

SUPERIOR COURT OF CALIFORNIA - COUNTY OF ALAMEDA  
SELF-HELP LEGAL SERVICES

**HOW TO DRAW THE LINE BETWEEN  
LEGAL ADVICE AND LEGAL INFORMATION**

One of the most difficult challenges we face is providing self-represented litigants (also known as “pro pers”) with the vital information they need, without rendering “legal advice”. As representatives of the court, we must remain ever mindful of our absolute duty of impartiality. We must not give information or advice for the purpose of giving one party an advantage over another. We must not give information to one party, which we would not give to another party.

Advising a party *what* to do, as opposed to *how* to do what the party desires to do, crosses the impartiality line. Communications and explanations should always be rendered in an impartial manner, so as not to advantage or disadvantage any litigant. The following guidelines may help in differentiating between providing “legal advice” and “legal information”.

**Information we CAN provide:**

1. Information contained in docket reports, case files, indexes and other reports.
2. Answers to questions concerning court rules, procedures and ordinary practices. These questions are frequently phrased as “can I...” or “how do I...”.
3. Examples of forms or pleadings to help guide litigants.
4. Answers to questions about completing forms.
5. Explanations as to the meaning of terms and documents used in the court process.
6. Answers to questions concerning the computation of deadlines or due dates.

**Information we CANNOT provide:**

1. Information we are unsure about.
2. Advising a litigant whether to take a particular course of action. Questions phrased as “should I...” must be referred to private legal counsel, or we can direct people to various books in the law library where they can read about the law and form their own opinion.
3. Taking sides in a case or proceeding pending before the court.

4. Information to one party that we would be unwilling or unable to provide to all other parties.
5. Disclosing the outcome of a matter submitted to a judge for decision, until the outcome is made public, or the judge directs disclosure of the matter.

John M. Greacen, former Clerk of the United States Bankruptcy Court, District of New Mexico, and a national expert in this subject, has written on the subject of legal advice versus legal information. He suggests the following five points be followed in dispensing information to the public:

1. **We have an obligation to explain court process and procedures to litigants.** Court staff have a unique understanding of the way in which the court functions, which is often superior to the knowledge of attorneys who practice before the court. It works to everyone's advantage for court staff to share their knowledge, and the court will operate more efficiently when everyone is operating under the same expectations regarding the ground rules and procedures applied.

If there are inquiries or requests for information from the press please refer all such requests to the Executive Office of the Court and the Public Information Officer.

2. **We have an obligation to inform litigants, and potential litigants, how to bring their problems before the court for resolution.** It is entirely appropriate for the court staff to apply their specialized expertise to go beyond providing generalized information, such as answering a question, "How do I file a lawsuit?" to giving detailed procedural guidance on how to request a hearing. We can also answer questions about what the court looks for in an application for award of attorneys fees, a request to enter default judgment, a child enforcement order, etc. We can also refer people to applicable statutes and rules, published case decisions, and sample pleadings. It is entirely appropriate to inform people as to the reason behind the rules, such as explaining due process requirements in relation to a proof of service. We want the public to understand that the rules are not there to thwart them, or make things difficult for non-lawyers; the rules are there to ensure due process and allow disputes to be decided on their merits.
3. **We cannot advise litigants whether to bring their problem before the court, or what remedies to seek, although we can inform about alternatives to litigation, and we can direct litigants to sources of information about potential remedies.** We cannot advise litigants whether to avail themselves of a particular procedural alternative, since we cannot possibly know enough about a litigant's personal position to know what is in the litigant's best interest. This is uniquely the role of private legal counsel, where a confidential attorney/client relationship exists.

4. **We must always remember the absolute duty of impartiality. We must never give advice or information for the purpose of giving one party an advantage over another. We must never give advice or information to one party, which we would not give to an opponent.** Giving procedure information, or suggestions on where to access legal information, applies to all sides. Having informed litigants helps the process for all concerned. Advising a party *what to do*, as opposed to *how to do* something the party has already chosen, crosses the line from impartiality to partiality. We owe equal duties to both sides.
5. **We should be mindful of the basic principle that counsel may not communicate with the judge *ex parte*. We should not let ourselves be used to circumvent that principle.** We must not allow ourselves to be used as *ex parte* “messengers” to the judge or court clerk who will decide a particular matter. Some court clerks can enter judgment, and perform other functions traditionally relegated to a judicial officer. We must be careful not to advocate on behalf of a litigant in our communications with decision makers in the court.

Knowing where to draw the line is one of the most difficult challenges we face in helping people to help themselves. Practical considerations sometimes blur the lines, but we must remember, above all else, not to give information if we are uncertain about its accuracy, and to treat all persons and all parties to a controversy with the same level of respect and with equal assistance.

**Any questions about whether a question involves legal advice versus legal information should be referred to an attorney or the Program Director.**