

From: "Bob Burton Jr." <bobb@burtonlumber.com>
To: "Billy Walker" <bwalker@utahbar.org>, "Bob Burton Atty." <bobb@dccorp.burtonlumber.com>, "Earl Wunderli" <emwunderli@msn.com>, "Fred Howard (Fred Howard)" <jhoward@email.utcourts.gov>, "Gary Chrystler" <glc101@veracitycom.net>, "Gary Sackett" <gsackett@joneswaldo.com>, "John Soltis" <jsoltis@utah.gov>, "Kent Roche" <kroche@pblutah.com>, "Marilyn Branch" <mattyb@email.utcourts.gov>, "Nayer H. Honavar" <nayerhonavar@hotmail.com>, "Paul Maughan" <pmaughan@email.utcourts.gov>, "Paula Smith" <psmith@co.sl.c.ut.us>, "Royal I. Hansen" <rhansen@email.utcourts.gov>, "Stephen Roth" <sroth@email.utcourts.gov>, "Steven Johnson" <sjohnson@norbest.com>, "Stuart Schultz" <sschultz@strongandhanni.com>
Date: 10/25/06 11:44AM
Subject: Next Meeting and Assignment

Committee Members:

No one raised any objections to having our next meeting on January 8, 2006. Therefore, please plan on that day. We will meet at the usual time, 5 p.m. at the usual place, the Law and Justice Center.

Our assignment has to do with a possible amendment to the Authorization to Practice Law Rule. As you know, we worked on this matter some time ago. For the most part, the Supreme Court agreed with our recommendations and adopted Rule 1.0, Chapter 13A. Although the verbiage of the rule has not changed, the Court did change the numbering of the rule to Rule 14-802, effective November 1, 2006.

The revision suggested by a Standing Committee on Resources for Self-Represented Parties would permit non-lawyers to assist individuals to complete any form provided by a court rather than limiting the assistance to court forms for protection of harassment, domestic violence, or abuse. The non-lawyer would still not be allowed to charge a fee for providing such assistance. Under the proposal, section (c) (3) of the rule would read "Providing clerical assistance to another to complete a form provided by a court for protection from harassment or domestic violence or abuse when no fee is charged to do so.

It seems logical to me to assign this matter to the same sub-committee that proposed the rule in the first place. That sub-committee was chaired by Gary Sackett. I believe the other members were Nayer, Steve Johnson and Earl. Gary, Nayer, Steve and Earl, if you are unable to take on this assignment, please let me know.

Bob

Robert A. Burton
PO Box 27206
SLC, Utah 84127-0206
Phone: (801) 952-3720
Fax: (801) 952-3734

Robert A. Burton
Attorney at Law
P.O. Box 27206
Salt Lake City, Utah 84127-0206
Phone: (801) 952-3732
Fax: (801) 952-3734

November 1, 2006

Mr. Steven G. Johnson
Attorney at Law
P.O. Box 1201
American Fork, Utah 84003

Ms. Nayer N. Honavar
Attorney at Law
2876 Oquirrh Dr.
Salt Lake City, Utah 84108

Mr. Gary G. Sackett
JONES WALDO HOLBROOK &
McDONOUGH
P.O. Box 45444
Salt Lake City, Utah 84145

Mr. Earl Wunderli
Attorney at Law
8010 Hunters Meadow Circle
Sandy, Utah 84093

RE: Supreme Court's Advisory Committee on the Rules of
Professional Conduct

Gentlemen and Nayer:

Enclosed find copies of all of the written materials I have received in reference to your new Subcommittee assignment. Thanks for your willingness to take on this assignment. I look forward to your report at our next meeting on January 8, 2007. After you review this matter and decide among yourselves what recommendation should be made to the Committee as a whole, it may be a good idea to draft a short memorandum summarizing your recommendation.

If you do this, I would, of course, request that you send your memo to Matty Branch so that she can distribute it to all Committee members in advance of the upcoming meeting.

Yours truly,



Robert A. Burton

RAB/lis
Enclosures
cc: Matty Branch

Supreme Court of Utah

450 South State Street
P.O. Box 140210
Salt Lake City, Utah 84114-0210

Appellate Clerks' Office
Telephone (801) 578-3900
Fax (801) 578-3999
Supreme Court Reception 238-7967

October 13, 2006

Christine M. Durham
Chief Justice

Michael J. Wilkins
Associate Chief Justice

Matthew B. Durrant
Justice

Jill N. Parrish
Justice

Ronald E. Nehring
Justice

Marilyn M. Branch
Appellate Court Administrator

Pat H. Bartholomew
Clerk

Robert A. Burton, Esq.
c/o Burton Lumber
1170 South 4400 West
Salt Lake City, UT 84104

Re: Referral from Supreme Court to Advisory Committee on the Rules
of Professional Conduct

Dear Bob:

Some time ago, the Utah Judicial Council created a Standing Committee on Resources for Self-Represented Parties. In July, the committee presented the enclosed report to the Judicial Council. One of the recommendations made by the committee, found on page 11 of the report, is to amend Rule 1.0, Chapter 13A, Authorization to Practice Law, to permit non-lawyers to assist individuals to complete any form provided by a court rather than limiting the assistance to court forms for protection of harassment, domestic violence, or abuse. The non-lawyer may not charge a fee for providing such assistance.

The Supreme Court requests that the Advisory Committee on the Rules of Professional Conduct consider the proposed amendment and advise the court of its recommendation. This is not a "rush" assignment. If the committee recommends amendment of the rule, the proposed amendment should go out for comment by early April 2007. Based upon this time line, there may be no need to schedule a committee meeting before January, but that's your call, of course. Let me know what you would like to do. Many thanks.

Sincerely,



Marilyn M. Branch
Appellate Court Administrator

Enclosure
cc: Tim Shea



Administrative Office of the Courts

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

July 17, 2006

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

Hon. Christine M. Durham
Presiding Officer, Utah Judicial Council
c/o Utah Supreme Court
Matheson Courthouse
450 South State Street
Salt Lake City, UT 84111

RE: Strategic Plan – Standing Committee on Resources for Self-Represented Parties

Dear Chief Justice Durham:

As chair of and on behalf of the Standing Committee on Resources for Self-Represented Parties, I request that the Judicial Council review and endorse the attached report on the Committee's Strategic Planning Initiative.

