

STANDING COMMITTEE ON RESOURCES FOR SELF-REPRESENTED PARTIES

Council Room
Matheson Courthouse, Room N-31
450 South State Street
Salt Lake City, Utah

July 13, 2007
12:00 to 1:30 p.m.

11:50 a.m.: Lunch available	
12:00 pm.: Chair's report <ul style="list-style-type: none"> • **Approval of minutes (Tab 1) • Attention to 2008 meeting dates (see below) 	Judge Baxter
12:10 p.m.: Subcommittee reports <ul style="list-style-type: none"> • **Bar liaison: Unbundling efforts in 2d District (J. Page); letter to Bar from J. Baxter, and subsequent contacts (Tab 2); other information • Education – Planning committee decisions about Annual Judicial Conference (if info is available); training materials for court clerks • Forms • Pilot project 	Judge Shumate Judge Baxter Prof. Backman Jessica Van Buren
12:50 p.m.: Two building block requests submitted: (a) 2 nd year of pilot project; (b) legal writing specialist	Mary Boudreau
12:55 p.m.: **Review draft letter for submission to Supreme Court: Rule 14-802 amendment and comments (Tab 3)	Linda Smith
1:25 p.m.: New/other business	Judge Baxter
1:30 p.m.: Adjourn	

****For items with asterisks, please review attached documents at indicated tabs.**

Meeting Schedule (all meetings at noon, 2nd Friday of month, unless noted):

August 10, 2007
September 14, 2007

October 12, 2007
December 14, 2007

January 11, 2008
February 8, 2008
March 14, 2008
April 11, 2008

May 9, 2008
June 13, 2008
July 11, 2008
August 8, 2008

September 12, 2008
October 10, 2008
November 14, 2008
December 12, 2008

Tab 1

**STANDING COMMITTEE ON
RESOURCES FOR SELF-REPRESENTED PARTIES
Meeting Minutes**

**June 8, 2007
Matheson Courthouse
Salt Lake City, Utah**

Members Present: Hon. John L. Baxter, Chair; Fred Anderson; Prof. James H. Backman; Mary Jane Ciccarello; Joe Derring; Jay Kessler; Hon. Rodney Page; Stewart Ralphs; Prof. Linda Smith; Jessica Van Buren.

Members Excused: Pat Bartholomew; Hon. Christine S. Decker; Rep. Neil Hansen; Chris James; Hon. James Shumate; V. Lowry Snow; James Upton.

Guests Present: Renon Warner, Legal Aid Society

Staff Present: Mary Boudreau; Tim Shea; Carolyn Carpenter

WELCOME AND REVIEW OF 4/13/07 MEETING MINUTES

Judge Baxter welcomed all present. The minutes of 5/11/07 were approved by acclamation.

Judge Baxter extended a special welcome to new committee member, Stewart Ralphs, Executive Director, Legal Aid Society of Salt Lake.

In observance of the committee's 2nd birthday, Mary Boudreau gave each committee member some materials she received at the conference in San Francisco. She reported that at the conference's opening plenary session, Richard Zorza mentioned the wonderful self-help efforts being made in Utah, and in a few other states.

Subcommittee Reports

Bar Liaison – Judge Baxter indicated a letter signed by himself, Judge Shumate and Lowry Snow will be sent to Gus Chin, president of the Utah State Bar, for distribution to local bar associations to encourage them to develop lists of attorneys interested in providing limited legal services. A draft of the letter has been reviewed and is awaiting signatures.

Linda Smith noted that, at the last meeting, Judge Shumate said he would forward materials developed by the Southern Utah Bar to Hal Christensen at the Salt Lake County Bar.

Mary Jane Ciccarello asked if any attempts to send the letter to the other bar association groups, such as the minority bar, Utah women lawyers, and Hellenic bar, are being made. She observed that if a judge associated with each of those groups made an effort, it could have an impact.

Judge Baxter said he would call Gus Chin to ascertain how active he would be in disseminating the letter. The individual bar associations can be sent a copy of his letter if Chin gives approval.

