

# Agenda

## Committee on Resources for Self-represented Parties

October 12, 2007  
12:00 to 1:30 p.m.

Administrative Office of the Courts  
Scott M. Matheson Courthouse  
450 South State Street  
Judicial Council Room, Suite N31

Approval of minutes	Tab 1	Judge John Baxter
Introductions of Robert Jeffs		Judge John Baxter
Report from Education Subcommittee	Tab 2	Pat Bartholomew Joe Derring Chris James
Report on attorney pilot program		Mary Boudreau Jessica Van Buren
Strategic Plan Next Steps	Tab 3	Judge John Baxter

**Committee Web Page:** <http://www.utcourts.gov/committees/ProSe/>

**Meeting Schedule:** Matheson Courthouse, 12:00 to 2:00, Judicial Council Room

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**

**August 10, 2007  
Matheson Courthouse  
Salt Lake City, Utah**

**Members Present:** Hon. John L. Baxter, Chair; Fred Anderson; Prof. James H. Backman; Pat Bartholomew; Mary Jane Ciccarello; Chris James; Jay Kessler; Stewart Ralphs; Prof. Linda Smith; Jessica Van Buren.

**Members Excused:** Joe Derring; Hon. Christine S. Decker; Rep. Neil Hansen; Hon. Rodney Page; Hon. James Shumate; V. Lowry Snow; James Upton.

**Guests Present:** Virginia Sudbury, Esq; Robert Sudbury.

**Staff Present:** Marianne O'Brien; Mary Boudreau; Tim Shea; Carolyn Carpenter

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**WELCOME AND REVIEW OF 7/13//07 MEETING MINUTES**

Judge Baxter welcomed all present. A motion by Stewart Ralphs to approve the minutes of 7/13/07 as prepared were seconded and approved unanimously.

Judge Baxter introduced Marianne O'Brien who will replace Mary Boudreau. Ms. O'Brien stated she has lived in Utah the past four years and has worked in the state law library for most of that time. Prior to her move to Utah, Ms. O'Brien participated in many volunteer activities in Massachusetts and worked as a staff attorney for the Massachusetts state government. Before that she worked for the American Bar Association and Chicago Legal Services.

Judge Baxter welcomed Virginia Sudbury, an attorney who recently left her work at the Disability Law Center in Utah to open her own unbundled family law practice, and Robert Sudbury, a paralegal who will be working as a facilitator in the new office.

The committee members introduced themselves to Ms. O'Brien and the Sudburys.

**SUBCOMMITTEE REPORTS**

Report on Attorney Pilot Program – Mary Boudreau reported since she has been working in the self-help center she has been studying domestic law, creating resources, doing training in the pilot districts, collecting lists of some systemic problems, and attending to a few tasks left over from her previous position in the AOC. The Self-help Services Center will be opened with domestic relations law, followed by domestic violence law, and then the items of most use to self-reps will be determined and added in sequence. Ms. Boudreau asked the group to give her input on any learning sources on family law that they may have.

Ms. Boudreau indicated that in addition to reading she has been observing self-reps in commissioner's courtrooms. She has sat in the family law self-help clinic and in the family law clinic that meets twice a month with attorneys. Ms. Boudreau has been creating resources for the public and some for her own use. She obtained a divorce flow chart to help explain the divorce process and took it to the Second District court clerks. They expressed an interest in having access to that, as did Commissioners.

Mr. Boudreau indicated she went to three Second District courts and will be going to the Ogden court next week to provide training for clerks. The clerks are very supportive of the self-help center project. Ms. Boudreau demonstrated for clerks what is available on the court's website currently. They did not know about many of the things available on the website, including the list of free legal clinics. Ms. Boudreau noted she will be going to Eighth District next week to meet with the clerks. There will be a briefing for judges at their bench meeting on September 11.

Ms. Boudreau said she began collecting lists and sometimes addressing, systemic problems involving self-reps. She sat with and asked questions of clerks at the Family Law Clinic and in Third District. They pointed out many snags. One example is that in OCAP directions, there is a certain type of acceptance of service form consent and waiver. Self-reps do not understand they should not use that process unless they agree to all the terms in the petition. There was a problem in letting them know not to use the service by mail unless they are sure the mailing certificate will be signed. Problems like this make it so people are continually coming to the courts for help. Ms. Boudreau reported she described what clerks told her about this issue to Kim Allard and copied Stewart Ralphs. Ms. Allard went into the OCAP forms and information, excerpted the instructions, sent it to Ms. Boudreau and asked for suggestions. Mr. Ralphs made suggestions in language on the service part. Ms. Allard then asked if she did certain things on the other problems if those would work. They did. This all took about an hour. If there is a change and it is helpful, it saves hundreds of hours for clerks and self-reps.

Ms. Boudreau expressed that every time she goes out to a district she sees or hears something that is a systemic issue. She said she cannot take care of them all, but thinks it will be useful if quick and effective ways to answer some of the problems can be developed. Clerks are able to pinpoint problems very well.

Linda Smith noted that although Ms. Boudreau did not conceive of having to work with systemic issues, it may be important to ascertain what some of the systemic problems are by surveying those who may know and soliciting those people to help solve the systemic problems. Ms. Boudreau should not be the one to solve them all. She expressed it is also important that those providing unbundled services be informed of everything that could be conveyed. How do the different stages fit together?

Ms. Boudreau asked the group if, when Richard Zorza comes to speak on September 27<sup>th</sup>, they would like to arrange to have lunch and visit with him. He will be addressing the judges around 1:30 and will be addressing the University of Utah Law School from 5:30 to 7:00 p.m. The group expressed an interest in meeting with him for lunch and conversation.

Ms. Boudreau reported that the committee's suggestion that a Fifth District judge and an attorney speak to attorneys and judges at a CLE lunch is being followed up on by Judge Shumate.

Ms. Van Buren pointed out the guidelines for operation of the Utah State Courts' Self-Help Center, provided in today's materials, borrowed heavily from California. She said it is a framework that can be added to, and solicited feedback from the committee on the guidelines as they review it. Ms. Van Buren noted that the start time for the Self-Help Center is sometime in September.