Since its first meeting a year ago, the Committee has studied national and Utah resources for self-represented parties in the courts, secured consulting, survey, and facilitation work by a national expert, completed a two-month survey of and about self-represented parties in 16 district and justice courts, and engaged in an extended strategic planning effort. I am thankful for the time and talent devoted to this effort by each Committee member, and commend their report to you for the effort and excellence it represents.

The Committee's survey data shows that most self-represented parties simply cannot afford to hire an attorney; nearly half have incomes of \$24,000 or less. Despite the challenges of self-representation, challenges that were confirmed by surveys of judges, court clerks, and attorneys, self-represented parties noted high satisfaction with the assistance provided by court staff. The Committee's strategic plan builds on this base of excellent public service, and also recommends that one of the judicial branch's ultimate goals should be to provide the same resources to all Utahns, regardless of where they live.

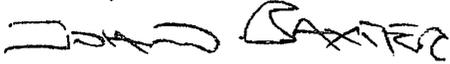
The key for doing this is a pilot project that would provide resources in district and justice courts in an urban and a rural district, using telephone, internet, and webcam to link self-represented parties with a staff attorney working from the State Law Library in the Matheson Courthouse. If successful, this type of assistance would eventually be extended to all courts.

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

Additionally, this report recommends augmenting current court-provided resources and developing new ones, while supporting efforts to build a statewide web of services for self-represented parties that would be provided through lawyer-sponsored resources and community organizations, as well as through the courts.

Thank you for your attention to this report.

Sincerely,

A handwritten signature in black ink that reads "John L. Baxter". The signature is written in a cursive style with some capital letters.

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

Committee on Resources for Self-Represented Parties
Strategic Planning Initiative
Report to the Judicial Council
July 25, 2006

Table of Contents

1)	Background.....	2
2)	Self-Represented Parties in Utah.....	2
a)	Nature of self-represented parties	2
b)	Perceptions by judges, attorneys and court staff of self-represented parties	3
c)	Services desired or needed by self-represented parties	3
d)	Legal representation.....	4
e)	Other sources of information and assistance	4
f)	On-line resources	4
g)	Satisfaction with clerk's office.....	4
h)	Satisfaction in the courtroom.....	5
3)	The Challenge.....	5
4)	A Program for Resources for Self-Represented Parties	6
a)	Goals.....	6
b)	Principles.....	6
c)	Conceptual Model	7
d)	Court-Sponsored Resources	7
i)	Self-help support center.....	7
ii)	Clinics and workshops	8
iii)	Assistance from clerks.....	9
iv)	State Law Library	9
v)	Forms, instructions and information	10
vi)	Court website.....	10
vii)	Clerical and judicial training	11
e)	Community-Sponsored Resources.....	11
f)	Lawyer-Sponsored Resources	11
5)	Summary.....	12
6)	Committee on Resources for Self-represented Parties.....	12

1) Background

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

The duties of the Committee are to:

(A) provide leadership to identify the needs of self-represented parties and to secure and coordinate resources to meet those needs;

(B) assess available services and forms for self-represented parties and gaps in those services and forms;

(C) ensure that court programs for self-represented litigants are integrated into statewide and community planning for legal services to low-income and middle-income individuals;

(D) recommend measures to the Judicial Council, the State Bar and other appropriate institutions for improving how the legal system serves self-represented parties; and

(E) develop an action plan for the management of cases involving self-represented parties.

Since its first meeting in June, 2005, the Committee has been reviewing services provided to self-represented parties in Utah and programs provided in other states. In early 2006, the Committee conducted an empirical study of the experience of self-represented parties in sixteen limited and general jurisdiction trial courts. Based on that study and the Committee's previous investigations, the Committee has developed this strategic plan for investigating, developing and providing resources for self-represented parties.¹

2) Self-Represented Parties in Utah

The data collected present the following picture of self-represented parties and their experiences.

a) Nature of self-represented parties

1. 52% of self-represented parties appearing at a trial or hearing are between the ages of 25 and 44. 55% seeking assistance from the clerk's office are between 25 and 44.

¹ The Committee would like to thank Mr. John Greacen, the Center for Court Solutions, the State Justice Institute, the National Center for State Courts, and the Center for Effective Public Policy for their help in preparing this report and in conducting the survey upon which it is partly based.

2. 65% of self-represented parties appearing at a trial or hearing have one or no children in their household. 61% seeking assistance from the clerk's office have one or no children.
3. 47% appearing at a trial or hearing and 41% seeking assistance from the clerk's office report annual household incomes of \$24,000 or less. 60% make \$36,000 or less annually. About 15% make over \$96,000 annually.
4. 19% of self-represented people coming to the clerk's office and 23% of those appearing at a hearing or trial identify themselves as minorities. About 3% identify themselves as Native American. About 12% identify themselves as Hispanic.
5. 95% of clerk's office users and 97% of people appearing for a hearing or trial report English as their primary language.
6. About 75% of self-represented parties are very infrequent court users.

b) Perceptions by judges, attorneys and court staff of self-represented parties

1. Judges of both district and justice courts find consistent problems with self-represented parties expecting judges and court staff to provide legal advice, failing to understand rules of procedure and evidence, failing to bring necessary witnesses and evidence to court, and refusing to accept the court's rulings.
2. Attorneys emphasize the parties' lack of reasonable expectations concerning case outcomes and the difficulties attorneys face in negotiating with self-represented parties.
3. Court clerks report that self-represented parties require more time than represented parties, that self-represented parties expect the clerks to provide advice that court staff are not allowed to provide, and they expect court staff to do the work for them.
4. Justice court judges rate the performance of self-represented parties more highly than do district court judges.
5. Justice court judges do not perceive a significant need to reschedule cases due to the lack of preparation of self-represented parties. More district court judges perceive this to be a problem. 63% of the district court judges report that it affects fewer than 25% of the cases.