Judge Page reported he had met with the presidents of the Davis and Weber County bar associations and is scheduled to meet with Davis County Bar members this week and Weber County Bar members later this month. Judge Page said it was apparent when he met with the bar leaders that there is virtually no knowledge of Rule 75. It will be important to work through the bar association to get the information disseminated.

Fred Anderson that reported the Southern Utah Bar Association has secured some funding and matching federal funding to set up a Utah Legal Services' clinic in southern Utah. Jessica Van Buren reported that there is now a description of legal limited help on the court's self help page, in its own separate section.

Ms. Boudreau asked if Judge Baxter's letter should be copied to the presiding judge in each district. Judge Page responded affirmatively.

Ms. Boudreau reported that a CLE training course will be offered at the Bar's fall forum.

Education – Judge Baxter said Commissioner Mike Evans is slated to present a 90-minute breakout session on limited legal services at the Annual Judicial Conference this fall. Some substantial outlines and information, including a Powerpoint for judges dealing with pro ses, will be at his disposal. It is not yet known if the planning committee for the conference has agreed to let us make a presentation.

Ms. Boudreau reminded the group that she emailed content to them asking for any edits they might like to suggest before it is given to Com. Evans. She reported that the education department director, Diane Cowdrey, is trying to retain Richard Zorza as the conference's keynote speaker, but this has not yet been finalized.

Forms – Jim Backman reported that Wayne Riches has been hired for the OCAP forms position. Tim Shea indicated Mr. Riches' first project will be to review forms developed as part of the Policy & Planning Committee's work on guardian and conservator reporting. He is developing that into an interview process similar to the OCAP process. Mary Jane Ciccarello's instructions and forms will be integrated at the front end of this as well. About half of Mr. Riches' time will be spent doing forms work for this committee.

Pilot Project – The interview committee for the pilot project self-help attorney, consisting of Jessica, Ms. Ciccarello, Tim Shea, and Judge Page, has been interviewing applicants this week. Ten applications have been received, and the office of the new attorney is becoming furnished. Ms. Boudreau has been working on ordering equipment for the pilot project districts.

Mr. Shea asked about the telephone monitoring system.

Ms. Van Buren responded that they have been unable to get an estimate, which is frustrating because the money for the equipment needs to be spent before the end of this fiscal year, June.

Ms. Van Buren indicated this does not mean there will be no phone. It is the call management system that is not in place, and that system gives us information about how many calls are coming to the self-rep help center, how many people are on hold, how many are dropped, the duration of the calls, etc. Money for the call management system is available right now, but not in the next fiscal year. Ms. Van Buren indicated the library staff may be able to help track until this is resolved.

For video-conferencing, IT Director Ron Bowmaster has recommended that we pay as we go, on a month-to-month basis, allowing the flexibility of changing if something is not working. Judge Baxter indicated his justice court works all the time with VIAC with remote incarceration situations

Ms. Van Buren reminded the group that the Self-Help Center will have a soft rollout, and will not be in full swing until August or September. Scripts need to be developed, triage done, etc. .

Judge Baxter said he emailed all eight justice court judges in the Eighth District about their possible participation in the self-help pilot project. He heard back from two of them who are interested in the program, but their comments were along the lines that the only civil cases they do are for small claims, so they would like to talk to the attorney to see how it might work. One noted facilities issues. The self-help attorney may need to do site visits in the 8th district.

Building Block Request for 2nd Year Pilot Project

Ms. Boudreau reported that the building block request for the second year of the pilot project will be for approximately \$78,000. The other request from this committee is for a writing specialist to develop forms, reviewed at an earlier meeting.

Rule 14-802 Authorization to Practice Law - Amendment and Comments

Tim Shea sent the comments he received to the proposed amendment to Rule 14-802 to Judge Baxter and Mary Boudreau, and described to them the usual process followed by committees that propose amendments. After comments to the amendment are discussed by the committee and any further amendments made, the committee submits its final recommendations to the Supreme Court.

