

**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 Waine 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 developing 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.
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- 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.