c) Services desired or needed by self-represented parties

1. The district court case types in which people most often appear without counsel are domestic relations matters, small claims, landlord/tenant, probate, other civil, and protective orders, in that order. In justice court the most frequent case types are traffic, parking, and small claims, in that order.
2. Most people coming to the courthouse do so to file a new case, to file papers in an existing case, or to inquire about an existing case.
3. The district court clerks serve primarily plaintiffs or petitioners. The justice court clerks serve primarily defendants or respondents (due to the high volume of people with traffic and parking cases).

d) Legal representation

1. 18% of self-represented people coming to the clerk's office in district court and 8% of those coming to the clerk's office in justice court have consulted a lawyer beforehand. 27% of people coming to a district court proceeding have consulted a lawyer.
2. About 60% of unrepresented users in justice court are unrepresented because they do not feel their cases are complicated enough to need a lawyer. The second most frequent reason (another 20%) is inability to afford a lawyer. In the district court, about 40% of unrepresented people coming to the clerk's office feel their cases are not complex enough to need a lawyer and about 33% cannot afford a lawyer. Of those appearing without counsel at a district court hearing or trial, about 50% report inability to pay as the reason for not hiring a lawyer and about 33% that their cases were not sufficiently complicated.
3. Another 7% in each court do not want to pay the money required for a lawyer, and about 7% say they have obtained enough information from a lawyer to handle the case by themselves.

e) Other sources of information and assistance

1. 80% of self-represented people coming to the district court clerk's office seek additional help before coming to the courthouse. About 60% used the court's website. 19% sought help from a friend or relative, 11% from the court clerk, and 7% went to a library. In the justice courts, by contrast, 59% sought no help. Those who sought help went to a court clerk, a friend or relative, or another information source.
2. This changes dramatically at the time of a hearing or trial. Use of the court's website decreases to 17% in the district court and to zero in the justice court, which reflects the website's focus on forms, information and preparing pleadings, rather than in-court assistance. Court clerks, family and friends are the major sources of help beyond legal consultation, which takes place primarily in district court cases.

f) On-line resources

1. Respondents prefer a personal interaction over web services, rating the web information lower than all other aspects of court services other than the ease of parking.
2. Judges, attorneys and court clerks rate highly the effectiveness of OCAP forms and website information and forms in producing more complete and correct pleadings from self-represented parties.

g) Satisfaction with clerk's office

1. Litigant surveys rate clerk's services quite highly.

2. Users give the highest ratings to small courts, followed by mid-sized courts, followed by large courts.
3. User comments suggest that the most appreciated services are courtesy, friendliness, quickness of service, and knowledgeable information.
4. Most user complaints arise from parking problems, long waiting times, inefficient processes, and problems with internet forms.

h) Satisfaction in the courtroom

1. As with the satisfaction scores for clerk's office services, the average satisfaction scores for courtroom experiences are inversely proportional to court size. Overall, justice court courtroom satisfaction scores are higher than the scores for district courts. The differences in these scores are insignificant.
2. Self-represented parties reported higher satisfaction scores in uncontested than in contested cases and in cases involving another self-represented litigant than in cases with a lawyer.

3) The Challenge

Large numbers of parties appear in our courts without lawyers. The table below shows the percentage of self-represented parties in select case types in cases filed in 2005.

Case type	Filings	Percent w/			Percent Self-	Percent Self-
		2 Attorneys	1 Attorney	0 Attorneys	represented Petitioners	represented Respondents
Divorce	12,828	17%	36%	47%	49%	81%
Protective Orders	5,219	13%	33%	54%	59%	82%
Stalking	898	7%	17%	76%	84%	84%
Evictions	8,251	3%	79%	19%	19%	97%
Small Claims	15,692	0%	2%	98%	99%	99%
Debt Collections	56,733	2%	97%	1%	1%	97%
Guardianship	1,319	1%	41%	58%	59%	2%

A layperson faces obstacles to effective participation in our courts such as the complicated nature of the law and unfamiliarity with complex rules of evidence and procedure. Some parties face additional barriers, such as limited English proficiency, lack of literacy, or less than full mental functioning. As a result of these barriers, an unrepresented litigant may not obtain the same benefits from the courts that a represented litigant does.

An essential component of any program to assist self-represented parties is to inform them of the benefits of legal representation and to refer them to affordable publicly and privately provided legal services. Beyond that, the challenge is to provide self-represented parties with the resources needed to overcome these obstacles. The data collected by the Committee show that most people representing themselves will

not obtain the services of a lawyer because they lack the means to do so or because they believe the matter is relatively simple.

The judicial branch does not stand alone in addressing this resource gap. There are some programs and individuals currently assisting self-represented parties, but the supply is insufficient. This plan provides a structure for supplementing existing resources and pursuing new resources to give self-represented parties the information and assistance needed to participate effectively in court proceedings.

4) A Program for Resources for Self-Represented Parties²

a) Goals

The Committee recommends the following goals for programs to assist self-represented parties:

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

b) Principles

We recommend the following basic principles applicable to court services described in this plan:

1. Services provided by the court should be equally available throughout Utah. While it will be necessary to develop programs on a pilot basis, the Committee's ultimate goal is to provide the same services to citizens throughout Utah. People in urban areas, for instance, should not receive more, better, or different services than people in rural areas. Programs and services developed by the judicial branch should be equally available in the justice court.
2. Services provided by the judicial branch should be available to all people regardless of income. This principle does not necessarily apply to legal service providers and social service agencies with whom the courts collaborate. Their funding sources and program philosophies often limit their services to indigents.

² This plan does not address resources for self-represented defendants in criminal cases. The Committee limited the scope of its survey and of this report to civil and, in justice courts, traffic cases. The Committee may address criminal cases in the future, as well as the needs of self-represented parties in the juvenile court.

