

Agenda

Committee on Resources for Self-represented Parties

December 12, 2014
12:00 to 1:30 p.m.

Administrative Office of the Courts
Scott M. Matheson Courthouse
450 South State Street
First floor, Room W18A (Café)
Executive Dining Room

Welcome and approval of minutes	Tab 1	Judge Marsha Thomas - Chair
Introduction of new member, Jaclyn Howell-Powers (U of U law)		Judge Marsha Thomas
Legal Aid Society of Salt Lake	Tab 2	Stewart Ralphs
New Strategic Plan	Tab 3	Judge Marsha Thomas
Subcommittee updates	Tab 4	Everyone
Scheduling subcommittees' meetings		Judge Marsha Thomas

[Committee Web Page](#)

Proposed Quarterly Meeting Schedule: Matheson Courthouse, Judicial Council Room, 12:00 to 1:30 p.m. unless otherwise stated.

December 12, 2014
March 13, 2015
June 12, 2015

TAB 1

Minutes of the Committee on Resources for Self-represented Parties

September 26, 2014

Draft. Subject to approval

Members Present

Judge Marsha Thomas, Carol Frank, Chris Martinez, Virginia Sudbury, Lisa Collins, Barbara Procarione, Jessica Van Buren, Eric Middlestadt, Sue Crismon, Susan Griffith, Carl Hernandez

Members Excused

Leti Bentley, Judge Doug Thomas, Robert Jeffs, Judge Michael DiReda

Staff

Nancy Sylvester

Guests

Judge John Baxter

Mary Jane Ciccarello

Tim Shea

(1) Welcome

All members introduced themselves and said how they interacted in their respective employment with self-represented parties.

(2) Approval of minutes.

Judge M. Thomas noted that there were two sets of meeting minutes that needed to be approved. Virginia Sudbury moved to approve the minutes, Mary Jane Ciccarrello seconded. The minutes from October 2013 and June 2013 were approved by unanimous vote.

(3) Honoring Judge Baxter

Judge M. Thomas gave the history of the committee and honored Judge John Baxter for his years of service. Judge Baxter gave a few remarks thanking everyone on the committee and in the AOC for their work.

Judge Thomas announced the history of the committee as follows:

The committee first met in June 2005. One of the first things that they did was to begin meeting to study the needs of self-represented parties, and to develop policy recommendations concerning those needs. They came up with a questionnaire – and that alone took several committee meetings, and in 2006 those surveys were collected from 15

rural and urban district and justice courts. Self-represented parties, judges, clerk staff, and attorneys were surveyed.

The 2006 survey found the following – and I’m reading from the survey that “self-represented parties require more time than represented parties – expect court staff to provide advice they are not allowed to give, lack reasonable expectations about case outcomes, and fail to bring necessary witnesses and evidence to court and to understand procedural and evidentiary rules.”

Based on the results of the survey, the Committee presented a strategic plan to the Judicial Council in July 2006. In that strategic plan, the Committee recommended goals for programs to assist self-represented parties including ensuring access to the legal system; increasing education of court users, court personnel, and community organizations; clarifying the court system; increasing efficiency and effectiveness of the court system by reducing the time required of judges to explain court procedures; reduce the number continuances; and to increase understanding of court orders.

The principles of the court services provided described is that they should be equally available throughout Utah; available to all parties involved (so defendants as well as plaintiffs) and should be available regardless of income. They should also be designed to supplement and not supplant legal representation.

They envisioned a web of services – some by the courts, some by community organizations, and some by lawyers. Court sponsored recommendations included the Self-Help Support Center; clinics and workshops (for self-represented parties on topics most commonly of interest to them; for clinic and workshop volunteers and for court personnel and community organizations); assistance from clerks and a self-help work space in each court; having the state law library promote statewide access to legal information and to provide forms, instructions and information; to improve the court website; and to improve clerical and judicial training. They recommended some rule changes to allow clerical assistance with forms by a broader audience, and recommended support of unbundled legal services, and support of low, no-fee representation.

I like to say the committee, came, saw and conquered under the direction of the Judge Baxter and the support of the judicial council and court staff.

The committee gave 12 specific recommendations in that 2006 strategic plan and there was a subsequent strategic planning session in 2011 that updated those recommendations – and if you look at those - most have been completed. For example, under the wing and nurturing of Jessica Van Buren (the state law library director) and Mary Jane Ciccierello, the Self-Help center was born. It is now flourishing and is state wide. A forms subcommittee was created and they in turn created and created and created many forms. The most recent recommendations of this committee were to begin to include flowcharts and to study a program to review the court forms before they are

filed by a pro se party, not for content, but for completeness. There were videos on small claims and landlord tenant uploaded – you can still see Tim Shea on YouTube talking about how to collect a judgment. Attorneys were trained, too. One project I remember was training attorneys to provide limited representation to service members. The unauthorized practice of law rule was changed to allow clerical assistance in completing a form where no fee is charged to do so. The website redesign happened using more user-friendly language. There was and still is a class available for court clerks on self-represented parties, and Judge Baxter and Judge Shumate went and learned about best practices in Self-Represented litigation and shared what they learned through presentations to other judges. This committee also wanted to investigate processes that may help the pro se party at the hearing. What we saw in that area was the development of the LOVs clinic in third district – initially called “Family Law Resolution day” – blossom into an example of a process that can work in this area, where Virginia Sudbury and Mary Jane and Legal Aid (Chris Martinez) appear and help parties try to finalize their cases one way or another in Commissioner Sager’s Order to Show Cause calendar. It took time to do all of this –it was just last year at this time that the self-help center reported in the minutes they had completed their first fiscal year operating as a state-wide program. The forms committee is constantly meeting and creating. The resolution day idea or LOVs clinic is in the process of growing and expanding.

So, now the main question is what is next for us?

