

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

August 11, 2017

**Members Present**

Judge Barry Lawrence (chair), Judge Elizabeth Knight, Sue Crismon, Jacob Kent, Chris Martinez, Shaunda McNeill, Jessica Van Buren, Kristin Godwin (Johnson), Jaclyn Howell-Powers (remote), Carol Frank (remote), Judge Doug Thomas (remote), Judge Catherine Roberts, Susan Griffith

**Members Excused**

Virginia Sudbury, Lisa Collins, Carl Hernandez

**Staff**

Nancy Sylvester

**Guests**

Kim Free, Nathanael Player, Monica Fjeldsted

**(1) Welcome, approval of minutes, introduction of new members.**

Judge Barry Lawrence welcomed everyone to the meeting. He then introduced Nathanael Player, who is the new director of the Self-Help Center. Mr. Player gave the committee some background on himself. Judge Lawrence then introduced Kristin Godwin (Johnson), who works for a domestic violence shelter in Moab and is the new community member representative. Ms. Sylvester then introduced Monica Fjeldsted, a case manager from Farmington District Court who will be taking committee member Tyler Cameron's position.

Judge Lawrence then entertained a motion on the June minutes. Ms. McNeill moved to approve them and Ms. Van Buren seconded. The committee unanimously approved the June minutes.

**(2) Committee Discussion**

**New Bar Section**

Judge Lawrence then discussed his thoughts on where the committee is going and some of the needs he thinks are out there. He talked about the creation of a new bar section for inactive and retired attorneys. The idea is that the section will allow them to be more involved in pro bono efforts with the assurance that they will be covered by malpractice insurance. Rick Davis of Prince Yeates is working on forming the new section. Judge Lawrence talked about the panel discussion at the Bar convention. He said there was a lot of interest in getting involved. Ms. Crismon clarified that under Rule 14-803 attorneys can volunteer for any legal non-profit, any of the clinics, etc. It's pretty broad what they can get involved in. The eviction, debt collection, and domestic calendars could particularly be populated by these attorneys.

### **Domestic Case Process Improvements Subcommittee (DCPIS)**

Regarding the DCPIS report, Ms. Sylvester went through the recommendations that the Judicial Council adopted at its June meeting. It was clear from the report that much of the Rule 16 pilot project had played a big role in the subcommittee's report. The big takeaway from the report was that the court, rather than the parties and attorneys, would be directing the progression of these cases. And because domestic cases are so different from other case types and deal with such a sensitive area of peoples' lives, the processes should differ. Judge Lawrence determined that the Rule 16 subcommittee of this standing committee had completed its task.

### **Subcommittee Discussions**

Regarding each of the subcommittees, Judge Lawrence went through his and Ms. Sylvester's discussions about the topic areas each subcommittee engages in. He added non-lawyer assistance to the Self-Help Center category. Non-lawyer assistance will include McKenzie Friends, which the committee discussed at recent meetings.

#### *Education and Outreach Subcommittees*

Judge Lawrence then asked the committee what more we should be doing right now. Ms. Van Buren brought up education. She said we used to do regular presentations to court staff and judges but have not done so for quite a while. Judge Lawrence observed that perhaps we should separate the outreach and education topic areas since education is more internal to the courts and outreach is more external to the Bar and public.

Judge Knight then spoke about the juvenile court. She said that court level has largely solved its self-represented party problems. She said protective order cases may be the only ones without counsel but that they are moving in the direction of having

representation. They appoint counsel on all felonies and the statute now allows appointment of counsel in parental termination. In district court, Judge Lawrence observed, Locken and Associates take on those.

Judge Roberts agreed to chair the education subcommittee until she retires later this year. She will try to get an item on the Spring Justice Court Judges Conference agenda.

Education Subcommittee membership: Judge Catherine Roberts (chair), Kim Free (ex officio), Jessica Van Buren, Nathanael Player, Lisa Collins, Nancy Sylvester, Monica Fjeldsted.

Outreach Subcommittee membership: Judge Barry Lawrence (chair), Judge Doug Thomas, Judge Elizabeth Knight, Judge Catherine Roberts, Shaunda McNeill, Jaclyn Howell-Powers, and Professor Carl Hernandez. This subcommittee will focus on getting attorneys and law students to fill the need for representation.

