



## **Facilitating Access Committee**

## **Final Report and Recommendations**

**September 2001**

**Office of Justice Initiatives**

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## EXECUTIVE SUMMARY

A vital mission of the Unified Court System is to expand and increase access to the courts. Essential to this mission is ensuring that court users, whether represented or not, are knowledgeable consumers of court services. To this end, the court system has an obligation to arm the public with as much information as possible about the courts and court procedures. For those court users who are self-represented, providing information presents special challenges as these litigants tend to seek more substantive legal and procedural information that is generally thought to be the province of attorneys. While the information sought may not constitute “legal advice,” it is understandable that court staff, without proper guidance on distinguishing between giving legal information and legal advice, could err on the side of caution and limit the information provided to the public. Or, conversely, court staff may provide too much information. Neither is appropriate and a delicate balance is required.

The Facilitating Access Committee (FAC) was established in April 2000 to address concerns of court staff about the nature and quantity of information that can be provided to litigants. The committee has 21 members who represent every judicial district and court type statewide. This report summarizes the efforts of the committee thus far and sets forth its preliminary recommendations.

The FAC recommends that the Unified Court System implement a statewide Legal Information vs Legal Advice program with the following components:

- A. A court rule that sets forth the UCS policy for offering assistance to court users;
- B. A manual for court employees that includes the UCS policy, guidelines and frequently asked questions and appropriate responses;
- C. An easily readable chart that delineates the information court staff can and cannot provide in three formats: 1) small, laminated cards to place at court staff locations

around the courthouse; 2) large laminated posters to be placed in areas where the public interacts with court staff; and 3) a brochure to be placed in resource centers, libraries, clerks' offices and other locations where the public would seek information about the courts;

- D. A training program to be incorporated into the new employee orientation and current employees' training that includes mandatory review of the a CD-ROM entitled "I'm Sorry, I can't give Legal Advice" and its supplemental training manual. Both products were developed by the Michigan Judicial Institute for court staff and provide general principles and guidelines which assist staff in distinguishing between legal information and legal advice.
- E. A Facilitating Access web page that includes the manual, the CD-ROM and a comment/suggestion page.

## INTRODUCTION

Court clerks, court officers and librarians (hereinafter “court staff”) are on the front lines of the courthouse interacting with the public on legal matters. Viewed by the public – which includes lawyers, represented or self-represented litigants – as a source of information, court staff serves as a vital link in the legal process. The public relies on court staff to answer questions about their cases, the judges, court procedures and many other concerns. Self-represented litigants pose a special challenge for court staff because their questions are often case specific. How should court staff respond to the barrage of questions they face daily? How does the court staff balance the obligation to provide information with the obligation to remain neutral and impartial?

Providing information about the courts and court procedures is the cornerstone of ensuring meaningful access to justice. Yet despite its importance, courts must balance this principle against their obligations to be the neutral and impartial arbiters. While it is a delicate balance, courts should not use the phrase “court staff can’t give legal advice” as a convenient shield to avoid the often difficult challenge of providing useful information to the public. To be clear, in providing access through information, court staff are not being asked to engage in the unauthorized practice of law.<sup>1</sup> Rather, they are being asked to use their knowledge about the courts and court procedures to facilitate access to the legal process.

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<sup>1</sup> Canon 3 of the Code of Professional Responsibility does not attempt to define the practice of law. It does state that the practice of law relates to services for others that requires the professional judgment of a lawyer. The Code acknowledges, however, that where this professional judgment is not involved, non-lawyers, “such as courts clerks . . . may engage in occupations that require a special knowledge of law in certain areas.” N.Y. Code Prof. Resp. EC-3-5 (1999).

Providing information, particularly to self-represented litigants, is especially frustrating in the absence of guidelines to help court staff distinguish between legal advice and legal information.<sup>2</sup> This is compounded by the lack of training programs that specifically address court staff concerns about the inherent difficulty of responding to public queries without crossing the lines of impartiality, neutrality, or the unauthorized practice of law.

The Facilitating Access Committee (FAC) was established in April 2000 to address these concerns of court staff. At its first meeting in May 2000, the committee established the following goals:

- A. Obtain broad consensus on how legal information differs from legal advice;
- B. Develop useful guidelines and written policies for staff and publish, post and disseminate these guidelines in public areas;
- C. Recommend and develop a training program that instructs court staff in the skills needed to distinguish between legal information and legal advice.

This report discusses the work of the committee and makes recommendations for implementing a comprehensive program that addresses court staff's concerns about providing information without giving legal advice.

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<sup>2</sup> A recent survey of court managers on the programs and services available to self-represented litigants indicated that: 1) court clerks understand that they cannot give legal advice; 2) clerks' interaction with self-represented litigants is often frustrating and time consuming; 3) guidelines on assisting self-represented litigants would be helpful; 4) training is currently unavailable to clerks on rendering assistance or services to the self-represented. The full findings of the survey will be released in a report to be issued September 2001.

## BACKGROUND/DISCUSSION

The FAC, consisting primarily of court clerks and court administrators, was established in April 2000, to study the issue of “legal advice vs legal information” and make recommendations on a program for New York state. The committee, with 21 members representing each judicial district and court type, has three subcommittees: Frequently Asked Questions; Policy and Guidelines; and Training (See Appendix A for a list of members).

At the committee’s first meeting in May 2000, the committee members were educated about the issues involved in the “legal advice vs legal information” debate, including familiarizing themselves with the authoritative literature on the topic (Appendix B) and the efforts underway in other states to address the issue (Appendix C). The committee also established its mission.

The Policy and Guidelines, and Frequently Asked Questions Subcommittees began work immediately, gathering information that would result in proposed policy and guidelines for court staff. The Policy and Guidelines Subcommittee’s approach was to develop an overall policy for assisting court users (Appendix D). It then focused on establishing guidelines for court staff to assist them with their daily interaction with the public (Appendix E). The subcommittee defined the terms “legal information” and “legal advice,” suggested guiding principles, and developed a chart that clearly delineates the type of information court staff can and cannot provide. The work of this subcommittee helped guide the efforts of the other subcommittees.

During the course of its work, two issues confronted the subcommittee and continue to surface in discussions on the extent court staff can assist the public. The first is whether court staff can or should complete forms for litigants. This issue has been addressed and resolved in

the New York City Family Court.<sup>3</sup> In that court, clerks serve in the role of a scribe and are authorized to type petitions with information provided by petitioners. These clerks, while not using their own judgment in completing the forms, clearly provide a valuable service to the petitioner and the court by preparing documents that will be administratively acceptable to the court. The committee's guidelines propose that court staff be permitted to record information on forms that is provided by litigants.

Clearly, it is not in the purview of this committee to suggest that each court develop forms to simplify applications made to the court. Nor is this committee suggesting that where a court has developed forms to expedite court processes, that court staff assist each litigant in completing forms. However, as a practical matter, litigants who need assistance – handicapped, illiterate, etc. – should not be denied access by a blanket rule that court clerks cannot help litigants complete forms.

The second recurring issue queries whether court staff should assist litigants with the selection of forms. The committee's guidelines propose a policy that would permit court employees to provide litigants with a list of optional forms available to them. However, it would not permit staff to proffer an opinion as to which form to choose. Clearly, if selecting the appropriate form requires legal judgment based on a specific set of facts, legal principles and a choice of options, court employees cannot provide an opinion as to which form to use. If, however, a court develops its own forms for specific actions, then court staff would be expected to provide those forms to the public. For example, the Uniform Uncontested Divorce Packet is routinely distributed to litigants by court staff when it is requested. Court staff use no legal

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<sup>3</sup> Family Court Act §216-c(1).

judgment, nor provide an opinion as to whether it is the appropriate option to choose when they give litigants the package.

The Frequently Asked Questions (FAQ) subcommittee designed a questionnaire and queried representatives from all court types for the questions most frequently asked by court users (Appendix F). In addition to the questionnaire, this subcommittee held focus groups to discuss the goals of the FAC and obtain broad input from staff about the nature of frequently asked questions. Many of the questions provided in response to this survey and focus group meetings are included in Appendix G.

In addition to the above efforts that exposed the court system to “legal information vs. legal advice” principals, committee members used a number of other forums to gather information as well as expose and educate UCS personnel on this topic. Beginning with the court clerk association seminars during Fall, 2000, the committee presented information about its purpose and goals to encourage court staff to begin thinking about the distinction between legal advice and legal information.

At two association seminars’ Plenary Sessions, members of the FAC shared with the participants products from Michigan developed by the Michigan Judicial Institute (MJI) – CD-ROM entitled “**I’m Sorry, I can’t give legal advice,**” and a supplemental training manual (Appendix H). Both provide court staff with general principles and guidelines on how to distinguish information and legal advice. The committee asked court staff to review and comment on the potential usefulness of the materials. Copies of the MJI booklet also were provided for comment during the Magistrate’s Court Clerks’ annual meeting in October, 2000.

In November, 2000, committee members served as facilitators at a Family Court and law

libraries roundtable discussion on “Giving Legal Advice.” The members used this opportunity to again discuss the goals of the FAC and solicit comments as to whether the MJI materials adapted or supplemented for New York would be useful.

The committee proposals and the MJI materials were well received by the seminar participants who commented that the information would be welcomed by staff. Seminar participants viewed the MJI CD-ROM training tool throughout the day, commenting favorably that it was interactive and engaging, allowed viewers to proceed through the program at their own pace and provided immediate feedback through topic review questions.<sup>4</sup>

The Training subcommittee, building on the efforts of the other two subcommittees and the feedback from other sources, developed a proposed training program for new employee orientation and in-service training. The proposed training is composed of six sections. The first section provides an overview, including a discussion of the need for the training program as well as a review of the UCS policy and guidelines on providing legal information to court users. The second section entails reviewing the MJI CD-ROM, followed, in section three, with a discussion about the difference between legal information and legal advice. In section four, participants would review the survey results on the most frequently asked questions of courts users in each

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<sup>4</sup> Clearly, there is much interest around the state on the issue of providing appropriate information to the public. Upon learning of the MIJ CD-ROM, the Court of Claims asked to preview it during its court attorney training seminars. The comments after the preview were generally favorable; the consensus was that the CD-ROM could be transcribed and converted into a two-or three-page summary for court attorneys and that the interactive program should be used for non-attorneys. The Deputy Chief Administrative Judge for Courts Outside New York City, Judge Joseph J. Traficanti, distributed an article entitled *How to Provide Access Without Giving Legal Advice: Practical Guidelines for Court Staff*. The Sixth Judicial District in its *Briefly* newsletter published a series of articles adapted from the circulated article.

court type. This exercise would give participants useful examples of answers that provide legal information rather than legal advice. Communication skills would be reviewed in section five; the goals of this exercise would be to enhance the participants' listening and oral communication skills in the context of the court environment. Finally, in section six, participants would review resources – charts, manuals, on-line resources, brochures, posters – that would assist them in their daily interaction with the public.