(4) Why we are here and what we have done

Judge M. Thomas had committee members read through Rule 3-115, which governs the committee’s projects. She also read through statistics from 2013 showing the percentages of self-represented parties within the state court system and in which areas they are most prevalent. She noted that you can see the top four are name changes, civil stalking, guardianships, and divorce (where 46% of the cases have no attorneys involved).

(5) Committee composition & membership

Ms. Sylvester went over the committee composition under Rule 1-205. She noted that there was a vacancy for a representative from the University of Utah Law School and that one would be appointed from the pool of three during the month of October. The candidates have been sent to the Management Committee for selection and then will go to the Judicial Council for final approval. Ms. Sylvester also noted that there would be a vacancy for the Bar Representative position in January and discussed the possibility of tailoring this position to the Bar’s Pro Bono Coordinator. Committee members decided that it was better to keep the position broad in order to potentially attract Bar leadership to the position, which could help in accomplishing projects at the Bar.

(6) Subcommittees and new projects

Ms. Sudbury talked about LOVS Clinic with 3rd District and its successes. The clinic has taken over the four commissioners' designated pro se calendars to help provide on the spot legal advice and procedural information to pro se litigants. She hopes to expand it state-wide.

Ms. Griffiths discussed her clinic, Timpanogos Legal Clinic, which helps people through their domestic cases. She also discussed limited representation, which matches law students with clients, and limited court representation, which matches pro bono attorneys with clients. TLC's goal is to help people by maximizing the usefulness of pro bono attorneys.

Ms. Van Buren brought up an appellate court pro bono project, which has been a collaboration of Ms. Ciccarello, Ms. Collins, and Ms. Van Buren and was initiated by Judge Michele Christiansen. The process is as follows: gather the cases that are pro se, have a round table to look at the cases, and use a panel to assign them to volunteer attorneys. They are not going to have income restrictions and they are currently updating the forms. Ms. Crismon pointed out that the Check Yes survey shows that 30-40 attorneys are already willing to take appellate case. The screening and assigning cases will be done by a panel of attorneys, but the court could help with getting the record to those attorneys. Mr. Hernandez weighed in and said that law students could help with the appellate cases. Ms. Crismon brought up the challenge of matching students, that there is a need for faculty willing to do this. Mr. Hernandez said that there are clinical alliances at BYU that could be tapped.

Ms. Crismon said the Bar has contacted ULS about doing a guided referral, so that idea could have funding now.

Ms. Crismon also brought up the fact that 2006 was the last "needs survey" done.

Ms. Van Buren brought up the fact that the FY 2013 statistics on self-rep parties were not entirely accurate due to some system glitches.

Judge M. Thomas had everyone look at the list in the agenda and write their ideas down on sticky notes that they wanted to focus on under the various categories: Document Assembly/ Assistance/Case Resolution; Education; Rules/Legislation/Funding; Self-Help/Triage; and Other Ideas. Judge M. Thomas then went through each category and read off the ideas to group things together.

(7) Upcoming items for the Committee

Before concluding, Judge M. Thomas discussed some upcoming items. Next month – in October – she and Ms. Sylvester will present to the Judicial Council on the status of the committee. The full committee will meet again in December. Between now and that meeting, she and Ms. Sylvester will compile the results of the committee's project ideas and incorporate that into the existing strategic plan. She said she anticipated activating some subcommittees based on the needs of the projects the committee selected. She and Ms. Sylvester would email the list to the committee members individually in order to

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September 26, 2014

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find out where they want to put their time. Then, when the committee meets in December, we will look at the next required steps.

The meeting adjourned at 1:30 p.m.

TAB 2



Legal Aid Society of Salt Lake

Assisted *Pro Se* Program

Legal Aid Society of Salt Lake is providing limited legal assistance at no-charge to income-eligible *pro se* litigants (representing themselves without an attorney) in family law cases such as divorce and parentage/custody. Legal Aid attorneys and staff can assist *pro se* litigants in the following areas:

Legal Advice from Legal Aid Attorney

- Thursdays: 1-4 p.m. at Matheson Courthouse: check in at Family Law Clinic First Floor W-15
- To make appointment, visit the Family Law Clinic on First Floor W-15 or leave a message with your name, phone number, and email address at **(801) 238-7102** (walk-ins may be seen if attorney is not busy with scheduled appointments). Must complete a Legal Aid Client Information Form prior to appointment.
- Ask for legal advice about the issues in the case and what to include in pleadings (court documents)
- Have completed OCAP pleadings reviewed prior to filing with the court
- Advice on replying to any legal pleadings filed by the other party
- Discuss whether there is a need for a Temporary Order, if and when to schedule mediation, or a need for discovery, etc.

Schedule Hearings/Mediation

- After *pro se* litigant files OCAP pleadings and the court assigns a case number, paralegals in W-15 can assist to:
- Schedule hearings for Temporary Orders on the *pro se* calendar days with assigned Commissioner
- Schedule mediation with Utah Dispute Resolution on *pro se* calendar days with the assigned Commissioner

Representation at Court Hearing

- Limited Appearance representation* (attorney for that hearing only) at hearings on Commissioner's *pro se* calendar on Tuesdays at 1:30 p.m. in Matheson Courthouse 450 South State Street, Salt Lake City, Utah
- 1st & 3rd Tuesday: Blomquist W-34 & Luhn W-32
- 2nd & 4th Tuesday: Casey W-38 & Sagers W-36

Representation During Mediation

- Limited Appearance representation* at mediation on Commissioner's *pro se* calendar days (above)

Representation at Pre-Trial Settlement Conference

- Limited Appearance representation* at pre-trial settlement conferences with Commissioners and Judges

Representation at Limited Trial

- Limited Appearance representation* at limited trial pursuant to Utah Rules of Judicial Administration, Rule 4-904 - which deals only with support, custody and parent-time

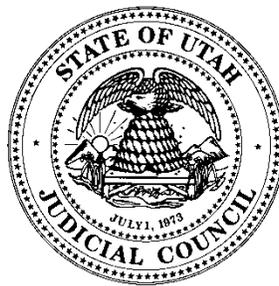
**Pro se* litigant signs a "Representation Agreement for Limited Appearance" and completes a Client Information Form

TAB 3



Utah State Courts

Committee on Resources for Self-represented Parties



Strategic Plan
October 24, 2011

The mission of the Utah judiciary is to provide the people an open, fair, efficient, and independent system for the advancement of justice under the law.