#### *Rural Services Subcommittee*

Judge Lawrence then turned to the Rural Services subcommittee. Susan Griffith asked how he envisioned her chairing that committee. He said the group should be identifying what services are currently available to self-represented parties, and what gaps still exist.

Rural Services Subcommittee membership: Susan Griffith (chair), Carol Frank, Judge Thomas, Kristin Godwin (Johnson), Jessica Van Buren, Jacob Kent, and Leti Bentley (ex officio).

#### *Court Updates/Self-Help/Non-Lawyer Assistance Subcommittee*

The committee then discussed adding a court updates subcommittee, which will dovetail with forms. Members noted that this committee is still a good place for recommending forms and website updates, etc. Ms. Sylvester mentioned that there was a recent update to the Utah Rules of Civil Procedure dealing with self-represented parties. Ms. Van Buren then updated the committee on the informal probate forms that have been posted to the courts' website. There is now a small subcommittee consisting of Ms. Van Buren, Mr. Player, Brent Johnson, and Kim Allard that is moving forward on non-LLP (Limited Licensed Paralegal) forms for the Standing Committee on Forms.

It was proposed that Nathanael Player, Jessica Van Buren, and Nancy Sylvester could be on a court updates subcommittee.

Regarding the Self-Help Center and non-lawyer assistance, the idea with this committee is obviously triaging with what the Self-Help Center does, but also focusing on non-lawyer assistance ideas like McKenzie Friends and the use of Hinckley interns in the law library that help people with filling out court forms.

Self-Help Center/Non-lawyer Assistance/Court Updates Subcommittee membership:  
Nathanael Player, Jessica Van Buren, Nancy Sylvester, Chris Martinez, Kristin Godwin (Johnson) and Virginia Sudbury.

Ms. Sylvester will type up the new list and send it out. Subcommittees will come back at the next meeting with updates on what they are doing and the gaps in services.

### **Further Discussion**

The committee renewed its discussion on the new Bar section. Judge Lawrence said the section will be targeting retired and retiring lawyers. Judge Lawrence said people who are retiring want to still work, but don't want to buy malpractice, and don't want clients calling them every day for two years. Regarding the Bar's malpractice insurance, a committee member noted that it is available when someone takes a pro bono case through the Bar or an approved organization, but is secondary if someone already has insurance. If the person doesn't have any malpractice insurance, it becomes primary.

Judge Lawrence said he's heard a lot of attorneys are interested in doing immigration work right now. The committee then discussed a new initiative called the Refugee Commission in which Rob Rice is involved. The committee also discussed that Carl Hernandez has started a new immigration clinic through the LDS church at BYU law school. That is starting up in fall semester. The committee then discussed the idea of a contest between U and BYU for students regarding number of pro bono hours in a given year.

Mr. Martinez raised a rural area issue. He said he's heard that there is a lot of need in rural need for defense work in landlord-tenant and debt collection. Ms. Crismon noted that there is no money for attorneys there because typically those people can't pay if they are being evicted or not paying their debts. Ms. Sylvester raised the rural remote hearings effort by AAA taskforce and the potential pilot program in Seventh District. Mr. Player asked whether there are CLE's for attorneys doing pro bono work. In San Francisco, he said, there would be free CLE's for attorneys willing to take a certain amount of pro bono cases, specifically in the eviction area. An experienced attorney would also be available at the eviction calendars to mentor younger attorneys.

Ms. Crismon noted that the biggest issue in Utah is the 3-day notice to pay or vacate. That's what makes it difficult to place clients with pro bono attorneys because those 3 days counts weekends. But, she said, if there is a way to coordinate remote hearings in rural districts with the pro bono calendars already happening in Salt Lake, that could be a way to provide attorney help.

Ms. Frank discussed what happens in Sixth District. She said there are 4-5 debt collection cases, mostly post-judgment, that are held each court date. Judge Bagley and Judge Lee each have one civil law & motion day a month. Ms. McNeill said part of the issue with remote hearings is that they would need to figure out the negotiation between parties piece. Judge Lawrence offered to talk to some of the judges about how to overcome this. He said will talk to them at the annual judicial conference, which is early October. The committee then discussed video capabilities. Judge Roberts said that with Vidyo, you can just silence people you don't want to hear the negotiations.

