

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

June 9, 2017

**Members Present**

Judge Barry Lawrence (chair), Susan Griffith, Judge Catherine Roberts, Jacob Kent, Chris Martinez, Shaunda McNeill, Jessica Van Buren, Mary Jane Ciccarello, Carol Frank (remote), Virginia Sudbury, and Lisa Collins.

**Members Excused**

Tyler Cameron, Jaclyn Howell-Powers, Judge Elizabeth Knight, and Judge Doug Thomas.

**Staff**

Nancy Sylvester

**Guests**

Kim Free, Commissioner Sagers, Commissioner Patton (remote), and Kristin Johnson (remote)

**(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. Mary Jane Ciccarello moved to approve them and Virginia Sudbury seconded the motion. The committee unanimously approved the minutes.

Judge Lawrence then thanked Mary Jane Ciccarello for her years of service to the committee and discussed a few of her accomplishments, which were highlighted in a letter from Chief Justice Durrant. Ms. Ciccarello expressed her appreciation for the opportunity to be involved with the committee.

**(2) Subcommittee updates.**

**Education/Outreach**

Judge Lawrence then introduced Kim Free, who works in the AOC Education department, and she talked about opportunities to educate pro se litigants in justice courts. She raised an issue that the Justice Court Board had brought up: adding another

justice court judge. Ideally we would have one urban and one rural. Ms. Free also offered to be a part of the committee. Ms. Sylvester noted that this committee always has items to take back to Education, so it would be helpful to have a liaison built in to the committee. Judge Lawrence and others agreed.

Ms. Ciccarello talked about having a regular slot on justice court judge conferences. Judge Lawrence echoed the importance of educating judges and clerks. Ms. Free noted that there are two conferences per year; she said the clerks' conference is separate. That is at the end of October in St. George. Both clerks and judges conferences need regular presentations on pro se issues. Judge Roberts said it would be good for Judge Lawrence to meet with the Justice Court Board meeting in October to discuss the needs of that court level.

Ms. Ciccarello mentioned that one of the first activities undertaken by this committee was creating a handbook on legal advice versus legal procedure advice. Many clerks don't know about it. The committee discussed how difficult it is to know where the line is. Chris Martinez discussed what Legal Aid does and that they have their paralegal refer to the Self-Help Center or the legal clinics.

Ms. Ciccarello then discussed the Self-Help Center's limits. She said that if someone says I need to file for divorce, we say here is the form. If someone says I need to sue my neighbor for encroachment, we can say here is how the process works, but we can't tell you your cause of action.

Commissioner Patton said he believes divorce in Utah is becoming a commodity. There are statutes that direct the judge to enter certain orders. He said that we're simply doing what the statutes tell us. But you get certain things when you file for divorce. There are more and more things that take judges' discretion away.

### **Rural Services**

Ms. McNeill talked about the AAA Taskforce and the form she drafted for moving to have a remote hearing. She sent it to Ms. Van Buren. This would go to the judge or the commissioner. The Self-Help Center gets requests on how to do this all the time.

Com. Patton talked about orders to show cause. He said that if one side is asking to have the other side held in contempt, he didn't think it was appropriate for the requester to just call in. Regarding temporary matters and pretrials, he said many attorneys don't settle until they are in the same room breathing the same air.

Ms. Sylvester discussed the remote appearances report in the packet and noted Commissioner Patton's concerns. Judge Lawrence also echoed Commissioner Patton's concerns and said that although he tends to be fairly liberal in allowing remote appearances, he agreed that there are benefits to having parties appearing in the courtroom as opposed to remotely. Virginia Sudbury then talked about things at the law and motion level that can be done remotely, especially when parties are out of state.

Ms. McNeill discussed the idea of a pilot program in rural areas. Judge Lawrence said pilot programs can be good, but he is always concerned about too much extra work for clerks. He gave the example of the pilot program with Tier 3 cases. Ms. Sylvester talked about the pilot for rural districts, noting that one idea thrown around in the AAA Task Force was a single calendar each week for remote appearances.