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(1) Background

The Committee on Resources for Self-Represented Parties is a standing committee established by Judicial Council Rule 3-115. The Committee's purpose is to "study the needs of self-represented parties within the Utah State Courts and propose policy recommendations concerning those needs to the Judicial Council."

The duties of the Committee are to:

- 1) provide leadership to identify the needs of self-represented parties and to secure and coordinate resources to meet those needs;
- 2) assess available services and forms for self-represented parties and gaps in those services and forms;
- 3) ensure that court programs for self-represented litigants are integrated into statewide and community planning for legal services to low-income and middle-income individuals;
- 4) recommend measures to the Judicial Council, the State Bar and other appropriate institutions for improving how the legal system serves self-represented parties; and
- 5) develop an action plan for the management of cases involving self-represented parties.

(2) Goals and Principles

The Committee endorses the goals and principles for programs to assist self-represented parties that were developed for the 2006 strategic plan.

(a) Goals

- 1) To ensure access to the legal system.
- 2) To increase education of court users about the courts, and to increase education of court personnel and community organizations about self-represented parties' needs.
- 3) To clarify the court system so that it is understandable by ordinary citizens.
- 4) To increase the efficiency and effectiveness of the court system by:
 - a. reducing the time required of judges and staff to explain court procedures; and
 - b. reducing the number of continuances required to give self-represented parties a further opportunity to prepare.

- 5) To increase understanding of court orders and compliance with their terms.

(b) Principles

Services provided by the court should be equally available throughout Utah. While it will be necessary to develop programs on a pilot basis, the Committee's ultimate goal is to provide the same services to citizens throughout Utah. People in urban areas, for instance, should not receive more, better, or different services than people in rural areas. Programs and services developed by the judicial branch should be equally available in the justice court.

Services provided by the judicial branch should be available to all people regardless of income. This principle does not necessarily apply to legal service providers and social service agencies with whom the courts collaborate. Their funding sources and program philosophies often limit their services to indigents.

Services provided by the judicial branch should be available equally to all parties. Defendants and respondents are as entitled to court services as plaintiffs and petitioners.

Court-provided services to self-represented parties are designed to supplement and not to supplant legal representation. Legal representation—either through public legal services programs or through the services of members of the private bar—remains the preferred method for parties to obtain information and advice, and court staff will continue to inform self-represented parties of the value of legal representation and how to obtain the services of a lawyer.

(3) Evaluation of work to date

The committee has taken successful steps in all of its duties except perhaps the last: “develop an action plan for the management of cases involving self-represented parties.”

The committee has been guided during the last five years by the following list of tasks. Most are objectives that can never fully be met.

- 1) Finance a pilot program in two judicial districts to make available by telephone and web communication a lawyer who would provide information and assistance.

The Self Help Center is staffed with full-time and part-time attorneys, funded by a combination of permanent and one-time appropriations and grants. The level of funding allows the center to serve six of the eight judicial districts or about 40% of the population.

2) Develop court-sponsored clinics and workshops.

The law library offers four classes once a month: the basics of small claims, collecting a judgment, landlord—tenant, and using the law library and court website.

3) Set up a work space in each courthouse to serve as a focal point for providing self-help information. Study the efficacy of staffing such a self-help work space.

Experience showed that this resource was not being used, and the objective has been abandoned.

4) Promote the state law library as a resource for self-represented parties.

Nearly 80% of the law library's patrons are representing themselves in a legal matter. The law library provides a variety of services including expert staff to guide people to resources, public computers with access to the courts' website, Westlaw, and word processing software, books written for lawyers and non-lawyers, and referral information. The library also provides a copy service for inmates.

5) Develop forms most needed by self-represented parties.

Numerous forms, along with information and instructions, a few in Spanish, have been published on the court webpage.

6) Study how best to meet the needs of self-represented parties through the court's website.

The court website has become the sole method of publishing self-help resources. There has been no study of its effectiveness. We do our best at plain-language drafting, trying to accurately describe the law and procedures in simple terms.

7) Develop training tools for clerks and judges on the needs of self-represented parties and effectively responding to those needs.

The committee has developed a manual for clerks on what help they can and cannot provide to the public. This is included in new employee orientation and in a continuing education class. The committee has presented or sponsored a few classes to judges at conferences. The SHC attorney conducts classes in the six districts served by the SHC.

8) Study how community service organizations can assist in providing self-help information.

Law library staff have provided training and information to public library staff around the state. Committee representatives have met with a few service organizations to convey what resources available to parties without lawyers.

9) Amend Rule 1.0, Chapter 13A of the Supreme Court Rules of Professional Practice to permit unpaid non-lawyers to complete court forms.

Rule 14-802 permits a non-lawyer to help a person complete court forms.

- 10) Promote clinics and workshops, low-fee and no-fee legal representation, and unbundled legal services among the legal community.

Resources are increasing, but they remain largely uncoordinated efforts.

- 11) Promote a legal service organization to recruit lawyers to provide such services and to raise and distribute funds to do so.

The Supreme Court has created the Access to Justice Council, but there have been no other significant developments.

(4) Future priorities

Time and money do not permit us to thoroughly evaluate the programs developed so far, other than the Self Help Center. The primary measure of success is that those programs are regularly used. Time and money also do not permit us to survey the profile of pro se parties as we did for the 2006 strategic plan, but we note from that survey that pro se parties are in no way remarkable from the general population. The consequence of that observation, as reported in 2006, is that 75% of pro se parties are very infrequent court users. The committee's challenge is to deliver products and services to someone who may come to court only a few times in a lifetime.