Mr. Shea asked that the call management system be tested before the Self-Help Center begins to make sure it is going to measure all that it is supposed to measure. Ms. Boudreau's work cannot be diverted by problems that will occur.

### **REPORT FROM THE CHAIR**

Judge Baxter reported he has received a letter of resignation from Lowry Snow. His obligations as President of the Bar have become too great. The Bar Commission will make a recommendation at their next meeting to fill this position.

### **REVIEW OF STRATEGIC PLAN**

Judge Baxter indicated there will be another Judicial Council budget session at the end of this month. He will be unable to attend but Tim Shea and Judge Page will attend.

Judge Baxter noted the month-to-month work of the committee needs to be reviewed. The committee needs to decide whether it should continue to meet every month. Currently, the subcommittees are working on their individual projects and reporting back to this committee.

Jim Backman noted that the subcommittees are being relied on more at this point than the committee as a whole.

Judge Baxter reviewed the summary of the committee's strategic plan with the group, to help the committee determine what has been accomplished and to identify where the committee should go next. He noted those recommendations on the summary list that do not have subcommittees to address them are 2, 5, 9, 11, and 12.

Ms. Smith expressed there are just two things the committee is not currently focusing on:

1. Some mechanism to evaluate what has been done or is being done needs to be developed - a collection of data and how the committee is going to test improvements over time.
2. Assisting in the development of programs that will better serve the needs of people who need access to justice. That is where this committee is a small cog in a big wheel of the Access to Justice or other staff programs. That might involve having more community groups know how to educate the public. It might involve creating new institutions or getting more state funding for existing institutions.

Mr. Shea indicated regarding the first one, that is why the call management system is so important. There are some things that only the pilot project lawyer will be able to evaluate. There should be some subjective measures beyond the volume that is collected.

Judge Baxter asked if the committee should consider some sort of objective tool so the kinds of the things the attorney is doing is consistently recorded.

Ms. Boudreau stated there are forms from other states that the pilot program subcommittee have seen. Ms. Van Buren added Alaska is using an evaluation tool from California. They are in the process of upgrading it and it will be ready any month now. Utah can use it when it is ready.

Mr. Shea suggested the methodology for it ought to be a web page that only Ms. Boudreau can access. With each phone call, she would complete a small survey that goes into the database.

Ms. Smith opined that is great in terms of the pilot project, but the committee is not just doing a pilot project. Some of the things Ms. Boudreau is doing within the pilot project are systemic. Many systemic changes can be put into place by surveying pro ses and clerks. A survey can see how things have improved with non-pilot districts vs. pilot districts.

Judge Baxter indicated a control group would be needed, and the control is either the two districts before the program is implemented, or those districts that do not have the program vs. those that do.

Ms. Smith stated a formal survey could be developed and sent to clerks and given to pro ses, asking specific questions about system problems that have arisen. After the court changes the instructions and provided more things, it could be determined in two years if things have improved. Perhaps the committee could ask for funds for this from the Judicial Council, the social work school at the university, or the legislature.

Mr. Anderson said that the court clerks, those that go to pro se clinics, paralegals and attorneys who work in the clinics could be surveyed so the problems among all groups could be compared.

Mr. Shea indicated that two separate issues were raised; a request for studies to measure the efficacy of the forms or whatever else is done, and a study to try to determine what clerks and lawyers who work in the clinics perceive as problems so this committee can identify what it is they want to do about it.

Mr. Shea stated that a focus group approach can be considered as well. That is a legitimate device to generate information. Ms. Boudreau indicated that frontline clerks should be questioned about systemic problems.

Ms. Boudreau indicated that Richard Zorza evaluates projects nationwide. If there is a lunch with him, perhaps the committee could speak to him about this issue. Judge Baxter agreed, saying Mr. Zorza may know of a tool he could recommend so the committee would not need to develop one.

Ms. Smith stated the law school has not yet decided on what Mr. Zorza's topic will be when he speaks to them. Perhaps he could be asked to speak for 90 minutes about problems in handling self-reps, and innovations to improve processes.

Mr. Backman said Ms. Boudreau has been able to identify problems or concerns during this past month. Once Ms. Boudreau is on phones in the Self-Help Center, her ability to work on any systemic problems will be lost. After this committee discusses the problems, perhaps a subcommittee could be formed to handle the issues. Ms. Boudreau will be the best source of bringing issues to the committee's attention. The committee should take advantage of what she has gleaned over this first month and keep things rolling.

Mr. Anderson opined that solving the problems discovered in this survey is likely going to take longer than the committee may think, so we do not want to get a huge list of things to solve.

Judge Baxter suggested that the systemic problems Ms. Boudreau has discovered should be memorialized so the committee can attend to them when it can. Even if the committee does not have lunch with Mr. Zorza when he comes in September, we will hear him speak at two venues and can possibly discuss the survey concept with him to see what he recommends - if he has something personally available or can steer the committee somewhere. Then a survey tool or other method can be the committee's primary agenda item at the October meeting.

Judge Baxter noted that in addition, Ms. Smith raised the issues about assisting and developing programs that promote clinics and workshops. Those are numbers 9, 11, 12 on the summary. Judge Baxter asked what the strengths and pitfalls are for the Bar if the committee promotes legal organizations.

Mr. Backman indicated the committee is in the same territory in that area as the Access to Justice Council. Perhaps a designated person or persons from this committee should tie in with that Council. That group has the greatest political clout and this committee should be a good cog in the wheel of their approach. Ms. Smith opined that the Access to Justice Council should generate liaison strategies and protocols. Mr. Anderson stated someone from that Council should come to this committee's meetings and someone from this committee should attend their meetings.

Ms. Smith indicated there is no resistance from the Bar if what we are talking about is better funding for people who cannot afford lawyers. We are just creating more jobs for lawyers. In talking about #'s 9, 11, and 12, that's when we can step away. All courts should be open to everyone. There needs to be more services for people who cannot afford lawyers, and this committee is on the same page as the Access to Justice Council in terms of seeing that need and trying to get it met. We are particularly concerned about those who cannot afford even unbundled services.

Judge Baxter said he will speak with Nate Alder, president-elect of the Bar and on the Access to Justice Council. Pat Bartholomew said she will speak informally with Justice Nehring about it.

