

Minutes of the Utah Judicial Council's

Standing Committee on Resources for Self-represented Parties

March 30, 2018

Members Present

Judge Barry Lawrence (chair), Judge Doug Thomas (remote), Monica Fjeldsted (remote), Nathanael Player, Carol Frank (remote), Jessica Van Buren, Susan Griffith (remote), Judge Brook Sessions, Chris Martinez, Sue Crismon, Lisa Collins, Kara Mann (ex officio), Virginia Sudbury (remote)

Members Excused

Shaunda McNeill, Carl Hernandez, Jacob Kent, Judge Elizabeth Knight, Kristin Godwin, Leslie Francis

Staff

Nancy Sylvester

Guests

Ericka Rickard (via video), Amy Sorensen

(1) Welcome and approval of minutes - Judge Barry Lawrence, Chair

Judge Lawrence welcomed committee members to the meeting and entertained a motion on the minutes. The minutes were approved by acclamation.

(2) Harvard's A2J Lab Presentation on reducing default in debt collection cases

Debt Collection Issues Discussion - Ericka Rickard

The committee has been discussing the high number of default debt collection cases in Utah. Ms. Rickard is currently running a research lab on this topic. Ms. Rickard is a former Access to Justice Coordinator for the Massachusetts Court system and is new in this research position. She is currently working at the Access to Justice Lab at Harvard Law seeking to bring evidence-based practice and empirical ideas into law. The lab also looks at unnecessary procedural hurdles that may "trip up" litigants in their case process. They look at areas that would allow the merits of the case to rise to the level of completion.

In the area of guardianship, the group is working on an experiment with the self-help center to provide information to folks with low literacy or difficulties in other areas in receiving the correct type of materials for their case.

In consumer debt, Massachusetts is also seeing a high level of debt collection case defaults. Researchers sent out letters to everyone in debt collection cases asking for them to come to court. Some of these letters were sent by the legal aid office, while others were sent out directly from the courts. Researchers looked at whether sending a letter would increase the volume or attendance to court hearings, or if other outreach processes would be more effective. Researchers did see a slightly higher volume of litigants attend court hearings. Those who were sent letters from legal aid were slightly higher in attendance than those who received letters from the courts.

Judge Thomas asked what information was provided in the letter, resources for legal services, information about the court system, etc. Ms. Rickard stated that in the original letter, letters were only sent when a lawyer would be available for the day program on site that could help litigants with their case. The letter was encouraging. In cases where filing was necessary, it provided information on how to file with the courts. The current letter is encouraging litigants to attend whether a lawyer is not present.

Nancy Sylvester asked what happens when litigants appear and begin to have attorney fees tacked on. She asked whether that had been a drawback for plaintiffs to come to court. Ms. Rickard stated that they have not seen much in terms of drawback in attendance but more "hallway" negotiations that take place, as well as fee negotiation. They have not seen increases in attorney fees at this point, however, the majority of the cases being tested are small claims cases that are able to be resolved in the same day.

Judge Lawrence stated that Utah has a debt collection calendar assigned to each judge for purposes of hearing coverage that day. If motions are pending, those cases are sent to the central calendar. Volunteer attorneys are present at those hearings but the issue lies in how to get defendants to those hearings. Judge Lawrence asked a) what would be the most effective kind of notice that could accompany a complaint, and b) what else we can do to get people in the community to understand we have resources to help folks? People don't trust or understand the legal system. Is getting a notice in plain English enough?

Ms. Rickard stated that doubling the rate of response by sending out these letters is great but there are other upstream interventions that could certainly help and get better results. Consumer debt is not looked at as a big problem until legal actions has been taken; many other jurisdiction are looking at other means to address these in a different manner to get the word out there before legal action is in place.

Judge Lawrence stated that we may have a naive perspective on this problem. Someone who has other legal problems, someone who has thousands of dollars of judgment against them may not care about this issue. Does data show that providing additional notice help in the default rate in court?

