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Employee Guide to Legal Advice

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Introduction

Every day many court employees in every court in every state are bombarded with questions about courts, procedures, judges, and cases. Most court employees have been told they cannot give legal advice when answering questions. Many courts have posted signs informing the public that employees of the court are not allowed to give legal advice. And probably every court support employee in every court in every state has, at one time or another, repeated the phrase, “I’m sorry. I’m not allowed to give legal advice.”

Do you know what information can be provided and what information would be considered legal advice?

- Can you tell parties whom they can sue?
- Can you tell a party what form to use?
- Can you tell parties what their options are?

If you don’t know the answers, don’t worry because you are not alone. Court support personnel in courts around the country have questions about what is and isn’t legal advice.

Purpose of This Guide

This guide is designed to help court employees understand the types of information they can provide. It is especially designed for court support employees who provide telephone and counter assistance as a major part of their job duties.

This guide will cover three areas:

1. The reasons court employees cannot provide legal advice.
2. Guidelines for determining what is and is not legal advice.
3. Commonly asked questions from the public and helpful responses.

Why Court Employees Are Not Allowed to Give Legal Advice

Although court support employees are told that they cannot give legal advice, they usually do not know why.

Neutrality¹: Employees of the court must remain neutral and cannot promote or recommend a particular course of action. Even though a court employee may have processed hundreds of similar types of cases, he or she is not in a position to know what is in a litigant's best interest. Only litigants or their attorneys can make that determination.

Impartiality²: Court employees have an "absolute duty of impartiality." A court employee can "never give advice or information for the purpose of favoring one court user over another." This is very important because court employees have considerable knowledge about the way in which their court functions. That knowledge must be shared fairly and in a manner that does not involve the disclosure of confidential or *ex parte* communication. "Advising a party 'what to do' rather than 'how' a party might do what it has already decided crosses the line from impartiality to partiality, from providing permissible information to giving prohibited 'legal advice' or engaging in the unauthorized practice of law."

Unauthorized practice of law: Every state has laws prohibiting the unauthorized practice of law. Only attorneys licensed by the state are permitted to practice law and give legal advice. Since court support employees are generally not attorneys, they cannot give legal advice because giving legal advice is considered the unauthorized practice of law. If an employee of the court were an attorney, he or she should still not give legal advice because it would violate the concepts of neutrality and impartiality.

¹ *The Ethics Field Book: Tools for Trainers*, Cynthia Kelly Conlon, J.D., Ph.D. Funded by a grant from the State Justice Institute, © American Judicature Society, 1995.

² *ibid.*

The Importance of Understanding What Is and Is Not Legal Advice

The job of court employees involves providing information to the different people who request or require it, including the general public, attorneys, parties, legal secretaries, and paralegals. Each has different levels of understanding and different needs. The court support staff must help all of them while staying impartial and neutral, without giving legal advice. How they respond to the questions they are asked affects how the public views the court system. How they respond will most certainly affect the attitude of the public during their involvement with the court. And, how the employee responds could affect the outcome of a case. An accurate understanding of this primary function makes it clear that it is important to know what is and is not legal advice.

1. **Providing Access:** Most people are not familiar with courts and court procedures and must depend to a large degree on court employees for information on the court system. As a result, you play a very important role as a “gatekeeper” providing access to the system. If people do not know how to use the system and court employees do not tell them, they are being denied access.
2. **Providing Service:** An important duty of all court employees is to provide service to the public. Providing information is a very important part of providing service. Therefore, it is important to understand what information can be provided and what information cannot.
3. **Pro Per Litigation:** An increasing number of people are representing themselves and are not being represented by attorneys. The burden will fall on court employees to be able to assist the parties without crossing the legal advice line.

Guidelines for Determining What Is and Is Not Legal Advice

How do I know what is and isn't considered legal advice?

This is perhaps the number one questions asked by court employees, and there is no easy answer. Court employees have a tremendous amount of knowledge about the court system and are supposed to provide information as part of their duties. But how are they supposed to know what information they can provide and what information they cannot? How can they know when they are crossing the invisible legal advice line?

Unfortunately there is never going to be a book or manual that clearly identifies every question asked and the appropriate way to answer each one. However, there are some very specific guidelines that can be used to help define the legal advice line.