The training program would be implemented in three phases. Phase I would involve Executive Assistants, New York City Chief Clerks, and OCA Assistant Deputy Chief Administrators, Directors and other Administrators. This phase would orient upper-level managers to the challenges front line employees face on a daily basis and introduce them to the resource tools provided in the training. During Phase II, managers and supervisors would be introduced to the topic and the materials, and receive training. Using the train-the-trainer method, it is envisioned that the judicial districts would identify employees from this group to train court staff and new supervisors who would participate in Phase III. Each judicial district would schedule and present training as well as distribute the resource materials. The training program is included in Appendix I.

## RECOMMENDATIONS

The Facilitating Access Committee offers the following recommendations for implementing a statewide Legal Information vs Legal Advice program:

- A. Promulgate a court rule that sets forth the Unified Court System policy for offering assistance to court users;
- B. Publish a manual for court employees that includes the UCS policy, guidelines and frequently asked questions;
- C. Publish the Can/Cannot chart in three formats: 1) small, laminated cards to place at court staff locations around the courthouse; 2) large laminated posters to be placed in areas where the public interacts with court staff; and 3) a brochure to be placed in resource centers, libraries, clerks' offices and other locations where the public would seek information about the courts;
- D. Develop a training program to be incorporated into new employee orientation and current employee training that includes reviewing the manual and the MJI CD-ROM;
- E. Authorize a Facilitating Access web page that includes the manual, the CD-ROM and a comments/suggestion page.

## CONCLUSION

In an ideal world, legal representation would be available to all litigants to assist in navigating through our complex laws and procedures. For those without legal representation, trust and confidence in the legal system are diminished if court employees do not provide information because of a mistaken belief that providing such information would mean giving legal advice. To avoid this result, court staff need guidelines to determine the information that can be provided without giving legal advice. It is not enough to say “Sorry, I cannot give legal advice.” The court system must go farther in explaining to its employees and the public it serves the information that can be provided.

The FAC recommends the adoption of a program that will give court staff a sufficient level of comfort and make it easier to distinguish what information can and cannot be provided. The committee believes that once implemented, ongoing training using the guidelines and materials proposed in this report, will help court staff quickly recognize where the line is drawn on giving legal advice and thus provide court users with as much information as possible. We are confident that implementation of the proposed training tools will reduce frustration for both court staff and court users and, more importantly, facilitate access to the courts so as to ensure the delivery of equal justice.

# **Appendix A**

## Members

Beverly Russell - Chair

Nicholas Baich

Ernesto Belzaguy

Judy Bromley

Maryrita Dobiak

Stephen Foulk

Earnestine Glover

Elizabeth Hooks

Kathy Lasko

Nancy Mangold

Juanita Norman

Patricia Pettit

Kenneth Roll

James Rosetti

Victor Rossomano

Gloria Smyth-Godinger

Colleen Stella

Ron Stout

Sharon Thomas

Barbara Zahler-Gringer

Michelle Zurek

## **Appendix B**

## Facilitating Access Committee

### Reading Materials

Donna Beaudet, *How to Provide Access Without Giving Legal Advice: Practical Guidelines for Court Staff*, 14 No.2 *The Court Manager* 22, (1999).

Russell Engler, *And Justice for All-Including the Unrepresented Poor: Revisiting the Roles of the Judges, Mediators, and Clerks*, 67 *Fordham L. Rev.* 1987 (1999).

Jona Goldschmidt. *How are Courts Handling Pro Se Litigants?* 82 *Judicature* 13 ( July/August 1998).

Jona Goldschmidt, *Legal Issues Surrounding Court Clerks' Assistance to the Public And Judicial Assistance to Pro Se Litigants* (unpublished).

John M. Greacen, *No Legal Advice From Court Personnel' What Does That Mean*, 34 No. 1 *Judges' J.* 10( Winter 1995).

John Greacen, *Legal Information vs Legal Advice Developments During the Last Five Years*, 84 *Judicature* 198 (January/February 2001)<sup>1</sup>.

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<sup>1</sup>This article was not published when the committee met. It is added here because it updates the information in the *Judges' Journal* article by John Greacen and contributes to the discussion of the issues covered in the report.

## **Appendix C**

**Facilitating Access Committee  
State Products**

**Massachusetts**  
Sample Staff Guidelines

**Florida**  
Florida Family Rule 12.750 Family Self-Help Programs

**Iowa**  
Guidelines for Clerks Who Assist Pro Se Litigants in Iowa 's Courts

**Michigan**  
CD-ROM  
Court Support Personnel Training  
"I'm sorry, I can't give legal advice."

LEGAL ADVICE v ACCESS TO THE COURTS  
DO YOU KNOW THE DIFFERENCE ?  
Michigan Judicial Institute

**New Jersey**  
Guidelines and Mission Statement

**New Mexico**  
Information Available from the Clerk 's Office Guidelines

Promulgation Order

**New York**  
The Seventh Judicial District Newsletter, "Provide Access Without Giving Legal Advice" **Briefly**.  
Volume 19, Number 14, April 7, 2000, p. 2.

The Seventh Judicial District Newsletter, "Provide Access Without Giving Legal Advice" **Briefly**.  
Volume 19, Number 12, March 24, 2000, p. 2.

## **Appendix D**

## **UCS Policy on Providing Assistance to Court Users**

The Unified Court System is committed to providing a fair and just legal system to all individuals who use the New York State Courts. Court employees frequently are faced with the dilemma of determining how to provide information without “crossing the line” and offering legal advice. Judges also can be faced with this problem when responding to the self-represented litigants who appear before them.

In order to best serve the interests of litigants and to provide judges and court employees with the guidance that they need to properly provide assistance, the UCS adopts the following policy:

1. To promote access to the courts and to provide a meaningful opportunity to be heard to all individuals who seek to use the court system to resolve a dispute, court employees shall use their best efforts to provide litigants with all legal information necessary to proceed with their actions, without giving legal advice.
2. To assist UCS employees in meeting this responsibility, the UCS will, through guidelines and training, provide UCS employees with the tools needed to delineate between legal information and legal advice.
3. The UCS will continually review court processes and procedures with regard to the needs of self-represented litigants, develop programs of assistance for self-represented litigants, and develop and offer education and training programs for court staff in the deployment of these programs.
4. The UCS shall make appropriate resources available to judges as guidance when responding to self-represented litigants who appear before them.

## **Appendix E**

## **UCS Guidelines for Providing Assistance to Self-represented Litigants**

### **I. Introduction**

Ensuring equal access to justice for all is one of the highest priorities of the Unified Court System. A vital component of meeting this priority is to insure that self-represented litigants have clear and unencumbered access to the courts. The **UCS Policy on Providing Assistance to Court Users** states that “to promote access to the courts and to provide a meaningful opportunity to be heard to all individuals who seek to use the court system to resolve a dispute, court employees will use their best efforts to provide litigants with all legal information necessary to proceed with their cases, without giving legal advice.” In accordance with that policy, these guidelines provide General Principles and Definitions to assist court employees, as well as Objectives and Responsibility for Training.

### **II. Definitions**

- A. "Legal information" is a written or oral statement by a court employee that
  - 1. describes court facilities and procedures, legal terminology, or possible permissible courses of conduct for litigants;
  - 2. provides general information applicable to a class of litigants rather than only to the specific litigant being assisted; and
  - 3. requires the court employee only to have knowledge of generally known legal concepts and court practices.
  
- B. "Legal advice" is a written or oral statement by a court employee that
  - 1. interprets the law or recommends a specific course of conduct to a litigant in an actual or potential legal proceeding;
  - 2. applies the law to the individual litigant's specific factual circumstances; and
  - 3. requires the court employee to have knowledge of the law and legal principles beyond familiarity with court requirements and procedures.

### III. General Principles

Court employees should always strive to provide the maximum amount of information. Litigants and the general public come to the courts on a daily basis with questions concerning a wide range of subjects. One of the most difficult challenges facing court employees is to decide how to answer these questions in a manner that will provide the requested information without crossing the line into “giving legal advice.” **Giving legal advice is prohibited.**

In addressing this challenge, court employees **should**:

**explain** court processes and procedures to the litigants and the public, and  
**inform** litigants of the different options available to them to bring problems to the court for resolution.

Court employees **should not**:

**advise** litigants whether to start a case,  
**recommend** which process or procedure to use, or  
**reveal** confidential information to a litigant.

The following table displays additional guidance for court employees in determining how to answer questions.

<b>Can:</b>	<b>Cannot:</b>
Provide Legal Information - General Information about the Courts, Procedures and Legal Terminology	Provide Legal Advice - Specific Information Related to a Litigant's Case and the Law which could Affect the Outcome of a Case
Explain Court Rules and Procedures	Explain Application of Rules and Procedures to a Litigant's Specific Situation
Provide List of Options Available to Litigants	Provide Opinions as to Which Option to Choose
Provide Information about what the Court has done	Predict what the Court will do
Provide Cites (or copies) of Statutes, Court Rules and Ordinances	Research Statutes, Court Rules or Ordinances
Explain Public Court Operations and Roles of Court Personnel	Explain Confidential or Internal Court Operations
Explain What Records are Kept by the Court and can be made Available to the Public	Provide Access to Court Records that are Sealed or made Confidential by Law
Provide Public Case Information	Provide Confidential Case Information
Explain How and Where to File a Complaint Concerning a Judge, Court Employee or Private Attorney	Provide Opinions about the Conduct of a Judge, Court Employee or Private Attorney
Provide General Referrals to Other Offices or Persons	Provide Referrals to Others Based Upon Personal Preference
Provide Forms and Instructions, and Record on the Forms Information Provided by the Litigants	Provide or Suggest the Information that should be Entered on the Forms

**In short, court personnel may inform an individual of the options available, and the steps required to carry out an option, but may not recommend which option to choose.**

## **Appendix F**

Justice Juanita Bing Newton, Deputy Chief Administrative Judge for Court Initiatives has formed a committee for the purpose of Facilitating Access to the Courts. This committee is looking at the increase in Self-Represented Litigants throughout New York State. Also it is seeking to assist Clerks and support staff in helping our customers to the best of our ability. Last but not least the committee wants to be able to provide a better understanding of what is considered Legal Advice, What is Legal Information and What Does That Mean to Court Personnel.

As part of this project there is a subcommittee on Frequently Asked Questions. This group is working statewide to solicit a compilation of questions asked of court personnel on a regular basis which may constitute giving legal advice.

