

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

February 9, 2018

Draft. Subject to approval

**Members Present**

Judge Barry Lawrence (chair), Jacob Kent, Shaunda McNeill, Kristin Godwin, Judge Doug Thomas, Virginia Sudbury, Jacob Kent, Monica Fjeldsted, Nathanael Player, Judge Elizabeth Knight, Carl Hernandez, Carol Frank (remote), Jessica Van Buren, Susan Griffith (remote), Leslie Francis (remote), Judge Brook Sessions.

**Members Excused**

Lisa Collins, Christopher Martinez

**Staff**

Nancy Sylvester

**Guests**

AOC Education: Kim Free

AOC Language Access: Kara Mann

Martin Luther King Commission: Carla Kelly, Shawn Newell

Utah Legal Services: Anne Milne

SJ Quinney Pro Bono Initiative: JoLynn Spruance

**(1) Welcome and approval of minutes.**

Judge Barry Lawrence welcomed everyone to the meeting and discussed the focus of the day's meeting: debt collection and the high rates of default. He listed some of the reasons he thought people may not be responding on debt collection lawsuits: language issues, people afraid of being deported or losing their home, and health issues, among others. He suggested that the last thing those people may care about is getting hit with a judgment when they don't have assets. He also suggested that some people likely aren't responding because they have no idea what to do. At least with those people they need to have the tools to respond and we could alert people about resources.

Judge Lawrence then requested a motion on or changes to the December minutes. An amendment to reflect Judge Sessions's absence at the meeting was made. The committee approved the minutes by acclamation.

## **(2) Introduction and of and discussions with Martin Luther King Commission, SJ Quinney Pro Bono Initiative, Disability Law Center, and Utah Legal Services**

The organizational guests then introduced themselves and the work they do: Carla Kelly and Shawn Newell from the Martin Luther King Commission, Anne Milne from Utah Legal Services, JoLynn Spruance from the SJ Quinney College of Law Pro Bono Initiative, and Adina Zahradnikova from the Disability Law Center.

### **Debt Collection Issues Discussion**

The committee spent some time talking about debt collection issues and suggestions surrounding access, such as the following:

- 1) When defendants are served with a complaint and summons, the notice should be clearer. The summons may not be sufficient to alert someone to their responsibilities. Nathanael Player said he has examples of better notice from around the country. This may require a change to the civil or local rules.
- 2) A defendant may file an answer but then not participate in discovery. We assume they know the civil rules, but they often don't. After the defendant ignores discovery, the plaintiff will file for summary judgment and is likely entitled to it because the defendant may still not respond. The suggestion was made to require notice at the top of debt collection case document that says something like "If you don't respond, you may have a judgment entered against you." It would also include a help number to call. Mr. Player said the Forms Committee approved a revised summons in English and Spanish. It discusses what the person has received and what they need to do next.
- 3) Mr. Player noted that in San Francisco the court sends out notice when a complaint is filed. In New York, a landlord is required to bring a postcard to the court with the tenant's address on it and the court sends it out. This is to avoid so-called "sewer service."
- 4) Mr. Player also discussed studies that said notice of case hearing is not enough in criminal cases; telling the consequences of missing the hearing increases response rate. Our courts have apparently just started robocalls to remind people of hearings.
- 5) Judge Thomas said there is a large collection agency in his district (Seventh) so he sees a lot of these cases. He inquired how often defendants actually prevail

after filing an answer. He said the cautionary tale is that in many cases there are underlying attorney fees provisions. Defendants get tagged with the judgment, attorney fees, court costs, etc., but they may not even have an adequate defense. Yet we are saying they should potentially incur significantly more cost by defending these actions. In Second and Third District, there is a debt collection calendar and volunteer attorneys are there to help these debtors. But that is not true in most other districts.

- 6) Virginia Sudbury suggested that there may be a triage piece that is important before a defendant files an answer.
- 7) Mr. Player suggested that more education about budgeting and consumer finance was important. With mounting debts: non-profit debt collection organizations can help consumers consolidate their debts and make one payment.
- 8) A committee member discussed having a virtual legal clinic like TLC replicated for debt collection.
- 9) The committee discussed the need to build many solutions, including a clinic to talk up front about the downstream problems.
- 10) The committee also discussed outcomes hoped for and determined that the best outcome is having people make an educated decision about how to move ahead. That may mean an answer or could mean a default. The focus should not be on everyone filing an answer.
- 11) Judge Lawrence mentioned that the Bar has started a new Access to Justice Committee which could work on addressing some of these issues and matching attorneys with needs.
- 12) Judge Thomas suggested that there is a need for protection in the judgment. He said he sees a lot of overreaching by debt collectors in judgment, for example miscalculations in the interest. He said there are a surprising number of debt collectors coming in with fees that aren't allowed. He mentioned again that knowing how much defendants are actually prevailing would be useful. He said we'd help debtors most by having good procedures so that creditors aren't overreaching. We also don't want debtors to have unrealistic expectations of success.
- 13) The committee discussed the hope at debt collection calendars: working out a deal to give the debtor a payment plan. But most courts don't have a debt collection calendar; it's a post-judgment calendar to deal with supplemental proceedings. Creditors typically want a judgment in place before they will talk payment plan.