In light of this, Linda Smith had law library assistants conduct further research into Rule 14-802, but they did not find what was needed. She conducted some research of her own, and distributed a partial memo of her findings to the group. Ms. Smith discovered there was an ABA Task Force on the Model Definition of the Practice of Law that produced a draft definition in 2002. After it was published, the Task Force received many comments from many groups. All made the point that, because lawyers were increasingly unavailable or unaffordable for individuals with low and moderate income, these individuals were increasingly appearing pro se and relying on non-lawyers to assist in the completion of forms that courts or legal service offices had developed. Appendices were accumulated of every state's definition of law and statutes from across the country. Washington state adopted a Definition of the Practice of Law (Sept. 1, 2001)

that provided the exception that Utah adopted. Under exceptions and exclusions to that rule, it reads: “providing assistance to another to complete a form provided by a court for protection under RCW chapters 10.14 (harassment) or 26.50 (domestic violence prevention) when no fee is charged to do so.”

Ms. Smith suggested that if a court has produced a form, and all that is being provided is clerical assistance, the definition should be broader, because we intend to provide more forms than just domestic relations forms. Some of the concerns of people who sent comments were that community groups be educated to help fill out forms.

Discussion followed with the following points made:

- The domestic violence shelters routinely help people fill out forms
- Legal aid has a lot of forms that are not officially court sanctioned. They are provided under the umbrella of an attorney and the organization behind it, but they are not provided by a court.
-
- Some of the forms on the court’s website are not that clear about how to complete them.
- A recent opinion in Michigan said as long as it is just clerical assistance to help the defendant understand terms, it is not the practice of law.
- In terms of keeping it broad, if there is no profit in providing clerical assistance, why not allow a librarian or other person to help? Something else that is not the practice of law is making legal forms available to the general public, whether by sale or otherwise, or publishing legal self-help information.
- We could say the exception applies to a form provided by the court or by a licensed, non-profit legal organization. We do not want to say any form from any lawyer.
- We are just trying to target some type of assurance of quality.

Fred Anderson expressed his opinion that we should stick with what we proposed and assert that it is not broad enough. The use of the word “clerical” should be sufficient to assure quality.

Judge Baxter said he proposed the committee stay with the language adopted in the original strategic plan. No one is questioning the quality of work that comes out of legal services. No one is questioning the paralegals. What makes people nervous is that we suggest to anyone they should go someplace where there are no supervising attorneys or there are untrained people assisting. Our current amendment restricts it in such a way that we are not giving permission for just anyone to open a shop with forms they will fill out. We are saying because of the laborious process we go through for court-approved forms, we are confident the clerical assistance that is given will produce a result acceptable to the courts.

Mr. Shea indicated that the Supreme Court appears to be concerned that the rule may be too broad, so it should not be broadened. The original draft proposal is what should be proposed for final action. It is just right. There is a separate committee through the Bar that reviewed the recommended amendment and will be commenting on it. We should put our efforts on quality control, not on who approved it. If an individual district sees a need for a local form and develops one, we just need to make sure it is good.

Ms. Smith added that we are saying that a person who helps with a form obtained from the court does not get into trouble for helping.

Judge Baxter asked the group what Ms. Smith should include in her letter of support for the proposed amendment.

Ms. Smith said she would like to add some history of the rule.

Judge Baxter stated the committee needs to stand by what has been proposed in the amendment, which is (c) (3) “providing clerical assistance to another to complete a form provided by a court when no fee is charged to do so,” eliminating the language “for protection from harassment or domestic violence or abuse.”

Prof. Backman suggested that the amendment specify “provided by a Utah court.” There are many forms from other states. It helps make it less broad to include Utah in the language. The group agreed with this.