As a result of discussions at its strategic planning session, the committee recommends the following priorities:

- 1) Continue with efforts to expand the Self Help Center to serve the entire state.

The Self Help Center remains the centerpiece of the committee's program. Its success in the districts in which it operates is undeniable. Patron satisfaction polls remain at or near 100%. The opinions of judges and clerks also remain strongly favorable. The Judicial Council has continued to support the center, allocating permanent and one-time funds during a period of declining budgets. The committee should continue to work for permanent funding for four FTE lawyers, which should be sufficient to serve the entire state.

- 2) Continue to develop forms with flowcharts, information and instructions.

Forms and the accompanying information can help pro se parties through some of the more common—although not necessarily simple—legal and procedural matters. Although the forms are not mandatory—parties and lawyers can prepare their own pleadings and other papers—they are approved by the various boards of judges and are accepted in all courthouses in the state. The public can access the

information and forms for free on the court website. The forms also make the Self Help Center more efficient, allowing the lawyers to refer patrons to the website or to print and mail the documents.

The committee recommends including flowcharts as part of the information package. Flowcharts add a visual component to the text, which may help communicate the law and procedures a pro se party is expected to follow.

The committee will study a program to review court forms before they are filed by a pro se party, not for content, but for completeness.

3) Produce instructional videos or web-based live classes.

The classes offered by the law library are helpful, but they require a significant and continual investment of time, yet they serve only a score of people monthly and only at the Matheson Courthouse. There is no good substitute for the opportunity to exchange questions and answers in live classes, but videos and web classes offer many of the benefits of classes and can reach a much larger audience. Just like the current live classes, the videos and web classes should direct patrons to the court website for the extensive information they can find there.

The committee recommends developing instruction pieces on civil procedures, evidence, effective courtroom presentations, and the resources available to help pro se parties. The committee recommends using social media to distribute these pieces to the public.

4) Develop an improved working relationship with OCAP (Online Court Assistance Program).

The Online Court Assistance Program uses an interactive web based interview to produce forms for filing. The application is a decision tree that selects different branches based on a patron's answers to questions. The OCAP Board is moving from a court-built application to HotDocs. Although the OCAP Board uses a different technology, its objective is similar to ours: produce for the public a document suitable for filing in common legal proceedings.

The Judicial Council has directed that at least one member of the OCAP Board serve also on this committee, and for several years we have had two. Staff from the two groups meet regularly, but there has never been a defined effort for the two groups to work more closely together. In the area of forms, at least, our efforts and the OCAP Board's efforts may be more successful if made in tandem.

5) Develop an improved working relationship with the Utah State Bar.

This committee has always tried to deliver the message that the best resource for a party without a lawyer is a lawyer. We have always supported and in some cases initiated the Bar's efforts to provide limited legal help, volunteers to represent service members, and clinics. The committee pledges its support and assistance in the Bar's "modest means" program and other efforts to provide legal services to parties who need them.

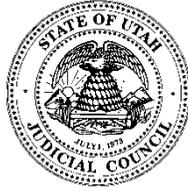
6) Study alternative processes for self-represented parties.

Would we have the procedures we have today if the common law had developed without lawyers to represent clients? What would a hearing look like if people had always been expected to present their case without the help of a lawyer? How can we improve case-flow management when pro se parties are involved? The committee plans to investigate processes that may serve the needs of pro se parties and the court. The committee also plans to develop resources to help the pro se party at the hearing. Forms may help a party reach a hearing, but they do little to help the party prepare for the hearing or to effectively present information to the judge or court commissioner.

TAB 4

Subcommittees of the Committee on Resources for Self-represented Parties

	A	B	C	F	G	H	I	J
1	Subcommittee	Member 1	Member 2	Member 3	Member 4	Member 5	Member 6	Member 7
2	Self-Help/Triage	Sue Crismon	Barbara Procarione	Mary Jane Ciccarello				
3	Document Assembly/ Assistance/ Resolution	Jessica Van Buren	Lisa Collins	Mary Jane Ciccarello	Susan Griffith	Carol Frank	Virginia Sudbury	
4	Rules/ Legislation/ Funding	Lisa Collins						
5	Education	Barbara Procarione	Lisa Collins	Mary Jane Ciccarello				
6	Other (Language Access)	Leti Bentley	Jessica Van Buren	Mary Jane Ciccarello				
7								
8								



Administrative Office of the Courts

Chief Justice Matthew B. Durrant
Utah Supreme Court
Chair, Utah Judicial Council

MEMORANDUM

Daniel J. Becker
State Court Administrator
Raymond H. Wahl
Deputy Court Administrator

To: Dan Becker
From: Judge Marsha Thomas *Marsha Thomas* and Nancy Sylvester *Nancy D. Sylvester*
Date: December 2, 2014
Re: The Bar Futures Committee and Malpractice Insurance

Last week, a subcommittee of the Committee on Resources for Self-represented Parties ("Self-rep Committee") met to discuss the barriers faced by statewide organizations in bringing low bono and pro bono services to self-represented litigants. The result of that meeting was a single gatekeeping issue: malpractice insurance. The subcommittee determined that before any further efforts could be developed, implemented, or promoted to help self-represented litigants achieve greater access to justice, this issue would have to be addressed.

The Self-rep Committee is tasked under Utah Rule of Judicial Administration 3-115 to

provide leadership to identify the needs of self-represented parties and to secure and coordinate resources to meet those needs; assess available services and forms for self-represented parties and gaps in those services and forms; ensure that court programs for self-represented litigants are integrated into statewide and community planning for legal services to low-income and middle-income individuals; recommend measures to the Judicial Council, the State Bar and other appropriate institutions for improving how the legal system serves self-represented parties; and develop an action plan for the management of cases involving self-represented parties.

