

Minutes of the Committee on Resources for Self-represented Parties

March 13, 2015

Members Present

Judge Marsha Thomas, Carol Frank, Jessica Van Buren, Barbara Procarione, Jaclyn Howell-Powers, Virginia Sudbury, Chris Martinez, Leti Bentley, Sue Crismon

Members Excused

Eric Mittelstadt
Judge Douglas Thomas
Lisa Collins
Carl Hernandez
Susan Griffith

Staff

Nancy Sylvester

Guests

Mary Jane Ciccarello

(1) Welcome and approval of minutes.

Judge Marsha Thomas welcomed everyone and asked for a motion to approve the minutes. Ms. Crismon made the motion and Ms. Sudbury seconded it. The December 2014 minutes were approved as written.

(2) Announcements: Rule Change and New Member

Ms. Sylvester announced that Utah Code of Judicial Administration rule 1-205, which adds a representative from the Self-Help Center to the committee, will go into effect on May 1, 2015. That means Mary Jane Ciccarello will now be an official member of the committee by the committee's next meeting.

Judge M. Thomas announced that the Utah Bar is in the process of seeking out replacements for the Bar representative position. Robert Jeffs has been on the committee since 2007 and his term ended in January. Judge M. Thomas and Ms. Sylvester got in touch with John Baldwin about this and they will send 3-4 potential replacements for the Judicial Council to consider.

Judge M. Thomas then made a few more announcements:

Ms. Sylvester and Judge Thomas met with John Baldwin, Michelle Harvey, and Elizabeth Wright (Bar leadership) at the Bar since the last time the committee met. The five of them discussed all of the projects the committee is doing. The Bar leadership said the web-based triage is moving forward. They confirmed the issues with malpractice insurance and then told a story about issues with sign language interpreters and modest means. They said in one case, the sign language interpreter's rate was more than the modest means attorneys, which was hugely problematic. Ms. Crismon suggested that it could be

possible to tap into student interpreters as a resource in those cases. Ms. Sudbury then asked whether we can use court interpreters. Ms. Van Buren and Ms. Ciccarello said that wouldn't be possible because court interpreters can only be used in court proceedings.

Judge M. Thomas went on to discuss further the meeting with the Bar. She said that document assembly was the next project to focus on and the Bar leadership said they agreed. But they expressed concern with OCAP documents, saying some pro bono attorneys won't help with OCAP because of the nature of the documents and complications with answering them. The Bar meeting then discussed the virtual grant and Ms. Ciccarello's lawyer of the day project, which is part of a Legal Services grant. Bar leadership was very positive about both of these.

Regarding document assembly, Ms. Crismon asked what the real issue was with this. Ms. Crismon said, and Ms. Sudbury echoed this, that attorneys probably prefer their own version and that it's hard to respond to OCAP documents. She said it may be worthwhile to poll attorneys on exactly why they don't like OCAP documents.

Judge Thomas continued to discuss the meeting with Bar leadership. She said they also discussed the language access issue and the 3rd year practice rule. Elizabeth Wright (general counsel) is the one to work with on this. They also discussed the Bar's website and its directories. They indicated that they were in the process of trying to improve it. They said they sent out about 300 postcards to solo practitioners regarding the new directory but they got only 15 back – so more education is needed of attorneys on this issue. Another thing they brought up was the fact that the futures commission was looking into raising small claims' jurisdiction to \$15k.

Judge Thomas suggested that John Baldwin may have talked to Lincoln Mead regarding the website because Lincoln then got in touch with Judge Thomas. He suggested that there may be ways to do more filtering and that an email could be sent to the attorney when a referral is made. Lincoln also said Ty Barra (courts) came up with an idea on OCAP. At the end of the petition, it could link up somehow with the new Bar directory.

Ms. Ciccarello said the directory is a huge issue – the Self-Help Center wants to refer to attorneys, but can't because people will disappear on the directory from one day to the next. They are now telling people to Google attorneys. Ms. Sylvester suggested that perhaps the committee could write a Bar Journal article once the new directory is up. Judge M. Thomas and Lincoln could co-write it. Ms. Crismon said it is helpful to know what we want in a directory and to tell the Bar. What is currently operating is not working but there are new things launching over the summer.

Judge M. Thomas then talked about her meeting with Judge Evershed. She met with him while she was in Vernal recently. She said he is going to try to a pilot project in 8th District. He is going to put a link in the summons to the courts' YouTube video regarding what to expect when you come to court. He is also going to poll judges and clerks regarding what's wrong with self-represented parties' forms that's causing so many headaches.

(3) Subcommittee Reports

Education Subcommittee

Mary Jane Ciccarello gave the update.