Ms. Smith will draft a letter from this committee for Judge Baxter’s signature that will reiterate some history of the rule, and the rationale for not limiting it to domestic violence. She will also note that the courts have created many forms since the rule was adopted. In addition, Ms. Smith will add a quote from the *Nelson vs. Smith* case, which was the first case that defined the practice of law in Utah, stating that when services are performed without a fee it is even less likely the practice of law, and also noting that the principle behind the practice of law is public service. **Ms. Smith will email a draft of the letter to committee members for review next week.**

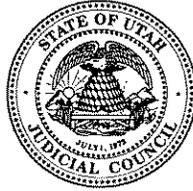
Other Business

Ms. Boudreau received information from Jay Kessler that people are being charged for accessing a lawyer on the Bar’s Legal Match site. When asked about this, Toby Brown sent a response to Lowry Snow stating that people are not charged a fee unless they opt for the premium service for a quick response. Ms. Boudreau noted that, as Bar president, Lowry Snow has said he is planning an alternative to the Legal Match site when the current contract expires.

Ms. Ciccarello observed that it is in this committee’s interest to talk to Lowry Snow about what the Bar is proposing and if it is another fee situation for either side. It is not a true match system if attorneys must pay money to be on the self-help list. The group agreed.

The meeting was adjourned. The next meeting will be held on July 13.

Tab 2



Administrative Office of the Courts

Chief Justice Christine M. Durham
Utah Supreme Court
Chair, Utah Judicial Council

June 14, 2007

Daniel J. Becker
State Court Administrator
Myron K. March
Deputy Court Administrator

Gus Chin, President
Utah State Bar
c/o Summit Co. Attorney's Office
6300 North Silver Creek Drive
Park City, UT 84098

RE: Utah State Bar's possible promotion of unbundled legal services by attorneys

Dear President Chin:

We are writing on behalf of the Standing Committee on Resources for Self-Represented Parties, to ask if the Utah State Bar would request that local bar associations urge their members to consider providing unbundled legal services ("limited legal help"). If that effort is made, the Committee hopes the Bar would also ask local bar associations to forward the names of attorneys willing to do this to the Bar, so it could create a website listing of attorneys sorted geographically and by practice area. The Utah State Courts would then like to create a link on its website list of Self Help resources to the Bar's list of those providing limited legal help. In addition to public use, this list would allow court staff statewide to print off and distribute lists of local attorneys willing to provide such services.

We urge the Bar to consider promoting the attorneys' provision of limited legal help services because the effort would meet a pressing public need, while also allowing attorneys to reach a larger segment of the population that would otherwise go unrepresented. As we discussed with the Bar Commission last fall and also in November with a subcommittee created by the Commission, thousands of self-represented parties use the courts. Most cannot afford full-service representation, and unfortunately are unaware that many attorneys might be willing to provide them with limited legal help for some of the discrete tasks required by their cases.

In the past few months, the Southern Utah Bar Association (SUBA) began promoting attorney provision of limited legal help after being approached by Lowry Snow and Judge James Shumate. SUBA developed excellent materials to explain the practice of providing this help, summarize recently approved URCP 75 procedures for limited representation involving court appearances, and gather attorney sign-up information. That effort was successful, and Fifth District court staff have been grateful for this new resource. The materials developed by SUBA are attached for your consideration.

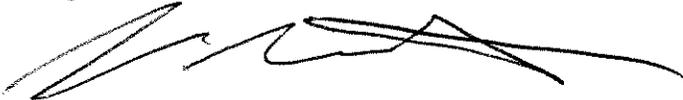
The mission of the Utah judiciary is to provide the people an open, fair,
efficient, and independent system for the advancement of justice under the law.

Similar inquiries have just been made by Committee members to bar association leaders in the Second and Eighth Districts, sites for a 2007-08 pilot project in the courts that will provide staffed services (information only) to self-represented parties. While the pilot project makes the availability of lists of attorneys providing limited legal help especially important in those districts, the Committee believes that this public service is essential statewide, and hopes the Bar might promote it in every judicial district in the near future.

Thank you for your attention to this inquiry.