3. Services provided by the judicial branch should be available equally to all parties. Defendants and respondents are as entitled to court services as plaintiffs and petitioners.
4. Court-provided services to self-represented parties are designed to supplement and not to supplant legal representation. Legal representation – either through public legal services programs or through the services of members of the private bar – remains the preferred method for parties to obtain information and advice, and court staff will continue to inform self-represented parties of the value of legal representation and how to obtain the services of a lawyer.

c) Conceptual Model

The Committee envisions a web of services for self-represented parties, some provided by the courts, some by community organizations, some by lawyers. The Committee proposes investigate the details of the proposal that follows, to build pilot programs as appropriate, and to implement those programs that show success as measured by the satisfaction of self-represented parties, judges, clerks and attorneys. Most of our approach to resources for self-represented parties is to build on the successes Utah has already experienced. Based on our work so far, the committee recommends building a pilot program for a self-help support center described below.

d) Court-Sponsored Resources

Much of the work for the court resources plan that follows is possible only because the Judicial Council and the state court administrator had the foresight to have put in place a manager and coordinator for programs involving accessibility to the courts, such as our program for self-represented parties and the program for court interpreters.

i) Self-help support center

Self-represented parties give very high marks to clerks for their courtesy and respect. And self-represented survey respondent report that the information is itself correct and helpful. The strategic plan here is simple: more of the same. To provide more of the same, the committee recommends a pilot program for a self-help support center. In this pilot phase the self-help center would serve the district and justice courts in one rural and one urban court district. We recommend the Second and Eighth Districts. If the program is successful, it would eventually serve all judicial districts.

The center would be staffed by an experienced attorney, preferably Spanish-speaking. The attorney's duties would include providing a broad range of information and assistance to self-represented parties but not representation. As time is available the attorney would develop and conduct informational workshops and create court forms.

The attorney would provide information and assistance exclusively by toll-free phone number and through video conferencing equipment located in courthouses, subject to the limitations of the existing infrastructure. The attorney would not provide in-person services, so we recommend that the attorney be housed in the State Law Library.

The committee decided on this model for several reasons:

1. Telephone and video conferencing allow efficient delivery of information statewide, ensuring that self-represented parties throughout Utah will receive the same level and type of service regardless of their location.
2. Alaska's study of their telephone help line showed that telephone services are an effective means of communication, require less staff time, and are less stressful for staff.
3. A program in California's Butte, Glenn and Tehama counties has shown that video conferencing is an effective way to conduct workshops simultaneously in several locations.
4. This model is more cost-effective than providing a resident expert in every courthouse, or having a circuit rider who periodically visits each court.
5. The infrastructure to support this program is in place in some locations, but the pilot may be limited to avoid increasing computer response time in locations in which bandwidth is insufficient.

The telephone's computer system should be able to measure the number of calls, lost calls, wait time, talk time, and other metrics that may be useful. In addition to the statistics generated through the computer system, the attorney hired to provide the information should evaluate the types of cases and parties involved, the nature and availability of the information requested, the extent to which the person requests legal advice that cannot be provided, the nature and availability of community resources that can serve the caller, and other metrics that may be useful.

The Committee will submit a detailed budget for the pilot project at the Judicial Council's annual planning meeting in August.

ii) Clinics and workshops

The Committee proposes to spearhead efforts to research and develop materials and resources for clinics and workshops

1. for self-represented parties on topics most commonly of interest to them,
2. for clinic and workshop volunteers; and
3. for court personnel and community organizations on the needs of self-represented parties and the resources that are available.

Held live in one courthouse, a workshop might be broadcast through web technology to anyone interested in "attending" from home or office. In workshops for self-represented parties, the nature of the service provided will depend on the qualifications

of those presenting. A lawyer who donates the time will have different knowledge than for example, a self-help clerk.

iii) Assistance from clerks

To the extent that a court has not already done so, we recommend providing in each courthouse a self-help work space, which would have:

1. a small work space;
2. written materials, such as forms, instructions and informational guides;
3. a computer with internet access and access to the court's public database; and
4. in those courthouses participating in the pilot project, necessary telephone and web conferencing equipment.

We propose to investigate the effectiveness of a clerk assigned to the self-help work space either part-time or full-time. The designation as a self-help clerk should include with it additional pay to recognize the necessary concentration of knowledge and expertise. Some possible duties for a self-help clerk:

1. maintain a high level of knowledge about the issues raised by self-represented parties, maintain familiarity with judicial and community resources, assess the needs of particular court users and refer them to appropriate services, maintain interpersonal skills needed to interact with self-represented parties, instruct on the use of the 211 service in Utah;
2. serve as the court's liaison with the toll-free self-help support center;
3. schedule and promote local court and community-sponsored workshops;
4. ensure that equipment is working; and
5. train other clerks to ensure that self-represented parties receive correct and consistent information.

iv) State Law Library

The State Law Library already serves a significant number of self-represented litigants. More than half of the people who seek library services are representing themselves. Staff are accustomed to walking the thin line between showing people how to help themselves yet not giving them legal advice. The law library should continue to deliver these services in person, over the phone and via its web pages, and work to expand these services statewide.

In addition, the State Law Library should promote statewide access to legal information by:

1. educating academic and public library staff about the resources available for people representing themselves, including the court's website, OCAP and legal clinics;

2. educating academic and public library staff about online legal research resources;
3. providing reference services to staff in academic and public libraries;
4. working cooperatively with the State Library to disseminate information to libraries statewide; and
5. working cooperatively with Utah's academic law libraries to coordinate services to the public.

v) Forms, instructions and information

Forms and explanatory materials are fundamental resources for people representing themselves. The court has many forms in place and is developing more. Through an interactive web-based interview, the Online Court Assistance Program (OCAP) produces pleadings ready for filing in divorce, landlord-tenant, and cohabitant abuse cases. The court has many more forms on its website that can be printed and completed by hand or copied and completed on a word processor. Under the supervision of the Committee, students at J. Reuben Clark Law School are developing forms for credit. The Committee will evaluate the effectiveness of this program.

