

May I help you?

Legal Advice vs. Legal Information

*A Resource
Guide for
Court Clerks*

Judicial Council of California
Administrative Office of the Courts
455 Golden Gate Avenue
San Francisco, CA 94102-3688

Copyright © 2003 by Judicial Council of California/Administrative Office of the Courts

This publication is also available on the California Courts Web site: www.courtinfo.ca.gov/programs/access

Printed on 100% recycled and recyclable paper

JUDICIAL COUNCIL OF CALIFORNIA

Chief Justice Ronald M. George

Chair

ADMINISTRATIVE OFFICE OF THE COURTS

William C. Vickrey

Administrative Director of the Courts

Ronald G. Overholt

Chief Deputy Director

Michael Bergeisen

General Counsel and Deputy Administrative Director

RESOURCE GUIDE WORKING GROUP

Hon. Steven K. Austin

*Judge of the Superior Court of California,
County of Contra Costa
Working Group Chair
Access and Fairness Advisory Committee*

Hon. Eric C. Taylor

*Supervising Judge of the
Superior Court of California,
County of Los Angeles
Access and Fairness Advisory Committee*

Denise Gordon

*Chief Executive Officer
Superior Court of California,
County of Sonoma*

Bonnie Hough

*Supervising Attorney
Center for Families, Children & the Courts (CFCC)
Administrative Office of the Courts
Lead Staff, Task Force on Self-Represented Litigants*

Michael Roosevelt

*Education Specialist
Education Division/Center for Judicial Education and Research (CJER)
Administrative Office of the Courts
Lead Staff, CJER's Fairness Education Committee*

STAFF

Donna Clay-Conti

Lead Staff Counsel

Scott Gardner

Staff Counsel

Clifford Alumno

Staff Analyst

Geraldine Dungo

Administrative Coordinator

Access and Fairness Advisory Committee

PRODUCTION

Fran Haselsteiner

Senior Editor

Sheila Ng

Production Artist

Form MC-800, Court Clerk's Office: Signage



WELCOME TO THE SUPERIOR COURT OF CALIFORNIA, COUNTY OF

WE ARE HAPPY TO HELP YOU IF WE CAN. HOWEVER, WE ARE ALLOWED TO HELP YOU ONLY IN CERTAIN WAYS, SINCE WE MUST BE FAIR TO EVERYONE.

This is a list of some things the court staff can and cannot do for you.

- We can** explain and answer questions about how the court works.
- We can** provide you with the number of the local lawyer referral service, legal services program, family law facilitator program, and other services where you can get legal information.
- We can** give you general information about court rules, procedures, and practices.
- We can** provide court schedules and information on how to get a case scheduled.
- We can** provide you information from your case file.
- We can** provide you with court forms and instructions that are available.
- We can** usually answer questions about court deadlines and how to compute them.

We cannot

We cannot

We cannot

We cannot

We cannot

We cannot

We cannot

tell you whether or not you should bring your case to court.

tell you what words to use in your court papers. (However, we can check your papers for completeness. For example, we check for signatures, notarization, correct county name, correct case number, and presence of attachments.)

tell you what to say in court.

give you an opinion about what will happen if you bring your case to court.

talk to the judge for you.

let you talk to the judge outside of court.

change an order signed by a judge.

Since court staff may not know the answers to all questions about court rules, procedures, and practices, and because we don't want to give you wrong information, we have been instructed not to answer questions if we do not know the correct answers. For additional information, please contact a lawyer or your local law library, or check the California Courts Self-Help Center Web site at www.courtinfo.ca.gov/selfhelp.

Court Clerk's Office - signage

INTRODUCTION

In recent years, courts throughout the country have identified an increase in the number of cases filed by individuals without the assistance of counsel. Because court users are unfamiliar with legal processes, they often look to you, court staff, for answers to questions about the legal system.

The Code of Ethics for the Court Employees of California requires you to “furnish accurate information as requested in a competent, cooperative, and timely manner” but to avoid “giving legal advice.” You may already know that you are not supposed to give “legal advice” to court users. However, you may not know exactly what that term means and thus may be unsure of yourself in an important area of your daily work. As a result, when people ask questions where the line between legal information and legal advice is blurry, you may avoid giving appropriate information about court procedures because you don’t want to violate the Code of Ethics. Meanwhile, court users don’t get the information they need and may become frustrated; more significantly, if they don’t follow the right procedure, they may be denied access to the courts.

In an effort to address these concerns, the Judicial Council of California recently approved form MC-800, *Court Clerks Office: Signage*, for display in court clerks’ offices throughout the state. The form is designed for posting at the clerk’s counter or public window at each court location so that court users can read and understand the guidelines that you are required to follow.

