

**LEGAL INFORMATION
VS
LEGAL ADVICE**

A CURRICULUM FOR COURT EMPLOYEES

Institute for Court Management
Court Executive Development Program
Phase III Project
May, 2002

Brenda L. Parson
Prescott, Arizona

“Put it before them briefly so they will read it, clearly so they will appreciate it, picturesquely so they will remember it, accurately so they will be guided by the light.”

– Joseph Pulitzer (1847-1911)

TABLE OF CONTENTS

TABLE OF CONTENTS	i
LIST OF APPENDICES	ii
ABSTRACT	iii
I. INTRODUCTION	1
II. LITERATURE REVIEW	7
<i>John Graecen</i>	7
<i>State Attempts to Define Legal Advice</i>	9
<i>State Guidelines and Manuals</i>	11
III. RESEARCH METHODOLOGY	14
IV. ANALYSIS	15
V. CURRICULUM DEVELOPMENT BASED ON RESEARCH & ANALYSIS	17
Objective A	21
<i>Instill In Court System Employees An Understanding Of The Role Of The Court System, The Roles Of The Employees Within That System And Why Public Access To That System Is Important</i>	
Objective B	26
<i>Teach Court System Employees The Difference Between Legal Information And Legal Advice, Along With The Importance Of Providing legal Information</i>	
Objective C	32
<i>Empower Court System Employees With The Confidence To Provide Meaningful Assistance To Court Users</i>	
VI. CONCLUSION	38
VII. BIBLIOGRAPHY	43
VIII. APPENDICES	45

LIST OF APPENDICES

Appendix A – Survey Information

A1 - Survey

A2 - Survey Results

A3 - Survey Comments

Appendix B - Curriculum

Introduction

Pre-Program Preparation

Beginning the Program

Session 1 – Objective A

Session 2 – Objective B

Session 3 – Objective C

Handout A - Learning Styles

Handout B – Objectives

Handout C - Assessment Questionnaire

Handout D - Legislative, Executive, Judicial Branches

Handout E - Trial Court Performance Standards

Handout F - Graecen guidelines

Handout G - New York Supreme Court definitions

Handout H - Michigan Judicial Institute Guidelines

Handout I - Boston Bar Association Staff Guidelines

Handout J - Florida Family Law Rule 12.750

Handout K - Guidelines for Clerks who Assist Pro Se Litigants in Iowa

Handout L - Welcome to the New Jersey State Courts

Handout M - Information Available from the Clerk's Office (New Mexico)

Handout N - Arizona Code of Judicial Conduct, Canon 3(E)

Handout O - Case Law

Handout P – Meaningful Assistance

Handout Q - True Impartiality

Handout R - What To Do???

Handout S - Commonly Asked Questions

ABSTRACT

Court systems nationwide have recognized the challenges their employees face when providing service to court users. The business of court systems is the interpretation and application of the law, but research indicates that court employees do not generally feel as if they have the education and training necessary to make the distinction between giving legal advice and providing legal information.

This paper will develop a curriculum that empowers court system employees with the confidence and knowledge necessary to provide meaningful assistance to court users without giving legal advice. Such education will result in court users who are more sophisticated and better prepared to support their legal positions and court systems that are more accountable with respect to public access.

Preliminary research conducted for this project concluded that state court systems have made tremendous effort to evaluate current programs and create new programs that better meet the needs of court users. While the Trial Court Performance Standards are very helpful in providing courts with focus on such issues as expedition and timeliness, the issues directly related to translating court functions and procedures for the lay court user are often overlooked. Surveys also conclude that the general public is confused about court systems and the procedures required in order for them to actively participate in their own litigation. Self-represented litigants have increased dramatically over the past few years, placing a burden on court system employees to provide more information in order to facilitate the ease with which a court user can access a court system.

Under Arizona's court structure (elected judges, elected clerks of court), a disconnect exists between the legal imposition of justice by the judiciary and the practical application of

justice by the clerks of court and court administrators. Statistical information indicates that the judiciary has been unable to reach consensus with respect to how much assistance to provide court users. That same statistical information also indicates that court system employees who work directly with the public support the concept that court users need information in order to meet their burdens before the judiciary.

The research methodology used for this project included an electronic survey of Arizona's court system employees. The survey asked employees if they provide legal information and then asked them if they were provided with a definition of legal information. It also asked them if they believed they had been adequately trained to know the difference between providing legal information and giving legal advice. As this curriculum was developed, it was tested with small, focused groups of participants and was well received. It was intended to encourage participants to think differently about their roles and about the importance of meaningful assistance. The comments returned by participants indicate that this curriculum accomplishes that goal. This curriculum provides participants with information that is easily referenced and readily shared with co-workers. Its effectiveness is evaluated through assessments that are performed throughout. These assessments also provide a basis for discussion and clarification.