The Committee will work cooperatively with other providers to develop new forms and instructions and to review current forms for accuracy, currency and plain language. The Committee also recommends that the Judicial Council mandate court-approved forms for statewide acceptance.

vi) Court website

The ease of web publication makes it the primary means for providing forms, instructions and information. The court's website has won awards, but survey results indicate self-represented litigants make only modest use of it and their satisfaction is mixed. Paradoxically, website statistics show that the website is heavily used, but apparently not by our target population.

We have begun and we propose to continue to review web information to ensure that it is accurate, up-to-date, well-organized, ADA accessible, relevant, and easy to understand. We propose to undertake a careful review of the resources provided for self-represented litigants on the court's website seeking answers to the following questions:

1. Is the information meeting the needs of self-represented parties?
2. If not, what additional resources are needed?
3. Who will provide this additional content?
4. Is the information organized so that self-represented parties can find the information they need?
5. Is the information written in a way that they understand?
6. What government and organization websites exist with useful information?

We have a substantial web presence now, and the website is the most obvious means of providing even more information. But these questions need to be answered before we simply throw more information onto the website. We will use the results of our investigation to work with the court's webmaster to ensure that we have an effective website.

vii) Clerical and judicial training

The success of our current training effort shows in the survey results. The courts should continue existing efforts to train clerks in distinguishing the help they can and cannot provide and in giving effective help when they can. The essential role for judges is to ensure that a self-represented litigant has an opportunity to present his or her case and to avoid miscarriages of justice without sacrificing the impartiality of the proceeding. We propose to investigate training for judges on techniques for accomplishing these results.

e) Community-Sponsored Resources

Public libraries, law libraries and library bookmobiles, senior centers, ethnic centers, special interest centers, and other community organizations exist to serve the public. They can easily serve as a source or conduit for self-help information. The information and assistance might be generated by the community organization itself, or the organizations might serve primarily as a means to reach the information provided by the courts. Some organizations and individuals may be willing to provide personal support for self-represented parties. In that way, people identified by court staff as unable to represent themselves successfully because of language, literacy, or mental or emotional impairments might be referred to an effective resource. We propose to investigate how to recruit such community organizations as an effective resource.

To support this community effort, we recommend that Rule 1.0, Chapter 13A of the Supreme Court Rules of Professional Practice be amended to permit assistance with court-approved forms generally rather than only harassment and domestic violence forms:

(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 court ~~for protection from harassment or domestic violence or abuse~~ when no fee is charged to do so.

f) Lawyer-Sponsored Resources

Representation, unbundled legal services, and clinics offering legal advice must be achieved outside the judicial branch, and the courts should support these efforts.

Programs already exist, but not in sufficient supply. The Supreme Court has recently approved unbundled legal services, but we have yet to see how this might affect availability for people who are unrepresented. Legal service organizations, lawyers and law firms, law schools and community organizations offer no-fee and low-fee representation and advice and free legal clinics and workshops.

The Committee recommends that a separate structure outside the judicial branch – either an existing entity or one to be established – recruit no-fee and low-fee attorneys to expand the availability of representation, unbundled legal services, and clinics for self-represented parties. The entity should raise and distribute funds to support those lawyers and ensure accountability for the funds.

5) Summary

The Committee recommends:

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;
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;
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;
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;
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;
11. promoting clinics and workshops, low-fee and no-fee legal representation, and unbundled legal services among the legal community; and
12. promoting a legal service organization to recruit lawyers to provide such services and to raise and distribute funds to do so.

6) Committee on Resources for Self-represented Parties

John L. Baxter, Chair	Judge, Salt Lake City Justice Court
Fred W. Anderson	Attorney, Utah Legal Services
James H. Backman	Professor, J. Reuben Clark Law School, Brigham Young University
Pat Bartholomew	Clerk of Court, Utah Supreme Court
Mary Jane Ciccarello	Attorney at Law

Christine Decker	Judge, Third District Juvenile Court
Joe Derring	Clerk of Court, First District Court
Neil A. Hansen	Representative, Utah State Legislature
Chris James	Assistant Clerk of Court, Fourth District Court
Jay Kessler	Attorney, Kessler Law Office, LLC
Rodney Page	Judge, Second District Court
James Shumate	Judge, Fifth District Court
Linda F. Smith	Professor, S. J. Quinney College of Law, University of Utah
Lowry Snow	Utah State Bar Commission
Marsha C. Thomas	Attorney, Thomas Tax & Law
James Upton	Director, Emergency Services, Catholic Community Services of Utah
Jessica Van Buren	Director, Utah State Law Library
Mary Boudreau, Staff	Program Manager, Administrative Office of the Courts
Carolyn Carpenter, Staff	Administrative Assistant, Administrative Office of the Courts

To: Supreme Court Advisory Committee, Rules of Professional Conduct

From: Gary G. Sackett

Date: January 3, 2007

Subject: Proposed Modifications to Authorization to Practice Law

This memo addresses two areas: (1) A request submitted to the Supreme Court seeking a modification to § (c)(3) of the Authorization to Practice Law Rule (currently codified as Rule 14-802 of the Court's Rules of Professional Practice), ¶ 1 below; and (2) a proposal by the Committee's *ad hoc* subcommittee on the practice of law to modify the existing structure (but not the substance) of the rules involving "special practice areas," ¶¶ 2-7 below).

To address the issue raised in a possible modification to Rule 14-802(c)(3) and to integrate the approach to the practice of law adopted by the Court in Rule 14-802 with other portions of Chapter 14 of the Court's Rules, the following are proposed:

1. Section (c)(3) of Authorization to Practice Law rule (currently Rule 14-802) would be modified to eliminate the limitation of court-form assistance to harassment, domestic violence or abuse situations.
2. The Authorization to Practice Law rule would be modified to recognize Article 8, Special Practice Rules, as areas of "authorized" practice of law. Thus, in addition to the § (c) exceptions for practice of law by non-lawyers, new § (a)(2) would identify activities under "Article 8 of this chapter" as not necessarily requiring a person to be an "active, licensed member of the Bar in good standing."
3. The Authorization to Practice Law rule would be modified to remove the reference to "activities of a non-lawyer, who is not otherwise claiming to be a lawyer or to be able to practice law." This eliminates the confusion introduced by the undefined terms "non-lawyer" and "claiming to be."