UT R J ADMIN Rule 3-115. The malpractice insurance issue falls right in line with nearly all of this committee's enumerated duties because of its impact on how and whether legal services may be rendered. While the committee plans to make this issue part of its long-term strategic plan, ultimately, it is one that must be addressed quickly with the State Bar. We have brought this issue to your attention because of your position on the Bar's Futures Committee which, we understand from Tim Shea, seeks to identify five key issues affecting the legal industry and make recommendations on them at the Summer Bar Convention. The issue of malpractice insurance is not only germane to the Bar's pro bono initiatives that seek to address the serious issues surrounding self-

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efficient, and independent system for the advancement of justice under the law.**

represented litigants, but it is also a crucial part of addressing the dearth of legal jobs available to new law school graduates.

This issue first came to Nancy's attention when she was taking over the launch of the Guardianship Signature Program from Tim. Because that program takes a hybrid approach to pro bono services, attorneys are required to carry their own malpractice insurance in order to participate. The program is a hybrid because attorneys accept representation of a guardianship respondent on the assumption that it will be a pro bono appointment but with the possibility of recovering attorneys' fees at "modest means" levels and above, depending on the size of the estate. What is problematic about the malpractice insurance constraint is that it keeps out newer attorneys who have not secured their first jobs, or those attorneys who do not traditionally occupy the legal market (i.e. in-house counsel, stay-at-home moms, retirees, law professors) and who would like to participate but cannot afford or are unwilling to carry their own insurance for just the few appointments per year that they accept.

While one could certainly argue that it is better to keep those attorneys out who do not regularly practice, there is a more compelling argument that the greater participation we can encourage by removing those constraints, the better off the legal industry and the public are. And that is exactly the approach that the Timpanogos Legal Clinic takes.

The Timpanogos Legal Center, or TLC, was founded by a broad based group including the Central Utah Bar Association, BYU's Law School, the J. Reuben Clark Law Society, UVU Legal Studies, and Utah Legal Services. Susan Griffith is the Executive Director of TLC and is also an adjunct faculty member at the J. Reuben Clark Law School at BYU. This group of passionate community members founded TLC to address the need for expanded services to self-represented parties in Utah County and also to connect new and non-traditional attorneys with pro bono opportunities by eliminating the barriers to their service. Mentoring and malpractice insurance are key in recruiting these volunteers. TLC is a 501(c)(3) nonprofit corporation with just two employees, yet they are able to accomplish big things. While neither attorney takes on full representation of a client, they are able to help many pro se litigants represent themselves via so-called "limited scope" representation. TLC has two main types of clinics through which they accomplish this—a walk-in advice only clinic and a document preparation clinic. Both of these clinics are held in various physical locations at regular intervals, but TLC is now also in the process of expanding into virtual clinics via video conferencing in order to serve more rural areas. While TLC's principal model is limited representation, if a case appears to require more "TLC" because the issues are complicated and/or the client has more functional limitations than usual, they will refer it to a pro bono attorney for full representation. TLC does not charge for its services because it receives grants and private donations and also uses volunteers extensively.

Because of this funding approach, however, like many other pro and low bono legal service organizations, TLC's bottom line is fragile.

When Professor Griffith applied for malpractice insurance, she discovered that TLC was nearly uninsurable or could not be insured except at a high cost in comparison to traditional firms. The original estimate was around \$8,000, but even at that price, most carriers wouldn't touch them. As Professor Griffith put it, "We [had] three strikes against us in purchasing our own insurance: we are non-profit, part time and small." Moreover, TLC needed to cover its volunteer attorneys, and while many of TLC's volunteer attorneys have their own malpractice insurance, many do not because they are either new attorneys still seeking full time employment, or they are in a non-traditional practice that does not require it. Because of these issues, Professor Griffith and several members of TLC's board of directors approached the Bar about becoming insured under its insurance policy, believing that the cost would be minimal or non-existent since it could simply act as a "rider" to the existing policy. The Bar said no. When one Board member contacted a Bar Commissioner in an effort to address the issue, the Bar Commissioner responded that the Bar cannot cover anything more than advice because of the limits in its insurance policy. The insurance covers the free, short consultations through the Tuesday Night Bar program (which is offered only in Salt Lake County), but any pro bono or modest means appointment requiring further representation through a direct attorney-client relationship is not covered.

It may be true that the Bar's current malpractice insurance has restrictions that would make it impossible to cover the programs envisioned by the Pro Bono Committees across the state. However, the Bar could purchase the insurance through the same insurance carrier used by Utah Legal Services and Timpanogos Legal Services. CIMA is the insurance broker that caters to non-profit programs. TLC eventually purchased malpractice insurance through them at a cost of \$877.31 for the two part time people who litigate no cases. That is fairly expensive, except that the policy also covers all volunteers. There is no limit to the number of volunteers. So it is very likely that the Bar could procure the insurance through CIMA, pay around a \$1,000 premium for a multitude of programs launched through the Pro Bono Committees across the state, and have it cost the same amount as one program.

In addition, it is important to know that providing insurance through this avenue would not require that Bar staff personally supervise the programs. Utah Legal Services used their malpractice insurance through the same carrier to cover an extensive number of clinics and projects across the state that they did not personally supervise. The Bar could manage the malpractice insurance in much the same way that Utah Legal Services did until their federal regulators prohibited supporting any programs that did not use the same restrictions they were required to follow (which means any program attached

to ULS insurance cannot help non-citizens or people above 125% of the Federal Poverty guidelines).

When a barrier like malpractice insurance exists, it keeps willing and capable volunteers away, like those attorneys who are stay-at-home moms, retired attorneys, law professors, recent graduates or those in business or corporate positions. Timpanogos Legal Center is having terrific success in getting volunteers from these groups. More services could be provided across the state if the Bar will help by taking care of this relatively low cost barrier in light of the many programs that could be covered. Because the bar has an obligation to serve lawyers and the public throughout the state, better assisting those programs and efforts to accomplish that objective through malpractice insurance coverage should be its top priority.