Ms. Rickard stated that finding these small interventions to bring people into court and providing tools for intervention is really make a big difference in other court areas. People who are made aware of their cases are actually coming in, and getting representation seems to be making a difference in these types of cases.

Sue Crismon asked if the majority of debt collection cases are credit card debts. Ms. Rickard stated that in the jurisdiction she has worked, the majority of debt collection cases are debt buyer cases (banks, student loans, Midland Funding, cases being bought by someone else). Non-debt buyers are other forms of debt.

Judge Thomas sits in a rural area that does not have a debt collection calendar so pro bono attorneys are not showing up to these cases. They don't have that resource right now. Without that resource, debtor will often file an answer on their own. Typically that requires the plaintiff and their attorney to then file a summary judgment. They bring forth the appropriate affidavit to show the courts the evidence and then they make claims for additional attorney fees. Filing an answer can become expensive to the debtor.

Ms. Rickard said their research is looking more at people who show up. They are looking for ways to encourage finding ways to get people to show up for court and access legal services. But thinking about whether justice is being served or whether both parties are present are two different areas of study.

Judge Thomas asked whether there is good data that shows the outcome is better for the defendant when an answer is filed. His concern is that defendants are going to incur excess attorney fees but they don't have a valid defense.

Ms. Rickard stated that they have been studying two conditions: one is whether an answer was filed, and the other is whether the defendant appeared at the case management conference. One of the conditions of the original study was that the courts did not want there to be a perception that defendants fare better than the plaintiff. But in a separate project, the Lab has been able to show that the success rate in terms of settlement is about 80% with an attorney present.

Judge Lawrence stated that ideally what they would like is to have legal counsel when they file their answer. The proper advice may be to look at the issues first before responding to the litigation.

Nathanael Player said the Civil Rules Committee is looking at Rule 73, which deals with attorney fees. Ms. Sylvester explained that the amendments would provide that instead of having an attorney fee rate that is based on the amount of the judgment, it would be based on a set amount for uncontested cases and a set amount for contested cases. Garnishments and post-judgment actions would now have a schedule of fees.

Mr. Player said the rule creates a space for someone to file an answer without incurring additional attorney fees. The increased fees will be based on argument or evidence presented at a hearing. The rule will go to the Supreme Court next week for voting and then circulation for comment. It could be effective as soon as November 1, 2018.

Judge Sessions said in metropolitan areas when a defendant files answer it would be placed on a debt collection calendar, but that is not possible in rural areas. Mr. Player raised the possibility of doing appearances via video conferencing or Skype. Judge Thomas stated that video conferencing would make discussion and negotiation between two attorneys difficult to do when they are not in the same room. Video conferencing is done in courtrooms where parties are in different areas. The judge receives notification when the parties are ready to speak in front of the judge.

In the Harvard study, once an answer is filed, the case automatically is placed on the court management calendar and the case is heard in a timely manner.

Judge Lawrence would like to reach back out to Ms. Rickard for information regarding additional notice to go along with complaints. Ms. Rickard was thanked for her time and excused from the meeting.

(3) Debt Collection Issues Triaging: subcommittee discussions - Judge Barry Lawrence and Committee

Judge Lawrence would like to explore additional notice that goes along with the complaints. Mr. Player said that a form summons that contains additional notice has been sent to the Judicial Council. The form is in both English and Spanish and has been approved by the Forms Committee. Although the form won't be required yet, the next step may be to make it required in certain cases.

Jessica Van Buren talked about a generic motion form for when a defendant fails to respond to the motion for summary judgment. The form is a dual column approach with English on one side and Spanish, or another language, on the other side. Its primary goal is to alert people of the consequences for not complying with the notice.

Debt collectors are required to be given a 10 day summons. The language could be modified with additional plain language to better provide clarity of any possible consequence.

Judge Thomas stated that we may be better off staying with a form that has already been approved, rather than changing a rule. Ms. Sylvester stated that this committee can make recommendations to the Civil Rules Committee for review.