### **Rule 16**

Regarding the pro se calendars, Commissioner Patton said he is settling in excess of 90% of pro se cases. He gives a lot of credit to Susan Griffith. He said that if there is any weakness in the process, it is entering into stipulations on the record, but not following up on orders. But he said some attorneys are bringing laptops and filling out orders in court.

Commissioner Sagers said that in the majority of cases on her calendars, there is resolution; if not, there is a next step. Judge Lawrence said it sounded like we are getting a lot of bang for our buck on these calendars. Commissioner Sagers said that her calendars are several hours long and they are getting people through. The last calendar she held was in May. She had 26 cases and all of them either dismissed or were given a next step. She said that she is reluctant to set the next calendar because in July the Domestic Case Process Improvements Subcommittee will be talking with the Judicial Council about a global change to domestic cases, which will include early case conferencing. She said she'd heard that the committee had talked about having a dedicated case manager in each district for domestic cases. She is concerned about the effectiveness of this in urban districts but said she thinks it could be helpful in rural. But she is reluctant to do anything further on her own calendars until the Council acts on the subcommittee's report.

Commissioner Sagers noted that she has had more pushback here with clerks. Judge Lawrence asked if we should push for more funding and how they are addressing the added burden on the clerks. Commissioner Sagers said she understands that they are looking at restructuring the clerks' office and using existing resources.

Ms. Ciccarello said that the recommendation is fairly vague but does discuss having a domestic case manager with the idea of leaving the ultimate decision up to local resources. But it's more of a calendaring issue. One track will be any case where an answer is filed, they will hold a conference within a short time after that. The court will check certain things, such as what the issues are and does it need to go to settlement conference or mediation. Another track will be if nothing happened on a petition after 60 days, the petitioner will be called in to answer questions about service, etc. Another track is for custody disputes. The subcommittee hasn't said whether the domestic case manager should be a highly trained clerk, attorney, etc. because they are leaving that up to local courts.

Commissioner Patton talked some more about what they are doing in his court. He said they are setting these cases for scheduling conferences 60 days after an answer is filed. He is not dealing with ones where an answer is not filed. Many cases are dropping out of the conferences if they are uncontested. More than half of the cases are filing something saying all the things are done, so they are not showing up at scheduling conferences. If one is pro se, they are showing up and he goes through what they need to do. He lets the other side tell them what is missing at that point. He will then direct the parties to mediators and gives them a paper telling them where they can get legal advice. He then sets it for pretrial calendar to make sure it's moving forward. His clerk says it's not taking much time to set the scheduling conferences.

Commissioner Sagers said she thinks that eventually these innovations won't be as great of a burden on a court.

Commissioner Patton then raised the question again of legal advice versus procedural advice. He asked at what point do we quit being a court and instead become court services. He said that at some point, word will get out that the court will move you through the system and you don't have to hire an attorney. He is concerned about having a case manager moving cases forward.

Kristin Johnson then jumped in and said that in her capacity as a domestic violence victim advocate, she often helps people with OCAP and the question is always what is the next step. The court clerks won't answer it, which is frustrating.

Ms. Sylvester then raised the report in the packet about disruptive technology. The committee had a discussion about how much the court should be service oriented. Commissioner Patton noted his continued concerns about the line on procedural advice: at one point should we be advising people about what forms they should file and what they need to do?

Commissioner Sagers said she thinks we're going to see a big change after the subcommittee's report. We're moving toward court-directed case management, which is going to change how we do things.

Judge Lawrence then asked how has the attorney recruitment has been going on these calendars. Commissioner Sagers said she brings pizza quarterly and she and the attorneys meet to discuss the calendars. She said more and more attorneys are coming. Ms. Sudbury suggested that Commissioner Patton do the same, but he said he doesn't think he wants attorneys sitting in big circle singing Kumbaya.