Please list below those questions you feel you are being asked that need more of a legal response. The information will be used to prepare guidelines for court personnel, design training seminars and create printed materials for court staff, the public and agencies working closely with the courts.

Please return all completed questionnaires to Sharon Thomas, Chief Clerk, Buffalo City Court. If you have any questions or require further information, you can reach me at 847-8225. Your time and effort in answering these questions for your court will be greatly appreciated. If you need additional space, please feel free to use an extra page.

(Please print or type your responses)

Criminal ( D. V. and Drug Court)

- 1.
- 2.
- 3.
- 4.

Civil

- 1.
- 2.
- 3.
- 4.

Family Court

- 1.
- 2.
- 3.
- 4.

Supreme & County Court

- 1.
- 2.
- 3.
- 4.

(Cont.)

Surrogate Court

Housing

- 1.
- 2.
- 3.
- 4.

- 1.
- 2.
- 3.
- 4.

Small and Commercial Claims

Landlord and Tenant

- 1.
- 2.
- 3.
- 4.

- 1.
- 2.
- 3.
- 4.

If your area of court operations was not mentioned , please include. Thanks

## **Appendix G**

## GENERAL COURT QUESTIONS

QUESTION: Do I need an attorney? Can you recommend one? Where do I get one? What if I can't get one?

ANSWER: Clerks are not allowed to recommend specific attorneys or law firms. Parties should contact their local attorney referral service.

*(Answer the question- do I need an attorney?)*

*Suggestion made: You have the right to an attorney. Is it appropriate to refer the individual to the library to research the particulars of their situation to determine whether they do, in fact, need an attorney. The answer may, or may not, depend on whether it is a criminal matter ... how about public defenders ... assigned counsel.)*

QUESTION: Can I talk to a judge?

ANSWER: Clerks must be cautious about allowing people direct access to a judge. Access to the judiciary should be determined by specific court policy, since access is varied from court to court and within the courts themselves. Depending on the inquiry being made, some courts may refer the parties directly to the judge's chambers; others may require the request be submitted to the court in writing. When addressing the court in writing, advise the party to include the title of the case, case number and an address where the party can be contacted.

QUESTION: How do I postpone a court date (getting an adjournment)?

ANSWER: Clerks must determine if the party is represented by an attorney. If the answer is yes, then direct the party to contact his/her attorney for further assistance. If the answer is no, and the party is self-represented, then that court's specific policy will prevail.

If a person is being represented by another party due to illness or other extreme circumstances, documentation as to their specific illness or emergency must be provided to the court.

QUESTION: What will happen to me when I appear in front of the judge?

ANSWER: Clerks cannot speculate on what actions a judge may take, however you may inform the party of specific court procedures. (i.e. arraignment proceedings, pins hearing, probate hearing etc.)

QUESTION: How do I take someone to court?

ANSWER: In this instance, the clerk must engage the party in conversation, in order to determine what type of court will best serve the individual. (i.e. Were you assaulted?; Was there a monetary loss?; Does it involve the loss of a family member? etc.)

QUESTION: Can you help me fill out this paperwork (court forms or court prescribed forms)?

ANSWER: Clerks have limited authority to act as a scribe in assisting physically challenged or illiterate parties. Certain courts and agencies grant clerks the authority to act as scribes for a petitioner in the course of normal business. A scribe must write down exactly what has been said by the party or petitioner.

QUESTION: I'm supposed to be in court, where do I go?

ANSWER: Clerks must try to determine the type of action that the party is appearing on. Parties who are scheduled for a court appearance should bring a copy of their court summons or other notification from the court in order to assist the clerk in directing them to the appropriate court or court agency.

QUESTION: What do I do next?

ANSWER: The clerk should determine what the party has done up to this point and without offering any sort of legal advice direct them to the court, agency or legal referral service most appropriate to the particular situation.

QUESTION: I want to look at some records.

ANSWER: The clerk should determine what records the party is seeking. It must also be determined if these files are subject to public access. Some records are sealed by court order and some records are confidential and not accessible to the public.

QUESTION: I need to have this document notarized, where do I go?

ANSWER: Notaries are available at local banks, police agencies, funeral homes, county clerk's office and some attorney's offices. The party should be aware that a fee may be charged.

## SURROGATE'S COURT

**QUESTION:** How to transfer personal property assets, such as automobiles, bank accounts, nursing home accounts in the decedent's name?

**ANSWER:** Members of the legal department point out that the statutory limits under SCPA Art. 13 regarding small estates less than \$20,000 and directs them to the appropriate court forms to fill out and double-check the forms for completeness. If real property is involved, the legal department directs them to see an estate attorney.

**QUESTION:** How to probate a Will?

**ANSWER:** The legal department directs individuals to review the Court index records found in computer/books and have them double-check safekeeping to see if a will is on file. The legal department only will discuss the types of assets to determine whether assets in the name of the decedent fall within small estate SCPA Art. 13 or probate (or full administration) proceeding. The legal department will direct individuals to see an attorney if the estate is not statutorily considered a small estate under SCPA Art. 13. (If it qualifies under SCPA Art. 13, then we do the same as is outlined in number 1 above.

**QUESTION:** How to find an estate file?

**ANSWER:** The legal department discusses the availability of court documents as public records and directs individuals to the record room where the clerk assists in locating an estate file in the computer/books. If they have a question regarding the estate, the record room clerk has been instructed to direct them to the legal department. The file is reviewed by the legal department's staff attorneys and an overview of the proceedings are discussed. Specific legal questions are

not answered. Individuals are directed to see an attorney for any legal issues presented.

**QUESTION:** How to obtain guardianship over a child's person/property?

**ANSWER:** These files are found in the Guardianship Department and brought to the legal department by an individual seeking guardianship over an infant/minor. The person usually has the necessary forms after the Guardianship Department makes an initial determination regarding property or person. The legal department makes inquiry to establish that there are no ongoing matters in Family Court for guardianship of the person. If not (or in the case of property), the person is then directed to fill out the necessary forms. These are then later reviewed for completeness and approved or set down on the court's calendar.

**QUESTION:** How to obtain information regarding an adoption?

**ANSWER:** These types of matters are strictly confidential. The judge and the adoption clerk review each inquiry on a case-by-case basis. Most, if not all, inquiries are refused due to the confidentiality involved. (The legal department is not involved with these matters and encourages those interested to contact an attorney.)

**QUESTION:** How to obtain family history (genealogy)?

**ANSWER:** These matters are handled by the record room clerk who assists individuals in reviewing the Court books which is a primary source of information. Records from 1990 to the present are on computer. Anyone requesting information is required to pay a research fee of \$25.00 to \$70.00 to locate files unless they appear in person. Requests for more than three (3) files are to be submitted to the court in advance, in writing, with appropriate index numbers.

## CITY AND DISTRICT COURT - CRIMINAL

**QUESTION:** Where do I find a bail bondsman?

**ANSWER:** Bondsman are independent of the court system, however, most courts have a listing of area bondsmen and make that list available to the public. Bond companies are listed in the yellow pages of the local telephone directory.

**QUESTION:** How do I post bail and when do I get my money back?

**ANSWER:** Bail is posted to secure the appearance of a defendant in court while a case is pending. The clerk should inform the party of the type of bail which may be posted (i.e. cash, bond, property) and the procedures that must be followed to post bail. Bail cannot be released until the criminal case is completed; the defendant is returned to custody; the court lowers the amount of bail; or releases the defendant in his/her own recognizance.

**QUESTION:** I was arrested and the police took my personal belongings, how do I get my property back?

**ANSWER:** The clerk should direct the defendant to contact the local arresting agency to inquire as to the procedure to be followed for the return of property.

### *HOW DO I FIND OUT IF THERE IS A WARRANT FOR MY ARREST?*

**QUESTION:** I have an outstanding warrant, and I don't want to be arrested. If I come to court, is the judge going to put me in jail?

**ANSWER:** The clerk should inform the defendant that the warrant will not be withdrawn until he/she makes a personal appearance in court or turns themselves in to the local police department. The question of whether the defendant will be placed in custody is at the discretion of the judge.

**QUESTION:** I've been arrested and I am not guilty. What will happen to me when I appear in court?

**ANSWER:** The clerk should inform the defendant to appear in court on the scheduled date. The clerk should inform the defendant that the charges filed will be explained to him/her by the judge. He/she will be given a copy of the charges, the judge will determine whether the defendant can afford an attorney and the issue of bail will also be discussed.

**QUESTION:** I was the victim of a crime. Do I need an attorney?

**ANSWER:** In a criminal matter the complainant (victim) is represented by the district attorney's office or other local prosecuting agencies.

## SUPREME COURT - CRIMINAL

**QUESTION:** My case has been held for the Grand Jury, what do I do next?

**ANSWER:** If the matter has been held for the Grand Jury or is to be directly presented to the Grand Jury by the District Attorney's Office, the clerk should inform the defendant that the matter is now in the jurisdiction of the Grand Jury. If the defendant does not have counsel, the matter will be scheduled in front of a Supreme or County Court Judge to afford the defendant a right to counsel. The court will also address the issue of bail at that time.

**QUESTION:** My case has been indicted, what do I do next?

**ANSWER:** In the event that an indictment warrant has not been issued, the defendant will be notified at least two days prior to the scheduled date that he/she is to appear in Supreme or County Court for arraignment. At that time the defendant will be arraigned on the indictment, and the court will address the issues of counsel and bail. If an indictment warrant has been issued the defendant should be directed to turn himself in to the nearest arresting agency.

**QUESTION:** How do I post bail and how do I get my bail money back?

**ANSWER:** Bail is posted to secure the appearance of a defendant in court while a case is pending. The clerk should inform the party of the type of bail which may be posted (i.e. cash, bond, property) and the procedures that must be followed to post bail. Bail cannot be released until the criminal case is completed; the defendant is returned to custody; the court lowers the amount of bail; or releases the defendant in his/her own recognizance.

QUESTION: How do I make a motion to the court?

ANSWER: The clerk must inquire if the party has counsel. If so then the clerk should inform the party that all motions must be made through his/her attorney. If the party is not represented by counsel, the clerk should inform the party that all applications must be made to the assigned judge in the matter and that all interested parties must be served with the appropriate motion papers.

QUESTION: I have had a fine and/or surcharge imposed by the court, what do I do now?

ANSWER: The clerk should direct the defendant to the court-ordered collection agency to make payment.

QUESTION: How do I file a criminal appeal from a local court to county court?