Besides being a guide to court system employees as they work with court users, this curriculum is designed to be portable and practical. In other words, court supervisors will be able to facilitate the curriculum themselves in their own courts without requiring a legal professional to come to them and without requiring their employees to travel to a more central location. It will, however, require the support of the presiding judge and/or elected clerk of court

in order to be implemented successfully. It can also be modified to pay particular attention to local needs and customs.

The conclusions reached in this project mirror what pro se programs across the United States have concluded: the importance of providing meaningful assistance to court users. It is the beginning step to ensuring equal access to swift and fair justice.

The ordinary administration of criminal and civil justice . . . contributes, more than any other circumstance, to impressing upon the minds of the people affection, esteem, and reverence towards the government.

– Alexander Hamilton, *The Federalist*, No. 17 (1787)

INTRODUCTION

Court systems nationwide have acknowledged the demand to better meet the needs of court users, whether or not they are represented by counsel. Many rely on the Trial Court Performance Standards established by the Bureau of Justice Assistance and the National Center for State Courts for guidance. The Trial Court Performance Standards focus on such goals as:

- ◆ access to justice
- ◆ expedition and timeliness
- ◆ equality, fairness and integrity
- ◆ independence and accountability
- ◆ public trust and confidence.

Implied in all of those goals is the notion that improved court performance not only benefits court users but increases the trust of the general public by making court systems accessible, swift, fair and accountable. Often, however, the methods directly related to the improvement of court performance fail to focus on training court system employees to understand the court's role in society, which is critical in order for them to be successful at providing meaningful assistance to court users. Also, court system employees often get mixed signals from their judicial leaders with respect to the level of service to be provided as well as their competence at providing such

service. Employees who are confident in the support of their judiciary and who receive adequate and ongoing instruction and encouragement provide a higher quality of service to all court users.

For purposes of this paper, judicial personnel includes judges, pro tems and magistrates. Non-judicial personnel, and court system employees in general, includes clerks, judicial assistants, bailiffs, administrative staff, general support staff, technical support staff and anyone not a judge, pro tem or magistrate. Nearly 90% of Arizona’s court system employees are non-judicial and have no formal legal training. (Figure 1.)

	Ltd. Juris. Judicial	Ltd. Juris. Non-Judicial	Gen. Juris. Judicial	Gen. Juris. Non-Judicial	County Total
Apache	4	10	1	11	26
Cochise	7	36	4	57	104
Coconino	9	42	4	36	91
Gila	4	16	3	35	58
Graham	2	6	1	8	17
Greenlee	3	2	1	5	11
La Paz	3	12	1	8	24
Maricopa	84	812	101	1293	2290
Mohave	8	55	7	54	124
Navajo	5	17	3	25	50
Pima	25	215	42	469	751
Pinal	10	50	5	91	156
Santa Cruz	4	14	3	18	39
Yavapai	3	38	7	69	117
Yuma	6	37	5	46	94
Metro Total	109	1027	143	1762	3041
Rural Total	68	335	45	463	911
Total Judicial	177		188		365
Total Non-Judicial		1362		2225	3587
TOTAL					3952

Figure 1. (Note: Rural is all counties except Maricopa and Pima)

Information obtained from 1999 Data Report from the Supreme Court of the State of Arizona

This paper explores the development of a curriculum for use by supervisors to teach non-judicial court system employees about their roles and how they can provide meaningful assistance to court users without giving legal advice. Although it is designed for use in Arizona, it is adaptable for use in any state or local jurisdiction.

Currently in Arizona, there are training programs for court system personnel that are staffed by one of two attorneys with expertise on the unauthorized practice of law in Arizona.¹ These programs are primarily available to the metropolitan areas of Phoenix (Maricopa County) and Tucson (Pima County), and attempt to clarify for participants what constitutes legal information and what constitutes legal advice. Even though over 70% of Arizona's court system employees are in Maricopa and Pima counties, it is still difficult for just two experts to accommodate the training needs of that many employees.

The curriculum developed here utilizes the information currently provided in Arizona, but includes information from around the United States and focuses on portability and practicality. Approximately 23% of Arizona's court system employees are from the thirteen rural counties of Arizona (Figure 2) and commute over two hours for current training on this topic.

