

# Nebraska

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## Young Lawyers Section

*Submissions to the Young Lawyers Section Page from young attorneys across the state are always welcome. If you're interested in writing, please contact Allyson Felt, Editor, at [afelt@nebar.com](mailto:afelt@nebar.com).*

## Advancing Access to Justice

by Joshua M. Livingston

As the world we live in continues to change and evolve at what seems like a blistering pace, the current and next generation of lawyers have a distinct responsibility—potentially an unspoken mandate—to use the skills we have developed to effectuate major structural change however we best see fit. One of the most meaningful changes we have seen in recent years has been the unprecedented push to further equality and meaningful access to justice for all. The premise of meaningful access to justice is founded on the belief that every person should be entitled to the same opportunities and access to the legal system, regardless of immutable characteristics. The justice system itself, both civil and criminal, is a daunting entity particularly for those whose primary experiences may have been in the difficult role of a Defendant. Meaningful access facilitates equality, which in turn can create trust and buy-in of the justice system from the community at large. With trust comes engagement. With engagement comes progress.

### Joshua M. Livingston



**Joshua Livingston** began his career in 2016 in private practice with McChesney & Farrell focusing on family law, juvenile law, and consumer debt cases. He began working at Child Support Services in Douglas County in 2017. In late 2018 he moved to the Child Support Division at the Sarpy County Attorney's Office. In May 2021, he was promoted to Senior Deputy County Attorney

within the Child Support Division. Josh has served on the Creighton School of Law Young Alumni Council, The Nebraska Child Support Enforcement Association Board of Directors, and has been recognized by the Nebraska Bar Association for contributions to the Nebraska Free Legal Answers Program. In addition to his community service efforts, Josh has prepared various presentations on "The Gig Economy," "Implicit Bias," and "Establishment and Disestablishment of Parentage." Josh is presently in the process of becoming in-house certified through the completion of various trainings on leadership and racial equity issues.

The primary structures and operations of the court system necessarily depend on federal and local governments to provide infrastructure. As such, because it is responsible for the creation and funding of the justice system, the government itself absolutely has a major role in ensuring its success.<sup>1</sup> This facilitative role of government in the justice system when combined with the support and effort from young attorneys to make that system navigable and available to all will inevitably be a major catalyst toward the achievement of the goal of meaningful access to justice.

Young lawyers have been at the forefront of the push for societal change. Since 2016, the country has experienced a wave of legal activism as attorneys and law students have risen to defend civil liberties.<sup>2</sup> This activism has included the creation of legal clinics as well as lawyers volunteering to represent undocumented immigrants both in court and through legislative means. By way of example, the national organization "Lawyers for Good Government" bills itself as a community of 125,000 lawyers, law students, and activists fighting to ensure equal rights, equal opportunities, and equal justice under the law.<sup>3</sup> Over the past few years, when young lawyers have turned their attention toward social issues, meaningful change has followed.

Access to justice and improving our communities does not require great individual leaps. Bettering our community and striving for access to justice can be achieved through the effort of those who are willing and able to put forth time and energy into a cause they believe in and support. Nebraska lawyers, by virtue of our passion, experience, and training, have an unmatched ability to facilitate that goal of meaningful access, in both big and small ways, which transcends the mere sentiment or aspiration for change but creates tangible results and progress.

It has been said countless times that real change happens on a local level and young lawyers in Nebraska have stepped up and proven that to be true. In recent months, Nebraska lawyers have been an integral part of some of the most important state-wide events. Young lawyers volunteered as counsel representing individuals arrested at local protests, appeared at the Nebraska Legislature to provide testimony on issues important to them, and have been and continue to show up at county courts to provide assistance to individuals being evicted from their homes as a result of the pandemic. There is no limit to what can be achieved when passion, skill, and energy are combined.



The American Bar Association (“ABA”) Model Rule 6.1 states that “every lawyer has a professional responsibility to provide legal services to those unable to pay. A lawyer should aspire to render at least (50) hours of pro bono publico legal services per year.” Nebraska Supreme Court Rule § 3-506.1 states that “a lawyer should aspire to render pro bono legal services.” Nebraska has not adopted the 50-hour recommendation that the ABA has promulgated and specifically provides that there is no disciplinary action for not providing any voluntary pro bono service. The non-specific hour requirement does not mean Nebraska does not recognize the importance of such work, it merely just does not mandate it. Neb. Ct. R. § 3-506.1(b)(3) notes that lawyers should provide any additional services through participation in activities for improving the law, the legal system, or the legal profession.

