

Supreme Court of Utah

450 South State Street
P.O. Box 140210
Salt Lake City, Utah 84114-0210

Appellate Clerks' Office
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Marilyn M. Branch
Appellate Court Administrator

Pat H. Bartholomew
Clerk

Christine M. Durham
Chief Justice

Michael J. Wilkins
Associate Chief Justice

Matthew D. Durrant
Justice

Jill N. Parrish
Justice

Ronald E. Nehring
Justice

MEMO

TO: Tim Shea
FROM: Matty Branch MB
DATE: March 1, 2007
RE: Publication of Proposed Amendment to Rule 14-802(c)(3) of the Supreme Court Rules of Professional Practice

The attached rule change to Rule 14-802(c)(3) was suggested by the Standing Committee on Resources for Self-Represented Parties in its report to the Judicial Council. The Advisory Committee on the Rules of Professional Conduct has discussed the proposed amendment and has approved it for publication. While the Supreme Court believes the language of the rule needs to be more specific as to the forms covered, it also approved publication. Please publish the attached amendment for comment. Thank you for your assistance.

Attachment
cc: Robert Burton, Esq.

Rule 14-802. Authorization to practice law.

(a) Except as set forth in subsection (c) of this rule, only persons who are active, licensed members of the Bar in good standing may engage in the practice of law in Utah.

(b) For purposes of this rule:

(b)(1) The "practice of law" is the representation of the interests of another person by informing, counseling, advising, assisting, advocating for or drafting documents for that person through application of the law and associated legal principles to that person's facts and circumstances.

(b)(2) The "law" is the collective body of declarations by governmental authorities that establish a person's rights, duties, constraints and freedoms and consists primarily of:

(b)(2)(A) constitutional provisions, treaties, statutes, ordinances, rules, regulations and similarly enacted declarations; and

(b)(2)(B) decisions, orders and deliberations of adjudicative, legislative and executive bodies of government that have authority to interpret, prescribe and determine a person's rights, duties, constraints and freedoms.

(b)(3) "Person" includes the plural as well as the singular and legal entities as well as natural persons.

(c) Whether or not it constitutes the practice of law, the following activity by a non-lawyer, who is not otherwise claiming to be a lawyer or to be able to practice law, is permitted:

(c)(1) Making legal forms available to the general public, whether by sale or otherwise, or publishing legal self-help information by print or electronic media.

(c)(2) Providing general legal information, opinions or recommendations about possible legal rights, remedies, defenses, procedures, options or strategies, but not specific advice related to another person's facts or circumstances.

(c)(3) Providing clerical assistance to another to complete a form provided by a court for ~~protection from harassment or domestic violence or abuse~~ when no fee is charged to do so.

(c)(4) When expressly permitted by the court after having found it clearly to be in the best interests of the child or ward, assisting one's minor child or ward in a juvenile court proceeding.

(c)(5) Representing a natural person in small claims court without compensation and upon the express approval of the court or representing a legal entity as an employee representative in small claims court.

(c)(6) Representing without compensation a natural person or representing a legal entity as an employee representative of that entity in an arbitration proceeding, where the amount in controversy does not exceed the jurisdictional limit of the small claims court set by the Utah Legislature.

(c)(7) Representing a party in any mediation proceeding.

(c)(8) Acting as a representative before administrative tribunals or agencies as authorized by tribunal or agency rule or practice.

(c)(9) Serving in a neutral capacity as a mediator, arbitrator or conciliator.

(c)(10) Participating in labor negotiations, arbitrations or conciliations arising under collective bargaining rights or agreements or as otherwise allowed by law.

(c)(11) Lobbying governmental bodies as an agent or representative of others.

(c)(12) Advising or preparing documents for others in the following described circumstances and by the following described persons:

(c)(12)(A) a real estate agent or broker licensed by the state of Utah may complete State-approved forms including sales and associated contracts directly related to the sale of real estate and personal property for their customers.

(c)(12)(B) an abstractor or title insurance agent licensed by the state of Utah may issue real estate title opinions and title reports and prepare deeds for customers.

(c)(12)(C) financial institutions and securities brokers and dealers licensed by Utah may inform customers with respect to their options for titles of securities, bank accounts, annuities and other investments.

(c)(12)(D) insurance companies and agents licensed by the state of Utah may recommend coverage, inform customers with respect to their options for titling of ownership of insurance and annuity contracts, the naming of beneficiaries, and the adjustment of claims under the company's insurance coverage outside of litigation.

(c)(12)(E) health care providers may provide clerical assistance to patients in completing and executing durable powers of attorney for health care and natural death declarations when no fee is charged to do so.

(c)(12)(F) Certified Public Accountants, enrolled IRS agents, public accountants, public bookkeepers, and tax preparers may prepare tax returns.

Advisory Committee Notes

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May 30, 2007

Robert A. Burton, Esq.
c/o Burton Lumber
1170 South 4400 West
Salt Lake City, UT 84104

Re: Comments Received as to Rule 14-802

Dear Bob:

Well, it looks like we might finally have a reason to schedule a committee meeting. At the Court's request, the Professional Conduct Committee reviewed the recommendation made by the Self Rep. Committee that Rule 14-802 (c)(3) be amended to permit a person to provide clerical assistance to another person to complete any court-provided form - not just a form for protection from domestic violence or abuse. The Professional Conduct Committee supported the Self Rep. Committee's recommendation, and the proposed amendment was published for comment.