ANSWER: The party taking the appeal (appellant) must prepare a notice of appeal. One copy must be served on the other party (respondent) and one copy must be filed with the court from which the appeal is being taken. One copy of the notice of appeal must be filed with the local County Clerk's Office.

QUESTION: How do I file a criminal appeal from Supreme or County Court?

ANSWER: The party taking the appeal must prepare a notice of appeal. The notice of appeal must be filed with the court and the Appellate Division within thirty days of sentence or order of the court.

QUESTION: What is a Certificate of Relief from Disabilities and how do I get one?

ANSWER: A "certificate of relief from disabilities" may be granted as provided in Corrections Article 23 to relieve

an “eligible offender” of any forfeiture or disability, or to remove any bar to his or her employment automatically imposed by law, by reason of his or her conviction of the crime or offense specified in the certificate. An eligible offender is a person who has been convicted of a crime or an offense, but who has not been convicted more than once of a felony.” (OCA operations manual.) Applications for a certificate of relief from disabilities are available in the Chief Clerk’s Office.

**QUESTION:**

How do I get my record expunged?

**ANSWER:**

The clerk should determine if the party is eligible to have any part of his/her criminal history expunged. If the party is eligible and the record remained opened due to clerical error, the clerk should immediately take the necessary steps to correct the error and have the record(s) sealed.

## SUPREME COURT - CIVIL

**QUESTION:** What if I can't afford to pay the filing fee, how can I file my lawsuit?

**ANSWER:** The clerk can advise the party to make an application to the court, requesting waiver of fees because of indigence. At the time of commencing the action, an application listing the amounts and sources of income, property, etc., must be filed along with the summons and complaint, or summons with notice, or notice of petition and petition. The party should also forward a filed copy of the application to the court and the local county attorney. Party should be advised that the application and supporting documentation will be reviewed by a judge who will determine the application.

**QUESTION:** How do I file a civil action? Where do I get the papers and what do I put in the papers?

**ANSWER:** A clerk may inform a party that filing a Summons and Complaint or a Summons with Notice, along with the applicable filing fees, to the County Clerk's Office, starts a civil action. Likewise, a Notice of Petition and Petition, along with filing fees, is filed to commence a special proceeding.

The clerk should inform the party that for most civil actions there are no pre-printed court authored forms. The party should either look at sample documents in the form books in a law library or contact a legal stationery store.

The clerk should inform the party that legal advice as to a specific case cannot be given. Clerk may, however, inform the party to seek legal counsel.

**QUESTION:** I got this paper (Summons and Complaint) and it says I'm supposed to appear. Where do I go?

**ANSWER:** Party should be informed that appearing means to answer the allegations mentioned in the complaint, by sending a written response to whoever sent the complaint, either directly to the plaintiff or the plaintiff's attorney. Party should also be advised to submit the same response to the County Clerk's Office.

**QUESTION:** How do I enforce the judgment of divorce when the other party is in non-compliance?

**ANSWER:** Clerk can inform the party that a formal application, either by Order To Show Cause or Notice of Motion, must be submitted to the court, requesting enforcement. Clerk may further inform the party that in certain circumstances, involving such issues as child support or child custody, the enforcement application may also be submitted to Family Court. Legal research needs to be conducted to determine what papers should look like since the court does not provide pre-printed forms.

***LAW LIBRARIES CAN PROVIDE COPIES OF THE FORMS BUT DO NOT HAVE SAMPLES OF THE FORMS FILLED IN.***

**QUESTION:** My child is 18 and according to the terms of the settlement, he/she can get all of the money. How does he/she get money from the bank?

**ANSWER:** If the court's order states that at 18 the child can receive all of the money, the party should be informed that a copy of the order (preferably a certified copy) should be presented to the bank and the bank must release the money to the child. The bank may require proof of the child's age.

**QUESTION:**

I want to get child support. My husband and I have a separation agreement on file in the County Clerk's Office. I went to Family Court for enforcement and they said I couldn't proceed in Family Court. Help!

**ANSWER:**

Clerk can inform the party that Family Court cannot enforce a separation agreement, which is simply a written contract between parties. To enforce the agreement, the party can sue for breach of contract in either City (Town/Village/Small Claims) or Supreme Court, depending on monetary amount; the party can commence a divorce action in Supreme Court; or the party can go to Family Court and file an original petition for child support and for an original support order from Family Court.

## MATRIMONIAL QUESTIONS

QUESTION: How do I get a judge assigned to my case?

ANSWER: Party should be informed that in Supreme Court a judge is assigned to a case once the court is in receipt of a properly filed copy of a request for Judicial Intervention (RJI) form. Party should be advised that the RJI form might be secured from either the Court Clerk's Office or the County Clerk's Office. The RJI form must be filed along with the filing fee, at the County Clerk's Office.

QUESTION: I've been divorced for 5 years and I want to change my name back to my maiden name. How do I do this?

ANSWER: Clerk should tell party to check judgment of divorce for authorization to resume maiden name. The party does not require a new order if the judgment so states. Party should then contact all agencies, such as Social Security Office, credit card companies, etc., to ascertain type of documentation needed to formalize change. *(Tell what to do if judgment does not provide.)*

QUESTION: I want to change my name. I want to change my child's name.

ANSWER: Clerk should remember that this simple question has many variations to it, and that a proposed order with accompanying index number must be submitted to court for approval.

If changing infant's name, party should be aware that in certain situations, notice should be given to other parent of intention to change infant's name. Clerk should advise party to seek legal counsel.

**QUESTION:** My estranged wife served me with divorce papers a year ago. I haven't heard anything since then; am I divorced?

**ANSWER:** After consulting the civil computer, clerk should relay appropriate information to party. Clerk should also direct party to local County Clerk's Office to obtain a copy of the judgment of divorce.

**QUESTION:** I want to look at this file.

**ANSWER:** Clerk should inform the party that all papers filed regarding a Supreme Court civil action or special proceeding will be found in the County Clerk's Office. By county law, the County Clerk is also the Clerk of the Court and is the custodian of all civil Supreme Court documents.

**QUESTION:** My child received money from a settlement and it's in trust. How can I get some money for the child's education?

**ANSWER:** Clerk can inform the party that a formal application must be submitted to the court. This can be done either as an ex parte application (petition and proposed order) or on notice (Order To Show Cause, notice of petition and petition) depending on the circumstances. Party should be advised to seek legal counsel or do legal research to determine which type of formal application to submit as well as the format of the papers being submitted.

## TRAFFIC COURT COMMON QUESTIONS

*I GOT A TRAFFIC TICKET AND I LIVE OUT-OF-STATE. DO I HAVE TO APPEAR IN COURT ON MY TRIAL DATE:*

QUESTION: Will there be fines and how is this going to affect my license?

ANSWER: We explain that by pleading guilty to a charge the Judge will impose a fine and mandatory surcharge.

Further, if the infraction is a moving violation , e.g. speeding, red light, stop sign there will be points attached to the driver's license, which in turn may effect the driver's insurance.

QUESTION: Why can't the Court accept my insurance card as proof of insurance on my vehicle?

ANSWER: You can still possess an insurance card even if your insurance has been canceled. An original letter is required from the insurance agent after a ticket has been issued.

QUESTION: Why do I have to come into Court to ask the judge for permission to attend the driver improvement school? Can't the clerk just give me permission?  
*(Is there a difference between driver improvement and defensive driving courses and who can give the order for the party to attend one of these programs?)*

ANSWER: These are the rules of this Court, and the judge will review the conviction stub portion of your driver's license and driving record. The judge also will inquire about your past attendance in any other similar class and when you attended.

**QUESTION:** Do I need a license to attend the driver improvement school? (*See italics above*)

**ANSWER:** Yes, you must have a driver's license to attend the school.

**QUESTION:** If I plead not-guilty to these charges, what is going to happen to me?

**ANSWER:** If you plead not guilty to the charge or charges, you will be given a trial date and when you appear on that day you will meet with the City Prosecutor and the Officer or Officers who issued the tickets. You will discuss your case and then appear before the judge.

What you plead to will be determined by the discussion that you have with the Prosecutor and the Officer. If you cannot reach a plea bargain, you will have a trial that afternoon with the judge deciding the case. If you plead guilty to, or are convicted of any charges, there probably will be fines and/or surcharges as determined by the judge. Please be advised that failure to appear will result in a bench warrant for your arrest.

**QUESTION:** What is a supporting deposition and should I check that box indicating I want one?

**ANSWER:** The supporting deposition contains any information or comments about why the ticket or tickets were issued, the location of the stop, conditions of the road, etc.

**QUESTION:** Will this affect my insurance?

**ANSWER:** If you plead guilty to a moving violation, yes it can affect your insurance.

**QUESTION:** If I don't take any action on this ticket, what happens?  
*This question is usually from out-of-state drivers.*

**ANSWER:** Your license can be suspended and/or a warrant can be issued for your arrest.

**QUESTION:** Can I go to jail for a traffic ticket and for how long?

**ANSWER:** Yes, you can go to jail for 15 days on a single traffic infraction.

**QUESTION:** I got a traffic ticket. Where do I go?

**ANSWER:** Clerk should inform the party to look on the back of the ticket. The name and address of the court is listed as well as the time and date when the party is to appear. The back of the ticket will also inform the party of appearance rules for that particular jurisdiction.

**QUESTION:** I got a ticket and Department of Motor Vehicles (DMV) told me to talk to County Court.

**ANSWER:** Clerk should determine if ticket is a felony by looking at ticket if available. If it's a felony, superior court clerk should check computer database to determine application information as to appearance, disposition, if any.

If ticket is a violation or infraction, clerk should advise the party to contact appropriate local traffic bureau or town or city court where ticket was issued.

**QUESTION:** My license was suspended. How do I get it back?

**ANSWER:** Clerk can advise party that an application to the Department of Motor Vehicles may be made after obtaining written permission from the sentencing judge. Party should be aware that final approval is the decision of DMV.

**QUESTION:** My license was taken away because I was charged with DWI. My case was dismissed. DMV won't give back my license. What do I do?

**ANSWER:** Clerk should inform the party that the final determination as to reinstating license is DMV's jurisdiction. The court has no remedy. Clerk can advise party to seek legal counsel.

**QUESTION:** I have an outstanding warrant, and I don't want to be arrested. If I come to court, is the judge going to put me in jail?

**ANSWER:** The clerk should inform the defendant that the warrant will not be withdrawn until he/she makes a personal appearance in court. The question of whether or not the defendant will be put into custody is at the discretion of the judge.

**(HOW DO I FIND OUT IF THERE'S A WARRANT FOR MY ARREST?)**

**QUESTION:** I've been arrested and I am not guilty. What will happen to me when I appear in court?

**ANSWER:** The clerk should inform the defendant to appear in court on his/her scheduled date. The clerk should inform the defendant that the charges filed against him/her will be explained to him/her by the judge. He/she will be given a copy of the charges, the judge will determine whether he/she has or can afford an attorney and the issue of bail will also be discussed.