¹Bob James, Self Service Center, Maricopa County
Fran Johansen, Arizona State Bar UPL Attorney

ARIZONA COURT SYSTEM EMPLOYEES

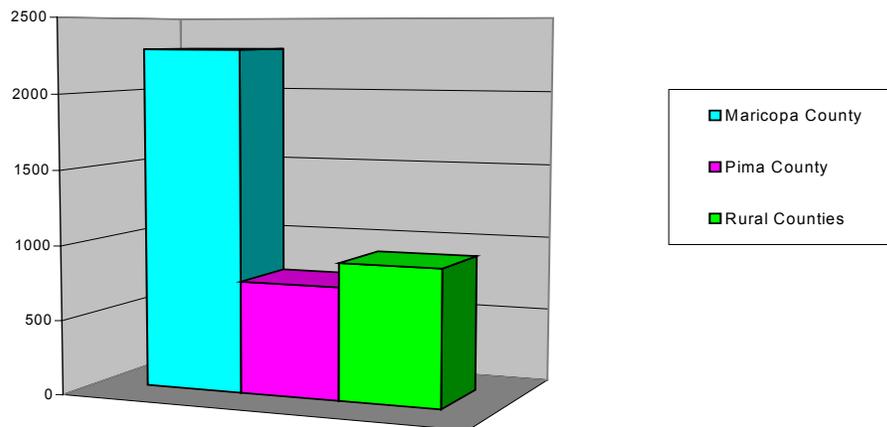


Figure 2.

The Arizona Supreme Court requires every one of its employees to complete 16 hours per year of COJET (Committee on Judicial Education and Training) training, but individual counties are responsible for the costs associated with the training. Travel in Arizona can be expensive and time-consuming. Not only does this create a financial burden on smaller courts, it severely affects their productivity. Some of the more remote courts only have one or two employees. Because this curriculum does not require an attorney experienced in the unauthorized practice of law to facilitate and due to its simplistic and interactive design, supervisors in any jurisdiction, large or small, will be comfortable facilitating this curriculum in their own locations. Rural jurisdictions will have access to local training and at a significantly reduced cost.

The actual cost of presenting this curriculum will vary from facilitator to facilitator and court system to court system. In some jurisdictions, the actual cost will be solely that related to copying the handouts and providing them to participants. The soft cost pertains to the cost of removing employees from their jobs for the amount of time allotted to the curriculum. In other jurisdictions, additional cost will depend on the level of technical delivery to be used by the facilitator. Yet other jurisdictions will choose to compensate a facilitator. The curriculum accommodates the needs of any jurisdiction.

Self-represented litigants have increased dramatically over the past few years, primarily in the area of domestic relations. This has challenged traditional methods of providing service and placed a burden on court system employees to provide more information in order to facilitate the ease with which all court users can access a court system. In November 1999, the American Judicature Society, the State Justice Institute, the Open Society Institute and the ABA Standing Committee on Delivery of Legal Services co-sponsored a national conference on pro se litigation. Participants learned of the issues and were encouraged to develop their own action plans for meeting the challenges. In April 2001, a report and update to that conference indicated there had been tremendous improvement by courts in the implementation of services to court users, but little progress made regarding defining the boundary between legal advice and legal information.² “Where judges lead, the lawyers will follow,” identified as the prevailing theme of the national conference, implies the need for judicial leadership to ensure the success of any pro se assistance program.

In Arizona’s general jurisdiction courts, the thirteen rural counties elect judges to four-year terms while the Maricopa and Pima County judges are appointed and retained by election. All fifteen clerks of court are elected as independent court officers. The presiding judge of each county appoints a court administrator. In limited jurisdiction courts, clerks are appointed by and work directly for the judges. Under this structure, a disconnect often exists between the legal imposition of justice by the judiciary and the practical and consistent implementation of procedures by non-judicial personnel. The position of the Arizona judiciary tends to mirror the findings reported in April 2001 that there is no uniform vision on the need for assisting the self-represented nor on the ways to provide such assistance. Non-judicial personnel who work face to face with court users, and are deluged daily with questions relating to specific cases, enthusiastically support the notion that court users need information in order for them to meet

²Sampson, Kathleen M., Project Director, A Report and Update April 2001, National Conf. On Pro Se Litigation, Nov. 1999, Scottsdale, AZ: American Judicature Society, State Justice Institute, Open Society Institute (page 4)

their burdens before the judiciary. Referring to the previously referenced theme, court system employees will also follow their leader, but there must be clear and consistent leadership along with adequate and sustaining tools in order for them to do so.

Laws, court rules, procedures and case law can be challenging even to those trained in law. It should be expected that the general public would be confused and possibly intimidated by court systems and the procedures required while proceeding through a legal process.

According to a national survey conducted by the National Center for State Courts, the American public gives an average grade to the performance of the courts in their communities.³ Of those responding, 68% disagreed with the statement “It is affordable to bring a case to court,” and included court fees, the slow pace of justice, complexity of laws and expenditure of personal time in the cost of going to court.

It should also be expected that employees working directly with court users have some insider knowledge with respect to legal systems and procedures, knowledge which could be meaningful to court users. This curriculum provides non-judicial court system employees with the confidence necessary to share that knowledge without giving legal advice.

In order to be successful, the judiciary must support this curriculum and court system employees must be encouraged to apply what they learn in the performance of their jobs. The outcome will be court systems which are more accessible, expeditious and fair to court users and ultimately more accountable. As court users become more engaged in helping themselves navigate the waters of litigation by becoming familiar with the legal system, court procedures and judicial authority, the result will be increased access to justice and enhanced public trust and confidence in the courts, the ultimate goals identified by the Trial Court Performance Standards.