To be abundantly clear, this need for malpractice insurance is not simply about TLC; there are many other examples of attorneys taking innovative approaches to providing legal services who would also benefit from addressing this issue. TLC's struggles simply illustrate how these efforts can be limited by this single issue. Other legal service organizations, like the Legal Aid Society of Salt Lake ("Legal Aid"), face similar challenges. Legal Aid has been extremely instrumental in bringing innovative legal services to self-represented litigants. For example, their organization utilizes volunteer attorneys to help push through domestic pro se cases that "bottle neck" in the Third District. The commissioners set aside specific times each week as "pro se calendars" and Legal Aid, in conjunction with the Self-Help Center, the S.J. Quinney College of Law, the Law Office of Virginia Sudbury, and others, provide attorneys and scribes to help the litigants finalize or request dismissal of their cases. Legal Aid, and organizations like it, would also benefit from the resolution of the malpractice insurance issue because, by removing that barrier, it would increase their volunteer workforce and make it possible for more non-traditional attorneys to help them tackle their ever expanding projects.

Yet, perhaps the most compelling argument for the Bar offering malpractice insurance to cover all pro bono and low bono representation is that Utah would hardly be a trailblazer in this regard. According to our research, at least three other states' bars are already offering this service. They are South Carolina, Wisconsin, and Michigan. We have attached information on each of them to this memo. What is clear in looking at each one's approach is that they have removed the barriers that still plague Utah and have personalized them to their states' unique circumstances. For example, South Carolina's malpractice insurance covers pro bono case referrals, assistance to military personnel, participants in their "Ask-A-Lawyer" program, and lawyers who lead free legal clinics. The efforts described in prior paragraphs would all be covered by the Bar if South Carolina was their home. Additionally, Wisconsin's Bar has removed the restrictions that the Legal Services Corporation imposes on pro bono cases, such as

income and case types. This is exactly what CIMA's insurance has allowed TLC to do. Finally, Michigan offers three options for attorneys to access pro bono malpractice insurance: 1) by volunteering through the Access to Justice programs throughout the state which carry their own insurance; 2) by requesting a "reverse referral" through the Access to Justice program so that they can represent pro bono clients they obtain on their own; or 3) by requesting coverage through the Michigan Litigation Assistance Partnership Program (MI-LAPP) if the pro bono client's income is within 200 percent of the federal poverty guidelines, their liquid assets do not exceed \$5,000, and the case is a meritorious civil matter. Michigan's approach could also be viable in Utah.

We have discovered through the Self-rep Committee that there are many attorneys who take seriously the Bar's clarion call to engage in more pro bono work. They are ready and willing to assist self-represented litigants, which tremendously eases the burdens on the courts and increases access to justice. Additionally, pro bono cases allow new attorneys to gain invaluable work experience in this largely unfriendly legal job market. But as long as the malpractice insurance barrier continues to exist, the ability of the legal community to address these issues will be severely limited and these efforts will only lightly chip away at the need for pro bono representation. On behalf of the Committee on Resources for Self-represented Parties, we implore you to strongly consider advocating for malpractice insurance to be one of the five issues taken up by the Bar's Futures Committee. Thank you for your time and attention in this matter.

Inside the Bar

Professional liability insurance covers pro bono volunteers.

GEORGE BROWN

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Pro Bono; Pro Lawyer

Many Wisconsin lawyers provide pro bono service, but many who want to help cannot because they lack insurance. The Bar's new professional liability insurance contract helps fill that gap.

by [George C. Brown](#),
State Bar executive director



The other day I signed a contract. Not an unusual event. Over the years, I have signed innumerable contracts. But this one is different. This contract helps Wisconsin attorneys expand their commitment to provide pro bono legal services to indigent people. This insurance for our Volunteer Lawyers Program - a project of the Bar's Pro Bono Initiative - provides all lawyers with professional liability insurance when they accept pro bono referrals from the State Bar or volunteer at a State Bar-sponsored pro bono project. This includes retired and semi-retired attorneys, and part-time and stay-at-home lawyers who might not necessarily carry insurance or high-enough limits. The largest groups covered under this policy likely will be government lawyers and in-house corporate counsel who do not have their own insurance policies. An endorsement on the policy even makes the State Bar policy the primary insurance for volunteer attorneys who already have coverage through their own

firms.

Signing this insurance contract fulfilled a long-standing objective of the Pro Bono Initiative developed by the State Bar's Legal Assistance Committee and our pro bono coordinator. Many Wisconsin lawyers provide pro bono service, but many who desire to help cannot because they lack insurance. This new professional liability insurance contract helps fill that gap.

The State Bar's Pro Bono Initiative coordinates, expands, and publicizes opportunities for lawyers to provide legal services to indigent people without being limited to matters that meet Legal Services Corporation restrictions on income and case types. Three pilot programs currently are under way, one each in the first, fifth, and seventh judicial districts. However, any Wisconsin lawyer taking cases or providing service through a State Bar-sponsored legal clinic is eligible to receive coverage under the State Bar insurance.

This insurance for volunteer attorneys is similar to the professional liability insurance the State Bar provides to attorneys who pick up the pieces when a lawyer abandons his or her practice. Until about 10 years ago, whenever a sole practitioner abandoned his or her practice, whether through death, illness, or disappearance, local attorneys often took the responsible action of winding up the attorney's practice. However, they did so at their own risk or at the risk of their liability coverage. At the request of the State Bar, the Wisconsin Supreme Court ordered the creation of the Lawyers Assistance Corporation to provide professional liability insurance coverage to attorneys appointed by the circuit court as trustees of an abandoned practice. The State Bar pays the premiums for both insurance programs so that clients' rights can be preserved and lawyers who are engaged in this work can have their well-being preserved.

For more information about the Pro Bono Initiative or how to use this new insurance benefit, contact attorney Jeffery Brown, the State

Bar's pro bono coordinator, at (608) 250-6177 or jbrown@wisbar.org. For information about the Lawyers Assistance Corporation, contact Shell Goar, the Wisconsin Lawyers Assistance Program coordinator, at (608) 250-6172 or sgoar@wisbar.org.