**QUESTION:** I was the victim of a crime. Do I need an attorney?

**ANSWER:** In a criminal matter the complainant (victim) is represented by the district attorney's office or other local prosecuting agencies.

## SMALL CLAIMS

**QUESTION:** How do I file a Small Claim proceeding?

**ANSWER:** You will need to come into our office and fill out an application, name, address, zip code, of the person or business you are suing, the amount you are suing for and a brief reason why. After evaluating your application, we will then give you a court date, approximately 6 to 8 weeks from the date of filing, you will then pay our cashier a filing fee of either \$10.00 if you are suing for \$1000.00 or less, or \$15.00 if you are suing for over \$1000.00. We will then send a summons to the party you are suing by regular mail and certified mail.

**QUESTION:** How much can I sue for in Small Claims?

**ANSWER:** The maximum you may sue for is \$3,000.00.

**QUESTION:** May I ask for "pain & suffering"?

**ANSWER:** No. Not in small claims.

**QUESTION:** Will you take a personal check or credit card for the filing fee?

**ANSWER:** No. Cash only.

**QUESTION:** What does "DBA" mean?

**ANSWER:** "Doing business as" is an individual operating as a business or "doing business as" a business.

**QUESTION:** What is the age limit of the defendant?

**ANSWER:** A defendant must be 18 years of age. If the defendant is not yet 18, you must sue the child's parents, naming them by first and last name.

**SMALL CLAIMS**

- **QUESTION:**           **What happens if the defendant fails to show up in court?**
- **ANSWER:**            You would still present your case and show whatever proof necessary to support your claim, then the Hearing Officer may issue a default judgment against the defendant.
  
- **QUESTION:**           **Can I sue an insurance company?**
- **ANSWER:**            Yes, if it is your own insurance company, otherwise, if involving an auto accident, you would have to file against the owner and driver of the other vehicle.
  
- **QUESTION:**           **What if I am unhappy with the Hearing Officer’s decision?  
Can I appeal?**
- **ANSWER:**            If you are unhappy with the Hearing Officer’s decision you may file a “Trial De Novo” which is Latin for “new trial”. The filing fee for filing a “Trial De Novo” is \$75.00 cash, which is non-refundable. Your case would then be scheduled before a City Court Judge, within thirty days.
  
- **QUESTION:**           **Once I go to court and win my claim, how do I collect my money?**
- **ANSWER:**            What you win Small Claims is a money judgment, if the defendant failed to pay you, you would have to try to collect, by either knowing where the defendant works or has a bank account or if they own a vehicle or a major asset. You would first have to wait for 30 or 35 days before collecting. If you know whether the defendant works you can garnish his wages through the City Court Marshal’s office by filing an income execution or if you know whether the defendant has a bank account you may do a property execution to the Marshal and he can go into the bank account and he can seize the money out of the account, for a fee which is added onto the amount of your judgment, you would have to pay the fee up front and the Marshal would add it on to the amount of your judgment when he collects. To go after a vehicle you would have to do a lien and title search through motor vehicles, then proceed through the Marshal’s office.

- **QUESTION:**           **What if I don't know where the defendant works or has a bank account?**
- **ANSWER:**           If you don't know anything about the defendant, you may do information subpoenas to the different banks to try and find out where the defendant has a bank account. We will supply you with the subpoenas and charge you a \$2.00 fee per bank.
  
- **QUESTION:**           **How long do I have to collect my judgment?**
- **ANSWER:**           Your judgment is good for twenty years.
  
- **QUESTION:**           **What are my chances for collecting my money?**
- **ANSWER:**           Slim to none. So quit crying about it!
- *(Inappropriate response!!!)*

## LANDLORD/TENANT

QUESTION: I want to evict someone. How do I do that?

ANSWER: First you must give notice to the tenants that you wish to evict them. A three (3) day notice if they owe rent; thirty (30) day notice for any other reason. A thirty day notice must be given at least one day before the rent is due - the 30 days are the following one calendar month.

After the notice time has elapsed, the landlord must file the eviction papers, (notice of petition and petition, which have been purchased from a legal stationary store, filled in, signed and notarized) with the court, arrange for service upon the Tenants, and receive the court date. On the Court date, the Landlord and Tenant appear before the Special Term Judge who will then make the decision as to the eviction, money judgment and warrant for removal.

QUESTION: When does the affidavit of service need to be returned?

ANSWER: An Affidavit of service must be returned within three (3) calendar days of service on the tenant. The day of return is the filing date.

QUESTION: By when do I have to serve this affidavit?

ANSWER: An affidavit is not served! The affidavit is completed (*submitted to the court*) by the person that served the notice of petition and petition to attest to the time, date, place and person served. Tenant must have at least 5 days notice but no more than 12 days before the Court date.

QUESTION: Where do I purchase the forms for filing?

ANSWER: At any legal stationary store

**QUESTION:** How do I pay a judgment to the person I owe it to if I can't find the person?

**ANSWER:** If this is a Landlord she/he may have had an attorney who would be able to assist. The County Tax office can advise as to where tax bills are sent. The City Directory's set of books often will provide an address.

**QUESTION:** Can I bring a witness?

**ANSWER:** A witness can be helpful if they actually saw or heard notice being given or rent being demanded or paid. Damages to property are not part of these proceedings.

**QUESTION:** Do I find out right in court if I win or not?

**ANSWER:** Yes

**QUESTION:** If I win, how long before I get my money? If they don't pay, what can I do?

**ANSWER:** The Court has nothing to do with the collection of money. If you do not receive money owed within a short time after your day in Court, the City Court Marshall can help you collect. Provide the Marshall with the place of employment or names etc., to locate bank accounts.

**QUESTION:** Is there a time limit in which to file a claim for payment?

**ANSWER:** If a Judgment is awarded in Landlord-Tenant Court, that Judgment will be entered automatically.

**QUESTION:** How can I have a Judgment, I never went to court?

**ANSWER:** A Judgment will be placed against you if you were personally served whether you appear in Court or not.

## FAMILY COURT

**QUESTION:** How do I file a Petition?

**ANSWER:** *(This response should be locality specific.)*  
Petitions can be filed in Erie County Family Court at 25 Delaware Avenue, Buffalo, 4<sup>th</sup> Floor, Room 404. There are Warrant Clerks available to assist you in filling out the paperwork. Petitions are taken beginning at 8:30 a.m. on a first-come, first-served basis. If you cannot come to Family Court to file the petition, the blank form can be mailed to the party with an instruction sheet. The petition can be mailed to Family Court for filing.

**QUESTION:** How do I file an appeal? How to perfect an appeal (requirements of the Appellate Division)? *(How do I get a notice of appeal?)*

**ANSWER:** An original plus two copies of the Notice of appeal must be filed with Family Court within 35 days of the mailing of the order that is to be appealed. Family Court cannot assist you with your questions regarding the perfecting of an appeal or the requirements of the Appellate Division. It is suggested that you read the instructions and if you are still in need of further assistance, you will need to consult an attorney.

**QUESTION:** Do I need an attorney to appear with me in Family Court?

**ANSWER:** Attorneys are not required in Family Court. If you would like to have an attorney present for your Court date, it is up to you. In certain types of cases, attorneys can be appointed by the Judge to represent you based on your income.

**QUESTION:** Can I have a copy of an Order? Can I review my file?

**ANSWER:** Yes, copies of orders are available to you as long as you were a party to the proceeding. Family Court is a confidential court and records are not open to the public. Picture identification must be presented to receive a copy of your order. Files can be reviewed by attorneys representing one of the parties, or by agency staff.

**QUESTION:** My child is out of control - what do I do with him/her?

**ANSWER:** If the child is under the age of 16, please call the PINS (Person In Need of Supervision) Diversion Unit at 858-8349. If the child is over the age of 16, please consult with an attorney.

**QUESTION:** How do I become emancipated or how do I emancipate my child?

**ANSWER:** There is no New York State statute that permits emancipation. In child support matters, parents may be relieved of their requirement to pay support if the child is self-supporting.

**QUESTION:** How can I obtain a free attorney?

**ANSWER:** *(Locality specific.)*  
We inform the individual to contact the Erie County Bar Association.

**QUESTION:** Can I obtain a blood test to determine if I'm the father?

**ANSWER:** In order to request a blood test, the person must file a paternity petition which contains language that alleges that the named male is the father of a child born out of wedlock. When the petition is filed, the punitive father can make a motion for the blood test before the trier of the case.

# Appendix H

**Disclaimer:**

This material has been endorsed by the Michigan Supreme Court as a model for providing information to the public and access to the Michigan court system. However, individual courts may have different policies and procedures. If any information contained in this material conflicts with your court's policies and procedures, contact your chief judge or court administrator for clarification.

For information on how to obtain the Legal Advice training disk (CD-i), contact:

- **VuCom**  
1256 Kirts Blvd., Ste. 300  
Troy, MI 48084  
248/362-4212  
[www.vucom.com](http://www.vucom.com)

For information regarding CD-i equipment, contact VuCom (listed above) or a licensed LG Electronics dealer.

Copies of this booklet are available free of charge for the first 1-10 copies requested; each copy beyond 10 will be billed at \$2.50 each. To order, contact:

- **Michigan Judicial Institute**  
PO Box 30205  
Lansing, MI 48909  
517/334-7805 ext. 117

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# *Legal Advice*

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# *Access to the Courts*

**Do YOU Know the Difference?**

## **Introduction**

Every day every clerk in every court in every state is bombarded with questions about courts, procedures, judges and cases. Most court clerks have been told they cannot give legal advice when answering questions. Many courts have posted signs informing the public that court clerks are not allowed to give legal advice. And probably every clerk 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 a clerk tell parties whom they should sue?
- Can a clerk tell a party what form to use?
- Can a clerk tell parties what their options are?

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**Purpose of this Training:**

If you don't know the answers, don't worry because you are not alone. Clerks in courts across the country have questions about what is and isn't legal advice.

*Purpose of this Training:*

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

This training will cover three areas:

- The reasons court clerks cannot provide legal advice;
- Guidelines for determining what is and is not legal advice; and
- Commonly asked questions

**Why Court Clerks  
Are Not Allowed  
To Give Legal Advice**

Although court clerks are told that they cannot give legal advice, they usually do not know why. There are several reasons:

1. **Neutrality<sup>1</sup>:** Court clerks must remain neutral and cannot promote or recommend a particular course of action. Even though a clerk 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.
2. **Impartiality<sup>2</sup>:** Court clerks 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 clerks 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."
3. **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 clerks are generally not attorneys, they cannot give legal advice because giving legal advice is considered the unauthorized practice of law. If a court clerk were an attorney, he or she should still not give legal advice as an employee of the court because it would violate the concepts of neutrality and impartiality.