Mr. Martinez then talked about another unmet need in domestic case trials. He said some people are trying to find counsel, but the attorneys won't take them on because they are reluctant to jump in so late. It was noted that the Legal Aid application process can take a month or two. Committee members then discussed the challenges of not having access to private files in domestic cases. The committee also discussed informal trials. Mr. Martinez pointed out that both parties must consent and if one is represented, they likely won't consent. He said he thinks some attorneys are concerned about how they will be perceived with little preparation time.

Ms. Crismon surmised that LPP's may help in this exact scenario because if the LPP serves up the issues to the attorney, the attorney may feel more comfortable. The LPP program won't be up and running for another 1 1/2 years, although the forms and rules are just about ready. There is concern with how the education piece is going to work. Ms. Crismon then discussed how the Bar has approved CLE credit for pro bono work. She said 5 hours of pro bono work will equal 1 hour of CLE credit and attorneys can do up to 6 hours of CLE credit this way.

Ms. McNeill and Ms. Sylvester then gave an update on the Bar's AAA Taskforce. They surmised that the taskforce may be nearing the end of its committee life. AAA implemented the new Bar directory and acted as the implementation arm of the Future Commission.

There was talk of an Access to Justice symposium and then the discussion switched to what each pro bono commission in each district is doing. The committee noted that Tyler Needham, the Access to Justice Director, may be the point person for the state on

all of the various efforts. The committee asked whether we create a subcommittee on access to justice and talked about inviting Tyler to the next meeting. Judge Lawrence then asked Ms. Frank to have Judge Bagley call him.

Judge Thomas then joined the meeting via phone, noting that cell phone coverage in Emory County is not great but that they can do things via internet. Judge Lawrence asked if Judge Thomas had heard the conversation about coordinating volunteer attorneys in SL with 7th district. Judge Thomas said he hadn't but said if you build it, they will come. They have no history of using pro bono attorneys and don't have pro bono calendars but they see a lot of pro bono issues in landlord-tenant and domestic cases. Regarding informal trials, he said practically all domestic relations cases are done through an informal process if both are pro se. Regarding pro bono lawyers, he said there is a huge need, noting that most debt collection cases are resolved by default. Occasionally when you get a pro se litigant going against a debt collection company, it is an uneven battle. How do you match them?

Judge Lawrence then asked how many eviction and debt collection cases they see in a week. Judge Thomas said it is hard to say because many are defaults. When you have restitution orders entered, some come back with a defense and he said he is certain those parties would like lawyers to talk to. The problem, though, is that these cases pop up irregularly. Ms. Crismon asked if the remote idea would work – when there is a calendar in Salt Lake with pro bono attorneys, there could be another room available for those attorneys to do remote appearances in rural districts. Judge Thomas said he's not sure if it could work. Each judge has different days for law and motion calendars but he looked forward to chatting at judicial conference about it.

Judge Thomas then talked about the Domestic Case Processing Improvements report. He said moving forward, courts would treat pro se litigant cases differently. There would be different calendars for pro se litigants that are half day. Volunteer attorneys will be used to assist with negotiating and then the agreement will be put on the record if successful. He said notices will be generated by the court for all cases involving pro se litigants and they will encourage informal trials at the pretrial conference. Regarding final orders, the minute entry will be given to parties at the end of each hearing. These can be used for drafting the final formal order so that no one has questions about what happened in the hearing. Parties will always have another hearing scheduled. The entire domestic case process scheme will involve much more active management by the court by case managers. The subcommittee was basically trying to emulate Commissioner Sagers's calendars, which they viewed as a model for efficient resolution.

## **Wrap up**

Judge Lawrence said he would send out a memo of what we discussed regarding subcommittees and the committee chairs, Susan Griffith, Judge Roberts, Judge Lawrence, and Nathanael Player will all report at the next meeting in October.

## **(3) Adjournment**

The committee adjourned at 2:00 p.m.

The next meeting is scheduled for October 13, 2017 at 12 p.m. in the Judicial Council Room of the Matheson Courthouse.