Table 1: Legal Advice Guidelines for Court Support Employees

| Can Provide: | Cannot Provide: |
|---|--|
| <ul style="list-style-type: none"> • Legal definitions | <ul style="list-style-type: none"> • Legal interpretations |
| <ul style="list-style-type: none"> • Procedural definitions | <ul style="list-style-type: none"> • Procedural advice |
| <ul style="list-style-type: none"> • Cites of statutes, court rules, and ordinances | <ul style="list-style-type: none"> • Research of statutes, court rules, and ordinances |
| <ul style="list-style-type: none"> • Public case information | <ul style="list-style-type: none"> • Confidential case information |
| <ul style="list-style-type: none"> • General information on court operations | <ul style="list-style-type: none"> • Confidential or restricted information on court operations |
| <ul style="list-style-type: none"> • Options | <ul style="list-style-type: none"> • Opinions |
| <ul style="list-style-type: none"> • Access | <ul style="list-style-type: none"> • Deny access, discourage access, or encourage litigation |
| <ul style="list-style-type: none"> • General referrals | <ul style="list-style-type: none"> • Subjective or biased referrals |
| <ul style="list-style-type: none"> • Forms and instructions on how to complete the forms | <ul style="list-style-type: none"> • Complete forms for a party or give advice on what to fill in |

Table 2

| Can provide legal definitions. | Cannot provide legal interpretations. |
|---|--|
| Reason: Legal terminology can be confusing and difficult. Providing definitions of legal terms or procedures helps the public understand the court system and does not involve the unauthorized practice of law. | Reason: Court employees cannot provide legal interpretations because it would be considered the unauthorized practice of law and would violate the concepts of neutrality and impartiality. |
| Example: What is child abuse? | Example: My neighbors leave their kids at home all day without supervision. Wouldn't you consider that child abuse? |
| Response: According to this dictionary of legal terms, child abuse is "the mistreatment of a minor by an adult legally responsible for the minor." | Response: I am not an attorney and cannot make a legal interpretation. However if you'd like to file a complaint, I can direct you. |
| Tip: <i>Resources for providing legal definitions include statutes, court rules, and a dictionary of legal terms.</i> | |

Table 3

| | |
|---|---|
| Can provide procedural definitions and explanations. | Cannot provide procedural advice. |
| Reason: Court procedures can be confusing. Explaining various procedures increases the public's understanding of the system and does not violate the concept of neutrality. | Reason: Employees of the court cannot give procedural advice, because in doing so they may favor one party over another or may encourage or discourage a party from a particular course of action. Court employees must remain impartial and neutral at all times. They can, however, point out various factors that individuals can consider to make the decision themselves. |
| Example: What happens at an arraignment? | Example: Whom should I sue? |
| Response: The arraignment is the first appearance before the court. Defendants are notified of the charges and informed of their rights, including the right to an attorney, bond is set, and a plea may be entered. | Response: I cannot tell you whom to sue because I cannot give you legal advice. If you aren't sure who to sue, who do you feel owes you the money? |
| Tip: <i>Whenever you hear the word "should", it is a tip that you are being asked for advice.</i> | |

| Table 4 | |
|--|--|
| Can provide cites for statutes, court rules and ordinances. | Cannot provide research of statutes, court rules and ordinances. |
| Reason: A court employee may cite the legal authority for a specific procedure. | Reason: Court support staff cannot research statutes, court rules, and ordinances for parties because it would be considered the unauthorized practice of law and violates the concepts of impartiality and neutrality. |
| Example: An employer asks if he/she has to file a disclosure with the court every time an employee's paycheck is garnished. | Example: Please provide me with a copy of all of the laws regarding stalking. |
| Response: No. The court rules only require a disclosure to be filed within 14 days after the date the writ was served. | Response: I'm sorry, but I am not allowed to do legal research. |
| <i>Tip: Have copies of court rules and most commonly used statutes available. In determining what is considered research, consider whether the material or information requested is something that should be known as a part of your job and whether the information is readily available or would require compilation.</i> | |

Table 5

| Can provide case information that is a matter of public record. | Cannot provide confidential case information. |
|--|---|
| Reason: You can provide case information that is public. Most court records are considered public records and, therefore, are available to the public. | Reason: You cannot disclose non-public or confidential information. It is very important to understand what information is confidential. |
| Example: Is there an estate file open for Beth Hall? | Example: May I see the Kramer adoption file? |
| Response: Yes, there is. It is a public record. Would you like to see it? | Response: No public record exists. |
| <p>Tip: <i>If asked about a confidential file, you should respond by saying that “no public record exists”.</i></p> <p>Note: <i>If you are not sure which records are public and which records are confidential in your court, check with your supervisor.</i></p> | |