Ms. Smith suggested requesting the Judicial Council set up some structure to ensure there is communication between the Access to Justice Council and this committee. In terms of thinking

about the research, the dean of the University of Utah Law School would like to have a pro bono project of some kind for everyone in the first year to do. If this committee decides research with interviewing and surveying should be done, or problems with survey and process, that would be an excellent project for first year law students. She said there could be 135 law students involved, each one spending 5 hours interviewing people.

Education Subcommittee – Ms. Bartholomew reported the subcommittee on education for clerks' ongoing training has met and are also communicating by email. Probably by the next meeting the group will have a draft ready for this committee's review. The subcommittee is working with the Education Department.

Judge Baxter summarized there are a couple of tasks identified for the whole committee:

1. A post-Zorza meeting and discussion about some sort of tool formation.
2. A discussion with the Bar representative and with Justice Nehring about promoting clinics and workshops for legal services organizations to assist self-represented parties.

Mr. Shea suggested the September meeting be canceled and discuss the defined tasks in the October meeting. The group agreed. The next meeting will be held on October 12.

Ms. Ciccarello expressed that #9 is important and is distinct from #'s 11 and 12 on the ideas of working with the Bar and promoting legal services issues. This committee initially thought of trying to work with public libraries to make sure they know how to give people information. There are other organizations such as Catholic Community Services, Jewish Family Services and all the other organizations that are in regular contact with people who would probably want information. It is not about going through a court proceeding on their own, but rather knowing how to use the court website and where legal services can be found. Perhaps the role of this committee should be figuring out how to get information to those organizations on what the resources are. Maybe the committee could put a prototype training out that committee members of the pro bono students would conduct.

Judge Baxter indicated that this will be a distinct and separate agenda item at the October meeting.

Ms. Boudreau offered to provide information to Ms. Ciccarello that she just received about community contacts. She suggested self-help centers should develop community resource directories as well. The Ms. Ciccarello indicated she is doing a presentation in September at the annual Utah Gerontological Society meeting and is planning on showing them how to work the court website and the resources available.

Ms. Smith stated the Access to Justice Council was very interested in pursuing how the approach to service should be done to inform community organizations and agencies to know about what we do. That is why the Council expanded their group to include community leaders.

The meeting was adjourned.

# Tab 2

# **Legal Information vs. Legal Advice**

**Guidelines and Instructions for Court Staff  
Who Work With Self-Represented Litigants  
in Utah's Courts**

**Prepared by the Education Subcommittee of the  
Utah Judicial Council  
Standing Committee on Resources for Self-Represented Parties**

**September 2007**

# Table of Contents

<b>Section</b>	<b>Page</b>
Introduction	2
Roles and Responsibilities of Court Staff	3
Why Court Staff May Not Give Legal Advice, But Should Provide Legal Information	4
What is Legal Advice?	5-6
What is <i>Ex Parte</i> Communication?	7
Quality Customer Service: Strategies for Answering Difficult Questions	8
Procedural Explanations vs. Procedural Recommendations	9
General Information About Court Operations vs. Confidential or Restricted Information	10
Explaining Legal Terms vs. Providing Legal Interpretations	11
Providing Forms and Approved Instructions vs. Filling Out Forms	12
Public Case Information vs. Confidential Case Information	13-14
Options vs. Opinions	15
Citing Statutes, Court Rules and Ordinances vs. Researching	16
General Referrals vs. Subjective or Biased Referrals	17
Permissible vs. Impermissible Forms of <i>Ex Parte</i> Communication	18
Appendixes	
Resources for Self-Represented Parties	19-21
Handout: What Court Staff Can and Cannot Do	22

## **Introduction**

Each year thousands of people represent themselves in Utah's courts. It is crucial that you understand how to help the self-represented without giving legal advice. This manual will help you understand where the line between legal information and legal advice is.

You are the face of justice in Utah. How you respond to questions affects how people feel about justice, as well as their access to justice. If someone does not understand how to use the court system, and you do not provide available and needed information, that person is denied access to the courts and justice.

This manual can't anticipate all the possible questions that self-represented parties might ask. If you are unsure whether responding to a question would be giving legal advice, refer to this manual. You can also check with your supervisor.

The law is complicated and confusing. Encourage people to talk to a lawyer about their situation. The *Resources for Self-Represented Parties* section of this manual describes a variety of ways people can get the help of an attorney.

## **Roles and Responsibilities of Court Staff**

### **PROVIDE ACCESS TO THE COURTS**

- o Access to justice is effectively denied if court customers do not know how to use the system, and the court does not tell them.
- o The court has an obligation to explain court processes and procedures to provide quality customer service and to provide accurate information to all court customers.
- o Your training on what information you can provide to the public will significantly affect access to the courts and the administration of justice.
- o One of the basic principles of the American justice system is that the doors of our courthouses are open to everyone.
- o Most members of the public, however, are not familiar with courts and court procedures and require some level of assistance.

### **PROVIDE CUSTOMER SERVICE WITH ACCURATE INFORMATION**

- o You are responsible for giving court customers the help they need and deserve by providing accurate information as requested in a competent, cooperative and timely manner.
- o You often are the first and only contact the public has with the judicial system, and your responses have an impact on how court customers view their court experience.
- o The court should treat all court customers equally: attorneys, defendants, self-represented litigants and others.
- o Learn the rules about *ex parte*, or one-sided, communication with the judge, and do not let court customers use you or other staff to circumvent that principle.
- o By providing effective customer service, you may reduce the number of times court customers must come to court, and thus, reduce stress on the court system.
- o Accessibility to the judicial system is affected by the accuracy of information that the court provides to court customers, along with the manner in which it is presented.
- o You must provide accurate information because even seemingly small mistakes can affect people's lives or the outcome of court cases. It is better to be honest and say "I don't know" than to give incorrect information.

**REMEMBER:** It is not up to you to determine who needs information. It is your responsibility to provide appropriate help to anyone who asks for it.

## **Why Court Staff May Not Give Legal Advice, But Should Provide Legal Information**

### **REMAIN NEUTRAL**

- o You must remain neutral and cannot promote or recommend a particular course of action to court customers.
- o You may have processed many similar types of cases, but you do not know what is in a court customer's best interest. Only the court customers or their attorneys can make that determination.

