

**STANDING COMMITTEE ON
RESOURCES FOR SELF-REPRESENTED PARTIES
Meeting Minutes**

**December 14, 2007
Matheson Courthouse
Salt Lake City, Utah**

Members Present: Hon. John L. Baxter, Chair; Fred Anderson; Prof. James H. Backman; Pat Bartholomew; Mary Jane Ciccarello; Rep. Neil Hansen; Chris James; Robert Jeffs; Jay Kessler; Hon. Rodney Page; Stewart Ralphs; Hon. James Shumate; Prof. Linda Smith; Jessica Van Buren.

Members Excused: Joe Derring; Hon. Christine S. Decker; Robert Jeffs; James Upton.

Guests Present: Kristine Prince

Staff Present: Marianne O'Brien; Tim Shea; Carolyn Carpenter

Welcome and Review of Minutes

Judge Baxter welcomed all present. The minutes of 10/12/07 were approved as prepared.

Report from Education Subcommittee

Pat Bartholomew reported the "Legal Information vs. Legal Advice Guidelines and Instructions for Court Staff" document was distributed to the clerks of court in their November meeting. They were asked to send comments by December 1st. The clerks of court were receptive to the document and think it will be helpful, but had a concern about how Rule 14-802 that allows clerks to fill out forms will be implemented.

Prof. James Backman indicated the paralegal section of the Bar could benefit from this document, as well as law students and paralegals. Prof. Linda Smith agreed. She requested that it be available in Word form so it could be edited for law students.

Tim Shea indicated the document will be integrated into clerical education and with clerk materials on the court's intranet. It can be made public as well on the court's self-help website.

Judge Shumate suggested the document be given to the Board of the Self-Help Center in St. George, making them aware that they can edit it for paralegals and volunteers. Ms. Smith said she could edit the document for paralegals if she had an electronic copy of it. Ms. Ciccarello stated she could do so as well.

Fred Anderson said clerks need direction as to when they can help someone with a form. Prof. Smith stated the rule simply states clerks can provide help. It should be within the discretion of the AOC and the clerks' offices whether on any given occasion providing help for a particular

patron is best. The only forms clerks are allowed to help with are the state courts' forms, not any other forms.

Judge Shumate stated care should be taken so that if a form is not filled out properly, the self-represented litigant cannot blame the clerk who helped.

Judge Baxter indicated there is a tension about the education of the clerks to do the right thing and at the same time bring the clerks' ability to help to the public's attention. The solution might be to put it on the intranet site, train the clerks, and then place it on the internet for public consumption or editing purposes.

Chris James stated the clerks will need some limiting guidelines that are uniform.

Judge Baxter summarized that those who work closely with the clerks are most comfortable with intranet site exposure at this time, clerk training, and the document will eventually be public.

Report on Attorney Pilot Program

Judge Baxter reported he received several questions from the Judicial Council on the pilot program. They are pleased that Mary Jane Ciccarello has accepted the position as the pilot program self-help attorney. She has been working in that position just short of a week.

Ms. Ciccarello reported she will go online with the telephone and email access beginning December 17. Hours have been established and clerks are happy with them: Mondays and Wednesdays – 2 p.m. to 7 p.m.; Tuesdays and Thursdays – 9 a.m. to 2 p.m. It will be determined if after-hour times and lunch-hour times will be helpful. Emails will be accepted at any time. Posters and flyers with information and times have been distributed to the clerks. Information is provided on any civil issue.

Ms. Smith indicated that many people, especially low income people, only have cell phones and do not have a land line. Ms. Smith noted that people may have to go to a courthouse or to a library to access a landline. Ms. Ciccarello stated the landline policy may change in the future.

Ms. Ciccarello stated she will visit the court sites to determine what they might need. Mr. Anderson pointed out that, in his experience, it takes awhile for clerks to get used to informing people of these services, so it may take awhile to get this going. Stewart Ralphs suggested Ms. Ciccarello set up a meeting to talk with the Legal Services Intake Unit. She agreed.

Report on the Harvard Conference

Judge Baxter indicated that he, Marianne O'Brien, Judge Shumate, and Kris Prince attended the National Conference on Access to Justice in the Courtroom for the Self Represented and Judicial Leadership in Access to Justice for the Self Represented at Harvard University. The Judicial Council was very interested in this conference. The juvenile court and the small claims section of the Bar have also indicated interest in this. The Chief Justice expressed interest in having a class to the appellate court judges because they anticipate that, as these processes come into place,

there will develop a body of law about the extent of judicial involvement. There were seven chief justices who attended this conference, and they are aware they will begin to see appeals come to them regarding the judges' role. This is a new way of being a judge and a new way of interacting with self-represented parties.

Kris Prince indicated the education department is looking at developing a curriculum for justice court judges, but this involves more than that. The curriculum generated by the national group is huge and much more in-depth. Ms. Prince is reviewing the materials to assemble a curriculum that could be taught to Utah's judges and staff. It is on the agenda of all the spring conferences.

Ms. Prince stated it is hoped that some training on this will be integrated into new judge orientation for all levels of court. Mentors will be trained to work with new judges who will be working with self-represented litigants.