This paper first examines research from around the country related to the issues of public service and legal advice. It then identifies specific curriculum objectives that support the research while developing a curriculum to achieve the stated goal to teach non-judicial court

³ National Center for State Courts. How the Public Views the State Courts - A 1999 National Survey, Williamsburg: State of Virginia (1999)

system personnel about their roles and how they can provide meaningful assistance to court users without giving legal advice.

We ask, not what this man meant, but what those words would mean in the mouth of a normal speaker of English, using them in the circumstances in which they were used.

– Oliver Wendell Homes, Jr., “The Theory of Legal Interpretation,” 12 *Harvard Law Review* 417, 417 (1899)

LITERATURE REVIEW

What is legal advice? In 1995, John Graecen examined the phrase and its “inherent meaning” and concluded it had none. He further stated that “its current use by courts has serious negative consequences for the ability of courts to provide full and consistent public service.”⁴ In other words, courts are less able to provide adequate and fair public service when staff members are preoccupied with the meaning of the phrase and, from fear, hide behind it. Although no actual definition for the phrase was proffered, Graecen outlined some principles for use by court system employees when answering questions from the public:

- ⇒ Court staff have an obligation to explain court processes and procedures to litigants, the media and other interested citizens.
- ⇒ Court staff have an obligation to inform litigants, and potential litigants, how to bring their problems before the court for resolution.
- ⇒ Court staff cannot advise litigants whether to bring their problems before the court, or what remedies to seek.
- ⇒ Court staff must always remember the absolute duty of impartiality. They must never give advice or information for the purpose of giving one party an advantage over another. They must never give advice or information to one party that they would not give to an opponent.
- ⇒ Court staff should be mindful of the basic principle that counsel may not communicate with the judge *ex parte*. Court staff should not let themselves be used to circumvent that principle, or fail to respect it, in acting on matters delegated to them for decision.

⁴Graecen, John M. “‘No Legal Advice From Court Personnel’ What Does That Mean?” The Judges Journal, Winter 1995: 10-15.

In 2001, Graecen updated his 1995 article and confirmed that many state court systems, including Michigan, New Mexico, Ventura County in California, Florida, Iowa, Utah and Maricopa County in Arizona, have either adopted his guidelines or designed their own utilizing his.⁵ He added that the National Association for Court Management and its Mid Atlantic Association for Court Management include education sessions regarding these guidelines. In all the research conducted for this project, none was located which would indicate opposition to utilizing Graecen's guidelines. In fact, he was critiqued for understating the court's obligation to provide information to the public. It was also suggested that the guidelines were too general and that there needed to be more direction on answers to be given to specific questions. Generally, there is broad support for the philosophy that court system employees should provide as much information as possible to court users, though there is no consistent approach to doing so.

Some states have attempted to define legal advice. The New Mexico Supreme Court held that "the line between what constitutes practicing law and what is permissible business and professional activity by non-lawyers is indistinct." State Bar of New Mexico v. Guardian Abstract & Title Co., 91 N.M. 434, 439, 575 P.2d 943 (1978). A federal district court in Florida determined that advice is legal advice if it "affects important rights of a person under the law, and if the reasonable protection of the rights and property of those advised and served requires that the persons giving such advice possess legal skill and a knowledge of the law greater than that possessed by the average citizen." In re Bachman, 113 B.R. 769, 772-73 (Bankr. S.D. Fla 1990). The Rhode Island Supreme Court held that legal advice is the "tendering of information to a client with a view to having him act thereon in furtherance of the client's interest (or) business." State v. Bucci, 430 A.3d 746 (R.I. 1981). Legal advice "requires the use of legal judgment requiring legal knowledge, training, skill and ability beyond that possessed by the

⁵Graecen, John. *Legal information vs. legal advice – Developments during the last five years.* 84 Judicature 198 (January-February 2001)

average layman.” O’Connell v. David, 35 B.R. 141, 144 (Bankr. E.D. Pa. 1983), findings adopted in part, 35 B.R. 146 (E.D. Pa. 1983), aff’d 740 F.2d 958 (3d Cir. 1984).

All of these attempts to define legal advice are of little assistance to court system employees, but do reinforce the difficulty and confusion that even law-trained persons have with defining the term. It is important that court system employees charged with the responsibility of working with the public have confidence in their ability to do so. It is difficult for these employees to maintain that confidence when legal scholars and courts of last resort cannot agree on what the term implies. Part of this curriculum emphasizes that court system employees are not ignorant or incompetent, but that they are in good company when it comes to being confused or unsure when it comes to determining what is legal advice and what is not. It also reinforces the knowledge that court system employees have and the importance of utilizing that knowledge to provide meaningful assistance to court users.