### **BE IMPARTIAL**

- o Impartiality is similar to neutrality, but focuses on equal treatment of court customers.
- o You often have considerable knowledge about the way the court functions and so must never give advice or information favoring one court customer over another.
- o Court knowledge must be shared fairly.
- o You must not disclose confidential information or become involved in or facilitate an *ex parte* communication.

### **DON'T ENGAGE IN THE UNAUTHORIZED PRACTICE OF LAW**

- o You must not engage in the unauthorized practice of law by providing legal advice.
- o Only attorneys licensed to practice by the Supreme Court can give legal advice.
- o Even court staff who are attorneys may not give legal advice to court customers because it violates the principles of neutrality and impartiality.

## **What Is Legal Advice?**

Court customers are asking for legal advice when they ask whether or not they should proceed in a certain fashion.

Telling a court customer “what to do” rather than “how to do it” may constitute giving legal advice.

Legal advice is a written or oral statement that:

- o Interprets some aspect of the law, court rules, or court procedures, or recommends a specific course of conduct a person should take in an actual or potential legal proceeding,
- o Applies the law to the individual person’s specific factual circumstances, or
- o Requires the person giving advice to have knowledge of the law and legal principles beyond familiarity with court requirements and procedures.

## **What is Legal Information?**

**Court staff may:**

- o Provide public information contained in dockets, calendars, case files, indexes, and other reports as long as they are public.
- o Recite common, routinely employed court rules, court procedures, administrative practices, local rules and explain generally how the court and judges function.
- o Refer self-represented litigants to a law library or the court’s website for statutes and court rules.
- o Explain the meaning of terms and documents used in the court process.
- o Answer questions concerning deadlines or due dates.
- o Identify and refer self-represented litigants to court forms. Note: the Supreme Court recently amended Rule 14-802 (c)(3) of the Supreme Court Rules of Professional Practice to allow court staff and others to provide clerical assistance to fill out court forms.

### **Rule 14-802. Authorization to practice law.**

(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)(3) Providing clerical assistance to another to complete a form provided by a municipal, state, or federal court located in the State of Utah when no fee is charged to do so.

**Court staff may not:**

- o Recommend whether to file a certain pleading.
- o Recommend wording or content for a pleading.
- o Recommend specific people against whom to file pleadings.
- o Recommend specific claims or arguments to assert at trial.
- o Recommend what type of damages to seek or whom to seek them from.
- o Recommend techniques for presenting evidence in pleadings or at trial.
- o Recommend which objections to raise or which motions to file.
- o Recommend whether a party should ask for a continuance.
- o Recommend whether or not parties should try to settle their dispute prior to trial.
- o Interpret applications of the statutes.
- o Perform legal research for a party.
- o Predict the outcome of a case.

**REMEMBER: If you are unsure about the answer to a question, direct the customer to the appropriate court staff or other publicly available source of information.**

## **What is *Ex Parte* Communication?**

*Black's Law Dictionary* defines *ex parte* as “on one side only; by or for one party; done for one party only.” *Ex parte* refers to situations in which only one party appears before a judge or communicates with a judge. These kinds of communications are forbidden unless they are expressly authorized.

With few exceptions, the court rules require that all documents filed with the court be given to all other parties in the case so that the other parties have an opportunity to respond. Thus, it is improper for you to transmit information to the judge unless that information has been provided to the other parties in the case.

If a party submits a written communication for a judge, you should deliver it to the judge, who will decide the appropriate action. Check with your supervisor for local policies on this issue.

If a party asks to talk to a judge, suggest that they write down what they want to say and file it with the court. This written communication should:

- o Include a proper heading, including the case number
- o Be dated and signed, with the name printed under signature
- o Include their address and telephone number over the heading
- o Be copied to the opposing party or counsel following Utah Court Rules

The original should be submitted to clerk and the party should keep a copy for their records

If the party has an emergency situation and there isn't time to submit a written request, you may communicate with the judge by following local rules. The party should be warned that the request may not be granted.

## **Quality Customer Service: Strategies for Answering Difficult Questions**

It is not always clear whether or not you can answer a question. However, there are several things that staff can do to assist court customers and make it easier to identify whether the question is asking for legal information or legal advice.

### **LISTEN CLOSELY and ASK QUESTIONS**

- o Let court customers ask their questions and listen carefully to what they are asking.
- o Be an active listener and respond reflectively. If necessary, repeat or rephrase the question to state what you think they are asking.
- o Take the time to clarify what court customers need. If someone does not ask a question in the right way, ask follow-up questions to clarify what they mean.
- o Ask court customers if they have completely read any paperwork they may have.

### **EXPLAIN YOUR ANSWERS AND REASONS AND BE PATIENT**

- o Put yourself in the customer's position and think of how much you would appreciate it if someone took the time to answer your questions and explain an unfamiliar process.
- o Coming to court can be stressful, confusing and intimidating, so take the time to welcome and greet court customers.
- o You may have been asked for the same information many times before, but remember that this is the first time for this particular court customer.
- o Remain calm even when the court customer is not. Your attitude is key. Some customers may just need to vent. Take it professionally, not personally. **Keep smiling!**
- o Providing the reasons why you cannot give certain information helps minimize customer's frustration and increases their understanding of the court system. If you cannot answer a question or provide assistance, explain why by telling the court customer how important it is that you remain **neutral and impartial**. Always be clear and concise when providing information. Ask how they would feel if the clerk gave legal advice to the other side?
- o The phrase "I can't give legal advice" should never be used as an excuse not to provide service. Politely state that you cannot explain or interpret the law or say how it would apply to their case because that constitutes giving legal advice. Also, explain that clerks are not legally trained and if the clerk tries to give information about which they are not completely informed, it might jeopardize the outcome of the case for the party.
- o If you cannot answer a question, try to give a good referral such as to a legal clinic, the court's website, or the State Bar. Remember: you **may not** recommend attorneys because you must remain neutral and impartial at all times.