4. The Authorization to Practice Law rule, currently 14-802, would be moved to Article 1, Integration and Management, as Rule 14-103.
5. Rule 14-718 (licensing of foreign legal consultants) and Rule 14-770 (qualifications for admission of house counsel applicants) would be moved to 14-805 and 14-802, respectively. This places these provisions with the other “special practice rules,” such as military lawyers. Rule 14-718 is partially duplicative with Rule 14-805, anyway.

All “special practice” rules would then be in Article 8 of Chapter 14.

A suitable addition to the Committee’s comments is also inserted.

6. Existing Rule 14-111, Practicing law Without a License Prohibited, would be renumbered as Rule 14-104 and revised to be consistent with the definition of practice of law. For similar reasons, Rule 14-101(d) would be deleted.
7. Existing Rules 14-103 through 14-110 would be renumbered as 14-105 through 14-112.

Attached are redlines of

- ▶ Revised Table of Contents of Articles 1, 7 and 8 of Chapter 14
- ▶ Revised 14-802, renumbered as Rule 14-103
- ▶ Rule 14-111, renumbered as Rule 14-102

CHAPTER 14 RULES GOVERNING THE UTAH STATE BAR.

Article 1. Integration and Management

Rule 14-101. Definitions

Rule 14-102. Regulation of the practice of law.

Rule 14-103. Authorization to practice law

Rule 14-104. Unauthorized practice of law

Rule 14-10~~3~~5. Organization and management of the Bar.

Rule 14-10~~4~~6. Admission to practice law; qualifications, enrollment, oath, and fees.

Rule 14-10~~5~~7. Conduct of licensed lawyers and judicial officers; complaints, investigations, and discipline.

Rule 14-10~~6~~8. Authority to engage in legislative activities.

Rule 14-10~~7~~9. Annual license, fees; disbursements of funds.

Rule ~~14-108~~14-110. Issuance of license; form.

Rule 14-1~~09~~11. Powers of the Board respecting funds.

Rule 14-11~~0~~2. Active and inactive members of the Bar.

~~Rule 14-111. Practicing without a license prohibited.~~

Rule 14-113. Creation of paralegal division.

Rule 14-114. Conflicts with statutes.

* * * *

Article 7. Admissions

Rule 14-701. Definitions.

Rule 14-702. Board - general powers.

Rule 14-703. Qualifications for admission of student, student attorney, and foreign law school applicants.

Rule 14-704. Qualifications for admission of attorney applicants.

Rule 14-705. Admission on motion.

Rule 14-706. Administration of Bar Examination under special circumstances.

Rule 14-707. Application; deadlines; withdrawals; postponements and fees.

Rule 14-708. Character and fitness.

Rule 14-709. Application denial.

Rule 14-710. Composition of the Bar Examination.

Rule 14-711. Preparation, grading and scoring of the Bar Examination.

Rule 14-712. MBE scores.

Rule 14-713. MPRE.

Rule 14-714. Unsuccessful applicants: disclosure and right of inspection.

Rule 14-715. Bar Examination appeals.

Rule 14-716. License fees; enrollment fees; oath and admission.

Rule 14-717. Readmission after resignation or disbarment of Utah attorneys~~[-]~~

Rule 14-718. [~~Licensing of foreign legal consultants.~~][Combined with Rule 14-805]

Rule 14-719. Confidentiality.

Rule 14-720 [~~Qualifications for admission of house counsel applicants.~~][Renumbered as 14-802]

Article 8. Special Practice Rules

Rule 14-801. Definitions.

Rule 14-802. [~~Authorization to practice law~~]Qualifications for admission as house counsel.

Rule 14-803. Inactive lawyers providing legal services for legal services organizations; purposes.

Rule 14-804. Special admission exception for military lawyers.

Rule 14-805. Licensing of foreign legal consultants.

Rule 14-806. Admission pro hac vice.

Rule 14-807. Law student assistance.

Rule 14-102. Regulation of the practice of law. [~~November 1, 2006~~Revised]

(a) Vesting of authority.

(a)(1) Under the power vested to it by the Constitution of Utah, the Supreme Court hereby authorizes and designates the Bar to administer rules and regulations which govern the practice of law in Utah. All persons authorized to practice law in Utah shall be licensed by the Bar in accordance with this chapter.

(a)(2) The Supreme Court recognizes a compelling state interest in its use of the Bar to assist the Court in governing admission to the practice of law, the conduct and discipline of persons admitted to practice law, and to improve the quality of legal services in the state. The Court also finds that the requirements imposed, the delegations made and the authority granted to the Bar provide the best ways to promote these compelling state interests and that there are no less restrictive alternatives available to achieve those results.

(b) Responsibilities of the Bar. Purposes, duties and responsibilities of the Bar include, but are not limited to, the following:

(b)(1) to advance the administration of justice according to law;

(b)(2) to aid the courts in carrying on the administration of justice;

(b)(3) to regulate the admission of persons seeking to practice law;

(b)(4) to provide for the regulation and discipline of persons practicing law;

(b)(5) to foster and to maintain integrity, learning competence, public service and high standards of conduct among those practicing law;

(b)(6) to represent the Bar before legislative, administrative and judicial bodies;

(b)(7) to prevent the unauthorized practice of law;

(b)(8) to promote professionalism, competence and excellence in those practicing law through continuing legal education and by other means;

(b)(9) to provide service to the public, to the judicial system and to members of the Bar;

(b)(10) to educate the public about the rule of law and their responsibilities under the law; and

(b)(11) to assist members of the Bar in improving the quality and efficiency of their

practice.

(c) Qualifications. The qualifications ~~[of lawyers and foreign legal consultants]~~ for admission to practice law in Utah, the duties, obligations and the grounds for discipline of ~~[members]~~persons who are admitted, and the method of establishing such grounds, subject to the right of this Supreme Court to discipline such a [member admitted to the Bar]person, shall be as prescribed in this chapter.

