

Agenda
Utah Judicial Council's Standing Committee
on Resources for Self-represented Parties

June 25, 2021
12:00 p.m.-1:30 p.m.

Via Webex

Welcome and approval of March minutes (Tab 1)	Judge Rich Mrazik
Roundtable check-in on emerging issues related to COVID-19	All
Follow up on prior discussions: <ul style="list-style-type: none">• CLE credit for pro bono work (Judge Mrazik)• Employment law (Sue Crismon)• Technology (remote hearing access issues; MyCase-Sue Crismon, Judge Mrazik)	All
Update on MyCase	Judge Rich Mrazik
Discussion on "Robyn's story"	All
NCSC Memo on recommendations for process simplification (Tab 2)	Zach Zarnow, NCSC
Other business	Judge Rich Mrazik

Next meeting: August 13, 2021

Meeting schedule: Every other month on the second Friday at noon

Tab 1

**Utah Judicial Council's Standing Committee on
Resources for Self-Represented Parties Summary Minutes**

Via Webex
March 12, 2021
12:00 PM – 1:30 PM

Members	In attendance	Excused
Judge Suchada Bazzelle	X	
Sue Crismon	X	
Monica Fjeldsted	X	
Leslie Francis	X	
Nicole Gray	X	
Susan Griffith		X
Carl Hernandez		X
Judge Catherine Hoskins		X
Jacob Kent	X	
Judge Richard Mrazik - Chair	X	
Shawn Newell	X	
Judge Katherine Peters	X	
Nathanael Player	X	
Charles Stormont	X	
Peter Strand		X
Virginia Sudbury	X	
Janet Thorpe	X	
Law Librarian (vacant)		
Guests	In attendance	Excused
Stacey Butler	X	
Kim Zimmerman	X	
Kim Paulding (Utah Bar Foundation)		
Jeff Daybell (People's Legal Aid)	X	
Amy Hernandez (Domestic Violence Program Coordinator)		
Kara Mann (Language Access Program Coordinator)		
Justice Christine Durham (Access to Justice Commission)	X	
Rob Jepson (Access to Justice Commission)	X	
Pamela Beatse (Access to Justice Commission)		
Amy Sorenson (Access to Justice Commission)		
Staff	In attendance	Excused
Nancy Sylvester	X	

(1) Welcome and approval of minutes

Judge Mrazik welcomed members and guests to the meeting. Mr. Stormont moved to approve the minutes and Ms. Sudbury seconded. The motion carried.

(2) Evictions (20 minutes prior to meeting start)

A small group discussed how to ensure defense counsel in evictions cases.

Regarding appointment of People's Legal Aid, this would happen one district at a time so it would not be overly burdensome on the clerks. 4th district should be the first guinea pig. PLA should be attached to the case as soon as the eviction is filed. Ideally this would be a hybrid of being automatically assigned to cases but tenant still gets personal service. PLA has already been involved in 3rd District. There are outliers in Tooele and Summit, but they have had support there. Rank: 3rd, 4th, 2nd. PLA works on the pro se calendar with Judge Cornish in Second District. They provide services at the occupancy hearing but they are really already behind the eight ball because tenants have filed an answer that won't help them. Judge Mrazik and Nancy Sylvester offered to connect with 4th district. PLA has been working with Brooke Robison at TLC. Tatiana is sending from 4th District. Angela will create a one-page on what they'd like to do.

(3) CLE Rules

The committee discussed CLE for pro bono work rules. Everyone needs to send comments to Judge Mrazik and Nancy Sylvester. Will the A2J Commission give support? The Judicial Council and the Board of District Court Judges supports this effort. Nancy Sylvester will put the rule into a Google Doc to allow for live edits.

(4) Employment Law Clinic

(Sue Crismon, Rob Jepson): The subcommittee will meet to work on this. Rob Jepson talked to Lauren Skolnick. Lauren is interested in expanding existing clinic through her class. Wage theft: don't need to be a lawyer to make the claim.

(5) Outreach

His office is in the process of hiring an outreach coordinator. Rebuild relationships with marginalized communities. Share resources. Jon will develop a strategic plan for the office. Data has shown that when a bar and a bench reflect the community they serve, the access to justice gap shrinks. In the process of data gathering. Juvenile courts are doing great in data gathering. National Conference on State Courts meeting on data gathering coming soon. Vision: done talking about diversity and inclusion and ready to put rubber to the road. Charles Stormont noted the excitement of the committee on the effort and willingness to help with this effort. Jonathan noted that it is important to include these groups in the process.