## Procedural Explanations vs. Procedural Recommendations

You *should* provide procedural information and explanations on how to accomplish various actions within the court system. Explaining various procedures increases the public's understanding of the court system and provides customers with greater access to the courts.

You *should not* make any recommendation to the customer that would indicate a direct advantage or disadvantage of a particular procedure. It is not appropriate for staff to tell court customers what is the best course of action for them to take, nor is it appropriate to give opinions about the probable outcome of a case.

<b>CAN PROVIDE Procedural Explanations</b>	<b>CANNOT PROVIDE Procedural Recommendations</b>
<p><b>Question:</b> Can you tell me how to file a small claims action?</p> <p><b>Response:</b> Yes. You need to fill out a small claims complaint and then file it with the clerk's office. At the time you file the complaint, you will have to pay a filing fee. The clerk will issue you a case number and give you copies of the paperwork. You will need to mail one copy to the defendant via certified return receipt mail. <b>These forms are available on the court website.</b></p>	<p><b>Question:</b> Can you tell me whether it would be better for me to file a small claims action or a civil claim action?</p> <p><b>Response:</b> I cannot tell you which process would be best for your situation because I cannot give you legal advice. You may want to talk to an attorney on this one issue to determine which process best fits your situation. You may also contact other legal resource organizations in your area, or you may research at the local law library.</p>

**Tip: Have a list of legal resource agencies available to hand to the customer. If you are talking to someone on the telephone, give the customer several of the options on the list from which to choose.**

## General Information About Court Operations vs. Confidential or Restricted Information About Court Operations

Generally, you can answer questions about court policies and procedures. However, there is some information that could be inappropriately used to affect the status or outcome of a case, such as case assignment procedures, adjournment policies and scheduling practices. It is important for us not to disclose information that would allow one party or another to have an unfair advantage.

As a general rule, it is appropriate for us to provide information on how to do something, but it is not appropriate to answer the “how” question when it involves the disclosure of **confidential** or **restricted** information.

<b>CAN PROVIDE General Information About Court Operations</b>	<b>CANNOT PROVIDE Confidential or Restricted Information About Court Operations</b>
<p><b>Question:</b> When will my divorce go to court?</p> <p><b>Response:</b> This time frame may be altered depending on the type of service in the case. Hearings are only needed on contested cases and it will depend upon the status of the pleadings as to when it is set. There are general instructions and appropriate forms for uncontested divorce on the court’s website, or you may wish to obtain legal help if your case is going to go to trial.</p>	<p><b>Question:</b> I don’t want Judge Doe assigned to my case. Can you tell me when he will be on vacation so that he doesn’t get assigned to it?</p> <p><b>Response:</b> I’m sorry, but the judge’s schedule will not affect the case assignment. This is done randomly by the court’s computer.</p>

**Tip: You should be familiar with the court rules governing  
your specific area of the court.  
You are *not* responsible for reciting, researching or  
interpreting the rules for the customer.**

## Explaining Legal Terms vs. Providing Legal Interpretations

You should help customers understand legal terms to provide access to the court and to help them understand the court system. While it is appropriate to explain legal terms, it is not appropriate to provide legal interpretations.

<b>CAN PROVIDE Legal Definition</b>	<b>CANNOT PROVIDE Legal Interpretation</b>
<p><b>Question:</b> What does “proof of service” mean?</p> <p><b>Response:</b> The rules require parties to file proof with the court that they complied with the requirement to serve other parties. This proof is called “proof of service”. Proof of service can be by a certificate of service or by acceptance of service. The rules require parties to give copies of any document filed with the court to all other parties in the case. The service options you have are outlined in court rules and state statutes, in particular you may wish to look at URCP Rules 4 to 6. The rules are available on the court’s website.</p>	<p><b>Question:</b> My neighbors leave their kids at home all day without supervision. Isn’t that child neglected?</p> <p><b>Response:</b> I am not an attorney or a judge and cannot make that legal determination. I can, however, refer you to Child Protective Services who may be able to help you. If you feel that the children are in any kind of danger, you can always contact law enforcement.</p>

**Tip: Utah Court Rules, the Utah Code, and a Finding Legal Help section are available on the court’s website: <http://www.utcourts.gov>**

## Providing Forms and Approved Instructions vs. Filling out Forms

Another important way to facilitate access to the court is by providing forms and assistance where resources allow. It is important that you know what forms and written instructions are available from the court and other agencies. Often court customers will not know what forms to request in order to bring their matters before the court. When this happens, staff should direct customers to available resources for forms such as the court’s website, law libraries, and legal clinics.

You can answer procedural questions about how to complete court papers and forms. For example, staff can tell a customer whether a form needs to be notarized or what factual information the form is asking for. Staff cannot, however, tell a court customer what words to put on the forms. If someone asks what to say in a form, staff should tell the customer to use his or her own words. Due to time and resource constraints, you should suggest that customers fill out as much of their form as possible before asking for assistance.

The Americans with Disabilities Act (ADA) requires you to provide reasonable accommodation to people with disabilities, which may include helping them fill out forms. Some legal clinics and legal service agencies will help people with disabilities fill out forms.

When helping a court customer fill out forms, write down exactly what the person dictates, word for word. Do not correct the person’s grammar, and do not paraphrase or edit what the person says. This can be considered giving legal advice, and threatens the court’s impartiality. Once you’ve filled out the form, read it back to the party to confirm that what you have written is correct. Write or stamp “dictated by court customer, written verbatim by court staff,” and your name or initials in the margin, and why the assistance was necessary.

<b>CAN PROVIDE Providing Forms and Approved Instructions</b>	<b>CANNOT PROVIDE Filling Out Forms</b>
<p><b>Question:</b> I need to file for divorce and I have no idea where to begin. Is there some place I can go to find out how to get started?</p> <p><b>Response:</b> Sure. The Court’s website has interactive forms and instructions for uncontested divorces called OCAP. There is a \$20.00 fee for using these forms, which will be charged upon filing of your case.</p>	<p><b>Question:</b> The self-help divorce petition says I can ask for spousal support if my spouse contributed to my educational opportunities. Since my husband stayed home to watch the children while I took night classes, should I mark that box on the form?</p> <p><b>Response:</b> I can explain what the form is asking, but I cannot help you decide what information to enter. If you have questions about this information is appropriate to enter on the forms, you can ask an attorney or visit a legal clinic. Information about legal clinics is available on the court’s website.</p>

## **Public Case Information vs. Confidential Case Information**

Some documents or entire cases are confidential and you cannot disclose the information. Be sure to ask your supervisor if you do not know what records or cases are public and what are not.