There are 3 areas they are focusing on – increasing classes and videos; fotonovelas and webpages; and educating professionals

Ms. Ciccarello said that she covered much of this in the report attached to the agenda. Much of this is already being done by the Law Library and the Self-Help Center. But it takes tremendous resources and labor.

They are trying public library classes and will report back. They intend to spread these around the state once they learn how it goes.

Regarding the webpages and fotonovelas, they are working as quickly as they can. There is not much the committee can do. The biggest problem is that there is a resource issue. They simply need more money for more staff.

Regarding educating professionals, including educating judges and court staff on what is needed and how to deal with self-represented parties, this is more of an internal court issue and that's why there is an Education Department.

Carol Frank and Barbara Procarione volunteered what the issues are for clerks. The clerks try not to fill out OCAP, and instead send court patrons down to the library for help. They said where judges and clerks stumble is if something changes with respect to court resources. They said the administration needs to educate more. Ms. Ciccarello noted that this is an internal issue that can be worked on and she also said that in rural areas, more libraries can help. Ms. Ciccarello referenced a one-time grant to train public librarians that the Self-Help Center piggybacked on.

Ms. Ciccarello then elaborated on the challenges the Self-Help Center faces, primarily the fact that it is almost entirely staffed by part-time people. She said we need a more substantial Self-Help Center; we need full-time employees in the center because that is where many of these educational efforts will take – and are taking – flight. She said the committee can still make suggestions on education that's needed.

Ms. Ciccarello also discussed a project she is working on with a clerk. She is working on finding out how to better help pro se litigants at commissioner hearings. One solution is to create a template for minute entries during the hearings. Clerks would send the template to the Self-Help Center, and the Self-Help Center could then create the orders electronically and send them right back.

The next step for this subcommittee is putting in the Strategic Plan more funding for the Self-Help Center. This must be a top priority for this committee. Ms. Ciccarello said the Self-Help Center was recently part of a nationwide study. We are at only 1% of what California spends on their self-help centers, which means we are at the bottom of the barrel in terms of spending on self-represented litigants.

Forms Subcommittee

Ms. Van Buren gave the update and said they will continue to do what they are doing. She laid out process and noted that topics come to them as Ms. Ciccarello flags what is needed (i.e. orders to show cause; motions to excuse mediation). The way Ms. Ciccarello knows what is needed is if they get recurring requests for forms in the Self-Help Center or when clerks come to Ms. Ciccarello and tell her they have repeated requests for something. Ms. Ciccarello suggested that perhaps Judge Evershed would like to join the subcommittee since he is putting some of his own ideas into practice in his district. Ms. Ciccarello noted for the committee's benefit that the subcommittee is different than OCAP, which is legislatively formed. She also noted that local courts have forms that they use for their own practices.

Language Access Subcommittee

Mary Jane Ciccarello and Leti Bentley gave the update.

Ms. Ciccarello began by stating that there is an overwhelming need to prioritize language access, including access for the functionally illiterate. Referencing what New York is doing successfully, she said Utah needs to start on a very small scale a court navigator program in the 3rd and 7th Districts. These navigators would help non-English speakers complete forms, go through OCAP, and navigate around court.

Ms. Crismon noted that she has seen the success of navigation at Utah Legal Services, too. She said she has an attorney who took an illiterate client around to all the agencies she needed to access to right her legal problems (i.e. social security, vital statistics, etc.). She suggested working with the Hinkley institute to pull student navigators. Ms. Van Buren has already done this in the Law Library – she has an undergrad intern every semester, which has been tremendously helpful. She works hard to make sure they are trained and able to help court patrons.

Ms. Ciccarello noted that anyone who comes on as a court navigator must have an incentive to do the work, such as an intern getting school credit, or a fellow receiving a stipend. She suggested also working with the Bennion Community Service Center and Salt Lake Community College's paralegal program. She said if this works and can show this is what we have done, then we can apply for a JusticeCorps grant the way California has done. AmeriCorps doesn't have enough placement opportunities in Utah, but the money is there.

Ms. Bentley then elaborated on Ms. Ciccarello's report. She said she read the report that Ms. Ciccarello sent regarding what New York is doing. The Moab Multicultural Center is already doing a lot of these things; she said the biggest work they do is navigate. They don't give legal advice and are very scared to cross the line. They stay far behind it as much as they can. They go to court with clients and also do a lot of social work, such as going to agencies like DCFS and law enforcement (for police reports) with their clients. They also take notebooks to court and write down everything the judge orders and then explain it to their clients. She noted that people from other countries, especially Central and South American countries, are afraid to be in front of the judge. It is a different experience in their countries where the legal systems are corrupt so often times they just plead guilty to get it over with or don't take advantage of opportunities to pay less of their fines. For example, in cases of driving without a license, the judge will give their

clients the option to either pay a hefty fine or take driving classes and get a real license. Often times, they would just pay the fine. Now the Multicultural Center is offering classes to teach people the contents of the driving booklet. This allows them to pay fewer fines, which in turn helps their families. Judge Tubbs from the Moab Justice Court is now recognizing work that the Multicultural Center is doing and is noting its effectiveness, although he was initially skeptical. This works still needs the support of this committee if it's going to gain wider acceptance. Navigators really address these problems holistically, so this should be a big focus of the committee.