- 14) The committee also discussed the potential for lawyers teaching a class on options: filing an answer vs. bankruptcy, etc. The goal would be to direct debtors down a path.

### **Community Representatives**

The committee then turned to the community representatives for their responses to the question of how to involve people in the process.

Mr. Newell (MLK Commission) said a lot of the communities are fearful of any authoritative documentation they receive. And once they have something in their hands, they don't have a lot of access to computers. He suggested reaching out to community leadership to offer them volunteer clinics so that there is a safe place for folks to go to learn. He said the only way to remove the fear factor is to have leadership disseminate the information. People in these communities don't have the resources to call an attorney. Community centers work on housing and education and this issue may not even be on community centers' radars. He suggested formulating a venue or program for folks where an attorney-compiled toolbox can be handed out and also training the trainers.

Ms. Spruance (PBI) said the law school holds a debtors clinic once a month; anyone who comes in can sit down with a law student. She suggested that the attorneys there could help with the Lawyer of the Day.

Mr. Newell said in terms of tapping into the community leadership, the MLK Commission triages all of the community groups. The Self-Help Center and MLK Commission can work together on connecting resources with people.

Ms. Zahradnikova (DLC) said for persons with disabilities, transportation is a huge barrier. She said the Disability Law Center receives about 300 calls per year regarding debt collection issues from their clients.

The committee then discussed the Lawyer of the Day Program. Attorneys are typically available from 12 to 3 p.m. Monday through Thursday. Utah Legal Services made quite a few modules to train attorneys volunteering for the program. The Licensed Paralegal Practitioners Committee is also looking at creating curricula for paralegals to include debt collection.

### **Community Outreach**

The committee discussed that its job consists largely of outreach. The Policy and Planning Committee takes up the administration rules, the Forms Committee takes care

of forms, and the Civil Rules Committee takes up the civil rules. The Committee can recommend that the other committees look into the issues surrounding debt collection cases and be a coordinating body: articulating what the problem is and understanding it. In this case, it is important for this body to understand whether the default rate is the real problem or whether it is educating people to help them make good decisions.

With respect to the Civil Rules Committee, this committee should recommend mandatory language on the summons so the debtor is fully informed of their rights. The committee can also recommend new clinics and help to leverage existing resources.

Professor Hernandez said he hadn't considered the negative consequences of encouraging people to file answers in debt collection cases. He said the dean at BYU Law is very entrepreneurial and created LawX in order to find creative solutions to common legal problems, like the high default rates in debt collection. They had a software designer and attorney come in to help put the software together. But, he noted, if a debtor files and answer but has no defense to the claim, they not only now owe the debt, but also attorney fees, which is problematic. He didn't think the law school had looked at that aspect.

The committee then discussed having lawyers involved earlier and looking at best practices with respect to these cases. Mr. Newell (MLK Commission) also observed that some people are working 2-3 jobs and can't get to court. Kim Free then noted that 75% of the cases or higher are in justice courts where there is typically no legal help available. The committee discussed that there is incentive to having these cases in district court where judges have more time to focus on them and also potentially studying the consequences of filing in one court versus another.

The committee then discussed online dispute resolution which will pilot in West Valley City's small claims court.

Ms. Milne (ULS) said she received a call from a national consumer advocacy organization that expressed concerns about people not getting legal help, but the organization didn't realize that many of these people aren't even showing up to court or engaging in the process at all.

Ms. Zahradnikova also raised a concern about her clients who may enter into contracts under duress or otherwise do not have capacity to enter into them.

**Next steps:**

The Self-Help Center and Education subcommittees were assigned to work on the suggestions dealing with legal centric issues such as forms, rules, etc.

The Rural Services and Outreach subcommittees were assigned to work on the suggestions for community outreach.

At the March 30 meeting, the committee will prioritize a plan of action. Judge Lawrence said he will talk to Judge Thomas about chairing the Rural Services subcommittee.

Judge Lawrence suggested starting any meetings with a discussion of the efforts the group is aware of that are going on. Judge Lawrence said he would be attending the first meeting of the Access to Justice Bar Committee.

Ms. Kelly (MLK Commission) suggested outreaching to the Utah Non-Profits Association.

**(3) Adjournment**

The committee adjourned at 2:00 p.m.

The next meeting is scheduled for March 30, 2018 at 12 p.m. in the Education Room of the Matheson Courthouse.