

**Minutes of the Utah Judicial Council's
Standing Committee on Resources for Self-represented Parties**

April 21, 2017

Members Present

Judge Barry Lawrence (chair), Judge Doug Thomas, Susan Griffith, Judge Catherine Roberts, Leti Bentley, Jacob Kent, Chris Martinez, Sue Crismon, Shaunda McNeill, Jessica Van Buren, Carol Frank (remote), and Virginia Sudbury.

Members Excused

Mary Jane Ciccarello, Carl Hernandez, Tyler Cameron, and Jaclyn Howell-Powers

Staff

Nancy Sylvester

(1) Welcome, approval of minutes, recognition of exiting member.

Judge Barry Lawrence welcomed everyone to the meeting. He then entertained a motion on the minutes. Judge Roberts moved to approve them and Judge Thomas seconded the motion. The committee unanimously approved the minutes.

Judge Lawrence then thanked Leti Bentley for her service to the committee and discussed a few of her accomplishments. Ms. Bentley expressed her appreciation for the opportunity to be involved with the committee and said it has helped her work with the Moab Valley Multicultural Center to be involved with the committee and the Self-Help Center. The committee then discussed how to replace her and asked how Ms. Bentley was recruited to the committee. She said Susan Vogel in the Self-Help Center had recruited her. The committee then discussed ways they could recruit for her position. Ms. Bentley and others suggested recruiting Kristin Johnson from Seek Haven in Moab, or recruiting from the Sorenson Center or 211 – United Way. Judge Lawrence requested that Ms. Bentley contact Ms. Johnson at Seek Haven and discuss the opportunity. Ms. Bentley said she will follow up with Judge Lawrence and Ms. Sylvester. Judge Lawrence requested other suggestions via email from the committee members.

(2) Law school outreach and Bar panel discussion.

Judge Lawrence then described the panel discussions at the law schools regarding pro bono service opportunities. He said both Jaclyn and Carl said they went well. The idea

is to do them annually at the beginning of the second semester. They will talk about opportunities available now for law students to contribute and gain experience before and after graduation.

The committee then discussed what happens at the law schools in terms of student experience. Ms. Crismon said JoLynn Spruance at SJ Quinney funnels students into the clinics and once they are used to that, they go on to the court calendars.

Christopher Martinez then talked about pro se calendars and training law students. He said he has had a few come back after graduation and help with the calendars.

Ms. Crismon then noted that there is a database scheduled to launch with all of listed pro bono opportunities. An attorney or law student can sign up and get reminders about all of the opportunities.

Judge Lawrence then discussed how the flip side of this is getting attorneys at the end of their careers. They don't want to maintain insurance but want to stay involved. Judge Lawrence, Rick Davis, and Tyler Needham are pushing this now. There will be a panel discussion at the State Bar's Summer Convention on this topic.

Ms. Crismon brought up that some attorneys want to do their own pro bono projects. This is covered by insurance if it is done under the Bar. She said there was a Bar emeritus committee created out of these attorneys' projects.

The committee then talked about having more attorneys doing remote hearings. Ms. Sylvester said she had made a presentation to justice court judges last Friday on this topic.

Ms. Griffith mentioned that in her experience, a lot the retired attorneys want to do limited scope representation. The Timpanogos Legal Clinic has had a lot of success with those kinds of volunteers.

(3) Subcommittee updates.

Forms

Jessica Van Buren talked about the new Standing Committee on Court Forms. She said the highest priority is the Licensed Paralegal Practitioner (LPP) project because it is set to deploy in one year or less and LPP's can't practice without court approved forms. The committee then discussed where things are with the LPP committee. There was talk of cost-benefit analysis, getting people involved, ethics rules, exams, etc.

Self-Help Center

Jessica Van Buren then updated the committee on the Self-Help Center. She said the Center immediately got a lot of calls once President Trump's new policies on immigrants were enacted. A lot of people have been worried about what is going to happen with their kids, businesses, etc., if they get deported. Mary Jane Ciccarello put on a CLE to address common issues and 80 attorneys came. It was standing room only. The Center determined that it needs to get attorneys educated so that it can refer people to them. Forms aren't enough; they need people trained. There is a packet of materials that Ms. Ciccarello made that is like a care plan. There is also a detailed booklet in English and Spanish that is designed for an attorney to explain to a client. Ms. Crismon said she'd bring it to one of the clinics she is staffing.