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Pro Bono Program

Pro Bono Overview

Pro Bono Award Nomination Form and Guidelines

Pro Bono Reporting Form

Pro Bono Intake Form

Income Guidelines

Pro Bono Signup Form

(This form is for lawyers only. If you need legal assistance, please call LATIS at 1-888-346-5592.)

LAMP Intake Form

Volunteer Successes

Community service is the backbone of a flourishing society. The South Carolina Bar Pro Bono Program affords lawyers an excellent opportunity to assist those who need legal assistance but cannot afford it. There are many ways to help:

- Case Referral
- Legal Clinics
- Ask-A-Lawyer
- Law School for Non-Lawyers
- Co-Counsel
- Recruiting/Mentoring
- Legal Assistance for Military Personnel
- Mediation/Arbitration

The Bar's Pro Bono Program can also assist you in the following ways:

Malpractice insurance

Pro Bono lawyers who take case referrals, serve as LAMP volunteers, participate in Ask-A-Lawyer and lead free legal clinics are automatically covered on every Pro Bono case accepted! Lawyers who do pro bono legal work on their own, or who are appointed pursuant to Rule 608, are also covered by malpractice insurance through the Pro Bono Program. To initiate this coverage, complete the Pro Bono Intake form (see link above) and fax it to Rose Dean at 803-799-5290. You must submit the form to Ms. Dean before commencing work on the client's case.

Law students

Law students are available for legal research for pro bono lawyers. Also, the University of South Carolina School of Law Pro Bono Program has a language bank available to assist you with your non-English speaking pro bono clients. If you need assistance, contact Pamela Robinson at 803-777-3405 or Robinson@law.law.sc.edu.

Reduced rates on CLEs/CLE discount certificates!

Each pro bono lawyer receives reduced rates on Legal Services-sponsored CLEs, and CLE discount certificates are awarded to volunteers who report 25 or more hours of service yearly!

Mentors

Not only does the Family Law Section of the Bar have a mentor program to provide assistance on domestic cases, the Pro Bono Program also has a list of lawyers who have agreed to serve as mentors in various other types of cases. Please call Rose Dean at 803-799-4015 or 800-395-3425.

Trial experience

Don't wait any longer for your first client! You can start to sharpen your trial techniques today!

Miscellaneous assistance

Each Legal Services office has a law library available to you! In addition, the South Carolina Appleseed Justice Center has developed two helpful manuals covering Medicaid and consumer practice (available for purchase).

Volunteer successes

The Pro Bono Program is very proud of the work done by its volunteers. The volunteers represent the low income community and give a voice to those who do not have the power to speak for themselves. If you would like to share any of your success stories as a pro bono volunteer, please complete and submit this form.

Legal Services is unable to provide all low income people with lawyers. Through Pro Bono, you help to close the gap between the need for these services and the lack of resources. To register for the Pro Bono Program, click on the easy-to-complete online Pro Bono Intake Signup form link above or call Cindy Coker at 803-799-4015 or 800-395-3425, ext. 142.

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All Lawyers Have Great Skills to Offer Pro Bono

Lawyers have great things to offer in the way of pro bono service at each stage of their careers. New lawyers have enthusiasm and a desire to earn client and courtroom experience. Mid-career lawyers are proud to “give back.” Seasoned lawyers have the wisdom and experience to skillfully handle particularly challenging matters. For the retired or transitioning lawyer, a keen desire to stay involved in the profession can be fulfilled through pro bono service.¹

The Perceived Barrier

Carrying professional liability malpractice insurance is a best business practice but not mandatory for Michigan lawyers. Some lawyers cannot afford to maintain malpractice insurance coverage—a reality for many just entering practice on their own, those transitioning toward or in retirement,² and those who are unemployed. Lawyers in certain settings—including law schools—do not have access to coverage. How can they provide pro bono legal services and be assured that their exposure to a professional liability claim is covered?

Three Ways to Access

Malpractice Coverage for Pro Bono Cases

There are three ways Michigan lawyers can access malpractice insurance coverage for their pro bono work. First, the 40 Access to Justice (ATJ) programs around the state (see sidebar) either carry their own malpractice insurance that extends to their pro bono lawyers or offer that coverage through a partnership with the State Bar of Michigan Pro Bono Initiative’s Michigan Litigation Assistance Partnership program (MI-LAPP).

Second, lawyers without malpractice coverage who want to provide pro bono services to clients they obtain on their own can contact an ATJ program and ask for a “reverse referral.” If a client is income- and asset- eligible under the program’s eligibility guidelines and the case fits within the program’s case priorities, most ATJ programs can add the client to the program’s docket and provide the program’s malpractice coverage to the pro bono lawyer. Additional benefits of working through many of the ATJ programs are that the programs screen

clients for income eligibility, assess the merits of the case, understand that the case meets community priorities, offer technical assistance, and have formal pro bono recognition programs.

Finally, if the client matter is not able to fit in an ATJ program through a reverse referral, the State Bar MI-LAPP program might be able to offer malpractice coverage. A request for coverage should be made if the client’s income is within 200 percent of federal poverty guidelines, liquid assets do not exceed \$5,000, and the case is a meritorious civil matter that would not be handled by a private lawyer because there is no likelihood of a fee. Visit the State Bar website at www.michbar.org for details, an intake form, and process instructions.

MI-LAPP malpractice coverage extends only to the particular pro bono matter and the individual attorney.

The policy is secondary to any other coverage available to the lawyer. If there is no other coverage, then the policy is primary.

The policy is offered through the CIMA Liability Protection Program for Legal Services Professionals and Public Defenders. It provides up to \$250,000 of coverage for each claim and \$500,000 in aggregate for professional liability, and up to \$100,000 of coverage for each claim and \$300,000 in aggregate for personal injury liability. Coverage under this policy is not provided for any other case or activity beyond the MI-LAPP case. Coverage will cease at the conclusion of the matter referred. The CIMA policy is a claims-made policy, and coverage is conditioned upon immediate notification to the State Bar of any potential claim, defined broadly as any demand for money or services including any service of process or the institution of arbitration proceedings.

