

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

**October 10, 2008
Matheson Courthouse
Salt Lake City, Utah**

Members Present: Hon. John L. Baxter, Chair; Fred Anderson; Mary Jane Ciccarello; Hon. Christine S. Decker; Rep. Neil Hansen; Christine James; Jay Kessler; Jose Lazaro; Christina Micken; Hon. Rodney Page; Prof. Linda Smith; Jessica Van Buren.

Members Excused: Prof. James H. Backman; Pat Bartholomew; Robert Jeffs; Stewart Ralphs; Hon. James Shumate.

Staff Present: Marianne O'Brien; Tim Shea

Welcome and review of meeting minutes

Judge Baxter welcomed all present. Professor Smith made a motion to approve the August minutes as prepared. The motion was seconded, and carried unanimously.

Report on Court Solutions Conference

Mary Jane Ciccarello was one of several Utah participants in the Court Solutions Conference in Baltimore in September. She followed the track for self-represented litigation. Anyone interested in viewing the powerpoint presentations or files she received at the conference on a CD can do so.

Ms. Ciccarello indicated that it was clear there is no longer an issue of trying to convince court systems or state legislatures that self-help resources are needed. Virtually every state is at the second level of resources for self-rep parties. There is no standard approach for dealing with the self-rep issues, but every state is generating solutions that work locally. There are some best practices standards, primarily looking at forms development, website development, integration of law library resources, having supportive committees or access to justice committees and generating a strategic plan that works for the state.

Ms. Ciccarello noted that because the conference was held in early September, the nationwide economic issues were not in play, but will likely factor in now. Utah's system is somewhat unique because it is a virtual system and still a pilot project. Utah is also unique in that we have thought of resources to help people in both rural and urban settings. Many other states are struggling with this.

Two ideas that came out of the conference are limited scope representation and the use of volunteers. Limited legal help has been identified as essential to Utah's strategic plan. Ms. Ciccarello often refers people to the website that lists attorneys who provide limited legal help, but that is not statewide.

The experience of states around the country has been that doing this is not quite enough, and in particular Massachusetts has done an extraordinary job. They started out somewhat the way Utah has, and it never really went anywhere. Then the state court system, working with the bar associations, figured out a system for what they call limited assistance representation program. Their program is only in pilot districts currently, but is expanding into a statewide system.

The Massachusetts system established CLE programs. Any lawyer who wants to participate in the program must go through the CLE training. Following the training, they are placed on a list that is kept current by the bar associations and is given out by the court clerks and the bar associations. Part of the training includes giving lawyers standardized forms that the group has generated: fee arrangements, representation agreements, notices of withdrawal, and notices of appearance for limited purposes. The courts stay out of it at that point and do not track it. It is a fee based service and not a volunteer program but it has been extremely successful. They have CDs of the training, and Utah could plug into this.

There is a widespread program in California, and they are saying there needs to be a structure in place for training and support by bar and bench to let lawyers know this is a legitimate way of providing services. The program is promoted by publishing the CLE's in bar journals and other legal publications. The training is established by the bar and the bench and the leading forces are the judges. The lawyers love it and realize this is a great way to get cases. The self-reps love it as do the courts because everything flows better. It has been very successful.

Tim Shea noted that the Utah bar's new lawyer list does not include the limited legal help information this committee had asked for, but it was probably overlooked and might be added. Mr. Shea stated that if pilot districts are needed to develop this further, the 2nd and the 5th districts would make sense, since they are the districts that already have a list of attorneys willing to provide limited legal help, and doing this would bring them to the next step.

Judge Page indicated he would be willing to take this information to the bar and see if someone at the bar will work with him and this committee to make some progress on this next step. Judge Baxter thought the committee should discuss setting up a subcommittee with the leadership of a judge because judicial leadership is essential. He thinks that bar president, Nate Alder, will be supportive of this.

Following discussion, it was determined the Limited Legal Help Subcommittee will consist of: Mary Jane Ciccarello, Judge Page, Linda Smith, and Robert Jeffs. The subcommittee will meet and report back to the full committee at the meeting in December.