An August 2000 report from the Conference of State Court Administrators stated that “the recent surge in self-represented [or pro se] litigation is unprecedented and shows no signs of abating.”⁶ This phenomenon is primarily out of necessity rather than by choice. Litigants often cannot afford to hire legal counsel. Independent paralegals, self-help books and changes in laws have made it perceptibly easier for litigants to proceed without legal counsel. One of the problems related to the increase of self-represented litigants is the reliance by court users on the court staff with whom they first come in contact.

Courts must acknowledge the public’s tendency to rely on court systems as they rely on other governmental entities and “devise appropriate [planned] responses to the increasing number of self-represented litigants.”⁷ Doing so increases the general public’s respect and thereby its level of confidence in the judicial process. An appropriate response is to teach court

⁶Government Relations Office, Conference of State Court Administrators. Position Paper on Self Represented Litigation. Rapid City: State of South Dakota, 2000 at 1.

⁷Government Relations Office, Conference of State Court Administrators. Position Paper on Self Represented Litigation. Rapid City: State of South Dakota, 2000 at 2.

system employees about the separation of governmental powers provided by the United States Constitution, the role of courts within that government structure and how that role differs from that of other government agencies. Through this curriculum, court system employees begin to better understand the expectations and frustrations of court users and avoid potential confusion about the information to be provided.

There are state guidelines and manuals developed for use by court staff when working with pro se litigants. Iowa anticipated that “some court users might leave the courts unnecessarily frustrated and may lose confidence in the court system” if clerks were overly cautious in rendering assistance. To assist its court system employees, Iowa developed its *Guidelines & Instructions for Clerks Who Assist Pro Se Litigants in Iowa’s Courts*, and designed specific answers to common questions asked of court system employees.⁸ Minnesota acknowledged the value of its workforce in declaring that its self-represented litigants placed “challenging demands on court employees who are entrusted and required to provide services to the public . . . Special attention should be placed on the training needs of judicial branch employees to assure they are well equipped to provide required services.”⁹ Michigan recognized that its court system employees have a tremendous amount of knowledge gained through their employment about court procedures but also understood the importance of guidelines and established legal advice guidelines to assist court system employees with what they “can” and “cannot” do.¹⁰ Some supreme courts, such as those in New Jersey and New Mexico, adopted similar one-page handouts for use by court personnel. All of these efforts highlight the

⁸Iowa Supreme Court, Iowa Judicial Branch Customer Service Advisory Committee. *Guidelines & Instructions for Clerks Who Assist Pro Se Litigants in Iowa’s Courts*, July, 2000

⁹Fredrickson, Teresa. 2001. *Service to the Self-Represented and Court Staff Training, The Disconnect*, Williamsburg, Va.: National Center for State Courts Phase III Project.

¹⁰Michigan. Michigan Judicial Institute. *Legal Advice v Access to the Courts. Do YOU Know the Difference?* Lansing: State of Michigan 1997

importance of addressing the issue of increased public service by courts throughout the nation, and were supported by the highest level of judicial leadership, the state supreme court.

In 1997, the Arizona Supreme Court commissioned a survey by its Court Services Division to identify the public's perspective of the state's legal system.¹¹ There were telephone interviews with 511 adult Arizona residents conducted by random-digit dialing statewide. Nearly half of the respondents (47%) expressed a higher level of trust for the judicial branch of government than any other. However, 85% believed that "courts take too long to process most cases" and 81% believed that "going to court is an intimidating experience." An overwhelming 89% supported the proposal that courts increase "public education on how to utilize court services." If courts are perceived as intimidating, and such intimidation has caused even one potential litigant to sacrifice their legal rights or position in avoidance, then equal access to swift, fair justice is not achieved and public trust and confidence are undermined.

Arizona's Code of Conduct for Judicial Employees encourages employees to provide legal assistance. "Judicial employees may assist citizens in identifying available procedural options and in understanding and complying with court procedures. Judicial employees shall not advise a particular course of action."¹² A commentary further clarifies this concept:

Employees may assist citizens, consistent with the court's resources, with matters within the scope of their responsibilities and knowledge. This assistance may include providing information contained in court records; furnishing examples of forms or pleadings; explaining court rules, procedures, practices, and due dates; and helping to complete forms with factual information provided by a citizen. Although a person may be informed of the options for addressing a matter, judicial employees should not advise citizens whether to take a particular course of action or attempt to answer questions outside their knowledge and experience. In performing their official duties, employees should not recommend the names of private attorneys to the public unless the employee works in a court approved

¹¹Arizona. Arizona Supreme Court. Arizona State Court Citizen Survey "The Public Perspective" A Preliminary Report for the 1997 Judicial Conference. Phoenix: State of Arizona, 1997

¹²Arizona. Arizona Supreme Court. Arizona Code of Conduct for Judicial Employees. Adopted by Administrative Order No. 96-27. (July 3, 1996)

lawyer referral program, but may refer members of the public to bar associations or legal aid organizations.