Comment Two to Neb. Ct. R. § 3-506.1 outlines the type of work contemplated by these rules, specifically indicating that “legal services under these paragraphs consist of a full range of activities, including individual and class representation, the provision of legal advice, legislative lobbying, administrative rule making and the provision of free training or mentoring to those who represent persons of limited means.” This comment provides a good basis for volunteer activities available to lawyers. Comment Seven notes that “because the efforts of individual lawyers are not enough to meet the need for free legal services that exists among persons of limited means, the government and the profession have instituted additional programs to provide those services.” Considering the programs created by the profession, the government, as well as non-profit and community organizations, the opportunities take action and further meaningful access to justice are countless.

Furthering access to justice does not only have to be a selfless endeavor. Depending on your present employment circumstances, there are a number of benefits from participating in various pro bono or outreach programs. If you are a young lawyer who has the desire but not the present opportunity to appear in Court, pro bono work—including the Tenant Assistance Project—is a fantastic opportunity to dive headfirst into a litigation practice. Not only are you helping a person or family in need, you are gaining valuable practical experience by learning the ins-and-outs of the courtroom. Crafting a cogent argument while being able to pivot and think on your feet is a skill that only comes from in-court experience. The benefit of gaining this experience while at the same time assisting someone in their time of need is a win-win for the attorney and the community. If, on the other hand, you want an opportunity to enhance your writing and analytical skills, Nebraska Free Legal Answers has a multitude of questions, which provide the opportunity to clearly and concisely apply the law to a specific issue. Being able to clearly explain a complex legal issue will inevitably make for a better overall practitioner. Should you

want to gain more executive experience, providing legal expertise and guidance on the board of directors of a local non-profit or charity is a valuable resume builder. Several law firms require that associates spend time marketing and developing their professional reputation in the community. Providing guidance on a local board is a useful way to gain knowledge and establish yourself and network with other local professionals.

One of the most recent opportunities to advance access to justice has been the Tenant Assistance Project (TAP). TAP started in recognition of the members of the local community who were being evicted from their homes when they were unable to pay their rent as a result of the COVID-19 pandemic. Since that first courtroom appearance, TAP has grown to more than 40 volunteer attorneys, a 100-page Tenant Assistance Handbook, and now includes volunteer attorneys in both Lancaster and Douglas Counties. On any given docket day, there are more evictions hearings than attorneys. According to Erin Feichtinger, Director of Advocacy and Policy for Together, a local charitable organization focused on preventing hunger and homelessness in Omaha and the surrounding communities, young lawyers are in a position to help make a truly positive impact on the life of someone who may soon be homeless but for their intervention. In these pending evictions, there is a “surprisingly high number of eviction matters where the tenant has a valid defense.”<sup>4</sup> Feichtinger noted that with the assistance of TAP volunteers, successful eviction judgments have dropped from 90% to around 2% since August 2021.


Young lawyers, armed with the proper guidance, mentorship, and training, can provide tenants with representation and ensure that the tenant is not faced with the prospect of homelessness. Even if a legal defense is not available, the young lawyer will have the opportunity to use negotiation and problem-solving skills to reach a resolution where the landlords needs are satisfied, and the tenant remains in their home. With the availability of federal funds to prevent these evictions, in many instances, the lawyer’s role is to guide the client to these funds while negotiating additional time for payment with the landlord. Courtroom experience, client counseling, and negotiations: it is hard to think of a more valuable combination of skills for a young attorney.

In recognition of the importance of this project, on September 28, 2021, the Douglas County Board of Commissioners, via resolution, reallocated \$410,000.00 specifically for the Nebraska Volunteer Lawyers Project eviction mediation assistance program.<sup>5</sup> The allocation of these funds is a recognition that the need for attorneys to continue to provide this assistance is ongoing and necessary. Young lawyers, particularly those who do not ordinarily practice landlord-tenant law, would find great benefits in taking advantage of this free training. If your present practice does not include landlord-tenant law, the availability and mentorship of the full-time