Education Subcommittee

Judge Baxter indicated he and Mr. Shea met and discussed their concern that this committee might turn into a forms committee, and it is hoped to develop new objectives and tasks. The people Jose Lozaro works with are completely underserved and could use outreach, as could senior centers and homeless areas, etc. Kris Prince, from the AOC's education department, is looking for subject matter and speakers for the March 2009 justice court conference. Information could also be given in the district and juvenile court conferences. Information about the Court Solutions Conference may be useful. Ways to further educate court clerks can be explored. The committee has talked about beginning community outreach, but has not yet engaged in it.

Judge Page indicated the committee may be handling all it can. He wondered if the committee is ready to start advertising more extensively in areas that need the help, or if it will just frustrate people who cannot yet receive assistance.

Judge Baxter responded that although the Judicial Council adopted most of this committee's proposal for the self help center, the economy has since taken a huge downturn. There are some ideas for preserving what is currently in place, but it may be that the expansion this committee proposed may not happen. If outreach is going to be done, the committee will have to focus less on the self help center and more on other aspects of access to the courts, such as OCAP, self-help clinics, and the bar's programs.

Mr. Shea indicated that he and Ms. Van Buren have been concerned that a recent class for clerks that was hosted by people not associated with this committee, did not rely on any of the materials this committee prepared. Trainers outside the scope of this committee should be welcomed, but it's concerning that they do not use very good materials that were developed just for that purpose.

Judge Baxter indicated he is willing to be a part of a process to explore further education objectives and tasks. Following discussion, it was determined the group that will meet to address this will consist of Judge Baxter, Jose Lazaro, Joe Derring, Chris James, Jay Kessler and Pat Bartholomew. This group will meet and come back with some proposals at the next meeting in December.

Joe Derring mentioned the Committee on Racial and Ethnic Fairness produced a report, and Brent Johnson may have materials from that committee. Ms. Van Buren indicated there may also be information in the library. She will check and also speak with Mr. Johnson.

Temporary Restraining Order Form

Ms. Ciccarello indicated the temporary restraining order packet (TRO) is meant for child custody more than anything else. The packet has been on the court blog for awhile. Significant comments were received from Stewart Ralphs.

Mr. Anderson asked why it is a temporary restraining order rather than a no-contact or protective order and whether it could be called a restraining order. Judge Page responded it is necessary under Rule 65A.

Judge Page stated that in TRO's judges are very hesitant to issue a Writ of Assistance. Those are only issued when judges think children are in danger, because it is very traumatic for a child to be taken from a parent by police, and it is dangerous for police to be doing those things. He also suggested a paragraph be added that gives the option of "other" because many times judges will add something such as "do not leave the county."

Prof. Smith suggested each paragraph be a check-off that the judge could choose. The Writ of Assistance could be included only as an option.

Mr. Kessler said if a child is in danger and there is going to be some irreparable harm, isn't that like getting a child protective order and shouldn't something else happen? Judge Page responded judges see those as distinct. The judiciary often sees situations where counsel use a protective order in a situation where it was not meant to be used, and is used as a "step up" on a divorce.

Mr. Shea asked if more support is provided to the TRO process whether there might be fewer co-habitant abuse orders issued. Judge Page responded affirmatively. He noted there are situations where the children are not really in danger but it is in their best interest to be with one parent or the other.

Mr. Anderson expressed that a pro se litigant likely will not know the difference. They will need an attorney or someone who is well informed to explain the difference. He said that this TRO while well intended, will create greater confusion relative to the other forms out there.

Judge Page stated the TRO is a good form and needs to be there. It may be somewhat confusing, but if a person goes to a judge and asks for a protective order when there is no basis for it, a restraining order can be asked for instead. Without this, people are left without a remedy.

Chris James indicated that in her district, law enforcement invariably calls asking for a restraining order rather than a protective order. Ms. Ciccarello added that one of the reasons these forms were done is because they are requested by court clerks who are often caught in the middle.

Mr. Shea indicated Ms. Ciccarello drafted this from the perspective of a lawyer representing a client. It starts out in the first person and then representations are made in the third person thereafter. First person is a simpler drafting style, but it does not work so well if it is an attorney filling it out on behalf of a client, which may happen sometimes. Mr. Anderson suggested just adding a sentence that says “by and through an attorney,” and it could still be in first person.

Ms. Smith suggested that individual paragraphs should also give an opportunity for the affiant to check or not check because a Writ of Assistance might not be asked for.

The committee determined they do not want to see the Temporary Restraining Order forms again after the changes are made.