Clearly, Arizona supports its court system employees and encourages them to provide a high level of assistance to court users.

Whatever the consequences we must accept the plain meaning of plain words.

Oliver Wendell Holmes, Jr.,
United States v. Brown, 206 U.S. 240, 244 (1907)

RESEARCH METHODOLOGY

In preparation for this project, a survey was designed to identify the practices of Arizona's court system employees with respect to providing information to court users and to assess their knowledge regarding the difference between legal information and legal advice. Arizona is fortunate to have two experts trained in the unauthorized practice of law and how it relates to courts. Bob James is a court administrator with the Self Service Center of Maricopa County, and Fran Johansen is an attorney working for the State Bar of Arizona as a UPL attorney. In consultation prior to this project, it was determined that a lengthy survey would not be effective. Since there is little or no consensus among the judicial and non-judicial court employees regarding this topic, it was also determined that an assessment of needs would be unproductive. The need is clear and has been documented nationwide. This is an important topic that deserves the full attention of courts no matter the concerns of the legal community or individual members of the judiciary. Therefore, the survey was designed to be brief and specific.

In order to reach the most court system employees through a medium that would make it easy for them to respond quickly, the survey was electronically transmitted. Arizona is one of several states to attempt implementation of a statewide automation system. Through a project entitled "Arizona Courts Automation Project (ACAP)," the Supreme Court provides a network of communication between twelve of Arizona's rural counties and the Supreme Court. It was through this network that the survey was transmitted. The e-mail list contained more than 800 addresses and included judges, administrators, clerks and other court system employees. The e-mail list did not include Arizona's largest counties (Maricopa and Pima), nor did it include Mohave County. Those counties are not yet part of the statewide automation network and gaining electronic access to those court system employees would have been difficult.

[Critical thinking is] ... our only guarantee against delusion, deception, superstition and misapprehension of ourselves and our circumstances.

William Graham Sumner, "What is Critical Thinking?"
(pp 632, 633 Folkways, 1906)

ANALYSIS

Because of the medium chosen, responses were generally returned within two to three days. There were 232 responses or approximately 25%. Only two respondents identified themselves as judges. The first question inquired about providing legal information (not legal advice) to the public. Approximately 77% of those responding indicated that some sort of legal information was provided. Of those, 2/3 indicated they were not provided with a definition of legal information and only 19% believed they were adequately trained to know the difference between providing legal information and giving legal advice. Troubling to this author was that almost one-fourth of the respondents provided no information at all or did not know if information was provided. Combining that number with the number of those who are not clear about what is legal information and what is legal advice, a court user has only a one-in-four chance at getting adequate information from the court employees responding to this survey. (See Appendix A for survey details).

An overwhelming 94% of the respondents indicated that further training was necessary. For those respondents who indicated that they were provided with some guidance, the guidelines were varied. The policy of some courts was to give information only as to dates and times of hearings. Some courts had forms that were made available to court users and that was the extent of their assistance. There were several responses that indicated court users were referred to the rules and statutes pertinent to their situation. Other responses indicated that the respondent knew how to provide adequate assistance but that fellow workers and other judicial departments did not. For the most part, those who had some policy relied on either Graecen's standards, the

Arizona Code of Judicial Conduct or the “common sense” standard of not leading a court user to a conclusion or decision about what is to be done, but identifying the procedures involved.

Eight respondents requested guidance in addressing such situations as court users who do not speak English or who do not read or write. These situations cannot be specifically addressed by this curriculum but should serve as a reminder that language barriers extend beyond the obvious. Court system employees often communicate using legal terms and words that might be considered by some to be a foreign language. Someone who has never heard them used in a legal context can often misconstrue terms as simple as motion, request or service. This curriculum reminds participants of these barriers. Six respondents identified a lack of legal “resources in rural communities” which make it difficult for court users to find legal assistance, thus relying more heavily on court personnel for help. Approximately twenty respondents indicated that the difference between legal advice and information was a flexible, gray area that would make it impossible to provide adequate training. This curriculum provides such training and will eliminate any confusion about how to provide meaningful assistance to court users.

In a similar survey conducted in Minnesota for a court staff training manual specific to service to the self-represented, the findings were similar.¹³ Court staff did not believe they had adequate training regarding clerical assistance versus legal advice and further indicated that most training came from co-workers and was inconsistent. As the “first impression” of the judicial branch of government, non-judicial court system employees play an important role in ensuring that justice is accessible by all court users, including the self-represented.

All of this research provided the foundation from which to begin the development of a curriculum which acknowledges the need for more meaningful service to court users yet attempts to more clearly delineate the boundary between giving legal advice and providing legal information or assistance.