Where to Go Next

If you are a lawyer who has been reluctant to offer pro bono services because of lack of malpractice insurance, please contact an ATJ Fund program in your community, the State Bar at pbi@mail.michbar.org, or SBM Pro Bono Service Counsel Robert Mathis at rmathis@mail.michbar.org. Your services will be put to use, with malpractice insurance coverage in place.

Access to Justice Programs

Below are the Access to Justice programs that can extend professional liability insurance coverage to lawyers accepting pro bono referrals or have partnered with the State Bar of Michigan to offer that coverage. They meet the Access to Justice

Access to Bankruptcy Court, Detroit

American Civil Liberties Union Fund of Michigan, Detroit

Bay Area Women’s Center, Bay City

Center for Civil Justice, Saginaw

Community Legal Resources, Detroit

Counsel & Advocacy Law Line, Southfield

Detroit Metropolitan Bar Association Foundation,
Access to Justice Programs, Detroit

Diocese of Kalamazoo Immigration Assistance Program, Kalamazoo

Elder Law of Michigan, Lansing

Farmworker Legal Services, Kalamazoo

First Step Legal Advocacy Project, Taylor

Free Legal Aid Clinic, Detroit

Freedom House, Detroit

Guild/Sugar Law Center, Detroit

HAVEN, Pontiac

International Institute of Metropolitan Detroit, Inc., Detroit

Lakeshore Legal Aid, Port Huron

Legal Aid & Defender Association Civil Law Group, Detroit

Legal Aid of Western Michigan, Grand Rapids

Legal Assistance Center, Grand Rapids

Fund³ criteria established by the Michigan State Bar Foundation and the State Bar Pro Bono Initiative for eligibility to receive donations under the Pro Bono Voluntary Standard. Many of these programs have locations throughout the state; the listed city is where the main office is located.

Legal Assistance Program of Macomb County, Clinton Township

Legal Services of Eastern Michigan, Flint

Legal Services of Northern Michigan, Escanaba

Legal Services of South Central Michigan, Inc., Ann Arbor

Michigan Immigrant Rights Center, Kalamazoo

Michigan Indian Legal Services, Traverse City

Michigan Legal Services, Detroit

Michigan Migrant Legal Assistance Project, Grand Rapids

Michigan Poverty Law Program, Ann Arbor

Michigan Protection & Advocacy Services, Lansing

MSU College of Law Clinical Law Programs, East Lansing

Neighborhood Legal Services Michigan, Detroit

Salvation Army William Booth Legal Aid Clinic, Detroit

Sixty Plus, Inc.—Elder Law Clinic, Lansing

Student Advocacy Center of Michigan, Ann Arbor

Underground Railroad Civil Legal Aid Program, Saginaw

University of Detroit Mercy School of Law
Clinical Law Programs, Detroit

University of Michigan Law School Clinical Law Programs, Ann Arbor

Washtenaw County/EMU Legal Resource Center, Ypsilanti

Wayne State University Law School Clinical Law Programs, Detroit

1 Section 6.1 of the Michigan Rules of Professional Conduct encourages lawyers to “render public interest legal service.” The rule further states that [a] lawyer may discharge this responsibility by providing professional services at no fee or a reduced fee to persons of limited means, or to public service or charitable groups or organizations. A lawyer may also discharge this responsibility by service in activities for improving the law, the legal system, or the legal profession, and by financial support for organizations that provide legal services to persons of limited means.”

The State Bar of Michigan Representative Assembly has adopted a Voluntary Pro Bono Standard, which provides guidance on how a lawyer can fulfill the goals of MRPC 6.1. This standard encourages all active members of the State Bar of Michigan to participate in the delivery of the legal services to the poor annually by:

- (1) Providing representation without charge to a minimum of three low income individuals; or
- (2) Providing a minimum of 30 hours of representation or services, without charge to low income individuals or organizations; or
- (3) Providing a minimum of 30 hours of professional services at no fee to persons of limited means or to public service or charitable groups or organizations; or
- (4) Contributing a minimum of \$300 to not-for-profit programs organized for the purpose of delivering civil legal services to low-income individuals or organizations. The minimum recommended contribution level is \$500 per year for those lawyers whose income allows a higher contribution.

2 A retired attorney with malpractice insurance tail coverage may be precluded by that coverage from participating in the programs described in this brochure.

3 See www.atjfund.org for information about the ATJ Fund. The Access to Justice Campaign is a partnership of the State Bar of Michigan, the Michigan State Bar Foundation, and Michigan’s civil legal aid programs to increase resources for civil legal aid to the poor.

Pro Bono Opportunities

The Pro Bono Initiative (PBI) is responsible for encouraging and coordinating the delivery of pro bono legal services. The PBI also helps the State Bar of Michigan play a constructive role in promoting policies and mechanisms to support lawyers in their effort to fulfill their ethical responsibility to assist in the provision of civil legal services to the poor.

To carry out its mission, the PBI supports numerous projects, including:

- A Lawyer Helps Program
- Circle of Excellence
- Documenting the Justice Gap in Michigan Report
- Homelessness Workgroup
- John W. Cumiskey Pro Bono Award
- Michigan Litigation Assistance Partnership Program (MI-LAPP)
 - o Patent Pro Bono Project
 - o Pro Bono Malpractice Insurance Coverage Program
 - o Qualified Domestic Relations Order (QDRO) Pro Bono Program
 - o Tax Pro Bono Program
- Pro Bono Menu of Opportunities
- Pro Bono Month
- Pro Bono Reference Manual
- Spring Pro Bono Workshop
- Statewide Pro Bono Assessment
- Veterans Resources Workgroup

Contact Information for Pro Bono Service

For more information on MI-LAPP insurance coverage or how you can get involved with pro bono please contact:

Robert Mathis

State Bar of Michigan
Pro Bono Service Counsel

(517) 346-6412

rmathis@mail.michbar.org



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