Access to internal memoranda legal notes or preliminary drafts prepared by or under the direction of any judicial officer which relate to the adjudication, resolution or disposition of any past, present or future case, controversy or legal issue is limited to court staff for case processing purposes only.

You must not disclose the outcome of a matter submitted to a judge for decision until the outcome is part of the public record or the judge directs disclosure of the matter.

You must not speculate on the possible outcome of a matter submitted to a judge or a jury until the outcome is part of the public record. This also applies in cases when a matter has not yet been submitted to the court.

Generally, there are three categories of records designated confidential by statute, court rule or court order. These records are designated as **private, protected, or sealed**.

### **Private/Protected Records**

Unless otherwise ordered by the court, only the following people may be given access to confidential records (for example: un-finalized adoptions, custody evaluations, home studies)

- o Parties to the action
- o Counsel of record
- o Individuals with a written order from the court authorizing access
- o Court staff - for case processing purposes only. There are also some additional exceptions (see UCJA 4-202.03 or talk to your supervisor).

You should not read private or protected records unless necessary to do your job. Private or protected records contain highly personal information about parties, and it is inappropriate for you to read these records unless it is required for your work.

### **Sealed Records**

Access to these records is restricted to the judge. After a record is sealed, not even court staff may open the record without permission from the court. Clerks may acknowledge existence of the case and a case number but nothing more (for example: finalized adoptions and wills).

<p style="text-align: center;"><b>CAN PROVIDE Public Case Information</b></p>	<p style="text-align: center;"><b>CANNOT PROVIDE Confidential Case Information</b></p>
<p><b>Question:</b> My mother died four months ago and I lost my paperwork regarding her probate case. Can you give me the case number, and can I get copies of the pertinent documents?</p> <p><b>Response:</b> Yes. I need to know her name. I'll check our records and give you the case number. Then, you can visit our courthouse and view the file, or you may purchase copies over the phone using a credit card.</p>	<p><b>Question:</b> I think there is a Mental Health case for my uncle in your court. His name is John Smith. Can you tell me anything about his case?</p> <p><b>Response:</b> Yes, I can look to see if a Mental Health record exists. What that means is that I will be able to look up this case on our computer system and give you a case number if there is one. Any information other than that is confidential and you would have to have permission from the judge to view the file.</p>

## Options vs. Opinions

You can provide information on the various procedural options that are available and what the differences are between the options. It is important for staff to explain options because the customer is often not aware of those options. By explaining options, you provide customers with better access to the courts. It is also important that staff advise customers of all appropriate options. Providing only some of the options may indirectly influence a decision by limiting the customer's choices.

You cannot give an opinion about what specific remedies to seek or which option the customer should use or otherwise advise someone on whether to bring the problem before the court. Staff must remain neutral and cannot take a position that will encourage or discourage a particular course of action.

<b>CAN PROVIDE Options</b>	<b>CANNOT PROVIDE Opinions</b>
<p><b>Question:</b> What can I do if I cannot afford to pay the filing fee?</p> <p><b>Response:</b> You can request a fee deferral, which allows you to open your case without paying the fee. At the end of your case, you may also qualify for a full waiver of your fees. The forms are available on the court's website.</p>	<p><b>Question:</b> My ex-husband hasn't paid the debts that he agreed to pay in our divorce settlement. Now he's filed for bankruptcy. The creditors are coming after me. This is ruining my credit. I don't live in Utah anymore. What can I do? He had an agreement and he's not following it. Can I be made responsible for this debt?</p> <p><b>Response:</b> I can't advise you what you can do because I cannot give you legal advice. The bankruptcy filing further complicates this matter. I strongly recommend that you consult an attorney. You may want to contact your local court to find out if there are any free legal advice clinics that you could attend to get further information, or see the court's Finding Legal Help web page.</p>

**Tip: Always make it clear to court customers that they may have other options available to them that you are not aware of.**

## Citing Statutes, Court Rules and Ordinances vs. Researching Statutes, Court Rules and Ordinances

You will often know statutory and court rule citations, especially as they apply to procedures, and it is appropriate for you to share this information. However, it is not appropriate for you to conduct legal research. There are two factors that help distinguish between the two:

- o If the information is something staff should know as a part of their job, then it is not considered legal research, even if staff has to look it up in the statute book.
- o If the information is readily available and does not have to be compiled, then it probably would not be considered legal research. If the information has to be compiled, then it probably is legal research.

<b>CAN PROVIDE Cites of Statutes, Court Rules and Ordinances</b>	<b>CANNOT PROVIDE Research of Statutes, Court Rules and Ordinances</b>
<p><b>Question:</b> Can I get a copy of a document from a case? Is it a public record?</p> <p><b>Response:</b> Court records and documents are public record unless categorized as private, sealed or protected (see UCJA Rule 4.202.03) The law requires that we charge a 25¢ per page copying fee. If the document needs to be certified there is a \$4.00 service fee and 50¢ per page copy fee.</p>	<p><b>Question:</b> Can you tell me what laws govern tort claims?</p> <p><b>Response:</b> I cannot perform legal research for you, but you do that research yourself or you can contact an attorney to assist you. The statutes, rules and ordinances are available online and at the law library. You can contact the State Law Library for help getting started in your research.</p>

## General Referrals vs. Subjective or Biased Referrals

Because the court and court staff must remain impartial in all matters, you cannot make referrals to a specific lawyer, law firm or paralegal service. You can refer customers to the court's website, the State Bar, or the yellow pages of the telephone book

It is also helpful to keep lists of contact information for local government agencies and departments where you frequently refer customers, so you can point people in the right direction. Sometimes it is appropriate to make a call to the referred agency or department (if time permits) to make sure it can accommodate the person before sending them there.

