

I'm Sorry, I Can't Give
Legal Advice...

If We Can't Give Legal Advice,
the Challenge Becomes How to
Provide Access, Service, and
Information, Without Being an
Advocate for a Specific Course of
Action

Program Goals

- Examine the reasons court employees cannot give legal advice.
- Identify guidelines for determining what is and what is not legal advice.
- Review some commonly asked questions from potential litigants and helpful responses.

Why Can't Court Employees Give Legal Advice

- Neutrality: As employees of the judiciary, court staff cannot promote or recommend a course of action.
- Impartiality: Court employees cannot favor one side over the other.
- Unauthorized practice of law: Only licensed attorneys are permitted to practice law.

Defining “Legal Advice”

“Legal Advice” - Providing a “*suggestion or recommendation*” regarding a legal decision or a legal course of action.

Guidelines for Determining What is and What is Not Legal Advice

There are Nine Categories of Questions Within Which Court Staff May Be Asked Questions.

They Are:

1. Legal Definitions
2. Procedural Definitions
3. Cites of Statutes and Court Rules
4. Public Case Information
5. General Information on Court Operations
6. Options
7. Access
8. General Referrals
9. Forms and Instructions on How to Complete Them

Legal Definitions

- You Can:
 - Define legal terms
 - For example: What does “leave to appeal” mean?
 - Answer: The appellate court must grant permission for the moving party to appeal.
- You *cannot* give legal interpretation or a legal or personal opinion.

Procedural Definitions

- You Can:
 - Provide procedural definitions and explanations
 - For example: What happens at an arraignment?
 - Answer: The arraignment is the first appearance before the court. Defendants are advised of the charges, informed of their rights, bond may be set, and a plea may be taken.
- You *cannot* advise a person what they should do at the arraignment.

Statutes and Court Rules

- You Can:
 - Cite legal authority.
 - Show or provide copies of court rules and statutes.
- You Cannot:
 - Conduct a “search” for statute or court rule or perform “legal research.”

Public Case Information

- You Can:
 - Provide case information that is a matter of public record.
 - For example: Can I have a copy of the complaint in the Smith v Tech Industries case? Answer: Yes, this is a public case.
 - Access to confidential documents or confidential information cannot be released

General Information on Court Operations

- What about general operations – can you provide information about scheduling, judicial assignment procedures, and other “generic” issues?

Absolutely!

- Can't discuss confidential internal matters or what a party in a case said to you.

Procedural Options and Personal Opinions

- OK to explain options - all of them, if there are several, and the differences between each.
- For example: I received a speeding ticket.
What can I do?
- Answer: You can admit responsibility and pay the fine or you can request a hearing in front of the magistrate or the judge.

Access to Justice

- Most people are not familiar with the court system. Our responsibility is to ensure that the system is accessible.
- The information you provide, and the manner in which it is presented, can affect how accessible the system is.

General and Specific Referrals

- General referral can be made to agencies and associations that can provide information and assistance to litigants and the public.
- You can't provide subjective or biased referrals.

Assistance with Court Forms

- You Can:
 - Provide forms.
 - Select an appropriate form.
 - Give instructions to complete forms.

Review of the Nine Categories

1. Legal Definitions
2. Procedural Definitions
3. Cites of Statutes and Court Rules
4. Public Case Information
5. General Information on Court Operations
6. Options
7. Access
8. General Referrals
9. Forms and Instructions on How to Complete Them

In Summary, Why Can't Court Employees Give Legal Advice?

- Must remain impartial at all times – cannot favor one side over the other.
- Must remain neutral - cannot recommend a course of action.
- Giving legal advice is the unauthorized practice of law.

Knowing Your Responsibilities

- Considering what we have reviewed, what then are the responsibilities of court employees?
 - Providing service and accurate information *is* providing access to justice.
 - Know and communicate *all options* that customers may consider.

Strategies for Better Service

- Listen closely and ask questions.
- Be patient.
- Don't hide behind "the phrase" as an excuse to not provide service.
- "Not what you say, but how you say it."
- Use plain English to describe procedures or explain policies.

Apply the Principles

- Where does my question fit within the 9 categories?
- Am I providing access to the system or hiding behind the phrase?

Conclusion