This handbook is a quick and easy reference. It is specifically intended for the use of court staff who provide telephone and counter assistance as a major part of their job duties. It is recommended that you keep it in a place where it is easily accessible while you perform these tasks.

Of course, this handbook and the guidelines cannot anticipate all the possible questions that court users may ask. When new questions arise, consult your supervisor. Keep in mind, too, that many court users would benefit from legal counsel. When you are uncertain whether you are being asked to give legal advice, do not hesitate to suggest that they consult an attorney.

YOU CAN EXPLAIN AND ANSWER QUESTIONS ABOUT HOW THE COURT WORKS AND GIVE GENERAL INFORMATION ABOUT COURT RULES, PROCEDURES, AND PRACTICES.

You have an obligation to explain court processes and procedures to court users. Certainly they will find sample pleadings and information packets useful, but you will also need to answer individual questions.

What happens at the arraignment?

At this hearing people are told about the charges that have been filed against them. They are also informed of their rights, including the right to an attorney, and bail is usually discussed.

You also have an obligation to inform litigants and potential litigants about how to bring their problems before the court for resolution. This includes referring them to applicable state and local court rules, explaining how to file a lawsuit or request a hearing, explaining court requirements for documents requesting

relief, and supplying sample forms. If there are court-based self-help centers in the county, you should inform litigants of their availability. The fact that such information may help a litigant does not mean it is improper. Instead, providing this kind of information is an important part of your responsibility to provide service to the public.

One good way to tell whether it is all right to answer a question is to ask yourself whether the information requested will help someone figure out how to do something. Most of these questions contain the words “Can I?” or “How do I?” Telling someone how to do something is almost always appropriate.

How do I get out of jury duty?

On the back of the jury summons you can find a list of the reasons for which the court may excuse you from jury service.

How do I evict my tenant?

If you are going to represent yourself, I can get you the packet of forms you need. You can also get information about evictions at our law library or from the Online Self-Help Center, located at www.courtinfo.ca.gov/selfhelp.

DO NOT TELL A LITIGANT WHETHER A CASE SHOULD BE BROUGHT TO COURT OR GIVE AN OPINION ABOUT THE PROBABLE OUTCOME.

Analyzing a litigant's particular fact situation and advising him or her to take a certain course of action based on the applicable law is a job for a lawyer, not for court staff. Advising a party what to do, rather than how to do something that party has already chosen to do, is not permitted.

Even though you may have processed hundreds of similar types of cases, you are not in a position to know what is in a litigant's best interest. Only litigants or their attorneys can make that determination. Your role is to provide information about the court's systems and procedures so that a litigant can know enough to make his or her own decision about how to proceed with a case.

My friend's dog bit me. Should I sue him?

You need to decide that for yourself. You may want to talk to a lawyer to help you make that decision. If you decide to file a lawsuit on your own, I can give you a packet of information on how to file a civil action, along with the necessary forms.

What sentence will I get if I plead guilty?

I cannot predict what the judge will do. The judge will decide what sentence to impose based on the facts and the law that apply to your case.

Most of the questions that ask whether to take a particular course of action contain the words "Should I?" So whenever you hear the word "should," the court user may be asking for advice that you cannot provide.

Even though you cannot answer these types of questions directly, there are a lot of ways that you can still help the court user. In many cases, you can point out various options that the person can consider in making his or her decision. You can also provide information about legal services, such as the local bar association or legal aid society, but you should not make a referral to private attorneys or a private agency. You can also refer the person to the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp) and to any court-based self-help center in the county.

Should I get a lawyer?

You are not required to have a lawyer to file papers or to participate in a case in court. I cannot advise you whether you should hire a lawyer in your case. Only you can make that decision. Here is a list of organizations in this area that you can call for free or low-cost legal help if you qualify.

PLEASE PROVIDE COURT USERS WITH INFORMATION FROM THEIR CASE FILES, AS WELL AS COURT FORMS AND INSTRUCTIONS.

You can provide case information to a court user that is public, including the material in most court files. Court files can be very difficult for many people to read and understand, so you may need to provide assistance. It is always appropriate to answer questions about the court procedures and legal terms reflected in public court files and to assist the court user in finding the specific information he or she is seeking.

I want to see my daughter more than the old court order allows. How do I get more time with my daughter?

It sounds like you want to obtain an order from the court modifying your present custody order. Here is an Order to Show Cause form that is usually used to bring that issue before the court, as well as a packet of information on how to fill it out.