(d) ~~[Licensure required. No person shall practice law in Utah]~~Unauthorized practice of law. Action or proceedings to enforce. Pursuant to Rule 14-506(a), a person who is not authorized to engage in the practice of law in Utah under this chapter and any person whose right or license to so practice has terminated either by disbarment, suspension, failure to pay license and other fees or otherwise, shall not practice law or assume to act or hold himself or herself out to the public as a person qualified to practice law or to carry on the calling of an attorney at law in Utah. Violation of such prohibition against practice or assumption to act or to hold out shall not constitute a crime, but shall be enforced by such civil action or proceedings, including writ, contempt or injunctive proceedings, as may be necessary and appropriate, which action or proceedings shall be instituted by the Bar after approval by the Board.

~~[as one who may practice law in Utah unless he or she has been admitted and is an active member of the Bar in good standing or is an inactive member in good standing providing pro bono legal services for or on behalf of a legal services organization approved by the Bar upon meeting certification and performance standards, conditions, and rules established by the Board, or has been licensed by the Bar as a foreign legal consultant. No suspended or disbarred lawyer or foreign legal consultant shall practice law in Utah or hold himself or herself out as one who may practice law in Utah while suspended or disbarred.]~~

Redline of new paragraph 14-104(d) relative to existing Rule 14-111:

~~[]Rule [14-111]. Practicing without a license prohibited.~~

~~(a)]14-104. Regulation of the practice of law. [Revised]~~

(d) Unauthorized practice of law. Action or proceedings to enforce.~~[Exception.]~~ Pursuant to Rule 14-506(a), ~~[no]~~a person who is not ~~[duly admitted and licensed to practice law in Utah as an attorney at law or as a foreign legal consultant nor]~~authorized to engage in the practice of law in Utah under section (d) of this rule and any person whose right or license to so practice has terminated either by disbarment, suspension, failure to pay [his or her]license and other fees or otherwise, shall not practice law or assume to act or hold himself or herself out to the public as a person qualified to practice law or to carry on the calling of an attorney at law in Utah. [S]Violation of such prohibition against practice[,] or assumption to act or ~~[holding]to hold~~ out[, by any such

~~unlicensed or disbarred or suspended person]~~ shall not constitute a crime, but~~[this prohibition against the practice of law by any such person]~~ shall be enforced by such civil action or proceedings, including writ, contempt or injunctive proceedings, as may be necessary and appropriate, which action or which proceedings shall be instituted by the Bar after approval by the Board.

~~[(b) Nothing in this article shall prohibit a person who is unlicensed as an attorney at law or a foreign legal consultant from personally representing that person's own interests in a cause to which the person is a party in his or her own right and not as assignee.]~~

Supreme Court Rule 14-802, [~~November 1, 2006~~]Proposed Revision A

[Renumber this entire rule as Rule 14-103.]

14-103. Authorization to practice law.

(a) Except as set forth in

(a)(1) subsection (c) of this rule, and

(a)(2) Article 8 of this chapter.

only persons who are active, licensed members of the Bar in good standing may engage in the practice of law in Utah.

(b) For purposes of this ~~rule~~chapter:

(b)(1) The “practice of law” is the representation of the interests of another person by informing, counseling, advising, assisting, advocating for or drafting documents for that person through application of the law and associated legal principles to that person’s facts and circumstances.

(b)(2) The “law” is the collective body of declarations by governmental authorities that establish a person’s rights, duties, constraints and freedoms and consists primarily of:

(b)(2)(A) constitutional provisions, treaties, statutes, ordinances, rules, regulations and similarly enacted declarations; and

(b)(2)(B) decisions, orders and deliberations of adjudicative, legislative and executive bodies of government that have authority to interpret, prescribe and determine a person’s rights, duties, constraints and freedoms.

(b)(3) “Person” includes the plural as well as the singular and legal entities as well as natural persons.

(c) Whether or not it constitutes the practice of law, the following activity by a non-lawyer, who is not otherwise claiming to be a lawyer or to be able to practice law, is permitted:

(c)(1) Making legal forms available to the general public, whether by sale or otherwise, or publishing legal self-help information by print or electronic media.

(c)(2) Providing general legal information, opinions or recommendations about possible legal rights, remedies, defenses, procedures, options or strategies, but not specific advice

related to another person's facts or circumstances.

(c)(3) Providing clerical assistance to another to complete a form provided by a court ~~[for protection from harassment or domestic violence or abuse]~~ when no fee is charged to do so.

(c)(4) When expressly permitted by the court after having found it clearly to be in the best interests of the child or ward, assisting one's minor child or ward in a juvenile court proceeding.

(c)(5) Representing a natural person in small claims court without compensation and upon the express approval of the court or representing a legal entity as an employee representative in small claims court.

(c)(6) Representing without compensation a natural person or representing a legal entity as an employee representative of that entity in an arbitration proceeding, where the amount in controversy does not exceed the jurisdictional limit of the small claims court set by the Utah Legislature.

(c)(7) Representing a party in any mediation proceeding.

(c)(8) Acting as a representative before administrative tribunals or agencies as authorized by tribunal or agency rule or practice.

(c)(9) Serving in a neutral capacity as a mediator, arbitrator or conciliator.

(c)(10) Participating in labor negotiations, arbitrations or conciliations arising under collective bargaining rights or agreements or as otherwise allowed by law.

(c)(11) Lobbying governmental bodies as an agent or representative of others.

(c)(12) Advising or preparing documents for others in the following described circumstances and by the following described persons:

(c)(12)(A) a real estate agent or broker licensed by the state of Utah may complete State-approved forms including sales and associated contracts directly related to the sale of real estate and personal property for their customers.

(c)(12)(B) an abstractor or title insurance agent licensed by the state of Utah may issue real estate title opinions and title reports and prepare deeds for customers.

(c)(12)(C) financial institutions and securities brokers and dealers licensed by Utah may inform customers with respect to their options for titles of securities, bank accounts, annuities and other investments.

