

## **Tennessee Supreme Court Access to Justice Commission: General Guidelines for Distinguishing Legal Information from Legal Advice**

As part of its 2012 Strategic Plan, the Access to Justice Commission undertook various efforts to assist self-represented litigants navigate the court system. The Commission declared it would create a policy clearly distinguishing between legal information and legal advice to provide guidance to court staff, clerks and attorneys assisting in self-help centers. While working on this project, the Commission determined that general guidelines are needed, not just for the groups listed above, but for any person assisting with initiatives to help self-represented litigants or who regularly are sought out by self-represented litigants for legal information.

The Self-Represented Litigants Advisory Committee has developed the following general principles to help differentiate between providing legal advice and legal information. The Commission hopes that these guidelines will provide all those who interact with self-represented litigants with the knowledge to be able to draw the line between legal information and legal advice.

*If you are not a lawyer you **can** provide legal information, but **not** legal advice.*

### **Legal Information**

Legal information can be defined as facts about the law and the legal process. Providing legal information is educating the litigant. Below is a list of examples of legal information:

- Answer questions that call for broadly-based factual information.
  - Example: Where do I go to file a divorce?
  - Example: To start a divorce, you have to file a complaint for divorce.
  - Example: You can file for divorce in either the Chancery or Circuit Court (if applicable in your county).
- Explain court rules and procedures. Tell the person where to find local rules.
  - Example: Our local rules tell you how to behave in the courtroom. You can find them here.
  - Example: In general, if you are suing someone, you are the Plaintiff. If you are being sued, you are the Defendant.
- Provide cites or copies of statutes, court rules, and ordinances.
- Provide general referrals to other offices or persons such as a legal aid provider, bar association, or pro bono program.
- Provide forms and instructions and answer questions about the forms.
  - Example: Check a self-represented litigant's papers for completeness.
- Explain the functioning of the court and purely procedural matters.
  - Example: The judge can only speak to the parties during court. You can't have one-on-one communication with the judge outside of court.

It is important to remember to always remain impartial and never give information for the purpose of giving one party an advantage over another. Information should never be given to one party, which could not be given to an opponent.

## Legal Advice

Legal advice can be defined as advice about the course of action a self-represented litigant should take to further his or her own best interests. Providing legal advice is guiding or directing the self-represented litigant, especially to the unique facts of the person's case. Below is a list of actions that can constitute legal advice:

- Provide an analysis or interpretation of statutes or ordinances based on the specific facts of a litigant's case.
  - Example: Based on the facts you've described, this statute permits you to....
- Answer questions that call for an opinion about what a litigant should do.
  - Example: Should I file for contempt or wait and see if my ex-spouse follows the court order?
- Suggest how to best present the issue or predict how the judge is likely to decide the case.
  - Example: When you are in front of the judge, make sure to say that....
- Suggest which option the litigant should pursue.
  - Example: You should file your lawsuit now instead of waiting to see if you and your spouse can agree on divorce terms.
- Draft the wording to be entered on forms.