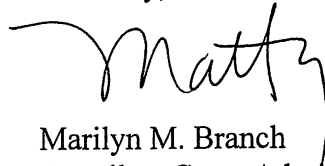
Three comments were received, copies of which are enclosed. The Professional Conduct Committee needs to review the comments and determine if it wants to further amend Rule 14-802(c)(3) in light of the comments. The Self-Rep. Committee is also going to send me any suggestions it may have in light of the comments. By way of information, at the time the proposed amendment went out for comment, several of the Supreme Court justices expressed concern that the phrase "a form provided by a court" was very broad - did it mean any form provided by a Utah court or any court, anywhere? As I recall, several members of the Professional Conduct Committee expressed similar concerns. Anyway, the committee should probably consider that issue as well.

Page Two

The Supreme Court is planning on taking final action on any pending rules at a court conference scheduled for August 8. Therefore, the Professional Conduct Committee needs to complete its review of Rule 14-802 before that time. If we stick with Mondays for a meeting, I'm available June 18 or 25 or July 2 or 9 at 5:00 p.m. Of course, there are a lot of other days of the week that would also work for me. Why don't you suggest a few dates that work for you, and I'll poll the committee by e-mail.

I hope life has been treating you well.

Sincerely,

A handwritten signature in black ink, appearing to read "Marilyn", written in a cursive style.

Marilyn M. Branch
Appellate Court Administrator

Enclosures

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9 facts and circumstances.

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11 that establish a person's rights, duties, constraints and freedoms and consists primarily
12 of:

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14 and similarly enacted declarations; and

15 (b)(2)(B) decisions, orders and deliberations of adjudicative, legislative and
16 executive bodies of government that have authority to interpret, prescribe and
17 determine a person's rights, duties, constraints and freedoms.

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19 natural persons.

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21 lawyer, who is not otherwise claiming to be a lawyer or to be able to practice law, is
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24 otherwise, or publishing legal self-help information by print or electronic media.

25 (c)(2) Providing general legal information, opinions or recommendations about
26 possible legal rights, remedies, defenses, procedures, options or strategies, but not
27 specific advice related to another person's facts or circumstances.

28 (c)(3) Providing clerical assistance to another to complete a form provided by a court
29 ~~for protection from harassment or domestic violence or abuse when no fee is charged to~~
30 do so.

Rules - Comments

Comments: Rules Governing the Utah State Bar

I oppose the expansion of a non-lawyer's right to practice law without a license. The changes to USB 14-802 are an expansion of the already liberal rights of non-lawyers to practice law in Utah. That said, if the changes to USB 14-802 are adopted, then I'd recommend that a definition of "clerical assistance" be provided.

Posted by Jason Nelsen March 30, 2007 11:37 AM

I have been a judge pro tem in the small claims court in St. George for many years. Approximately once a month, I spend an entire afternoon doing it. These are scheduled a year in advance in St. George and take away from my schedule and other billable time. I consider it to be bar-related service. I question the need for additional mandatory C.L.E. for small claims judges who are attorneys. Especially for us in St. George, it may be a burden to expect us to travel to Salt Lake for annual small claims C.L.E. and lose one or two days of work when we are doing this on a volunteer basis. I would suggest that a monthly newsletter to all small claims judges with articles discussing current small claims issues may be more productive and less of a time burden. Another suggestion would be for quarterly meetings with the small claims judges and local district court judges to discuss current small claims issues and law updates. I do not think a required annual small claims C.L.E. would be of much benefit.

Posted by David C. West March 30, 2007 10:42 AM

As an immigration law practitioner, I found that there are so many so called "notarios" who assist immigrants in filling out forms, and at the same time collecting a fee. There should be a disclosure provision that if a person assists a client to fill out a form should disclose the person's information and if fee is collected.

Posted by Roberto G. Culas March 30, 2007 09:02 AM

May 14, 2007

Tim Shea, Esq.

Administrative Office of the Courts

P. O. Box 140241

Salt Lake City, UT 84114-0241

Re: Proposed change to USB 14-802

Dear Mr. Shea:

HALT-*An Organization of Americans for Legal Reform* strongly supports the change to USB 14-802 proposed by the Judicial Council's Committee on Resources for Self-Represented Litigants. This change will allow volunteer nonlawyers to assist consumers with the many types of court forms they encounter.

Currently, paragraph (c)(3) limits nonlawyers' unpaid help with court forms to those forms relating to protection from domestic violence. As we urged this Court in comments submitted in 2004, this clause should be extended to *all* types of court forms, as is currently proposed. This will allow court clerks, lawyers working *pro bono* and other knowledgeable individuals to assist and answer questions regarding the completion of all types of court forms.

Legal consumers desperately need that assistance. A 2004 article in the *Georgetown Journal of Legal Ethics* indicates that four-fifths of low-income and up to three-fifths of middle-income Americans have legal needs that go unmet^[1]. According to a 2002 American Bar Association study, the most frequent reason cited for not seeking legal assistance is the prohibitively high cost of hiring a private attorney^[2]. Consumers in Utah face the same problems. According to Utah Legal Services' January 2007 report "The Justice Gap," 87% of the poorest residents of Utah with legal problems did not receive any kind of assistance; the majority of these individuals did not even seek help, and one of the main reasons was due to the perceived cost of legal services.

Only a small fraction of these legal problems involve domestic violence. "The Justice Gap," reports that only 5.7% of the legal problems of those surveyed involved this issue. The current language of (c)(3) excludes the possibility of volunteers providing assistance for the vast majority of legal problems facing low-income individuals in Utah. They need help completing forms not just for protection orders, but for divorces, child custody, probate and many other issues, just as average legal consumers do.

With consumers needing assistance on a broad spectrum of legal issues, it is counterproductive to limit free help with legal forms only to protection from domestic violence. HALT urges this Court to adopt the proposed modification to USB 14-802 so that individuals in Utah can receive the help they need completing forms for all of their common legal concerns.

Sincerely,

James C. Turner