The form, which includes the language for a 10 day summons is ready to go but is “parked” because further discussion is needed to determine best use of the form. Ms. Van Buren said many self-represented litigants would not use the form because they are typically responding to a lawsuit. Judge Lawrence indicated that there is support internally to get rid of the 10 days summons language. Mr. Player indicated that the Forms Committee looked at the idea of removing the language from the form.

Judge Lawrence stated that most forms for up front notice/summons do contain notice on the top of the form, for example Rule 56 request for admissions. Ms. Van Buren will send the group the latest 10 day summons draft form.

Judge Thomas states that rural areas do not see as many 10 days summons as they do 20 days summons, even in collection cases. Judges do not really like 10 days summons as people tend to call in an attempt to delay the summons. This may be a rural vs. urban district difference.

Judge Lawrence asked about making a recommendation to remove the 10 day summons. Most judges and attorneys do not like it and most attorneys do not like it. But there are others who do like it because it does provide an opportunity to provide service without ballooning costs.

This committee will propose a rule to eliminate the 10 days summons, requiring certain language on certain pleadings and other documents. Judge Lawrence will work on the language for requests for admission and all dispositive motion as those are the ones that can really trip people up. Ms. Crismon stated it may be helpful to have a copy of the notice that Ms. Rickard has created to see if it could be appropriate to adopt into our practice.

By the next committee meeting, Judge Lawrence and Mr. Player will meet to write up a recommendation for changing the language of the 10 day notice and/or eliminating the 10 day notice. It would be helpful for the committee to have case studies from other states to see how they are handling summonses. Mr. Player will also get a copy of the notices that Ms. Rickard and her team uses.

Judge Lawrence asked if Judge Thomas would consider looking at how video conferencing may be helpful to him and his district. Judge Thomas stated that cases involving domestic relations would probably benefit the most from video conferencing with an attorney. Judge Thomas is concerned about how a person would access the

Wasatch Front resources. There are many options, including Lawyer of the Day, Self-Help Center, video conferencing from the existing debt collection calendars.

Discussion will continue at the next meeting. Judge Lawrence requested any and all proposals that fall within the jurisdiction of the committee.

(4) Subcommittee updates and projects - All

Judge Lawrence would like this committee to take more concrete roles in different subcommittee.

Education Subcommittee: This committee focuses on the education of the bar, the courts, and the law schools. Judge Lawrence is the chair.

Outreach Subcommittee: This committee focuses on outreaching to members of the community about the legal resources available. Sue Crismon has been assigned as the chair.

Rural Services Subcommittee: This committee focuses on the need for rural legal services. They are interested in hearing from rural people to see what the courts can do better in providing legal services. Susan Griffith has been assigned as the chair. Ms. Griffith will send out an email to the other committee members requesting their input.

Self Help Center: this committee will focus on providing access to justice statewide. Nathanael Player is assigned as the chair. Mr. Player will work with Amy Sorensen, who is co-chair of the Access to Justice Committee of the Bar.

Justice Lawrence reiterated the need for tangible suggestions of how we can better serve the self-represented parties community.

Ms. Sylvester requested everyone to meet with their subcommittee, at least by email, to discuss their projects and send any updates or reports to her by May 25th. This will help to keep everyone on track and get progress information more effectively.

(5) Other Business - All

Ms. Sylvester talked about a new rule being proposed by the Civil Rules Committee: Code of Judicial Administration Rule 4-511. She said a lot of people are not getting served with orders, which is causing trust and confidence issues. Many parties do not know they are required to serve court orders on the other parties. Rule 5 amendments would have the court serve every order and Rule 4-511 would require parties to provide a valid email address to the court so that those orders could be served electronically. Ms. Sylvester asked for feedback on the consequences of a party not providing an email

address. The committee suggested not making it too punitive but instead emphasizing the positive aspects of it.

(6) Adjournment

Judge Lawrence thanked the committee members for their attendance and participation.

The meeting adjourned at 1:55 p.m.