<b>CAN PROVIDE General Referral</b>	<b>CANNOT PROVIDE Subjective or Biased Referral</b>
<p><b>Question:</b> I need a process server. Where do I find one?</p> <p><b>Response:</b> Here is a list of process servers. ( Check to see if a list from your district is available ) You may also check in the phone book or internet in your area for licensed process servers.</p>	<p><b>Question:</b> Can you recommend a good process server?</p> <p><b>Response:</b> I'm sorry, but the court must remain impartial. I cannot recommend a specific process server, but I can suggest that you check the phone book or the internet in your area for a licensed process server.</p>

**Tip: Develop and have available a list of general resources and referrals to give customers. Good general referrals include the yellow pages and the Internet.**

## Permissible vs. Impermissible Forms of *ex Parte* Communication

As discussed earlier, you may not transmit information to a judge unless that information has been provided to the other parties in the case. To uphold this principle, you should follow these guidelines:

- o Do not communicate to the judge case information that you know through personal knowledge, that you have read in the newspaper or heard on the radio, or that someone told you.
- o Do not transmit verbal information to a judge on behalf of a party or attorney concerning a case unless it involves scheduling or other administrative matters.
- o Screen all calls to a judge. Do not transfer phone calls to a judge from parties or attorneys without learning what the caller wants to talk to the judge about and whether it is associated with a case before the judge, and then ask the judge if he/she wants to take the call.
- o Communications about scheduling or other administrative matters are permitted because they do not deal with the litigation’s substance or merits, and no party gains an advantage as a result of the *ex parte* contact.

<b>CAN PROVIDE</b> <b>Permissible Forms of <i>Ex Parte</i></b> <b>Communication</b>	<b>CANNOT PROVIDE</b> <b>Impermissible Forms of <i>Ex Parte</i></b> <b>Communication</b>
<p><b>Question:</b> Has the judge ruled on the motion to dismiss yet?</p> <p><b>Response:</b> No, the judge has not ruled on the motion yet. It is still under advisement.</p>	<p><b>Question:</b> I am a prosecutor in the DUI case today. Please tell the judge that I don’t think we’re going to have the trial today because the defendant has already admitted he was drunk.</p> <p><b>Response:</b> I cannot tell the judge information about potential evidence in the case because it would be an impermissible <i>ex parte</i> communication. I can relay to the judge that the prosecutor states the trial will not go forward, or I can ask the judge if he would be willing to speak to you.</p>

**Tip: Remember that *Black’s Law Dictionary* defines *ex parte* as “one side only; by or for one party; done for one party only.”**

## **Resources for Self-Represented Parties**

### **Utah State Courts' Self Help Web Page**

**<http://www.utcourts.gov/howto/>**

The Utah State Courts' Self Help web page has resources for people trying to do their own legal work, and makes it easier for public library staff to direct them to that information.

Topics offered on the Self Help page include:

- Appeals
- Civil Cases
- Criminal Cases
- Estate Planning & Probate
- Families & Children
- Forms & Instructions
- Juvenile Cases
- Landlord-Tenant
- Mediation
- Protection from Abuse
- Seniors
- Spanish Resources
- Traffic Matters

### **Alternative Dispute Resolution**

**<http://www.utcourts.gov/mediation>**

Going to court – litigation – isn't always the best way to resolve a problem. Alternative dispute resolution (ADR) is one way to work out an agreement. Mediation and arbitration, for example, both involve neutral, third party representatives who guide the resolution process or reach a settlement. Specific ADR programs are available for many types of cases, including child welfare, co-parenting, divorce, probate, victim-offender and appeals.

### **Government Agency or Non-Profit Help**

**<http://www.utcourts.gov/howto/legalassist/#3>**

Information about government agencies and non-profit organizations which investigate complaints and work with parties to resolve differences. Areas include consumer protection, landlord-tenant, complaints about people in trades or professions (such as an electrician or doctor), securities fraud, and utility companies.

### **Legal Assistance Agencies and Organizations**

**<http://www.utcourts.gov/howto/legalclinics/#2>**

Descriptions of and contact information for Utah agencies and organizations such as the American Civil Liberties Union, Disability Law Center, DNA People's Legal Services (Navajo Nation), immigration law resources, Legal Aid Society of Salt Lake, Multicultural Legal Center, Small Claims Mediation Programs, Utah Dispute Resolution, and Utah Legal Services.

### **Finding an Attorney**

LegalMatch is a free service provided by the Utah State Bar to help people find an attorney. A person can confidentially post information about their legal issue and interested attorneys will respond. Attorneys can be compared by experience, ratings, offers, and fees. Access LegalMatch on the Utah Bar Association website: go to <http://www.utahbar.org/> and select *Find a Lawyer* from the left column.

Other resources include the telephone yellow pages and asking friends to recommend a good attorney. You cannot provide lawyer referrals.

Another resource is [martindale.com](http://martindale.com), an online version of the print lawyer directory Martindale-Hubbell. Can be searched by location and subject specialty, and provides information about a lawyer's education and experience, as well as the ratings other lawyers give them.

### **Limited Legal Help**

Many people can't afford to hire an attorney. Limited legal help, also known as "limited scope legal representation" or "unbundled services" is an alternative way to get legal help. Under this kind of arrangement, an attorney and client agree that the attorney will provide specific services for a predetermined fee.

For example, the attorney and client could agree that the attorney:

- o will only advise the client about the strength of the case, or
- o help draft a document, or
- o review a document the client has drafted, or
- o coach the client for a negotiation, or
- o help with the discovery process, or
- o coach the client for a hearing, or
- o appear in court on behalf of the client for one hearing only, or
- o any combination of these kinds of services

Hiring an attorney to handle part of a case can be an affordable alternative to hiring one to take care of the entire case (also called "full representation"), and is preferable to representing yourself in court – a process that takes time and patience and can be confusing. People who act as their own attorneys are expected to know and follow the same rules that attorneys do.

Not all cases are suited for limited legal help, and the idea of limited legal help is just beginning to be adopted by attorneys in Utah. A person should find the names of a couple of attorneys using the resources described in the Finding an Attorney section, and then talk about the possibility of hiring them to provide limited legal help.

