

# ADMINISTRATIVE OFFICE OF THE COURTS

## Giving Legal Advice Versus Providing Legal Information



ACAP SYSTEMS CONFERENCE

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# **What are the roles and responsibilities of court personnel?**



# What is legal advice?

Legal advice interprets some aspect of the law, court rules, or court procedures.

Legal advice recommends a specific course of action a person should take in an actual or potential legal proceedings.

Legal advice applies the law to the individual person's specific factual circumstances.



## What is legal information?

Legal information is general, factual information about the law or legal process that is both neutral and objective.

Legal information does not address any particular cause of action.



### Legal Advice

- Tailored to the needs of a specific person
- Tell someone what words to use in court filings or what words to say in court

### Legal Information

- Generally available to anyone
- Provide court forms and assist in completing the forms without telling what specific words to write



### Legal Advice

- Selecting and telling someone to use specific forms
- Interpreting the law or applying the law to the specifics of a person's case

### Legal Information

- Providing forms that a person can choose to use
- Providing general information on court rules, procedures, practices, terms and laws



### Legal Advice

- Calculating a deadline to file a court document
- Performing legal research for a party by researching opinions, court rules, statutes, etc.

### Legal Information

- Referring someone to the law library for the court rule that establishes the deadline to file a court document
- Referring someone to the judiciary website where links to opinions, court rules, statutes, etc. can be found



### What legal information can be provided?

- Public information contained in dockets, calendars, case files, indexes, and other reports
- Recite common, routinely-employed court rules, court procedures, administrative practices
- Explain generally how the court functions
- Refer self-represented litigants to a legal aid program, law library, or website for statutes, court rules, or forms



### Tips

- Politely explain court personnel cannot explain or interpret the law or say how it would apply to a case
  
- Politely explain that court personnel do not have legal training and don't want to jeopardize the outcome of a case by giving inaccurate information
  
- Use phrases like “generally speaking”



# Tips



- Avoid phrases like “you can” or “you should”
- Do not give an opinion about the probable outcome



# SCENARIOS





# Scenario 1: Explaining Court Procedures

- “You can file a motion if you want the judge to consider something formally. I can’t tell you what kind of motion to file, but I can direct you to legal aid resources.”
  -  Permissible — this is general procedural information.
- “You should file a motion to dismiss, because I think your landlord didn’t give proper notice.”
  -  Legal advice — the clerk is interpreting facts and advising a legal course of action.





## Scenario 2: Communicating with the Court

- Clerk tells a party how to request a hearing by directing them to the correct form and explaining where to file the form.
  -  Permissible — the assistant is giving procedural help without interpreting the party's legal situation.
- “If you don't get a hearing within 10 days, the case will be dismissed — so make sure to file this now to protect your rights.”
  -  Legal advice — this suggests legal consequences and a strategy based on legal interpretation.





## Scenario 3: Asking About Proper Court Filing

- “This is the motion form most people use for this type of request. You can also look at the instructions or contact legal aid for help.”
  -  Permissible — the assistant refers to general practice and directs them to resources, without endorsing any legal course of action.
- “Yes, this is the motion you should file to get your case reopened — it’s the only one that works in your kind of situation.”
  -  Legal advice — this makes a judgment about legal strategy tailored to the person’s circumstances.





## Scenario 4: Reviewing Documents Before a Hearing

- Reviews a party's paperwork for completeness (e.g., checking if required attachments are included), without commenting on the content. They return it if something procedural is missing.
  -  Permissible — reviewing for procedural compliance is part of administrative duties.
- Tells the party, “You should include more details in paragraph 5 to show that you are in fear of imminent danger or harm— that will make your case stronger.”
  -  Legal advice — this evaluates and recommends legal content.





## Scenario 5: Inquiry About a Judge's Decision

- “I can’t interpret the judge’s ruling, but you can read the written order for the judge’s reasoning. If you need help understanding what it means legally, you may want to contact an attorney or legal aid.”
  -  Correct — avoids interpreting the judge’s legal reasoning.
- “The judge denied it because you didn’t prove hardship — you should’ve included more financial details.”
  -  Incorrect — interprets legal findings and offers guidance on how to strengthen a legal argument.





## Scenario 6: Request to Reschedule a Hearing

- “You can file a written request to reschedule, called a motion for continuance. I can tell you how to file it, but I can’t say whether the judge will approve it.”
  -  Correct — provides procedural help, not a prediction or recommendation.
- “If you say you have work and no one else is available to cover your shift, the judge will probably grant it. Just make sure to explain that clearly.”
  -  Incorrect — gives advice on legal strategy and outcome prediction.





## Scenario 7: Asking What to File

- “You might want to speak to an attorney or check the court’s self-help center.”
  -  Correct — offers general information with a referral, not tailored legal advice.
- “You should file a motion for contempt. That’s how you force them to comply.”
  -  Incorrect — selecting a legal remedy for the party based on the situation.





## Scenario 8: Submitting Additional Evidence

- “The judge can only consider evidence properly submitted according to the rules. You may need to check the local rules or contact an attorney.”
  -  Correct — explains procedural limitations without saying what to do.
- “Yes, that photo will help your case. Make sure to bring it and show it to the judge.” 
  - Incorrect — endorses a legal strategy and implies how the judge will view the evidence.





## Scenario 9: Legal Language in a Proposed Order

- “I can’t help draft legal language. If the judge gave specific instructions, you can write them as clearly as possible, or you may want to ask for a transcript or get legal help drafting it.”
  -  Correct — avoids participating in drafting legal content.
- “Write that the respondent must vacate the home within 10 days and that you're granted sole custody. That matches what the judge said, and it’s what they usually order.”
  -  Incorrect — this is drafting legal text and interpreting a judge’s decision.



## Scenario 10: Asking About a Hearing Date

- “Sure, I can look that up for you. What is your case number or the name the case is under? Once I find it, I can confirm the date, time, and location or format of the hearing.”
  -  Correct — provides appropriate assistance to the party.
- “Yes, I will look that up for you. Make sure you review the most recent case statutes and be prepared with witnesses and evidence to argue your case to the judge. Also, make sure you are prepared to pay fines and court costs if you do not prevail and to ask for attorney’s fees if you do win in court.”
  -  Incorrect — provides legal strategy.



# Key Takeaways

- Court Personnel can provide procedural guidance and direct self-represented parties to helpful resources.
- They cannot interpret the law or suggest specific legal strategies.
- Legal advice is for licensed attorneys.
- Court Personnel must remain neutral and avoid influencing decisions.
- Always direct self-represented parties to self-help resources or legal aid for assistance in understanding or acting on legal matters.