Hon. John L. Baxter, Chair
Standing Committee on Resources for Self-Represented Parties



Hon. James L. Shumate, Chair
Subcommittee for Bar matters

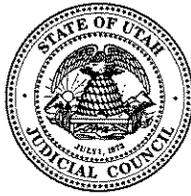


V. Lowry Snow, Utah State Bar representative
Standing Committee on Resources for Self-Represented Parties

Encl.

cc: Nate Alder, President-elect
Utah State Bar

Tab 3



Administrative Office of the Courts

Chief Justice Christine M. Durham
Utah Supreme Court
Chair, Utah Judicial Council

June 29, 2007

Daniel J. Becker
State Court Administrator
Myron K. March
Deputy Court Administrator

Draft -- draft -- draft -- draft -- draft -- draft -- draft

Matty Branch, Appellate Court Executive
Utah Supreme Court
Matheson Courthouse

Salt Lake City, Utah

RE: Comment on proposed amendments to Rule 14-802,
from the Standing Committee on Resources for Self-Represented Parties

Dear Ms. Branch:

You recently asked the Standing Committee on Resources for Self-Represented Parties to address comments received on proposed amendments to Rule 14-802 that the Committee had recommended about a year ago.

Enclosed please find a memorandum written by one of our Committee members, Professor Linda F. Smith of the S.J. Quinney College of Law. It supports and accurately describes the Committee's continued recommendation of the proposed change, and also recommends the addition of just one word to the proposed amendment.

Would you please submit this letter and memorandum to the Supreme Court, for its consideration?

Thank you for your help with this.

Hon. John L. Baxter, Chair
Standing Committee on Resources for Self-Represented Parties

Encl.

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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M E M O R A N D U M

To: Utah Supreme Court
c/o Matty Branch, Appellate Court Executive

From: Professor Linda F. Smith, S.J. Quinney College of Law
On behalf of the Standing Comm. on Resources for Self-Represented Parties

Re: Supreme Court review of public comments and proposal: *Amendment of Rule 14-802 of the Rules of Professional Conduct – Authorization to Practice Law*

Issue

Rule 14-802 was adopted by the Utah Supreme Court on June 7, 2005. The rule reads in part:

(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)(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.

Last year, this Committee proposed that the above rule be amended to permit clerical assistance to complete any form provided by a court. The proposal was to re-draft the exception as follows:

*(c)(3) Providing clerical assistance to another to complete a form provided by a **Utah** court when no fee is charged to do so. [Word "Utah" newly inserted to modify "court.]"¹*

The Committee has now been asked to comment further upon this proposed rule change.

History of Rule 14-802

The history that preceded the adoption of Rule 14-802 and related developments in other states provide useful background information about the proposed amendment..

On September 18, 2002, the American Bar Association's Task Force on the Model Definition of the Practice of Law ("ABA Task Force") proposed a Draft Definition² which included, in part:

¹ The Committee recommends that the word "Utah" be inserted to modify "court." This would permit anyone to provide free assistance to a pro se person completing a form provided by a "Utah court" without committing the unauthorized practice of law. It should be clarified that it is only Utah court forms (forms obtained from a Utah court) that the exception applies to.

(c) A person is presumed to be practicing law when engaging in any of the following conduct on behalf of another:

. . . (2) selecting, drafting or completing legal documents or agreements that affect the legal rights of a person.

The ABA Task Force also posted an Appendix titled "State Definitions of the Practice of Law"; it included definitions of "the practice of law" as adopted by statute or court rule, or enunciated in judicial opinions.³ Many states included drafting or preparing "legal documents" within the definition of "the practice of law," as did Utah in *Board of Bar Commissioners v. Peterson*, 937 P.2d 1263 (Utah 1997) ("drafting complaints, drafting . . . contracts . . . wills").

After the ABA Task Force published its Draft Definition, it received many comments on the Draft.⁴ On the issue of assisting others to complete legal documents, of note are comments submitted by the ABA Standing Committee on the Delivery of Legal Services, the ABA Standing Committee on Pro Bono and Public Service, the ABA Standing Committee on Legal Aid and Indigent Defendants, the Legal Services Corporation, the National Legal Aid and Defender Association ("NLADA"), and various other legal service programs. All these groups made the point that because lawyers were increasingly unavailable or unaffordable for those with low and moderate income, these individuals were increasingly appearing pro se relying upon non-lawyers to help complete forms that courts or legal service offices had developed. For example:

- Civil and defender legal services programs also often rely on non-lawyer case handlers/paralegals to attend to a myriad of largely ministerial tasks that do not require legal judgments. These sometimes include the completion of forms and documents. While selecting an appropriate form/document or drafting such a document almost always involves the application of legal judgment and usually should be considered "the practice of law," the mere insertion of relevant information into an existing form/document by a carefully trained but otherwise unsupervised non-lawyer may or may not be legal work. . . . For example, many legal services programs and courthouse pro se projects offer assistance to poor pro se clients in 'filling in the blanks' in forms that have been selected by a client or by a lawyer or judicial officer. *Comment by the ABA Standing Committee on Legal Aid & Indigent Defendants.*
- The completion of forms and other documents through the insertion of relevant information by trained non-lawyers should not necessarily be considered the practice of law. Legal services programs have developed numerous forms and templates that can be utilized and completed by trained non-lawyers who incorporate information provided by clients and, under appropriate circumstances, produce high quality legal documents that fully meet the needs of the programs' clients. *Comment by the NLADA.*

² The text of the draft definition is found at:
http://www.abanet.org/cpr/model-def/model_def_definition.html.

³ The State Definitions of the Practice of Law and other related documents are available at: www.abanet.org/cpr/model-def

⁴ *Id.* and http://www.abanet.org/cpr/model-def/draft_def_comment.html

- Much of our work focuses on community legal education. For example, we might . . . instruct the staff of a domestic violence center on how to obtain protective orders for abuse victims. . . . Many courts employ technology such as self-help kiosks, where litigants can access a host of information that may help them forestall an eviction or escape an abusive spouse. We have found that providing technical assistance on how to use these systems is critical to assist clients who are not technologically savvy. Typically, these facilitators are not lawyers. *Comment by Legal Services Corporation.*
- Non-lawyer clerks, paralegals, social workers and pro bono coordinators help in filling out forms and assisting clients in conjunction with discrete legal issues. In family law, probate and housing courts across the country, help desks have been established to address the increasing flow of litigants – most often low-income – who appear in court unrepresented by counsel. . . . Below is a list of just a few active pro bono projects where lawyers partner with social service providers, translators, accountants, community advocates, paralegals and others to provide free legal assistance: . . . Helping at the courthouse with forms and workshops for low-income people who are doing divorces for themselves. . . Helping women prepare requests for restraining orders against batterers. . . helping [people who are being evicted] prepare papers to appear in court without legal representation. . . . *Comment by the ABA Standing Committee on Pro Bono and Public Service.*

After receiving these comments, the ABA Task Force made its final Report and Recommendation in August, 2003, no longer promoting its draft language, but rather recommending that each state adopt a definition of the practice of law and that the definition should “include the basic premise that the practice of law is the application of legal principles and judgment to the circumstances or objectives of another person or entity.”⁵ The Task Force Report specifically noted that a few states – Arizona, the District of Columbia, Washington State – had recently drafted such definitions.

The Appendix entitled “State Definitions of the Practice of Law” contained Washington’s recently adopted rule, denominated “Definition of the Practice of Law”⁶ (2001). This rule appears to have been relied on by Utah drafters in fashioning Rule 14-802, because it contains almost the same exception for providing clerical assistance to complete a domestic violence form:

(b) Exceptions and Exclusions: Whether or not they constitute the practice of law, the following are permitted:

. . . (6) providing assistance to another to complete a form provided by a court for protection under RCW chapters 10.14 (harassment) or 26.50 (domestic violence prevention) when no fee is charged to do so.

Washington Court Rules, Rule GR 24 (*Sept. 1, 2001*)

The ABA website has continued to track various states’ activities regarding definitions of “the practice of law.” In addition to Utah’s new rule, the ABA website indicates that the following

⁵ *Id.*

⁶ Washington Court Rules, Rule GR 24

states have recently adopted rules (or have draft rules under consideration): Kansas, Wisconsin, Indiana, Massachusetts and Nebraska. Some are relevant in addressing the preparation of court documents based on court forms.