(6) Subcommittee on simplifying court processes

New subcommittee on simplifying processes. Nathanael Player, Virginia Sudbury, Sue Crismon, Nancy Sylvester.

(7) Phone Trees

Phone trees are a barrier to getting hold of a human being. Matheson is the worst. Judge Mrazik has raised this. The committee decided to put a pin in this because we are in a transition time.

(8) ODR

ODR (Kim Zimmerman): Most messages are being sent after business hours. That is a testament to its impact on access to justice.

(9) Medical Debt

Medical Debt (Stacy Butler): has several applications pending for the sandbox and is looking at service of process in Utah. She is partnering with the University of Utah on some of her projects and is also looking at improving the ODR interface.

(10) Technology

Technical issues: most notices that go out don't contain a number to call if there is a problem connecting. The person who answers the call should know how to operate Webex. Often times the attorney has no training on Webex. Motion-Nathanael; Sue-2: committee resolves that when court is issuing electronic notices, include phone number, and someone will answer who can provide technical support. These should not be sent to the Self-Help Center. Perhaps hire someone to run an IT helpline. We also have to have the ability to let the clerk know that the person was there in the hearing when there are technical issues. Rules of Professional Conduct meeting about this issue: Nathanael Player, Judge Mrazik, Sue Crismon will attend, too. Leslie Francis noted that she often ends up being the person calling the folks petitioning for guardianship, when she is representing the respondent

Note from Monica Fjeldsted: With that last motion, I agree with adding a number to notice for hearings. 2nd District is adding a phone number and/or team email to allow clerks who are not in court help parties to connect. I have a lot of information I would like to share if you have any questions. I can say clerks who are clerking court cannot take phone calls. It is super difficult multitasking with what they now have to do in WebEx. So problem solving with parties trying to connect would prove too difficult. The phone number/team email is to provide an email to the court in order to send the WebEx link.

(11) Rule Change CLE

Rule change CLE: Jonathan Hafen, Charles, Nancy.

(12) Next meeting issues

Next meeting: CORIS auto-dump in notices. Webex technical support.

(13) Post-meeting follow up:

- Nathanael's motion on technology
- Evictions

- Pro bono CLE rules

(14) Adjournment:

The meeting adjourned at 1:30 p.m.

(15) Next meeting:

May 14, 2021 at noon via Webex.

Tab 2

Self-Represented Litigants and the Utah State Courts

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Introduction

The National Center for State Courts was asked to provide advice and recommendations regarding the high-volume dockets in Utah state courts where at least fifty percent of the parties are self-represented litigants (SRLs). The goal of this memo is to provide preliminary recommendations for ways to improve the operations of the Utah State Courts that lessen confusion among those parties by improving processes to benefit both court users and court staff.

NCSC stands ready to work more deeply with the Utah State Courts to audit and evaluate the start to finish processes used externally by self-represented litigants in high volume civil case types. Among the kinds of tasks NCSC can do include assessing current processes available to self-represented litigants and other court users and the desires of various court stakeholders and identify areas for improvement. NCSC can also recommended solutions, prioritize them, and present options for implementation.

Self-Represented Litigants Nationally: Trends and Observations

This challenge is not unique to the Utah State Courts. National data paints an increasingly clear picture of changing judicial systems in two significant ways. First, the majority of civil cases no longer involve disputes with legal counsel representing each side's interests. It has been estimated by NCSC that in almost 75 percent of civil and family cases in state courts, one or both parties go unrepresented. Second, it is no longer true that all litigants, witnesses, and family members involved in civil, criminal, and juvenile cases can speak and understand the English used in courts. According to the most recent U.S. Census data, many states, including Utah, have increasing numbers of residents with limited English proficiency. In Utah specifically, new Americans have contributed to this increased language diversity.¹

As a national maxim, state court rules and judicial procedures were designed by and for lawyers. Based on national research and our diverse experience, we have found three core findings about the needs and experiences of court users, especially true for self-represented litigants:

1. **SRLs face difficulties understanding the legal system, the court process and what they need to do next.** These court patrons:
 - Have difficulty deciphering legal terms, especially if written in legalese.