Ms. Prince noted on the last day of the conference, each state was asked to talk about the action plan their state had created. Utah's action plan was highly focused on education, but one session at the spring conference will not be sufficient. This will need to be taught on an on-going basis with judges and staff. There is enough material to do that for a long time without repetition.

Judge Shumate said the chief justices who attended the conference stated the analogy in a way he had not thought of before: Lowes and Home Depot have made fortunes on the concept of do-it-yourself. There is a growing feeling among people that when there is a problem, they can obtain the right "tool" they need to represent themselves in court. If the courts do not accept that as part of the court's operation, people will go somewhere else. In 20 years the courts will be different from what they are today. That theme was running through the entire conference. This is a way to be proactive in a society that is changing the way people are living – using such tools as ADR to get through the process as painlessly as possible and get solutions. The courts need to be functional and relevant to people, or processes like ADR will take them away from the courts.

Rep. Hansen indicated that he has been in the construction business and can agree with the analogy of having tools needed to solve a problem yourself. The biggest problem will be self-represented litigants who do not know the rules. Is there a way to give them that information so they know what to do to represent themselves? Rep Hansen indicated that when he was new to the legislature he thought he knew a lot until he started reading the rule book. Now he uses the rules as a tool to push his issues through and is more successful when doing that.

Marianne O'Brien stated she was impressed at the difference an individual judge could make on a pro se litigant and the sense the pro se litigant has of having a fair shake and a level playing field. Whether the litigant wins or loses, they leave respecting the process and the rule of law. Judge Baxter agreed that it was not so much outcome driven as process driven so that people feel they had a fair shot.

Ms. Smith noted the new ABA opinion changed the old ABA opinion which said it was unethical to give extensive assistance to a self-represented litigant. Utah currently goes by the old opinion. Judge Shumate stated that Lowry Snow has asked for a review of the old opinion and the Bar is looking at it now.

Mr. Kessler encouraged the suggestion that after the curriculum is created, it be taken to the appellate court judges for their review before any judges are trained. Judge Baxter noted this committee will accept the chief justice's invitation to present it to the appellate judges.

Public Education and Outreach

Mr. Shea indicated that Ms. Ciccarello has some ideas to get started on public outreach. The Public Outreach Committee will be kept apprised of what is being done in this area.

Brochures

Ms. O'Brien indicated she has gathered brochures from other states, looking for material that would be given to a self-represented party after a lawsuit has commenced. There is a huge range from one page sheets to table of contents directing attention to various aspects of lawsuits.

Ms. Smith said last fall her students taking her community justice class spent time with Mary Boudreau talking about what kind of instructional material would be good for somebody who has a lawsuit. We were leary about giving someone an entire book – that people are not that interested or willing to read a long tome about all the steps involved. One student developed a powerpoint about what to expect when pro se litigants come to court, which was shown to this committee last December. The powerpoint is not yet complete. The course was not taught this past year, but it is hoped some pro bono students will complete the powerpoint and add chapters. This committee thought that kind of short approach, with visuals, available online, linked to the website, and put on videos that could be shown at the Tuesday Night Bar sites, was a good idea.

Ms. O'Brien stated it could be looked at as a book with many discrete parts or looked at as a series of part that could be assembled, covering the whole process. Ms. Van Buren added that there is the ability to put the information on the web, where people could access specific topics.

Mr. Shea said the powerpoint Ms. Smith referred to was well done, but there is a need to communicate to self-represented litigants that there is a value to the rules. The rules are not intended to keep people out of court but rather help them through court. Currently there is a mishmash of information on the website. It would be helpful if a uniform approach was used so the court has to maintain one information site instead of several.

Judge Baxter asked Mr. Shea to explain his ideas for what the written product should look like. Mr. Shea responded multiple brochures do not make sense to him. There could be one brochure that tells pro se litigants where to go to access the website, how to access rules and statutes, etc. That is information that never changes. It is a referral to authoritative sources, which would be fine. Individual brochures on serving process, on landlord/tenant, on small claims, etc., are too small to give any significant, helpful information. They might get read, but there's no real content. Mr. Shea recommends a more complete approach, broken down into discrete parts. It might include small claims, landlord/tenant, etc., and eventually might include everything. It should be organized in a convenient way to find the information wanted through tables of content and indexes. There ought to be a template for local courts to provide local information,

such as where to park. The web should be used almost exclusively for distribution, but the information would be prepared in such a way that it is easy to print the sections that are needed. As processes and procedures change, the changes are made on the website where people have access to the most current information. Many different ways of presenting the same information should be avoided.

Mr. Anderson said Utah Legal Services has extensive landlord/tenant information available online. To re-invent the wheel under the umbrella of the Administrative Office of the Courts seems unnecessary. Sharing of information should be done.

Ms. Ciccarello stated she wants to be involved in developing this. It has been useful to have Prof. Backman's subcommittee to run things by because there are lawyers looking at the information before putting it on the website.

New Business

Judge Baxter indicated Mary Jane Ciccarello will need to be replaced on the committee since she is now a court employee. Jim Upton will also be leaving the committee. He has accepted a position in Newport, Oregon, to start their drug court. His position will need to be filled by someone involved in community outreach. He asked the committee to send suggestions for replacements to Mr. Shea.

The meeting was adjourned.