

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

**December 12, 2008
Matheson Courthouse
Salt Lake City, Utah**

Members Present: Hon. John L. Baxter, Chair; Fred Anderson; Mary Jane Ciccarello; Hon. Christine S. Decker; Rep. Neil Hansen; Christine James; Jay Kessler; Jose Lazaro; Hon. Rodney Page; Stewart Ralphs; Hon. James Shumate; Jessica Van Buren.

Members Excused: Prof. James H. Backman; Pat Bartholomew; Hon. Christine S. Decker; Robert Jeffs; Christina Micken; Prof. Linda Smith.

Staff Present: Marianne O'Brien; Tim Shea; Carolyn Carpenter.

Welcome and review of meeting minutes

Judge Baxter welcomed all present and extended a special welcome to Anna Jespersen and Connie Howard from the State Bar. A motion to approve the August minutes as prepared carried unanimously.

Pro bono coordinator, Utah State Bar

Ms. Howard and Ms. Jespersen introduced themselves and committee members reciprocated. Mr. Shea indicated they were invited today to learn more about what this committee is doing and to share information with this committee about the pro bono work that is being done in the State Bar.

Ms. Howard reported that this year, Anna Jespersen was hired full time to head the pro bono section. Ms. Jespersen also staffs the Tuesday Night Bar and will be working with the senior centers as well. Several years ago the Bar had CLE on unbundling at the spring conference. Last year the same individual returned to speak to the Bar about unbundling legal services.

Judge Baxter informed Ms. Jespersen and Ms. Howard about some of the efforts of this committee. There are lists on the court's website of attorneys from the Central Utah Bar Association, Davis County Bar Association and Southern Utah Bar Association who have identified themselves as willing to provide limited legal services.

Ms. Howard indicated the Bar's lawyer referral service has a list of attorneys who identify their areas of practice, and it has been discussed that it be rejuvenated to make it more sophisticated and include unbundled services. The Bar is trying to decide how to word "unbundled services" so when the public is searching for an attorney it will make sense to them.

Mary Jane Ciccarello indicated that unbundled services are described on the court's website and Ms. Howard could look at that to see if it would suit her needs. The phrase this committee decided on is "limited legal help."

Ms. Howard indicated that the Bar now has a room in their building with computer stations for the public to be able to search for a lawyer and for other information such as And Justice for All. She asked Ms.

Ciccarello to work with her to give her ideas of what other materials the court has that could also be used at the Bar's kiosk.

Ms. Howard also has been talking with Linda Smith at the U of U Law School and has seen the student-generated video about what to expect in the courtroom. She indicated this video can be played in the Bar's kiosk while people are waiting for their appointment. Ms. Ciccarello noted that this video is on the court's website.

Stewart Ralphs indicated that when Access to Justice and Utah Legal Services conducted their survey throughout the state, it was found that the largest need is with family law issues. The Bar has offered some follow-up CLEs in the family law section, but that has not been pushed enough. Now that we have a list of attorneys willing to provide limited legal help, we need to coordinate better with the family law section of the Bar to provide trainings and encourage people in attendance to put their names on the list. The legal aid clinic is telling many of the pro se litigants their case is too complicated for them to do without some legal help, and they are encouraged to contact a lawyer who can provide limited representation. This effort needs to be coordinated.

Ms. Ciccarello noted that having a list of attorneys who will provide limited legal help is not enough. That alone will fail. This has happened in many other states. What is successful is a coordinated effort of the bar and the bench, training, forms, some kind of certification by the court that the lawyer has been trained, with the list going out to the clinics. It must be coordinated so that lawyers have support, training, and feedback.

Fred Anderson said that unless attorneys' attitudes change, this is not going to work. People who need limited help cannot afford full service, and if attorneys are providing limited help at a full rate, those people will still not be able to afford an attorney.

Judge Baxter indicated that in conversations this committee has held in the past, it was determined that the appropriate way to approach the Bar about limited legal services is to tell the attorneys they will be able to receive some fee.

Limited Legal Help Subcommittee

Judge Page indicated the first thing the subcommittee decided to do was to see what is already available in other states. Through Linda Smith and Mary Jane Ciccarello, good programs were found in Massachusetts and in California. They spoke with Sue Talia in California who is the primary promoter of the limited legal help program there and one of the foremost experts in the country.