Delegation of Powers by a Parent form

Ms. Ciccarello noted this form was presented at the last meeting and suggestions were made. Judge Page indicated he wanted to see further delineation of powers being granted. Ms. Ciccarello is still working on this because of what the statutory language says. The form was generally accepted at the last meeting but there was no committee approval. It was suggested she email Judge Page about the changes he wanted. The committee agreed, and it does not need to see the form for review again.

Voluntary Relinquishment of Parental Rights

Ms. Smith indicated she likes the checklist and the form is good. She asked if the law provides for a partial waiver of fees. She noted that the statute does not define what “poor” is for civil litigants. Ms. Ciccarello said she thought the law provided for partial waiver of fees but she will check. Ms. Smith suggested adding a sentence indicating that the forms are only valid in Utah.

Judge Decker suggested adding a sentence to ask people if they are under the influence of drugs or alcohol or any substance that would impair their thinking.

With these changes, the committee agreed it does not need to see this form again.

Miscellaneous forms

- Answer form
 - Ms. Smith suggested the form should include an option that the defendant neither admits nor denies but has insufficient information to respond.
 - Chris James indicated she was confused by the word “defenses.” She asked if that is a counterclaim. Mr. Shea responded they are the affirmative defenses that have to be plead or are lost. A denial says the plaintiff is wrong, and a defense says the plaintiff may be correct but loses anyway.
 - Ms. Smith asked if there is a reason a counterclaim is not included as an option. Ms. Ciccarello responded that the counterclaim had been planned as a separate form.
 - Mr. Shea asked Ms. James if a counterclaim were included as an option, but the option was not checked, if she would charge for it. Ms. James responded she would not.
 - The committee decided it would like to review the answer form again.
- Affidavit
 - The committee approved this form as drafted.

- Memo of costs and attorney fees
 - It was suggested that more space be added to the form for comments.
 - The committee agreed it does not need to see this form again.
- Notice of entry of appearance pro se
 - Mr. Shea indicated that if an attorney withdraws, the Rules of Civil Procedure require the pro se party to enter a notice of appearance.
 - Ms. Smith suggested the notice of withdrawal needs to include a motion.
 - Mr. Kessler suggested a 20-day notice of entry of appearance pro se.
 - Ms. Ciccarello indicated there are all kinds of issues here and pro se parties are being told they need this. It is difficult to remedy all the problems.
 - Mr. Kessler suggested eliminating the procedural snags in something like this.
 - Mr. Shea said that what he is hearing is that the package needs to be bigger and is not just this form. Mr. Anderson indicated that in the long run, that may be more efficient. The committee agreed and determined it will need to see this again.
- Request to submit for decision
 - Mr. Shea indicated this is pretty much a checklist from the rule in which there is a delineation of dates on which various steps have occurred.
 - Ms. Smith suggested adding the idea of “I want a decision without a hearing.” The committee agreed they do not need to see this form again.
- Proof of Service of Complaint and Summons
 - Mr. Shea indicated he has proposed something different from what Ms. Caccarello did. He revised it to attempt to have it as an instruction document, telling the person doing the service how they serve the various entities.
 - Following discussion, the committee decided to limit the categories to the major ones.
 - The committee agreed it needs to see this form again.

Other Business

Mr. Shea indicated the legislature has imposed on the judiciary more than a 3% reduction in the court’s budget for the balance of this fiscal year. The decrease for the next year is a bit higher. Dan Becker has recommendations for meeting those reductions. The Judicial Council will meet on Oct. 27 to decide what to do. It is being recommended that one-time money be used to handle the reductions for the current fiscal year. This will affect the funding source for the self help center, but not the operations.

Next fiscal year, the budget reduction for the judiciary is over four million dollars. Mr. Becker is going to recommend the Judicial Council pursue an appropriation this next fiscal year for the three attorneys this committee requested. In the meantime he has asked Ms. Van Buren to review the potential for grant money and that the pilot program be continued for another year.

Ms. Smith indicated there are some growth areas that will occur because of the downturn in the economy and the self-rep area will likely be one. Judge Baxter said that pitch was made to the Judicial Council.

Mr. Kessler proposed that another voluntary attorney slot could be put in. There are many attorneys in this state and some help could be received from each of them.

The meeting was adjourned. The next meeting will be held on Friday, December 12.