The packet covers all state court issues, not immigration. Issues include guardianship, custody, etc. Ms. Van Buren said they are hearing from people who are preparing to be deported, not those who've been deported yet. Ms. Griffith requested that the packet be sent out to the committee.

Lawyer of the day

Ms. Van Buren and Shaunda McNeill then talked about the lawyer of the day program. Fiscal year to date, there have been more than 400 referrals from the Self-Help Center to the lawyer of the day. They expressed gratitude for volunteer attorneys and noted that Ms. McNeill helped with recruiting in the Young Lawyers' Division. The committee noted that retired attorneys would be great at this. The Self-Help Center first explains the situation to the volunteer lawyer and then asks if the lawyer can help. The nice thing is that the issue is already teed up for the lawyer, including background, so it is an efficient system.

Free Legal Answers

Ms. McNeill and Ms. Van Buren then discussed Free Legal Answers, which is run through the ABA website. They noted that a person signing up for it must first put in income questions, which may deter people, and you must tell the truth. When the Self-Help Center went to test it, they found that they weren't able to put in information because of that. The website is for civil questions only and for people that don't have an attorney. Ms. Griffith said she went to Equal Justice Network and they didn't have much info on it yet. So it's new and still developing. She noted that Lawyer of the Day is more immediate.

McKenzie Friends

Ms. Sylvester discussed the McKenzie Friends report that Ms. Ciccarello had found. McKenzie Friends is something that has been around in Great Britain since the 1970's and now British Columbia has adopted it. A McKenzie Friend is basically a support person for someone who is representing themselves. They are not a lawyer but can help the litigant organize their thoughts or offer emotional support.

Judge Thomas said he already allows this to happen informally in his courtroom. The committee then asked how we can move this forward more formally. We need buy-in from judges. The committee discussed making a presentation to judges and also discussed how this falls on the spectrum of court navigators.

Judge Thomas said he looks for some good reason why a person needs a support person in court with them. A protective order may be a good reason, or if someone has helped them organize their records. He said he sees this most in landlord tenant.

Ms. Bentley said she acts like a McKenzie Friend for the Moab Multicultural Center clients, except that she stays in the benches and takes notes. Ms. Sudbury said she will be making a presentation at AFCC with 2 Canadians that is on limited scope. She will ask them about their practices. The committee then discussed bringing Ms. Bentley to a presentation/discussion with the judges. The committee discussed a breakout session at one of the conferences. Ms. Bentley said that if judges have guidelines for interacting with navigators/McKenzie Friends, that would be really helpful. Judge Roberts then brought up the need for more training on sovereign nation people/constitutionalists.

Counsel in Termination of Parental Rights Cases

Judge Thomas then discussed the issues surrounding the lack of counsel in termination of parental rights cases. He said he typically raises the concurrent jurisdiction of both the district and juvenile courts with the parties. Indigent counsel is appointed in the juvenile courts but not the district.

Judge Thomas said what typically happens is that a termination of parental rights is filed in connection with an adoption. The step parent files a motion to adopt and the biological dad objects, for example. This doesn't happen in every case. Father sometimes comes in with private counsel. But the district court has no funding to appoint indigent counsel. He said the objector either needs to find someone to represent them for free or walk across the hall and have the case heard in juvenile court. The problem is that the adoption can't be in juvenile court. Judge Lawrence noted that in

Third District, Locken and Associates said they will take the indigent parental termination cases.

AAA Taskforce

Ms. McNeill then gave an update on the Bar's AAA Taskforce. She said there are some new updates to the lawyer directory coming up. They will update it to show not just lawyers in rural areas, but also those who are willing to take cases in those areas. Ms. Van Buren noted that the Self-Help Center and the Law Library use the website all the time.

Remote Hearings

The committee then discussed remote hearings. The idea was floated to create a form for people to request a remote appearance in order to institutionalize this practice. The committee discussed the current practice of remote hearings, including set aside telephone conferences.