(c)(12)(D) insurance companies and agents licensed by the state of Utah may recommend coverage, inform customers with respect to their options for titling of ownership of insurance and annuity contracts, the naming of beneficiaries, and the adjustment of claims under the company's insurance coverage outside of litigation.

(c)(12)(E) health care providers may provide clerical assistance to patients in completing and executing durable powers of attorney for health care and natural death declarations when no fee is charged to do so.

(c)(12)(F) Certified Public Accountants, enrolled IRS agents, public accountants, public bookkeepers, and tax preparers may prepare tax returns.

Subsection (a).

“Active” in this paragraph refers to the formal status of a lawyer, as determined by the Bar. Among other things, an active lawyer must comply with the Bar's requirements for continuing legal education. The reference to the activities conducted pursuant to Article 8, Special Practice Rules, is intended to recognize that persons with certain legal background, training or ability may be permitted to practice law in limited circumstances as established by the Supreme Court in that article.

Subsection (b).

The practice of law defined in Subparagraph (b)(1) includes: giving advice or counsel to another person as to that person's legal rights or responsibilities with respect to that person's facts and circumstances; selecting, drafting or completing legal documents that affect the legal rights or responsibilities of another person; representing another person before an adjudicative, legislative or executive body, including the preparation or filing of documents and conducting discovery; negotiating legal rights or responsibilities on behalf of another person.

Because representing oneself does not involve another person, it is not technically the “practice of law.” Thus, any natural person may represent oneself as an individual in any legal context. To the same effect is Article 1, Rule 14-111 Integration and Management: “Nothing in this article shall prohibit a person who is unlicensed as an attorney at law or a foreign legal consultant from personally representing that person's own interests in a cause to which the person is a party in his or her own right and not as assignee.”

Similarly, an employee of a business entity is not engaged in “the representation of the interest of another person” when activities involving the law are a part of the employee's duties solely in connection with the internal business operations of the entity and do not involve providing legal advice to another person. Further, a person acting in an official capacity as an employee of a government agency that has administrative authority to determine the rights of persons under the law is also not representing the interests of

another person.

As defined in subparagraph (b)(2), “the law” is a comprehensive term that includes not only the black-letter law set forth in constitutions, treaties, statutes, ordinances, administrative and court rules and regulations, and similar enactments of governmental authorities, but the entire fabric of its development, enforcement, application and interpretation.

Laws duly enacted by the electorate by initiative and referendum under constitutional authority would be included under subparagraph (b)(2)(A).

Subparagraph (b)(2)(B) is intended to incorporate the breadth of decisional law, as well as the background, such as committee hearings, floor discussions and other legislative history, that often accompanies the written law of legislatures and other law- and rule-making bodies. Reference to adjudicative bodies in this subparagraph includes courts and similar tribunals, arbitrators, administrative agencies and other bodies that render judgments or opinions involving a person’s interests.

Subsection (c).

To the extent not already addressed by the requirement that the practice of law involves the representation of others, subparagraph (c)(2) permits the direct and indirect dissemination of legal information in an educational context, such as legal teaching and lectures.

Subparagraph (c)(3) permits assistance provided by employees of the courts and legal-aid and similar organizations that do not charge for providing these services.

Subparagraph (c)(7) applies only to the procedures directly related to parties’ involvement before a neutral third-party mediator; it does not extend to any related judicial proceedings unless otherwise provided for under this rule (e.g., under subparagraph (c)(5)).

practice.

(c) Qualifications. The qualifications ~~{of lawyers and foreign legal consultants}~~ for admission to practice law in Utah, the duties, obligations and the grounds for discipline of ~~{members}~~ persons who are admitted, and the method of establishing such grounds, subject to the right of this Supreme Court to discipline such a ~~{member admitted to the Bar}~~ person, shall be as prescribed in this chapter.

(d) ~~{Licensure required. No person shall practice law in Utah}~~ Unauthorized practice of law. Action or proceedings to enforce. Pursuant to Rule 14-506(a), a person who is not authorized to engage in the practice of law in Utah under this chapter and any person whose right or license to so practice has terminated either by disbarment, suspension, failure to pay license and other fees or otherwise, shall not practice law or assume to act or hold himself or herself out to the public as a person qualified to practice law or to carry on the calling of an attorney at law in Utah. Violation of such prohibition against practice or assumption to act or to hold out shall not constitute a crime, but shall be enforced by such civil action or proceedings, including writ, contempt or injunctive proceedings, as may be necessary and appropriate, which action or proceedings shall be instituted by the Bar after approval by the Board.

~~{as one who may practice law in Utah unless he or she has been admitted and is an active member of the Bar in good standing or is an inactive member in good standing providing pro bono legal services for or on behalf of a legal services organization approved by the Bar upon meeting certification and performance standards, conditions, and rules established by the Board, or has been licensed by the Bar as a foreign legal consultant. No suspended or disbarred lawyer or foreign legal consultant shall practice law in Utah or hold himself or herself out as one who may practice law in Utah while suspended or disbarred.}~~

Redline of new paragraph 14-104(d) relative to existing Rule 14-111:

~~{Rule 14-111. Practicing without a license prohibited.~~

~~{a}~~ 14-104. Regulation of the practice of law. [Revised]

(d) Unauthorized practice of law. Action or proceedings to enforce. ~~{Exception.}~~ Pursuant to Rule 14-506(a), ~~{no}~~ a person who is not ~~{duly admitted and licensed to practice law in Utah as an attorney at law or as a foreign legal consultant nor}~~ authorized to engage in the practice of law in Utah under this chapter and any person whose right or license to so practice has terminated either by disbarment, suspension, failure to pay ~~{his or her}~~ license and other fees or otherwise, shall not practice law or assume to act or hold himself or herself out to the public as a person qualified to practice law or to carry on the calling of an attorney at law in Utah. ~~{S}~~ Violation of such prohibition against practice, ~~{}~~ or assumption to act or ~~{holding}~~ to hold out, ~~{by any such unlicensed or disbarred or~~