Ms. Griffith then discussed her perspective on what's happening in Commissioner Patton's court. She said attorneys have been very responsive because they feel like they are doing something meaningful. They can see results that are significant. It takes attorney work to make that happen. They are only doing these calendars quarterly. They have had only one case with no resolution and some cases with partial resolution, but there is a lot of comradery.

Judge Lawrence then asked if we need to report to the Council on Rule 16. The committee determined that yes, it would be good to provide feedback to the Council as the DCPI subcommittee reports.

### **(3) Existential Discussion**

#### **Rule 3-115**

J. Lawrence went through Utah Code of Judicial Administration Rule 3-115, which directs the committee's work. He said he sees education, rural services, and Rule 16 as priorities, but asked if there is anything else we should be doing. He said he recognizes that we are all busy and there are other initiatives out there. He also said we may be doing exactly what we should be doing. Ms. Sudbury said that we may be ahead. She went to a conference and they said the West is being innovative; the East is not yet. She said she would talk to people and they would ask what we're doing. Ms. Ciccarello noted that we don't have much data or research on these efforts yet, though.

Commissioner Sagers and Ms. Ciccarello have tried to track things, but they need to study it more. Maybe interns could help with it. Ms. Sudbury asked what we would study. Ms. Ciccarello suggested tracking 6 months down the road and asking questions like, are people getting orders they are living with? How many are coming back on orders to show cause and requests to modify? People don't want to keep coming back, except for a few who have other issues. How effective are the clinics?

Ms. Sylvester raised the idea of asking the National Center for State Courts to do a study. She noted that we have asked them to do this in the past with discovery reform and the Civil Rules committee. She thought we could ask for grant funding to help.

Ms. Griffith said she's noticed that people think whatever they have done in court is just supposed to work but then end up having huge problems that need fixing. She thought it would be good to start with looking status quo. She said damage is not found in just court time, but also what happens with these families – bad orders, no child support, etc.

Prof. Hernandez said the rule says study not just the needs, but also the outcome. He said we should connect it to paragraph (2)(c) – ensure that court programs are integrated into statewide and community planning for legal services. The only way we can capture this is to study it. There is no policy group to take this on. He said the NCSC may be a possibility, but we also have two universities that may be able to take this on and study it. He suggested forming a subcommittee to talk about what needs to be studied, what we do best, and what we'd like to see be sustainable.

Judge Lawrence said there is a huge need in domestic and collections cases, but we do have programs to deal with that. He asked if there are other areas where there is a need.

Judge Roberts said in small claims cases you can now have a jury trial, which is creating a lot of imbalance in small claims for pro se. For example, you'll have Intermountain Healthcare on one side and a pro se on the other. They are suddenly going to district court and there are disadvantages there, such as formal rules of civil procedure to follow. She said there is clerk education needed on what advice they can give and giving advice on what to do next. Judge Lawrence said this sounds like the perfect case for 3<sup>rd</sup> year law students.

Judge Roberts said she has a friend in Los Angeles who runs a self-help center. She said there are a bunch of people from Americorps that help there. She wondered if that could work here or if we could tap into universities.

Judge Lawrence suggested that we wait and see what the new small claims rules look like. Then we could talk about starting a new program where young lawyers can help – just where there is an imbalance. Judge Roberts said that is a good idea. She said she was an older law student and got a lot of invaluable experience volunteering.

Judge Roberts said she will report back on small claims rules. There will be a presentation at the Bar Convention by some of the small claims committee members.

Ms. Sudbury said that the Limited Scope Section will receive the section of the year award at the Bar Convention. Judge Lawrence noted that he will be part of the access to justice panel discussion at summer convention and invited Ms. Sudbury to join the discussion.

#### **(4) Adjournment**

The committee adjourned at 1:30 p.m.

Next meeting is scheduled for August 11, 2017 at 12 p.m. in the Judicial Council Room of the Matheson Courthouse.