Judge Thomas said they have quite a few remote hearings. He said people just file a motion requesting it and it is routinely granted. He said they don't have ability to do them via video, though. Ms. Sylvester mentioned Google capabilities.

Judge Roberts said she uses video all the time with remote jails. But there are problems with video feeds. She has requested the AOC to invest some money in this equipment.

Rural Services

Ms. Bentley then reported on rural services. She said things improved for the work she does as more conversations with the courts happened. She said she has had great results with the work they are doing. She said she noticed her clients (non-English speakers) would just plead guilty before she got involved because they wanted to just get the case over with and because in their countries, the government is corrupt. When applying for citizenship, a guilty plea would be hugely problematic. After she got involved, her clients would be more invested in the process, with better results in terms of compliance with court orders and fewer guilty pleas. Judge Lawrence asked what we can do moving forward to keep this effort going. Ms. Bentley said the conversations need to happen with the courts in the rural areas and more people in rural areas need to get involved in this work. The committee discussed how to do that, including speaking with other non-profits. Ms. Bentley noted that funding for MCC comes from private donors.

Ms. Bentley said Judge Romney in Provo contacted her about doing this same thing in Provo. She noted that Centro Hispano charges for their services; it is hard to get people to do it without charge. The committee then talked about BYU being involved. A member noted that the Jacobson Service Learning Center at BYU would be a good contact. Carl Hernandez is starting a clinic with the LDS church at Deseret Industries related to immigration issues. A member noted that the case types that have the highest need for court navigators are family law.

Ms. Griffith then gave an update on the Timpanogos Legal Clinic. She said they are hopeful that the clinic will secure a VOCA grant. VOCA funds used to be limited to preparing emergency orders, but they have now added family law orders.

The committee then discussed court navigators and determined that court navigators could not be court employees because of partiality issues and the amount of time court employees can spend with court patrons.

Rule 16 Subcommittee

Ms. Sylvester reported that there are no new updates on the Rule 16 subcommittee, but mentioned that Commissioner Sagers had come to the last committee meeting and provided an update.

Judge Thomas reported on the Domestic Case Process Improvement Subcommittee. He said it has been a very proactive committee. They have been focusing on different tracks for different cases. One of the tracks is pro se parties and the idea is to push everything forward and move cases quickly. The court needs to provide resources for them. In more populous districts, they are trying to make sure that they have appropriate resources, but they have noted that they don't have resources to do the same in rural districts. So they are trying to come up with the appropriate structure to assist pro se litigants. This includes timelines, notices as to what they need to do by certain dates, etc. They will also be given a list of resources, which will vary by location in the state. What won't be allowed to happen for pro se parties is letting cases sit. There will be corresponding litigation tracks depending on whether a case is complex, simple, default, or custody. They are looking to compress how long it is taking to get cases through the system. Right now the average contested custody case is taking 780 days. They are trying to move from a system where litigants and lawyers have control to one where the court has more control, like a criminal calendar. Every time a litigant comes to court, they will leave with an order. They also won't leave a court hearing without another one being set up. This is much the same way Commissioner Sagers has been

running her pro se calendars. Chris Martinez said he had concerns originally with rule 16 hearings and the pro se calendars, but they have been going well.

The committee discussed inviting the Rule 16 commissioners to the June meeting. The Domestic Case Process Improvement Subcommittee will have its recommendations to the Judicial Council in July. Ms. Sudbury asked whether they were talking about orders. Judge Thomas said attorneys will prepare protective orders before they leave. The court will fill out orders on the bench at the time of the hearing. Orders will be completed by the end of the hearing. He noted that sometimes orders don't come in from parties when the court asks them to do them.

Chris then talked about how some non-profit law firms are filling gaps that Legal Services can't fill, such as Open Legal Services, Choice Legal Services, and Non-profit Legal Services. Judge Thomas noted that pro se does not equal the need for pro bono, though. He brought up landlords who are requesting pro bono attorneys but have the ability to pay for a lawyer.

(4) Adjournment

The committee adjourned at 2 p.m.

Next meeting is scheduled for June 9, 2017 at 12 p.m. in the Judicial Council Room of the Matheson Courthouse.