The program is run by the bar, not the court. Rules have been adopted to support the program. The program has developed forms for general civil and for divorce. Training is required to be on the bar's list, and the lawyers are then certified by the California Bar. Limited legal help is promoted as another opportunity for business. They have found it does not work well with big firms, but works well with small firms, and has not resulted in the problem raised by Mr. Anderson.

The program cannot succeed by just publishing a list of attorneys who are willing to provide limited legal help. The Utah State Bar and the lawyers themselves have to step forward and commit to promoting the program. The Bar needs to be willing to provide training and forms for attorneys who want to participate. In California, a risk management packet has been prepared for participating attorneys. Initially, California had problems with liability providers, but when someone from the Bar showed them what was being done, the providers came around. Ms. Talia has provided most of the training to the local bar associations. Now she is training the trainers. This needs to be ongoing and localized. This information was provided to

Utah Bar president, Nate Alder. The Bar wanted to put it on their spring or summer conference schedule but those agendas are filled, so they are talking about doing it at the fall forum. Ms. Howard indicated that the fall forum is the best target audience because it is geared to solo and small group practitioners and is the most highly attended convention.

Ms. Howard indicated that the Bar's malpractice insurance provider is always looking for an opportunity to put on a program and bring a presenter in. This may be a key issue that they would be happy to underwrite. She will call them about this possibility.

Judge Page said a champion in the bar is crucial. The courts and judges will support this, but it needs to be a bar project.

Ms. Ciccarello and Linda Smith provided a CLE series on ethics yesterday. California's system was explained, the participants were given some sample forms, and Ms. Smith talked about the Utah specific ethics rules. Those who attended were very receptive. Utah is ahead of the game because Utah does not have roadblocks to such things as ethics on ghostwriting. All lawyers provide some limited legal help to some extent – but having assurance that it can be done properly is needed.

Ms. Ciccarello offered to share everything the court has with Ms. Howard to help move this forward. Ms. Howard indicated she will talk with Nate Alder about getting a group together to assemble a curriculum, working with Ms. Ciccarello. She asked Ms. Ciccarello to send Sue Talian's website.

Ms. Ciccarello indicated that Ms. Talia will be doing a training presentation in Costa Mesa, California in March. The presentation will be videotaped and have a PowerPoint and materials. It is geared to training the trainers. The materials will be available through the ABA and can be used at the fall forum.

Mr. Ralphs said he has a sense that it is increasingly known by attorneys that in the vast majority of family law cases, one or both parties are pro se. It is not the role of the bar to promote pro se litigation. They know there are many cases in which the litigant needs a competent attorney to create or review a critical or technical piece of their pro se litigation. If attorneys are trained and feel they can provide counsel on a specific aspect of a case and then remove themselves from it, it is a good business model.

Judge Page agreed and indicated that most divorces are not complicated, but they have some complicated parts. Litigants need to be able to seek help from attorneys just to do something like draft a quadro so that it meets the legal requirements that the agencies will accept. There is a niche out there if counsel can understand they can legally do this.

Ms. Howard said part of the curriculum could be someone talking about what Stewart Ralphs just talked about – that there are issues within a divorce case that need professional help and educating the public about this. There needs to be lawyer education and public education.

Judge Shumate asked if it would be useful to extend an open invitation to the Bar to coordinate the promotion of unbundled certification and programming so it becomes part of the Bar's organization statewide. The concept is in place, but there is currently no training behind it. The one piece the Southern Utah State Bar has not been willing to do, because it should be done by the State Bar, is to develop training. The courts can offer some resources through this committee.

Mr. Shea said one of the problems over the last few years is many of the infrastructure blocks, such as limited appearance rule in civil procedures, the new rules of professional conduct, etc are in place, but there has never been a person in the Bar whose job it was to promote unbundled services. It has not been a problem with the elected leadership, but the elected leadership can only go so far. There has to be an

identified person to make things happen. This committee is reluctant to pursue something that in the end the bar must pick up and carry.

Ms. Howard mentioned the bar is doing a new lawyer training program that will occur next year. Part of the model mentoring could include unbundling as a required portion.

Judge Page indicated that a weakness in the program is that the training should be done by a bar member, not a judge. The attorney needs to say to fellow attorneys, "here it is and it works, and you can make money doing it." Judge Baxter said he and Judge Shumate could train the trainer, but then an attorney who is an active practitioner in family law should do the training. He suggested someone like Virginia Sudbury could be trained and she could then teach it to the local bar associations.