Some court files contain confidential information that should never be disclosed. There are many reasons that material in court files may be designated as confidential, including safety and privacy concerns. Disclosure of confidential information could also give an unfair advantage to one side of a case. If you are not sure whether a record is considered public or confidential in your court, check with your supervisor.

It says “relief requested” next to this blank on the form. What do I put there?

I can't tell you what words to use, but you should write in your own words what you want the court to do. If you have any question about the kind of remedies that may be available in your case, you should consult an attorney.

Providing court forms and, when available, written instructions on how to fill out those forms is an important part of a clerk's job. Often court users will not know what forms to request in order to bring their matters before the court. When this happens, you should identify and provide forms that may meet the court user's needs.

Court forms can be confusing, so people frequently ask for help in filling them out. If a court user cannot figure out how to fill out a required form, he or she may be denied access to the court. You can answer questions about how to complete court forms, including where to write in particular types of information and what unfamiliar legal terms mean. You cannot, however, advise a court user on how he or she should phrase responses on a form.

Can I see the Kramer adoption file?

I'm sorry. Adoption files are confidential and may not be viewed by the public.

D O NOT TELL A LITIGANT WHAT WORDS TO USE IN COURT PAPERS OR WHAT TO SAY IN COURT.

You can always answer questions about how to complete court papers and forms. You cannot, however, tell a court user what words to put on the forms. You threaten the court's impartiality if you fill out a form for a court user using your own words. If someone asks you what to say in a form, you should tell the person to use his or her own words to state the information requested.

Would you look over this form and tell me if I did it right?

You have provided all the required information. I cannot tell you whether the information you provided is correct; only you can know that.

You can also check a court user's papers for completeness. This includes checking to make sure that he or she has completed each line that is required to be filled in. Also, you can check for such things as signatures, notarization, correct county name and case number, and the presence of attachments. If the form is incomplete, you should inform the person completing the form of the specific problem and how to fix it.

My form got sent back to me from the court because it was incomplete. What is wrong with it?

It looks like you did not include all the information requested on the back of the form. Once you have filled that out, I'll be happy to file the form for you.

What should I say to the judge when he calls my case?

I can't tell you what arguments to make in court. You will need to decide that for yourself. Here is a handout on effective ways to present your case in court. You can also view a videotape on this subject at our law library.

Sometimes a court user will be unable to fill out a form without assistance because of a disability or illiteracy. In these limited situations, you may fill out a form for a court user, writing down the specific words that the he or she provides. The fact that you provided such assistance should be noted on the form itself.

I have a disability that prevents me from filling out this form. Would you fill it out for me?

In that case I can fill out the form for you, but you have to tell me what information to put down. I will write down whatever you say and read it back to you to make sure what I have written is correct.

Litigants often ask what they should say in court. You cannot give advice about specific arguments a person should make while in court or tell people what you think would be the best way to handle a court appearance. You can give out general information about appropriate courtroom behavior. Many courts have informational packets on how to prepare for court hearings that you can give to the litigant.

YOU CANNOT TALK TO A JUDGE ON BEHALF OF A LITIGANT OR ALLOW THAT PERSON TO TALK TO THE JUDGE OUTSIDE OF COURT.

You should always remember the basic principle that neither parties nor attorneys may communicate with the judge *ex parte*. Be sure that you do not violate this restriction by carrying a mes-

I want to see the judge. Where is the office?

The judge only talks with all parties to a case at the same time. You would not want the judge to be talking to the other side about this case if you were not present. The judge will speak to you at your hearing.

sage from a party to a judge or by speaking to a judge on behalf of a litigant. To do so could give one side in a case an unfair advantage.

Many self-represented litigants feel that they have a right to see the judge in the judge's chambers to explain their situations and problems. When a litigant asks to meet with the judge, you should explain that the judge can see a party only at the hearing or trial, when the other side is also present. While you are explaining this rule, it sometimes helps to ask litigants how they would feel if the judge had a private meeting with the other side in their case. You can also explain procedures, such as a motion, that would allow the litigant to properly bring his or her concerns to the court's attention.

What is an "ex parte"?

It is a Latin term that refers to one-sided contact with the court. In most cases ex parte contacts with the court are not allowed.

Some courts delegate certain decisions to clerk's offices, especially on procedural matters and on cost and fee awards. You should avoid *ex parte* contacts while making such decisions. Be sure that you have heard from both sides before deciding an issue and avoid even the appearance of giving one party an advantage in the process.

I know that I can't talk to the judge. But you're nice—could you please take her this message for me?