### **Utah's Law Libraries**

Law libraries have print and online resources including statutes, regulations, court rules, and court decisions, as well as legal encyclopedias, form books, and books about specific areas of law. Most law books are written for legal professionals, but some books are written for non-lawyers. Law library staff can't give legal advice, but they can show people how to use their resources.

Brigham Young University  
Howard W. Hunter Law Library  
BYU Campus, Provo  
801-422-3593  
[www.law2.byu.edu/Law\\_Library/](http://www.law2.byu.edu/Law_Library/)

Utah State Law Library  
450 S. State Street, Rm. W-13  
Salt Lake City  
801-238-7990  
[www.utcourts.gov/lawlibrary/](http://www.utcourts.gov/lawlibrary/)

University of Utah  
S.J. Quinney Law Library  
332 South 1400 East  
University of Utah Campus, Salt Lake  
City  
801-581-6438  
[www.law.utah.edu/sjqlibrary/](http://www.law.utah.edu/sjqlibrary/)

Weber County Law Library  
2464 Jefferson Avenue  
Ogden  
801-337-8466

## **Legal Clinics**

**<http://www.utcourts.gov/howto/legalclinics/#2>**

Legal clinics give general legal information and brief legal advice. Clinics also provide help with forms, and give people a chance to ask questions about the law. Most legal clinics handle civil law matters only. Talking to someone at a legal clinic is not the same as hiring an attorney, because the attorneys there may not take cases or represent people in court. Going to a legal clinic can help someone decide if they can handle the matter on their own, or if they should hire an attorney. A list of legal clinics statewide is available on the court's website.

## **Utah Forms**

Legal form books provide sample language you may use to prepare documents to file with the court. Some forms are fill-in-the-blank, while others only provide language that must be tailored to the situation. Forms are not available for every situation.

- o The court's Online Court Assistance Program (OCAP) (<http://www.utcourts.gov/ocap/>) is a free online program that helps you generate the paperwork for Divorce, Landlord-Tenant, Guardianship of a Minor, Paternity, and Stalking or Protective Order matters.
- o Other court forms are available on the court's website at <http://www.utcourts.gov/resources/forms/>, for matters such as Child Support, Expungement, Garnishment and Name Change.
- o Search the web for Utah legal forms. As with all legal research, be sure to check the currency of the information, consider the source of the information, and make sure it complies with Utah laws and court rules.
- o Some forms are published in the *Utah Code* (annotated and unannotated); look in the index under Forms.
- o The Utah State Bar publishes the Utah Uniform Probate Code Forms; some are available for free online on the Utah Probate Solutions website at <http://www.utahprobate.com/uupcforms.htm>.
- o Hansen & Neeleman, *Utah Probate System*, 2nd ed. includes the Utah Uniform Probate Code Forms, as well as other probate-related forms.
- o Utah continuing legal education materials often include forms. Search the catalogs of university law libraries for the topic you are interested in, such as contracts, and include "Utah" in your search.
- o Some state-approved forms are published on Utah state agency website (for example, corporation, tax, real estate). A list of state agencies – with links to website – is available online at <http://utah.gov/government/agencylist.html>.
- o Some forms are published in the Appendix of Forms of *Utah Court Rules Annotated*.
- o Thomas, *Utah Civil Practice* includes forms for use in Utah civil cases.
- o Utah's law libraries have a variety of general (not Utah-specific) form books, such as *West's Legal Forms*, *American Jurisprudence Legal Forms*, *American Jurisprudence Pleading & Practice Forms*, and *Federal Practice and Procedure*.

WE WILL BE HAPPY TO HELP YOU IF WE CAN. HOWEVER, WE ARE ALLOWED TO HELP YOU ONLY IN CERTAIN WAYS, SINCE WE WANT TO BE FAIR TO EVERYONE.

This is a list of some things court staff can and cannot do for you.

**We can** provide you with a list of local lawyers or the telephone number of the Utah State Bar lawyer referral service.

**We can** explain and answer questions about how the court works.

**We can** give you general information about court rules, procedures and practices.

**We can** provide court schedules and information on how to get a case scheduled.

**We can** give you information from your case file.

**We can** give you samples of court forms that are available.

**We can** usually answer questions about court deadlines and how to compute them.

**We cannot** tell you whether or not you should bring your case to court.

**We cannot** tell you what words to use in your court papers. However, we will check your papers for completeness. For example, we check for signatures, notarization, correct county name, correct case number and presence of attachments.

**We cannot** tell you what to say in court.

**We cannot** give you an opinion about what will happen if you bring your case to court.

**We cannot** talk to the judge for you.

**We cannot** let you talk to the judge outside of court.

**We cannot** change an order signed by a judge.

### **Utah Court System Mission Statement**

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

# Tab 3

## Strategic Plan Summary

<b>The Committee recommends:</b>	<b>Status</b>
1. financing a pilot program in two judicial districts to make available by telephone and web communication a lawyer who would provide information and assistance;	Pilot program in place through June 30, 2007. Request for continuation through FY 2008 will be considered April 2008.
2. researching and developing court-sponsored clinics and workshops;	
3. setting up a work space in each courthouse to serve as a focal point for providing self-help information;	Work done in pilot program locations
4. studying the efficacy of staffing such a self-help work space;	
5. promoting the state law library as a resource for self-represented parties;	
6. continuing to develop forms most needed by self-represented parties;	Work in progress. Consider role of Committee and role of Board of District Court Judges.
7. studying how best to meet the needs of self-represented parties through the court's website;	
8. continuing training with clerks and studying training with judges on the needs of self-represented parties and effectively responding to those needs;	Work in progress. Plenary session at annual judicial conference. Planned session for district judges' conference. Court staff guidelines document prepared.
9. studying how community service organizations can assist in providing self-help information;	
10. amending Rule 1.0, Chapter 13A of the Supreme Court Rules of Professional Practice to permit unpaid non-lawyers to complete court forms;	Done. Effective November 1, 2007
11. promoting clinics and workshops, low-fee and no-fee legal representation, and unbundled legal services among the legal community; and	Work in progress. Substantial progress in Southern Utah Bar Association. Can only move as fast as the bar.
12. promoting a legal service organization to recruit lawyers to provide such services and to raise and distribute funds to do so.	