¹³Fredrickson, Teresa. 2001. *Service to the Self-Represented and Court Staff Training, The Disconnect*, Williamsburg, Va.: National Center for State Courts Phase III Project at 26.

Procedure is the “. . . wild ass of the law which the court cannot control.”

– Porter Sims, Anderson v. Buchanan,
292 Ky. 810, 822 (1943)

CURRICULUM DEVELOPMENT BASED ON RESEARCH & ANALYSIS

In designing any curriculum, it is important to first develop the learning objectives or outcomes of the curriculum.¹⁴ Objectives should contain three basic elements:

- ◆ A verb that actively describes an observable action, i.e. teach, instill, empower
- ◆ A description of the conditions under which this action takes place
- ◆ Level of acceptable performance

In order to formulate a sequence of objectives for a curriculum designed to teach court system employees the difference between legal advice and legal information, it is essential to begin with identifying the role of courts and court employees as well as the perception by the public of those roles. Once court system employees understand their roles and responsibilities, they must become confident and supported in their methods of delivering meaningful assistance to court users. Much of this confidence is obtained by learning how to differentiate between providing legal information and giving legal advice. The level of acceptable performance is initially measured by the level of confidence exhibited by curriculum participants during and at the completion of the exercise. The next measures are the extent to which they are able to share the information and skills they learn from this curriculum with their co-workers, the authority

¹⁴The National Judicial College. Judicial Education: A Guide to Curriculum Development. Reno: State of Nevada (1991)

they are given by their superiors to utilize what they have learned, and the level to which public perception of courts changes.

Curriculum facilitators should acquaint themselves with adult learning methods. Generally, adult training is for personal growth and development. Whether for professional or personal reasons, adults want to be enriched with valuable knowledge. There are, however, many different ways for adults to learn. According to Roger Saljo, there are five steps to learning:

1. Learning brings about an increase in knowledge.
2. Learning is memorizing or storing information for easy recall.
3. Learning is about developing skills and methods, and acquiring facts that can be used as necessary.
4. Learning is about making sense of information, extracting meaning and relating information to everyday life.
5. Learning is about understanding the world through reinterpreting knowledge.¹⁵

Adults have more and varied life experiences and are more likely to view learning as an experience-based process as in steps three, four and five rather than as an instructional process as in steps one and two. Most court system employees learn much while on the job and memorize or store that information. They also develop skills and methods for increasing their knowledge and for acquiring the facts necessary to do their jobs. Much of what is learned gets reinterpreted through real experience. This curriculum focuses on teaching court system employees to make sense of their knowledge and to apply that knowledge in a fair and a consistent manner as they

¹⁵Saljo, R. (1979). Learning in the Learner's Perspective: I. Some common-sense conceptions. Reports from the Institute of Education. University of Gothenberg, 76. As summarized in Psychology: Theory and Application.

provide service to court users. Court system employees must also be trained to evaluate the different experiences of court users in order to expand their base of knowledge.

In addition to the steps of learning, there are styles of learning. David Kolb identified three processes of learning:

1. Cognition -- how one acquires knowledge
2. Conceptualization -- how one processes information
3. Affective -- motivation, decision making styles, values and emotional differences

Combining the individual processes of learning with two learning activities, perceiving and processing, he identified four learning styles:

1. Assimilators (abstract conceptualization/reflective observation)
2. Accommodators (concrete experience/active experimentation)
3. Convergers (abstract conceptualization/active experimentation)
4. Divergers (concrete experience/reflective observation)¹⁶

While it is not imperative that curriculum facilitators become experts at learning styles, it is helpful to understand that learners, particularly adults, are unique in their methods of learning and the curriculum and session participation must account for all methods. It is also helpful to review these differences for participants in order that they appreciate how their co-workers and supervisors learn. Equally important is to understand how people share what they learn. Every employee is capable of providing the same quality of service but it may appear to be inadequate

¹⁶Kolb, D. A. *Experiential Learning: Experience as the source of learning and development*. New Jersey: Prentice Hall, 1984.

because a different method of delivery is used. As reflected in the comments section of this project's survey results, there was the perception that "I" know the difference, but co-workers do not. This perception is not uncommon and should be discussed as part of the curriculum.

Just as court system employees need to learn to communicate effectively with one another and their superiors, they need to do so with court users. It is important to understand that, for a court user, the act of coming to court is a learning experience. Few court users have had prior experience with courts. Recognizing the differences in how people learn and communicate is a valuable skill for court system employees when working with court users who know much about their situation but little about legal procedures.

Curriculums should be comprehensive and meaningful yet diverse enough to keep the attention of all participants. This curriculum is focused on three objectives.

- ◆ Instill in court system employees an understanding of the role of the court system, the roles of the employees within that system and why public access to that system is important.
- ◆ Teach court system employees the difference between legal information and legal advice, along with the importance of providing legal information.
- ◆ Empower court system employees with the confidence to provide meaningful assistance to court users.