I'm sorry, I can't do that for you. It wouldn't be fair for me to present your concerns to the judge when the other side in your case is not there. But I can help you schedule a hearing with the judge so that both sides in your case can be present.

YOU SHOULD PROVIDE COURT USERS WITH SCHEDULES AND INFORMATION ON HOW TO GET A CASE SCHEDULED. YOU CAN ALSO ANSWER MOST QUESTIONS ABOUT COURT DEADLINES AND HOW TO COMPUTE THEM.

You can always give out information on court calendar settings and tell court users how to get matters placed on calendar. This is one of the most important things you can do to make sure people have access to the courts. When court users cannot figure out how to get a case scheduled for hearing, they cannot even begin the process of getting a judge to decide the case.

It is often helpful to provide court users with written court schedules and information packets dealing with how to get a case set for hearing. Many courts now have this information on their court Web site, and there is a good general discussion of this topic in the Online Self-Help Center, at www.courtinfo.ca.gov/selfhelp.

When do I have to file my opposition papers on this motion?

Unless the court has ordered otherwise, the law requires that all papers opposing this kind of motion must be filed and served on the opposing party 10 calendar days before the hearing. If you like, I can give you a handout on motion filing deadlines and how to calculate them.

What is the last day I can file my lawsuit?

The time for filing your case can vary depending on the particular facts involved. Determining the last day for filing a lawsuit is very difficult to do. You should consult a lawyer to help you figure this out.

in counting the number of days. Court staff should help court users correctly apply these rules. Remember, if you are not sure what the filing deadline is on a particular matter, it is always appropriate to say, "I don't know."

On the other hand, you should not attempt to explain the statute of limitations to court users. Those rules are very complicated, and it would be very easy to give incorrect or misleading information.

When it comes to court deadlines, a good rule to remember is that if you can reject a document as untimely, then you can assist a court user in understanding why it was untimely. You can also explain how to calculate the deadline for filing that type of document in advance so it can be filed in a timely way.

Providing assistance with court deadlines is a little more complicated. You can help court users calculate routine filing deadlines associated with most court hearings. Court rules state when weekends and holidays are included and when they are excluded

I figured out that I have to file my papers 10 days before the hearing, but that day falls on a holiday when the court is closed. What do I do?

Your situation falls within an exception to the 10-day rule. You must file and serve your papers by the end of court business on the next day that the court is open following the holiday.

YOU CAN PROVIDE PHONE NUMBERS FOR THE LOCAL BAR ASSOCIATION REFERRAL SERVICE, LEGAL SERVICES PROGRAM, FAMILY LAW FACILITATOR PROGRAM, AND OTHER LEGAL INFORMATION SERVICES.

It is the policy of the California courts to encourage litigants to use lawyers because court cases often involve legal issues beyond the understanding of the ordinary person. You can always make general referrals to associations and public agencies that provide legal services or information. A good place to start

How do I get my ex to pay child support?

You can start by visiting the family law facilitator in Room 210. You can talk to the family law facilitator for free. The facilitator is an attorney who works for the court and helps people with support issues. He or she can help you fill out the forms and understand more about your case and what your options are.

Since court clerks must remain neutral and impartial at all times, you cannot make referrals to a specific lawyer, law firm, or paralegal service.

Many courts have prepared handouts that include contact information for local legal services organizations. Such written materials are very useful to court users and can provide you with a handy list of appropriate referral organizations.

You can also tell court users that they can ask friends or colleagues for the name of a lawyer or even find one by checking the yellow pages of the phone book. Many of them are surprised to learn that lawyers will often give an initial consultation at no cost and that some will agree to provide limited representation—giving advice or preparing particular papers—at a reduced fee.

Could you check to see if there are any liens on my property?

We don't have those kinds of records in this office. You can find that information at the County Recorder's office. It's located only a few blocks from here. Let me show you how to get there on this map of local government buildings.

is with the local bar association referral service. You should explain that although this is a free service, the lawyer will charge a fee. You can also provide information regarding other public legal services programs that may meet the needs of court users and refer them to any court-based self-help center in the county.

I need a good lawyer. Who is the best?

I can't refer you to an individual lawyer because the court must always remain neutral in all matters. I can give you information on the local bar association's lawyer referral service if you want help in finding a lawyer who specializes in your kind of case. You might also want to check out the Web site for the State Bar of California, www.calbar.ca.gov, which includes a section on ways to find a good lawyer.

representation—giving advice or preparing particular papers—at a reduced fee.

Sometimes people call the court when they don't know whom else to call about their problems. Keep a list of contact numbers for local government agencies and departments so you can point people in the right direction.