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<sup>1</sup> *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.

<sup>2</sup> *The Ethics Field Book: Tools for Trainers*, *ibid.*

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*The Importance of Understanding What Is  
and Is Not Legal Advice*

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Every day court clerks are bombarded with questions about courts, procedures, judges, and cases. Their job involves providing information to the different people that request or require it, including the general public, attorneys, parties, legal secretaries and paralegals. Each has different levels of understanding and different needs. Court clerks must help all of them while staying impartial and neutral and 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 court involvement. And, how they respond could affect the outcome of a case. An accurate understanding of a court clerk's primary functions 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 clerks for information on the court system. As a result, court clerks play a very important role as a "gatekeeper" providing access into the court system. If people do not know how to use the system and court clerks 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 support staff to be able to assist these 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 question asked by court clerks, and there is no easy answer. Court clerks 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 court clerks get asked and what questions they can or cannot answer. 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 clerks**

<b>Can Provide:</b>	<b>Cannot Provide:</b>
Legal definitions	Legal interpretations
Procedural definitions	Procedural advice
Cites of statutes, court rules and ordinances	Research of statutes, court rules and ordinances
Public case information	Confidential case information
General information on court operations	Confidential or restricted information on court operations
Options	Opinions
Access	Deny access, discourage access or encourage litigation
General referrals	Subjective or biased referrals
Forms and instructions on how to complete forms	Fill out forms for a party

TABLE 2.

Legal definitions	v Legal interpretation
Can Provide:	Cannot Provide:
<p><i>Reason:</i> 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.</p> <p><i>Example:</i> What is child abuse?</p> <p><i>Response:</i> According to this dictionary of legal terms, child abuse is “the mistreatment of a minor by an adult legally responsible for the minor.”</p>	<p><i>Reason:</i> Court clerks cannot provide legal interpretations because it would be considered the unauthorized practice of law and would violate the concepts of neutrality and impartiality.</p> <p><i>Example:</i> My neighbors leave their kids home all day without supervision. Is that child abuse?</p> <p><i>Response:</i> I am not an attorney and cannot make a legal interpretation. However, I can refer you to someone that can help you.</p>
<p><i>Tip:</i> Resources for providing legal definitions include statutes, court rules and a dictionary of legal terms.</p>	

TABLE 3.

Procedural definitions & explanations	v Procedural advice
Can Provide:	Cannot Provide:
<p><i>Reason:</i> Court procedures can be confusing. Explaining various procedures increases the public's understanding of the system and does not violate the concept of neutrality.</p> <p><i>Example:</i> What happens at an arraignment?</p> <p><i>Response:</i> 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.</p>	<p><i>Reason:</i> Court clerks 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 clerks must remain impartial and neutral at all times. Clerks can, however, point out various factors that individuals can consider to make the decision themselves.</p> <p><i>Example:</i> Whom should I sue?</p> <p><i>Response:</i> 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?</p>
<p><i>Tip:</i> Whenever you hear the word "should", it is a tip that you are being asked for advice.</p>	

TABLE 4.

Cites for statutes, court rules & ordinances v	Research of statutes, court rules & ordinances
Can Provide:	Cannot Provide:
<p><i>Reason:</i> A court clerk may cite the legal authority for a specific procedure.</p> <p><i>Example:</i> An employer asks if the employer has to file a disclosure with the court every time an employee's paycheck is garnished.</p> <p><i>Response:</i> No. The court rules only require a disclosure to be filed within 14 days after the date the writ was served.</p>	<p><i>Reason:</i> Court clerks 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.</p> <p><i>Example:</i> Please provide me with a copy of all of the laws regarding stalking.</p> <p><i>Response:</i> I'm sorry, but I am not allowed to do legal research.</p>
<p><i>Tip:</i> 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 the clerk's job and whether the information is readily available or would require compilation.</p>	

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TABLE 5.

<b>Case information that is a matter of public record v</b>	<b>Confidential case information</b>
<b>Can Provide:</b>	<b>Cannot Provide:</b>
<i>Reason:</i> Court clerks can provide case information that is public. Most court records are considered public records and, therefore, are available to the public.	<i>Reason:</i> Court clerks cannot disclose non-public or confidential information. It is very important that clerks understand what information is confidential.
<i>Example:</i> Is there an estate file open for Beth Hall?	<i>Example:</i> May I see the Kramer adoption file?
<i>Response:</i> Yes, there is. It is a public record. Would you like to see it?	<i>Response:</i> I'm sorry. Adoption files are confidential and not able to be viewed by the public.

*Tip:* If asked about a confidential record, a court clerk may confirm its existence but cannot provide any other information.

*Note:* If you are not sure what records are public and which records are confidential in your court, check with your supervisor.

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TABLE 6.

General information about court operations	v	Confidential information about court operations
Can Provide:		Cannot Provide:
<p><i>Reason:</i> Court clerks have considerable knowledge and information about how a court functions. Sharing this knowledge of general court operations is not considered legal advice.</p> <p><i>Example:</i> How long before I become the guardian?</p> <p><i>Response:</i> Hearings generally are scheduled in four to six weeks, and a determination is made at that time.</p>		<p><i>Reason:</i> Court clerks cannot disclose confidential information about court operations or ex parte communications because it can give one side an unfair advantage.</p> <p><i>Example:</i> How do I get a particular judge assigned to my case?</p> <p><i>Response:</i> I'm sorry, I can't give you information about the court's internal assignment procedures.</p>
<p><i>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".</p>		

TABLE 7.

Options	v	Opinions
Can Provide:		Cannot Provide:
<p><i>Reason:</i> Court clerks can provide information on the various procedural options available and can explain how to do something.</p> <p><i>Example:</i> How can I collect my judgment?</p> <p><i>Response:</i> 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><i>Reason:</i> Court clerks cannot give an opinion on or otherwise advise parties to use a particular procedure or remedy.</p> <p><i>Example:</i> Should I file a writ of garnishment or a writ of execution?</p> <p><i>Response:</i> 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><i>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.</p>		

TABLE 8.

Facilitate access	v	Deny access, discourage access or encourage litigation
Can:		Cannot:
<p><i>Reason:</i> Most people are not familiar with the court system. They often cannot describe their problem in legal terms. Court clerks are the gatekeepers to the system. It is their 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.</p> <p><i>Example:</i> How do I <i>convict</i> my renter?</p> <p><i>Response:</i> Do you want to evict your renter? The court that handles landlord/tenant disputes is down the hall.</p>		<p><i>Reason:</i> Most people are not familiar with court procedures or terminology. Legal advice should not be used as an excuse not to provide service. If the question is not asked in the right way, take the time to clarify what is being asked.</p> <p><i>Example:</i> How do I take care of a <i>civil infection</i>?</p> <p><i>Response:</i> Civil infections are handled by the health department.</p>
<p><i>Tip:</i> In the examples above, the client was using incorrect terminology. Often it is necessary for a court clerk to ask questions to determine what the client is really asking rather than make an inappropriate referral.</p> <p>(Examples include the mistake of identifying Mr. Pro Per as an attorney rather than realizing it is an indicator that a party is acting on his/her own behalf, incorrect usage of guardian vs. custodial parent, etc.)</p>		

TABLE 9.

General referrals	v	Subjective or biased referrals
Can Provide:		Cannot Provide:
<p><i>Reason:</i> 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.</p> <p><i>Example:</i> I'm not sure I'm calling the right place, but I need to talk to someone about my birth certificate.</p> <p><i>Response:</i> Let me give you the phone number for the county records division.</p>		<p><i>Reason:</i> Court clerks must remain neutral and impartial and cannot make referrals to specific individuals.</p> <p><i>Example:</i> Can you give me the name of a good criminal attorney?</p> <p><i>Response:</i> 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.</p>
<p><i>Tip:</i> Good general referrals include yellow pages and local bar associations.</p>		

TABLE 10.

Distributing forms & instructions on how to complete forms	v	Filling out forms unless there is a handicap or physical disability that prevents the person from filling out the form
Can:		Cannot:
<p><i>Reason:</i> Court clerks must facilitate access to the court system.</p>		<p><i>Reason:</i> Court clerks 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 clerks to record information on a form. Some examples include language barriers (illiteracy or foreign language) and physical handicaps (blindness or deafness).</p>

*Tip:* The following is a recommendation for handling these 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, the clerk 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 clerk, be present to witness.

*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 clerks 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, clerks can provide access to the courts and service to the public while remaining impartial and neutral.

# Appendix I

**THIRD DRAFT - AUGUST 22, 2001  
THE NEW YORK STATE UNIFIED COURT SYSTEM  
DIVISION OF HUMAN RESOURCES  
CAREER SERVICES OFFICE**

**FACILITATING ACCESS TRAINING PROGRAM**

**Section One:**

**Why A Facilitating Access Training Program?**

Participants will understand the impetus for developing a Facilitating Access Training Program. Participants will review the Guidelines established for providing legal information to court users.

**Section Two:**

***"I'M SORRY ... I CAN'T GIVE LEGAL ADVICE"***

Participants will review the CD-ROM *"I'm Sorry ... I Can't Give Legal Advice"* developed by the Michigan Court System.

**Section Three:**

**Legal Advice v. Legal Information**

Participants will discuss the difference between legal advice and legal information.

**Section Four:**

**Frequently Asked Questions (FAQs)**

Participants will review the results of a survey conducted to elicit the most frequently asked questions of court users.

**Section Five:**

**Communication Skills**

Participants will review the importance of enhancing their listening and oral communication skills and the impact of the environment on communication.

**Section Six:**

**Resources**

Participants will review the available resources to assist them in providing appropriate legal information to court users while not crossing the line and giving legal advice.

## SECTION ONE WHY A FACILITATING ACCESS PROGRAM?

Participants will understand the impetus for developing a Facilitating Access Training Program. Participants will review the Guidelines established for providing legal information to court users.

This section will take \_\_\_\_\_ minutes.

Nationwide, courts are increasingly faced with self-represented litigants and court users seeking to resolve their legal issues without an attorney. Court employees are constantly being asked for information about our courts, procedures, judges and cases. Most UCS employees have been briefed on the prohibition about giving legal advice when faced with these questions. In some instances our courts have posted signs which state that court employees may not give legal advice. In fact, many UCS employees are probably familiar with the phrase, "I'm sorry. I am not allowed to give legal advice."