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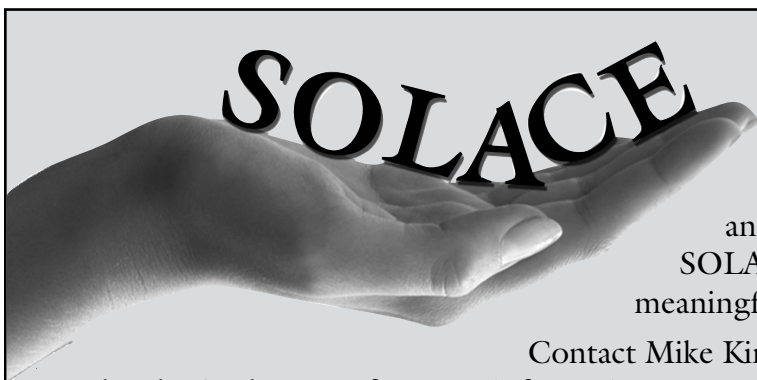
staff will be an opportunity to broaden your skillset and bring more value to your present—or future—employer while also having the safety net of those with more experience. Having a broader base of knowledge, particularly on issues as important as landlord-tenant law will put you in a position early in your career to be a go-to person for these types of issues. Even more, the value of mentorship and networking with other attorneys, who are willing to give their time as well, is immeasurable.

Another opportunity to provide access to justice is the Nebraska Free Legal Answers program. This free legal answers program is described as the “first and only national online legal clinic through which income-eligible clients can post civil legal questions to be answered by pro bono attorneys.”<sup>6</sup> Since 2018, the University of Nebraska College of Law has received the ABA Free Legal Answers Pro Bono Leader recognition award by answering 127 total questions in 2020.<sup>7</sup> In addition to providing valuable guidance to those in need, this program provides lawyers the opportunity to practice explain complicated legal concepts in a concise and clear manner to the average person.

This is only a small example of the many opportunities which are available to young lawyers. There is no end to the amount of good that can be done simply by putting forth the effort to make the community around you better. Nebraska lawyers, both young and old, should seek out these opportunities and encourage others to do the same. 

## Endnotes

- <sup>1</sup> See Figgatt, Sarah <https://www.americanprogress.org/issues/criminal-justice/reports/2021/07/15/501472/beyond-u-s-department-justice/>.
- <sup>2</sup> Lornet Turnbull, *Lawyers Turns to Activism as Civil Liberties Come Under Attack*, (2018) Yes! Solutions Journalism. <https://www.yesmagazine.org/democracy/2018/08/06/lawyers-turn-to-activism-as-civil-liberties-come-under-attack>.
- <sup>3</sup> Lawyers For Good Government, *Lawyers for Good Government Pro Bono Programs*. <https://www.lawyersforgoodgovernment.org/pro-bono-programs>.
- <sup>4</sup> Nebraska Transcript- Fall 2020 Issue, *Sullivan's Tenant Assistance Project Represents Renters Facing Eviction*. <https://law.unl.edu/transcript/fall-2020-sullivans-tenant-assistance-project/>.
- <sup>5</sup> Douglas County Board of Commissioners Agenda Item, Request Justification Form (2021). [https://commissioners.douglascounty-ne.gov/images/stories/Commissioners/agenda/sep/09\\_28\\_21\\_VII\\_A4a.pdf](https://commissioners.douglascounty-ne.gov/images/stories/Commissioners/agenda/sep/09_28_21_VII_A4a.pdf).
- <sup>6</sup> Tali K. Albuquerk, *Law Students Get Pro Bono Experience with ABA Free Legal Answers* (2021) American Bar Association. <https://www.freelgalanswers.org/blog/law-students-get-pro-bono-experience-with-aba-free-legal-answers>.
- <sup>7</sup> *Id.*



If you are aware of anyone within the Nebraska legal community (lawyers, law office personnel, judges, courthouse employees or law students) who suffers a sudden, catastrophic loss due to an unexpected event, illness or injury, the NSBA's SOLACE Program can likely assist that person in some meaningful way.

Contact Mike Kinney at [mkinney@ctagd.com](mailto:mkinney@ctagd.com) and/or Liz Neeley at [lneeley@nebar.com](mailto:lneeley@nebar.com) for more information.

We have a statewide-and-beyond network of generous Nebraska attorneys willing to get involved. We do not solicit cash, but can assist with contributions of clothing, housing, transportation, medical community contacts, and a myriad of other possible solutions through the thousands of contacts available to us through the NSBA and its membership.