¹ See e.g., <https://research.newamericaneconomy.org/report/the-contributions-of-new-americans-in-utah/> (showing rapid growth in New Americans in Utah, including a doubling of the percentage in the state from 1990 to 2010).

- Do not know where to go within the court building and what they need to do where.
 - Do not know what to do after each individual hearing and the final judgment.
2. **SRLs have differing backgrounds and needs, which will affect what kind of self- help services they will need.** These court patrons:
- May have different needs in multiple case types, including contract disputes, family law, guardianship, foreclosure, traffic and wage garnishments case, as well as multiple cases within a single case type (such as a parent with multiple child support cases).
 - Differ in their degree of preparedness and understanding of their case.
 - May have had previous encounters with the legal system.
 - May have multiple cases ongoing, in different areas of the law and in different courts within the courthouse, district or state.
 - Differ in their suggested approach/intended courses of action toward their case(s), including their aptitude for conflict.
 - May have low or limited literacy or English proficiency.
 - May have low digital literacy, and Internet access only available on a smart phone.
3. **The experience of an SRL is based on many factors, only some of which are case-specific:**
- To resolve a case, an SRL will interact with multiple stakeholders, including courthouse security, the bailiff, the clerk's office, opposing counsel, judicial officers, court-annexed mediators, the case manager, legal aid or volunteer attorneys (if available) and the law library (if available).
 - The emotional stress of the litigants is often recognized, but not addressed. Coming to court—especially in a case with high personal stakes like a divorce—can often be stressful and trigger emotional reactions. In addition, SRLs may have trauma that is not directly relevant to their court case, but which may affect their conduct or ability to make choices in the case.

Self-Represented Litigants and Utah State Courts

In divorce, custody, eviction, debt collection, protective orders, contracts, name changes, stalking injunctions, guardianship of a minor, temporary separation, and employment discrimination cases over fifty percent of parties represent themselves in the Utah State Courts.

The Utah State Courts have long recognized the value of modified and simplified procedures for cases with high percentage of SRLs, as evidenced by small claims court and the procedures therein. In the case types listed above the same considerations should be given for the same reasons. The judges and court staff who work on these dockets know that the people involved in these cases are no different than those in small claims court. They have the same challenges understanding the legal system and they present the same case management issues to the court. It does not serve the parties or the court to ignore this fact and to continue attempting to

process cases as if both sides have attorneys with a working understanding of the rules and procedures of the court.

This begs the question, if thousands of court users find themselves confused and making mistakes trying to navigate rules and procedures every year, does the fault lay on the shoulders of everyday people trying to solve everyday problems, or has the court system thus far failed to adequately respond to the reality of who its actual users are and what they need? This is, again, not unique to Utah, but Utah can be among the first jurisdictions to craft a comprehensive response. It is this belief that animates the recommendations below.

Recommendations

1. Simplify Rules and Procedures for Case Types Where SRLs Make Up 50% or More of the Parties

As described above, the Utah State Courts have already made this adjustment for small claims cases and did so because of the recognition that most parties in small claims court are SRLs. Currently, divorce, custody, eviction, debt collection, protective orders, contracts, name changes, stalking injunctions, guardianship of a minor, temporary separation, and employment discrimination cases all have 50% or greater rates of SRLs. Below are some concrete changes the Utah State Courts could make to achieve this recommendation.

1a. Make Changes to Limit Defaults: Use Initial Hearings/Scheduling Conferences, Allow Written Responses, Verify Notice

To avoid the high default rates common with SRL cases, upon the filing of a complaint the court should schedule an initial hearing or scheduling conference. Defendants/Respondents could then either appear at that initial hearing or file a written response to oppose the initial complaint. The court should not enter a default for failure to attend a hearing unless the court is satisfied that a party actually received notice of the hearing and was warned that their failure to attend would result in a default and them losing the case.

1b. Limit Discovery

Unless a party files a motion and provides a compelling reason why initial disclosures was insufficient, discovery should be limited in high SRL dockets. SRLs are capable of making initial disclosures, but are often confused by interrogatories and discovery requests, which some sophisticated parties purposefully deploy to get SRLs to make admissions they do not mean.

1c. Relax the Rules of Evidence

Apply the same relaxed rules as in small claims court, unless the parties opt-out.