Establishing a facilitating access program is consistent with the NYS Unified Court System's commitment to providing quality service to all court users. The focus is on expanding access to justice by providing UCS employees with guidelines to meet this obligation with the highest level of professionalism.

To ensure that we are meeting this obligation, the Honorable Judith S. Kaye and the Honorable Jonathan Lippman appointed the Honorable Juanita Bing Newton as the Deputy Chief Administrative Judge for Justice Initiatives. (See Addendum 1, Press Release)

Justice Bing Newton appointed a Facilitating Access Committee (See Addendum 2) to develop a plan to provide guidance and training to UCS court employees for meeting this challenge and ensuring they are clear about the difference between legal advice and legal information.

The FAC developed a multi-pronged approach to addressing the implementation of this program. Several sub-committees were established to work on:

- ▶ Guidelines: establishing a primer for providing assistance to self-represented court users;
- ▶ FAQs: identifying the most frequently asked questions (FAQs) covering both general and court specific information. These questions serve as a

window on what self-represented court users do not know about the appropriate responsibilities and obligations of our employees;

- ▶ Training: providing a program to ensure UCS employees are clear about their roles and responsibilities in providing legal information but not legal advice; and
- ▶ Implementation: determining the most effective method of delivering the instructional phase of this initiative.

The challenge to court systems nationwide will continue to increase. Here are some statistics:

- ▶ only 1:7 people can afford an attorney (See Addendum 3, news article);
- ▶ reduced funding in legal services;
- ▶ 18B Panel issues;
- ▶ Family Court issues; and
- ▶ The impact of television programming about the legal system and the profession.

## I. Introduction

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Providing *equal access to justice for all* is one of the highest priorities of the Unified Court System. A vital component of meeting this priority is to ensure that self-represented litigants have clear and unencumbered access to the courts. The **UCS Policy for Offering Assistance to Court Users** states that "to promote access to the courts and to provide a meaningful opportunity to be heard to all individuals who seek to use the court system to resolve a dispute, court employees will use their best efforts to provide litigants with all legal information necessary to proceed with their cases, without giving legal advice." In accordance with that policy, these guidelines provide General Principles and Definitions to assist court employees, as well as Objectives and Responsibilities for Training.

The FAC Guidelines Sub-Committee recommended that in order to ensure and to serve the interests of self-represented litigants and court users, judges and court employees are provided with the guidance they need to properly provide assistance by:

1. Promoting access to the courts and to providing a meaningful opportunity to be heard to all individuals who seek to use the court

system to resolve a dispute. Court employees shall use their best efforts to provide litigants with all legal information necessary to proceed with their actions, without giving legal advice.

2. Assisting UCS employees in meeting this responsibility through guidelines and training and providing UCS employees with the tools needed to delineate between legal information and legal advice.
3. Providing continuous UCS review of court processes and procedures with regard to the needs of self-represented litigants, develop programs of assistance for self-represented litigants, and develop and offer education and training programs to court staff in the deployment of these programs.
4. The UCS shall make appropriate resources available to judges as guidance when responding to self-represented litigants who appear before them.

It is vital that court employees understand the kinds of information they can provide. This training program will provide information on:

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the reasons court staff cannot provide legal advice;  
clear understanding of what is and is not legal advice; and  
the most frequently asked questions.

**SECTION TWO:  
SHOW CD-ROM AND DISCUSS**

One of the resources identified to assist the NYS UCS in delivering training to our employees is a CD-ROM developed by the Michigan Judicial Institute entitled: "*I'm Sorry, I Can't Give Legal Advice.*" This CD-ROM provides some basic tools for responding to some of the frequently asked questions our employees receive from self-represented court users.

This section will take \_\_\_\_\_ minutes

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## SECTION THREE

### EXPLORING THE DIFFERENCE BETWEEN LEGAL ADVICE AND LEGAL INFORMATION

A discussion of the distinctions between legal information and legal advice by reviewing definitions and distinctions of those terms. Explain why court employees may not provide legal advice.

This section will take \_\_\_\_\_ minutes.

There are a number of reasons why court staff may not provide legal advice to self-represented litigants and court users.

#### 1. Neutrality

All court employees are required to remain neutral. They cannot promote or recommend a particular course of action.

While court employees have probably dealt with hundreds of similar cases, they may not provide advice or be in a position to advise a particular litigant in their specific case. Only litigants or their attorneys can make those decisions.

#### 2. Impartiality

Court employees have a duty to "absolute impartiality." Court employees can "never give advice or information for the purpose of favoring one court user over another."

Court employees have amassed considerable knowledge about their particular court's functions. That information must be shared fairly and in a manner that does not involve the disclosure of confidential or ex parte communication.

Giving advice to a litigant or court user about "what to do" rather than "how" a party might go about carrying out an action which has already been decided crosses the line from "impartiality" or "legal information" to "partiality" or "legal advice" or engaging in the unauthorized practice of law.

### 3. Unauthorized Practice of Law

The New York Code of Professional Responsibility prohibits the unauthorized practice of law. Only those individuals licensed by the state to practice law can give legal advice. While there may be some clerks or other court staff who are attorneys, practicing law while in the employ of the NYS UCS, without permission, is considered the unauthorized practice of law and is prohibited (§25.40 of the Rules of the Chief Judge). Further, giving legal advice while an employee of the court system violates the concepts of neutrality and impartiality.

#### What Is and Is Not Legal Advice

Court employees are required to provide information to the different people that request or require it, including the general public, attorneys, parties, legal secretaries and paralegals. Each one of these groups has varying levels of understanding and different needs. Court employees must provide this assistance while maintaining their impartiality and neutrality, without giving legal advice. The responses to the questions asked will affect how the public views the court system, their attitude during their court involvement, and it could affect the outcome of a case. A clear and accurate understanding of the primary functions of court staff will clarify how important it is to know what is and is not legal advice.

#### NYS UCS Employees Must:

- ▶ **Provide Access:** Court users are generally not familiar with courts and court procedures. They depend to a large degree on court employees for information about the court system. Consequently, court employees play a very important role as “gatekeepers” in providing access to the court system. Denial of appropriate information and failure of court employees to properly inform court users, is denial of access.
- ▶ **Provide Service:** One of the most important roles of court employees is to provide service to the public. Providing information is part of that service. This requires court employees to be clear about what information can be provided and what information they are prohibited from providing.

- ▶ **Assist Self-Represented Litigants:** More and more individuals are choosing to represent themselves and foregoing representation by an attorney. The burden for providing assistance to these individuals will fall on court employees without crossing the legal advice line.

The number one question asked by court employees is: “How do I know what is and is not considered legal advice?” This is a difficult question to answer. Court employees know a great deal about the court system and are supposed to provide information as part of their duties. But how do they know what information they can provide and what information is prohibited? How can they know when they are crossing the invisible legal advice line?

No book or manual will ever clearly identify every question court employees are asked or provide a road map of what questions they can or cannot answer. There are, however, some guidelines that can be used to help define the differences between legal advice and legal information.

An understanding of the differences between legal information and legal advice also provides assistance to court employees when dealing with self-represented litigants and court users.

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## REFER TO THE CHART

**Legal Information** is a written or oral statement that:

- ▶ describes court facilities and procedures, legal terminology, or options available to self-represented court users;
- ▶ provides general information applicable to self-represented court users and not information related to a specific litigant’s case; and
- ▶ requires the court employee to have knowledge of generally known legal concepts and court practices.

UCS court employees can and should **explain** court processes and procedures to self-represented court users and **inform** them of the different options available to them.

**Legal Advice** is a written or oral statement that:

- ▶ interprets the law or recommends a specific course of conduct to a self-represented court user in an actual or potential legal proceeding; and

- ▶ **applies** the law to the individual self-represented court user's specific factual circumstances.

**COURT EMPLOYEES ARE PROHIBITED FROM INTERPRETING THE LAW AND/OR APPLYING THE LAW.**

UCS employees should not:

- ▶ **advise** self-represented court users whether to start a case;
- ▶ **recommend** which process or procedure to use; or
- ▶ **reveal** confidential information to a litigant.

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**SECTION FOUR**  
**FREQUENTLY ASKED QUESTIONS**  
**FAQs**

Participants will review the results of a survey conducted to elicit the most frequently asked questions of court employees by court users.

This section will take \_\_\_\_\_ minutes.

The FAQ Sub-Committee canvassed the courts to make sure this training program met court employee's needs. These questions range from general to specific court questions.

**General Procedural Inquiries:**

How do I take someone to court?

I am supposed to be in court, where do I go?

What do I do next?

What will happen when I go before the Judge?

How do I get an adjournment?

**General Public Information or Confidential Inquiries:**

Can I see some records?

**General Operations Inquiries:**

Can I speak to the Judge?

Can you fill out the forms for me?

**General Referrals/Options Inquiries:**

Do I need an attorney?

Can you recommend an attorney?

Where can I get a document notarized?

**Surrogate's Court Inquiries:**

**Procedural Inquiries:**

How do I transfer personal property?

How do I probate a will?

How do I obtain a guardianship over a child's personal property?

**Public Information or Confidential Inquiries:**

Can I see an estate file?

Can I obtain information on an adoption?

I want to do research on my family history ... can you help me?

**Criminal and District Court Inquiries:**

**Procedural Inquiries:**

How do I post bail?

When and how can I get the bail back?

How do I get property back that was taken during an arrest?

**Operations Inquiries:**

I have an outstanding warrant ... will the judge put me in jail?

What will happen in court?

I am a victim ... do I need an attorney?

**Referrals/Options Inquiries:**

Where can I get a bail bondsman?

**Supreme Court, Criminal Term Inquiries:**

**Procedural Inquiries:**

My case is being held for the Grand Jury ... what do I do next?

My case has been indicted ... what do I do next?

How do I post bail? How do I get it returned?

How do I pay a fine or mandatory surcharge?

What is a "Certificate of Relief from Disabilities?" ... how can I get one?

How do I file an appeal?

How do I get my record expunged?

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**Supreme Court, Civil Term Inquiries:**

**Procedural Inquiries:**

How can I file a lawsuit if I cannot afford the filing fee?

How do I file a civil action ... what papers do I need?

I was served with a summons; what do I do?

How does my 18 year old get money released by a bank from a settlement?

How do I access money from a settlement for a minor child's education?

I have a separation agreement on file in the County Clerk's office ... where do I go to get child support?

How do I get a judge assigned?

How do I change my married name to my maiden name:

How do I change my name or my child's name?

I was served with divorce papers over one year ago ... am I divorced?

### **Public Information or Confidential Inquiries:**

I want to look at a file in a Supreme Court action ... where do I go?