Table 6

| Can provide general information about court operations. | Cannot provide confidential information about court operations. |
|---|---|
| Reason: Court support staff have considerable knowledge and information about how a court functions. Sharing this knowledge of general court operations is not considered legal advice. | Reason: You cannot disclose confidential information about court operations or ex parte communications because it can give one side an unfair advantage. |
| Example: How long before I become the guardian? | Example: How do I get a particular judge assigned to my case? |
| Response: Hearings are generally scheduled in four to six weeks, and a determination is made at that time. | Response: Judges are assigned randomly to cases. We have no control over judge assignments. |
| Tip: <i>Is the information sought for the purpose of having knowledge of the court's policies and/or procedures, or is the client hoping to get an advantage through the information? For example, if parties have confidential information about a court's case assignment procedures, they could "judge shop".</i> | |

Table 7

| Can provide options. | Cannot provide opinions. |
|---|---|
| <p>Reason: Employees of the court can provide information on the various procedural options available and can explain how to do something.</p> | <p>Reason: Court staff cannot give an opinion on or otherwise advise parties to use a particular procedure or remedy.</p> |
| <p>Example: How can I collect my judgment?</p> | <p>Example: Should I file a writ of garnishment or a writ of execution?</p> |
| <p>Response: You have several options. If you know where the defendant is employed or has a bank account, you can file a writ of garnishment. If you know of property that they own, you can file a writ of execution. Otherwise, you can file a discovery subpoena to determine what assets, if any, they have.</p> | <p>Response: I can explain the difference between the two types of writs, but I cannot tell you what to do or give you an opinion on which option to select. That's a decision you have to make.</p> |
| <p>Tip: <i>Telling someone "how" to do something does not usually cross the legal advice line. Telling someone what he/she "should" do, does cross the legal advice line.</i></p> | |

Table 8

| Can facilitate access. | Cannot deny or discourage access, nor encourage litigation. |
|--|---|
| Reason: Most people are not familiar with the court system. They often cannot describe their problem in legal terms. You are the gatekeeper to the system. It is your job to ensure that the court system is accessible. The information that is presented, and the manner in which it is presented, can affect how accessible the system is. | Reason: Most people are not familiar with court procedures or terminology. Nor do they understand the types of cases processed by the courts. Legal advice should not be used as an excuse not to provide service. |
| Example: How do I <i>convict</i> my renter? | Example: I'd like to pay my speeding ticket. |
| Response: Do you want to evict your renter? The court that handles landlord/tenant disputes is down the hall. | Response: Speeding tickets and other civil infractions can be paid at the district court. Let me tell you how to find the court. |
| Tip: <i>In one example above, the client was using incorrect terminology. Often it is necessary for a court employee to ask questions to determine what the client is really asking rather than make an inappropriate referral.</i> | |

Table 9

| Can provide general referrals. | Cannot provide subjective or biased referrals. |
|--|--|
| Reason: General referrals can be made to agencies and associations that can provide additional information and assistance. Sometimes people call the court when they don't know whom to call. | Reason: You must remain neutral and impartial and cannot make referrals to specific individuals. |
| Example: I'm not sure I'm calling the right place, but I need to talk to someone about my birth certificate. | Example: Can you give me the name of a good criminal attorney? |
| Response: Let me give you the telephone number for the county records division. | Response: I can't refer you to a specific attorney, but you might want to check the yellow pages. Some attorneys list their areas of specialty there. |
| Tip: <i>Good general referrals include yellow pages and local bar associations.</i> | |

Table 10

| | |
|--|---|
| <p>Can distribute forms and instructions on how to complete forms.</p> | <p>Cannot fill out forms <u>unless</u> there is a handicap or physical disability that prevents the person from filling out the form.</p> |
| <p>Response: Employees of the court must facilitate access to the court system.</p> | <p>Response: Court support staff should not fill out forms for parties because it violates the principles of neutrality and impartiality.</p> <p>However, there may be some situations where it is appropriate for you to record information on a form. Some examples include language barriers (illiteracy or foreign language) and physical handicaps (blindness).</p> |

Tip: *The following is a recommendation for handling exceptional situations:*

1. Exhaust all other possibilities first. Is there someone with them who can assist? Is there a literacy council that provides volunteers, or is an interpreter available?
2. If there are no other alternatives, you must record exactly what is said, confirm the information with the party, make a notation on the document, and have the party sign the form.
3. If possible, it is recommended that a witness, such as another court employee, be present.

Note: This is a very difficult issue. Although courts have an obligation to facilitate access and are required under the Americans with Disabilities Act to accommodate individuals with disabilities, courts also have an obligation to remain neutral and impartial.

Conclusion

When court employees realize that most of the questions they are asked fall into the nine categories we have discussed, it is much easier for them to accurately draw the “legal advice” line and understand what is and what is not legal advice. With that understanding, court support employees can provide access to the courts and service to the public while remaining impartial and neutral.