Judge Baxter summarized: He and Judge Shumate will train the trainer on the materials they received at the Harvard conference. They will solicit resources from the AOC's education department to do so. The training will be coordinated through Marianne O'Brien. Ms. Talia might be brought in for the fall forum. Mary Jane Ciccarello and Jessica Van Buren will serve as resources.

Mr. Andersen asked what measure is going to be used to call the program a success, and asked if California has a measure. Ms. Ciccarello responded that she does not know about California, but Massachusetts does have a measure. She will contact both states.

Judge Page suggested that CORIS be tweaked to show those who are filing the entry of appearance on a limited scope representation. Tim Shea indicated CORIS may already be tweaked. Ms. O'Brien will check on this.

Education subcommittee

Judge Baxter reported that the subcommittee met and considered what it should be doing from this point forward. Some clerk training material on pro se litigants already exists. The next step is community outreach and judicial education. He and Judge Shumate are already engaged in the judicial education aspect. Judge Baxter asked each member of the subcommittee to identify an agency or a community organization to whom presentations could be made about limited legal services, what it means, how to access the services and what to expect when coming to court. Judge Baxter has contacted Salt Lake Community College to arrange a time to make a presentation. Ms. Van Buren will contact the Senior Center, Jay Kessler is checking with Magna's community organizations.

This committee made the following suggestions about groups that could be approached to make presentations:

- Seniors in high school.
- College law classes.
- Community councils.
- Police organizations.
- Lions Clubs.

Judge Baxter noted that presentations to outlying areas beyond a short trip could not be done unless done in connection with conferences being held in those areas. Presentations could possibly be made on week nights. Ms. O'Brien will be the contact for those arrangements. In addition, Nancy Volmer, the Public Relations representative for the AOC can be contacted to make arrangements for newspaper announcements of presentations or of stories.

Future money for the Self-Help Center

Ms. Van Buren reported that the Self Help Center is scheduled to end on June 30. After that there will be no money to keep the program going. What needs to be explored now is the possibility of grants or awards. Ideas about where to obtain a total of about \$80,000 are needed.

Ms. Ciccarello spoke with Stewart Ralphs and Kai Wilson about the possibility of grant money from "And Justice for All" and will be writing a letter of request. The problem is, as it is with many grant makers, the court is a government entity and And Justice for All provides small grants to non-profit organizations. Basically the letter has to ask them to change their rules and accept a government entity. In addition, their funding is committed for 2009 so we would be asking for funds for 2010. The letter will be sent but it is a long shot and would only be for about \$5,000 if granted.

Jay Kessler asked if an individual, like himself, could donate. No one knew whether this is permissible. He said if the rules allow it, \$10 from each attorney in the state would take care of it.

Ms. Van Buren indicated that she and Ms. Ciccarello spoke to SJI and were discouraged after that conversation. There are no guarantees of anything, even though this program has been very successful. The committee's proposal will still go to the state legislature but everything is being cut and there are no guarantees. There is no money to maintain the pilot program beyond June 30, 2009.

Judge Baxter suggested contacting Joan Kroc of the McDonald's family. Ms. Ciccarello will try to contact her and will write grant proposals, but said many of the foundations will not award money to a government agency. Those foundations themselves are facing real monetary problems. She said she doubted asking for \$10 from every lawyer in the state would work.

Mr. Kessler indicated he would like to be on a new fundraising committee. If someone can tell him what is allowed, he will work within those parameters.

Other business

Ms. Ciccarello said she proposed to Dan Becker that the pilot program be expanded to 7th district. This was approved, beginning on January 1, 2009.

Mr. Anderson reported that Legal Services held its first web clinic with Richfield. It went well. It will be held on the fourth Thursday of every month.

Miscellaneous forms

Tim Shea reminded the committee that it asked for several forms to be seen again after revisions were made. He received many email suggestions on the forms which have been incorporated. Mr. Shea reviewed the following forms with the committee: Answer, Proof of Service of Complaint and Summons, and Withdrawal of counsel set. Suggestions were given by the committee which were noted by Mr. Shea and will be incorporated, after which the forms will be advanced.

October 2009 Meeting

It was decided to change the October 2009 committee meeting from Oct. 9 to Oct. 16 to accommodate the Columbus Day holiday weekend.

The meeting was adjourned.