### **Traffic Court**

#### **Procedural Inquiries:**

I got a ticket ... where do I go?

I got a ticket and DMV told me to go to County Court ... where do I go?

My license was suspended ... how do I get it back?

My license was taken away because I was charged with DWI.

My case was dismissed and DMV won't return my license ... what do I do?

What is a "supporting deposition?" Do I need one?

#### **Operations Inquiries:**

Will there be fines and how will it affect my license?

Why isn't my insurance identification card adequate proof of insurance?

If I plead "not guilty" to these charges, what is going to happen to me?

If I plead "guilty," will it affect my insurance?

If I don't take action on this ticket what happens?

(See Appendix A for specific questions and answers.)

**SMALL GROUP EXERCISE**  
**DISTRIBUTE CASE STUDIES ON EACH OF THE FOLLOWING:**

The following case studies, developed from the results of the survey, are designed to make clear the distinctions between providing legal advice and legal information. We will spend the next 20 to 30 minutes examining the case studies, whether they fall into the legal information or legal advice category, and how to address them.

**HOUSING COURT**

A court clerk is assigned to a busy counter in the Landlord and Tenant Court.

Court User: I live in a basement apartment. My landlord has not fixed the drain in my kitchen sink for three weeks. I can't even use it. What should I do?

Court Clerk: I can't tell you what you should do. You may start a Housing Part(HP) action. You will need an order to show cause to be signed by a judge and we will setup a date for an inspection of the drain. There is a \$35 fee for the index number. If you cannot afford the fee, I can give you papers required to have the fee waived.

Court User: Do I need a written lease to start this proceeding?

Court Clerk: You do not need a written lease.

Court User: Should I get an attorney?

Court Clerk: That is your option. We have a Resource Center in the building with informational videos and I am going to give you a guide to Housing Court which explains the proceedings. There are also attorneys in the Resource Center who can explain your options without giving legal advice. If you cannot afford a lawyer and you want legal advice, you can call the Legal Aid Society or Legal Services(Provide appropriate telephone numbers).

Court User: My rent is due tomorrow. Should I withhold the money?

Court Clerk: If you do not pay your rent, the landlord can bring a non-payment case against you. A tenant may be evicted for non-payment of rent.

Court User: The landlord warned me that if I go to court he would change the locks and turn the apartment back into a basement for storage. What should I do?

Court Clerk: Once again, I cannot tell you what you should do. If you want to get a judge to order the landlord to make necessary repairs then I can assist you. If you get locked out in the future, you can come in to file the necessary papers to commence an illegal eviction proceeding.

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## SUPREME COURT (MATRIMONIAL ISSUES)

A court clerk is assigned to a busy matrimonial part of Supreme Court. An obviously distraught woman approaches the clerk and hands him a legal form.

Court User: Excuse me, my case is on the calendar today. My lawyer wants me to fill out my net worth statement to submit to the judge. Can you tell me if this is the correct form to use?

Court Clerk: Yes, this is the form accepted by the court.

Court User: Thank you. Would you also take a look at it? I've done some work off the books and I'd like to know if I should include those amounts also?

Court Clerk: I'm sorry. I cannot tell you what to write on the form. You can check with your attorney when she appears here today.

Tip: Whenever you hear the word "should," it is a tip that you are being asked for advice.

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## LOCAL CRIMINAL COURT CASE STUDY

A person has been charged with a driving a vehicle while their privilege to drive is suspended or revoked in violation of section 511 of the Vehicle and Traffic Law. Aggravated unlicensed operation of a motor vehicle in the third degree is a misdemeanor punishable by (i) a fine of not less than two hundred dollars nor more than five hundred dollars; or (ii) a term of imprisonment of not more than thirty days; or (iii) both such fine and imprisonment.

The defendant comes to the court seeking information on how to handle the ticket. The defendant asks the following questions:

1. What will happen to me if I enter a guilty plea?
2. How do I enter a guilty plea?
3. Why can't I just pay my fine and go?
4. Do I need a lawyer?
5. If I am found guilty, will my insurance rates go up?

Think about how would you answer each of the above questions. Remember, you can provide legal information without giving any legal advice. What information will you provide? What advise would you avoided providing?

For each question, list the response that would be legal information vs legal advice.

## SURROGATES COURT

You are assigned to the Administration Department and are responsible for assisting the public with the petition process. Part of that responsibility is ensuring that petitions are filled out completely and accurately. A woman comes into the department looking for assistance in handling her father's estate. After ascertaining that her father, who was divorced from his wife, died intestate, you give her a Petition for Letters of Administration. She asks you the following questions:

1. I don't understand a lot of the language in this form. Can you help me fill it out or do I need an attorney?
2. My father had two homes - an apartment in this county and a house in Sag Harbor. Which is his domicile?
3. I'm not really sure about his assets. Should I estimate the value of his house?
4. I know he had a safe deposit box where he kept his important records, but I don't know where. How do I do a diligent search?
5. I've lost touch with one of my brothers and I don't even know if he's alive, let alone where he lives. Is he entitled to anything?
6. My name appears on one of his bank accounts. Can I use that money to pay the funeral expenses?
7. When will I get letters issued to me?

For each question asked, provide a response that would constitute legal information. What advise should you avoided providing? Remember, you can provide legal information without giving any legal advice.

## FAMILY COURT

You are assigned to a family court petition room and are responsible for assisting the public with the petition process. Part of that responsibility is ensuring that petitions are filled out completely and accurately. A woman comes into petition room to obtain an order of protection against the father of her children. She reviews the Family Offense Petition and asks you the following questions:

1. I don't understand a lot of the language in this form. Can you help me fill it out?
2. Could you tell me the difference between harassment and assault?
3. How should I word my answer so that the judge gives me my order?
4. This has happened before, should I describe those incidents as well?
5. What do I do when I get to the courtroom? Do I need an attorney?
6. Will the judge give me an order that puts him out of the house?
7. He hasn't been paying child support, do I have to let him visit with his children?

For each question asked provide a response that would constitute legal information. What advice should you avoid providing? Remember, you can provide legal information without giving any legal advice.

Debrief the Case Study exercise to ensure understanding of the distinctions between legal advice and legal information.

Review the "CAN/CANNOT" chart (See Addendum 4) in conjunction with the case scenarios.

## SECTION FIVE COMMUNICATION

Participants will review the importance of enhancing their listening and oral communication skills and the impact of the environment on communication

This section will take \_\_\_\_\_ minutes.

While the basic rules for distinguishing between giving legal information and legal advice are fairly straightforward, it is important to build the necessary communication skills in order to provide access to self-represented court users.

Communication is something we do every day, primarily through conversation. In order to achieve successful communication we should take into consideration five critical elements: The speaker, the listener, the language, the environment and feedback.

### The Listener

Let us examine the listener. Self-represented litigants and court users are probably in a confused, maybe even frightened, state when court employees are interacting with them. Sometimes they present a hostile or defensive posture. They may be intimidated by the magnitude of being in a court facility. They may only be grasping a fraction of what is being said.

### The Speaker

You, the holder of the information required by the listener must be alert to the state of the listener and make sure that the listener is "getting it." It is important to say what you mean and not leave it to the listener to interpret your words. (Use an example from the scenarios.)

### The Language

The language chosen should be clear and specific. The use of qualifiers should be avoided, as well as the use of jargon or acronyms.

Cite court interpreter information on the numbers of languages in which we provide court interpreting services. In an ever increasing diverse population, many of our court users are not English dominant.

## The Environment

The environment in which legal information is being requested may be noisy and perhaps even chaotic. Distractions often result in the information getting lost on its way to the listener.

## Feedback

You must check for understanding on the part of the listener. It is important to guarantee that you understand what information is being requested while at the same time ensuring that the listener understands the information you have provided.

Since these communications occur in situations in which both you and the self-represented court user are stressed, it is a prime opportunity for conflict to occur. While it may be cliched, it is important to take a step back and examine the situation from the other person's point of view.

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## SECTION SIX RESOURCES

Identify the resources available to court employees to assist them in providing access to court users.

This section will take \_\_\_\_\_ minutes.

Distribute copies of resources available to assist in ensuring that court users are receiving the legal information they require while court employees do not cross the line and give legal advice.

- ▶ “Legal Advice v. Legal Information” Training Manual
- ▶ NYS UCS Policy and Guidelines
- ▶ The “CAN/CANNOT” chart;
- ▶ Discuss **Court Operations Manuals** which can provide guidance for UCS employees (available on the Internet);
- ▶ LAW HELP Program;
- ▶ Courtnet;
- ▶ General information brochures specific to each jurisdiction which may already be available;
- ▶ Importance of contacting your local Chief Clerk (chain-of-command) on court specific issues;
- ▶ Brochures for public distribution explaining your role and limits for providing information to court users; and
- ▶ Laminated posters to be prominently displayed.

CAN	CANNOT
Provide Legal Information General Information about the Courts, Procedures and Legal Terminology	Provide Legal Advise Specific Information Related to a Litigant's Case and Law(s) Which Could Affect the outcome of the case
Explain Court Rules and Procedures	Explain Application of Rules and Procedures to a Litigant's Specific Situation
Provide List of Options Available to Litigants	Provide Opinions as to Which Option to choose
Provide Information about what the Court has done	Predict what the Court will do
Provide Cites (or copies) of Statutes, Court Rules and Ordinances	Research Statutes, Court Rules or Ordinances
Explain Public Court Operations and Roles of Court Personnel	Explain Confidential or Internal Court Operations
Explain What Records are Kept by the Court and can be made Available to the Public	Provide Access to Court Records that are Sealed or made Confidential by Law
Provide Public Case Information	Provide Confidential Case Information
Explain How and Where to File a Complaint Concerning a Judge, Court Employee or Private Attorney	Provide Opinions about the Conduct of a Judge, Court Employee or Private Attorney
Provide General Referrals to Other Offices or Persons	Provide Referrals to Others Based Upon Personal Preference
Provide Forms and Instructions and Record on the Forms Information Provided by the Litigants	Provide or Suggest the Information that should be Entered on the Forms

## Conclusion

### III. General Principles

Court employees should always strive to provide the maximum amount of information. Litigants and the general public come to the courts on a daily basis with questions concerning a wide range of subjects. One of the most difficult challenges facing court employees is to decide how to answer these questions in a manner that will provide the requested information without crossing the line into "giving legal advice."

In addressing this challenge, court employees should:

Explain court processes and procedures to the litigants and the public,  
and

Inform litigants of the options available to them to access the courts.

Court employees should not:

Advise litigants whether to start a case,

Recommend which process or procedure to use, or

Reveal confidential information to a litigant.

**GIVING LEGAL ADVICE IS PROHIBITED**