1d. Simplify Motion Practice

When a motion is filed, an opposition (or countermotion) must be filed within 14 days. An opposition to the countermotion is due within 7 days. The court should always schedule a hearing at least 21 days after the motion is filed, regardless of whether the case is before a commissioner or a judge. At the hearing, unless the court has good cause for not doing so, the court must issue an order and provide a copy to all parties.

1e. Allow for Electronic Service of Process

Allow the parties to utilize electronic service of process, including email and text messages. The party utilizing such a method must show proof of transmission, receipt, and acknowledgment of receipt to the court for review during the initial hearing. A party who was served using one of these methods who fails to appear should not have a default judgment entered against them, but instead the party with the burden of service must then use a traditional notice method, with the initial hearing rescheduled to provide time for the recipient party to receive and respond to the notice.

1f. Allow Either Party to Opt-Out of These Simplified Proceedings

Either party should be allowed to opt-out of these simplified rules and procedures, but to do so must show a compelling reason why they wish to opt-out and must explain how opting-out will not unduly prejudice a party who is an SRL. The Parties may stipulate to opt-out, but again must show that this will not unduly prejudice a party who is an SRL.

2. Use Plain Language and Modify Forms and Rules to Increase Understanding

Legal jargon, Latin, and instructions written above a fifth-grade reading level can be difficult for SRLs to understand.² It is to the court's benefit to have SRLs understand what they need to do and how they need to do it. Likewise, for those court users who have limited English proficiency, it is important to offer resources in commonly used languages other than English.

2a. Rename Complaints, Petitions, Motions, and Answers

SRLs often do not understand these terms. The title of the complaint or petition type should be easy to understand and should tell the party something about the case type. For example, a complaint in a debt case could be titled "You Owe Money (Debt Complaint)" a complaint in an eviction case could be titled "Your Landlord Wants to Evict You (Eviction Complaint)". SRLs

² See NCSC's Tiny Chats on Plain Language, Illustrated Instructions, and Instructions, all available at: <https://vimeo.com/showcase/8208717>. Also see <https://www.plainlanguage.gov/> and <https://www.lep.gov/>.

often do not understand what a motion means. Motions could be re-titled “Request to the Court (Motion)” or “Request for Order (Motion)”. An answer could be re-titled “Response (Answer)”.

2b. Require that An Answer Form be Included with Served Complaints

SRLs struggle to navigate court websites and to locate the correct forms. Clerks are overwhelmed with questions and spend a lot of time directing people to answer forms and explaining why one is required and how to complete it. There is no reason why an answer form with instructions couldn’t be served on a defendant/respondent when they also receive the complaint.

2c. Revise URCP 10: Location of Pleading Titles

It should be required that all pleadings have the title of the pleading on the top of the first page, centered, in bold 14-point font. SRLs are commonly confused about which document they have received and do not understand court form numbers or caption boxes.

3. Make Case Type Specific Changes That Improve Court Efficiency and Increase Procedural Fairness

There are a number of changes that could be made specific to certain case types that will make it easier for court users to understand the lifecycle and procedures related to a case, which will in turn make them feel better about their experience with the court. Those users will have a better time using the courts and court staff will benefit from better prepared litigants.

3a. Require Complaints in Debt Cases to Include Disclosure of the Original Debt Holder & Facts About the Amount Owed

SRLs in debt cases often do not understand that the debt they owe has been purchased and the lawsuit has been initiated by the new debt owner. If the complaint showed the original owner of the debt, fewer SRLs would be confused about who was suing them and why. This would make it more likely that an SRL would take action when they received a complaint. Most people know when they owe money, what they don’t often know is that their debt can be bought. It would help SRLs understand what was happening if the complaint included a simple table (like a nutrition facts label on food) that showed: the original debt holder, the new debt holder, the amount owed, and several payment term options (*e.g.*, \$x per month for 48 months; \$x per month for 36 months, etc.).

3b. Include a Notice of Rights and an Explanation for How to Ask for a Set Aside in Garnishment Proceedings

Defendants should be given the opportunity to understand their rights and to ask the court to set aside a garnishment order. To enable this, the notice of rights should be included in the complaint and any garnishment order should trigger notice to the defendant that includes what is going to happen, together with instructions (written in plain language) and the motion form to ask for a set aside. The court should schedule hearings on those motions on an expedited basis and should conduct an examination of finances, particularly for extraordinary circumstances.