Kansas, like Utah, appears to have adopted a definition based upon the Washington definition, including an "exception" for "Providing clerical assistance to another to complete a form provided by a court for protection under K.S.A. 60-3101 et seq. to provide protection from abuse when no fee is charged to do so." (Adopted 5/11/04).

Indiana similarly chose to list "exceptions," but broadened the permissible activity to include completing any form previously approved by a lawyer: "Selection of and/or completion of a legal document previously approved by a lawyer by filling in the blanks where that activity requires only common knowledge regarding the required information and general knowledge of the legal consequences." (Rule 24, proposed as an amendment to Adm. & Disc. Rule 24).

Arizona's rule provides for a "certified document preparer" and also states: "Nothing in these rules shall prohibit the supreme court, court of appeals or superior courts in this state from creating and distributing form documents for use in Arizona courts." Rule 31, Rules of the Supreme Court of Arizona. See also Arizona Code of Judicial Administration, Part 7, Chapter 2, Section 7-208 regarding "document preparer."

Finally, relying upon the ABA Task Force's recommendation that a definition include "the basic premise that the practice of law is the application of legal principles and judgment to the circumstances or objectives of another person or entity," the Supreme Court of Michigan decided that "a person engages in the practice of law when he counsels or assists another in matters that require the use of legal discretion and profound legal knowledge." *Dressel v. Ameribank*, 468 Mich. 557, 6564 N.W. 2d 151, 155 (2003). Accordingly, that court held that the bank did not engage in the unauthorized practice of law when it completed a standard form mortgage for the plaintiff, even though it charged for that service, because it acted "as an amanuensis, a kind of secretary No legal knowledge or discretion was involved in the document's completion. . . . In general, the completion of standard legal forms that are available to the public does not constitute the practice of law." *Id.* at 156.

Committee comment on proposed amendment to Rule 14-802

This Committee believes that its previously proposed amendment to Rule 14-802 is desirable for the following reasons:

- There is nothing inherently different between domestic violence court forms and other court forms posted on the Utah State Courts; public website or derived from using the Online Court Assistance Program ("OCAP"). While the domestic violence forms were re-written in the past year into plain language so they are particularly user-friendly, the courts are increasingly moving to improve existing forms and create new forms. The courts' process for approving a form is thorough and conscientious. Once a form has been approved through this process, it contains all the essential elements needed to plead a particular matter. At this point, it is simply a "clerical" matter to know how to complete the form.
- The proposed rule continues to permit only "clerical assistance." If a non-lawyer were to provide advice about what claims to make or what reasons to provide for those

claims, that would go beyond the permissible "clerical assistance." It is certainly possible that a court-provided form could be too slim for a given individual to be able to complete it without actual advice from a lawyer. But in that case, the person would be seeking more than "clerical assistance" and, hopefully would be directed to an attorney willing to provide "limited legal help" or "unbundled" legal services to that individual, or perhaps to a free legal clinic.

- The proposed rule only protects clerical assistance in completing court-provided forms when it is given for free. This will facilitate certain groups (e.g. domestic violence providers, law student volunteers) being trained to provide this assistance competently. It does not encourage "document drafters" to set up shop and prey upon the vulnerable public.
- The proposed amendment is still very protective of the public. It is noteworthy that one state permits non-lawyers to complete any form drafted by a lawyer. While there is some argument for such expansion, the public would not be as well protected with such a rule, since many lawyers' documents would not be as complete, thorough, and appropriate to use as the documents provided by the courts. Moreover, since the rule currently allows non-lawyers to "make legal forms available to the general public," including by sale, it is important to divorce any such document-selling from assistance in document completion. Limiting a non-lawyer's help to completing court-provided forms for free should accomplish this goal.
- Finally, assisting a pro se person to complete a similarly excellent form provided by a lawyer (or law office, such as Utah Legal Services or the Legal Aid Society) may well not constitute the unauthorized practice of law. However, this proposed amendment is simply silent on that issue. This will, no doubt, inspire those public interest offices to continue to oversee staff and volunteers using their forms, thus providing further protection for the public.

For the above reasons, the Committee continues to recommend the proposed change to Rule 14-802.