Ms. Crismon inquired whether this could become a program like the Court Visitor Program, where there are staff people centrally who dispatch volunteers to courthouses across the state. Ms. Bentley said at least in Moab, the University of Utah extension could give credit to social worker students for navigating, although they must be bilingual. Ms. Ciccarello said New York identifies its navigators with t-shirts so that the court staff know why they are there. She also said that the Moab Multicultural Center, and those like it, should become court partners since they are increasing access to justice and making compliance by non-English speakers more possible.

Rules, Legislation, Funding Subcommittee

Ms. Howell-Powers gave the update on this subcommittee. She said they met at BYU last month and tried to determine what the current 3rd year law student practice rule looks like and what the issues are. She said they used research from a survey that students did a year ago. The subcommittee tried to pinpoint areas where changes could be made. They identified 3 possible changes to the rule:

- 1) The current rule gives unwarranted authority to opposing counsel, which bogs things down, so we should get rid of this. Utah is the only one doing this.
- 2) There is movement in the law schools for 2L's to be able to appear before a judge. 26 other states allow 2L's to appear in front of a judge, and with Utah not being able to do this, it's creating a disadvantage for 2L's who would like to appear. Changing the rule would also mean more help for public interest organizations.
- 3) Expand opportunities for students to practice outside of the presence of attorneys. Currently, students must have the presence of an attorney at all times except in default divorce proceedings. The subcommittee is trying to brainstorm other areas that students can do without attorneys.

They will do a redline edit of the current rule and send it out to faculty, deans, etc. before moving to change the actual law. Judge Thomas said Elizabeth Wright (Bar general counsel) would be interested in helping and being involved.

Ms. Crismon asked any rule changes could also take into account the fact that 3L's must file a form to make an appearance. If 3L's could instead enter a limited appearance on the record, i.e. "Your honor, NAME entering appearance under rule X," this would make for much less hassle and paperwork. Ms. Howell-Powers said this was something the subcommittee would also consider doing.

Self-Help, Triage Subcommittee

Judge Thomas went over the objectives of this sub-committee; asked if any could be eliminated or moved. The committee agreed that the education work needed to be moved to the education subcommittee.

Regarding delivery of legal services, Ms. Crismon reported that the committee needed to encourage improvement of ALL legal services, i.e. all lawyer directories.

The committee agreed to support the triage webpage that ULS and the Bar were doing.

Regarding the malpractice insurance issue, the committee agreed to support the creation of signature programs through the Bar..

Mr. Martinez brought up the fact that the Tuesday calendar is a pretty open door for helping self-represented people in Salt Lake County. He said patrons can ask clerks to get on that calendar if their case is before commissioners.

The committee will look to see if there is a way to broaden the scope of malpractice, i.e. expanding the Tuesday calendars to other areas of the state.

(4) Development of Strategic Plan

Judge Thomas went around the table to see if everyone had had a chance to weigh in on what the Strategic Plan would focus on.

Ms. Frank said they have an access problem in the middle of the state. ULS does do one Skype clinic and they have partnered with the crisis center. Ms. Crismon said ULS's vision is that once it launches its Zoom clinics in the 7th District, then it would go to 6th and then statewide. She said Richfield is in the middle of the state, but the district is so huge that it makes tackling problems difficult. Virtual is nice because patrons can call in from other parts of state to an attorney in Salt Lake and a law student in Provo, for example. ULS is in the process of trying to locate places in the state as access places for these services.

Ms. Proccarione said they need a Multicultural Center in Price. The university is there but they need more social workers and case managers to act as navigators like in Moab.

Ms. Howell-Powers is interested in educating the legal community and law schools on where they can send people who need help. She said she gets multiple calls a day from people needing help. Ms. Crismon said this is why the triage webpage needs to happen. She said if for some reason the Bar backs out of that effort, ULS would take it up.

(5) Next steps

Judge Thomas noted how hard this committee is. She said this is a "roll up your sleeves and do it" kind of committee. She recommended that we just chip away at these issues, i.e. brown bag trainings, requesting funding, etc.

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Judge Marsha Thomas and Nancy Sylvester will present the Strategic Plan at the April Judicial Council meeting.

The meeting adjourned at 1:38.