Within each objective, the participants are required to interact with one another and the facilitator. This is best done by asking questions throughout the sessions and by allowing participants to assess themselves at the beginning and the end of each session. Participants should be comfortable with each assessment in that they should be encouraged to speak freely without fear of criticism and embarrassment. Adult learners are eager to make learning sessions meaningful. They bring their experiences, examples and frustrations with them. The outline for each of the objectives allows for the integration of these experiences, examples and frustrations. Facilitators must recognize when and how to allow for such integration.

OBJECTIVE A

INSTILL IN COURT SYSTEM EMPLOYEES AN UNDERSTANDING OF THE ROLE OF THE COURT SYSTEM, THE ROLES OF THE EMPLOYEES WITHIN THAT SYSTEM AND WHY PUBLIC ACCESS TO THAT SYSTEM IS IMPORTANT

This curriculum begins with a review of the role of the court system and then compares it with the roles of the other branches of government. The powers of each branch of government are identified in the United States Constitution and in each state's constitution. The judiciary is constitutionally separate from the legislative and executive branches of government. The executive branch generally administers and enforces the laws made and passed by the legislative branch, while the judicial branch interprets and applies the laws. Alexander Hamilton suggested that the judicial branch was the weakest and most in need of protection because it possessed neither the executive branch's power of the sword nor the legislative branch's power of the purse. Many learn of this concept in junior high or high school. Politicians speak of this concept in speeches and during legislative debates. There are often references, spoken and written, to this separation of powers in the routine conversations or activities of friends and relatives. All of this would indicate that it is, in fact, common knowledge.

But, realistically, it is difficult to comprehend the concept of separation of powers and how it relates to everyday lives and, in particular, how it relates to providing assistance for court users. For example, it is easy to recognize that court systems are part of the judicial branch of government, but most people probably could not identify which branch of government is responsible for the Motor Vehicle Department. In the minds of the general population, both the Motor Vehicle Department and the courts are governmental entities. The discussion component of this session of the curriculum explores the question, "What is the significance of this comparison?"

Part of the answer lies in the level of reliance by the public on the service and information provided by each governmental entity. Few people come in contact with the

legislative branch of government, other than to exercise their right to vote or run for office. Generally, most of the public's contact with a government agency occurs with one in the executive branch of the government. For example, when it is time to renew a driver's license, a person is given instructions from the person behind the desk at the Motor Vehicle Department as to the steps necessary to accomplish such a renewal. When someone loses their job, the person behind the counter of the Department of Economic Security provides forms, instructions and procedures to follow in order to collect unemployment insurance benefits. When we are threatened or injured by someone, we call 911 and the police take care of the rest. Because most people have experience only with executive branch governmental agencies, when they face legal problems requiring contact with the court system, the natural expectation is that the person behind the desk at the courthouse will provide the same type of instructions and assistance to guide them through their problem to a successful conclusion. The definition and interpretation of what constitutes a successful conclusion is just one of many differences between those who interact with the executive branch of government and those who interact with courts. This issue is explored further in the curriculum. In none of the mentioned situations has legal advice been specifically requested, but in the latter, the reliance on or expectation of an answer has the potential of affecting someone's legal rights or altering their legal position.

Trial courts rely on rules of procedure established by supreme courts but most of those rules can be complex and difficult to understand for someone who has no legal training. In some instances, there are no rules, just statutes and case law that can be even more inaccessible and intimidating. The question posed of an employee regarding how to accomplish something might be easily addressed by the Motor Vehicle Department, but presents unique problems when posed to a court employee.

Another important phenomenon is the fact that, historically, lawyers were necessary when someone was involved with the judicial branch. No other branch of government required that an advocate help someone through a process. In 1975, the United States Supreme Court

held that people have a constitutional right to represent themselves.¹⁷ Due to negative perceptions about lawyers, the cost of litigation, a widespread public attitude that there are some legal matters that individuals can handle on their own, and the increase in legal self-help publications, growing segments of the population, are choosing to represent themselves in court actions¹⁸. Prior to the increase of self-represented litigants, there was no need for courts to examine the issues related to giving legal advice versus giving legal information because lawyers were making all of the decisions for litigants. Courts were and still are generally unprepared to deal with the influx of self-represented litigants who are not law-educated and more often than not expect the same level of instruction as they would receive with other branches of government.

While the role of courts is generally to provide a forum for dispute resolution, the phenomenon of self-representation has challenged courts to integrate principles and methods to improve and simplify court processes and outcomes while preserving the rule of law, due process and judicial independence. According to Graecen, in order to be effective, court leaders need to recognize that court employees acquire a significant amount of knowledge regarding legal procedures and should authorize them to proceed with the task of providing assistance to court users with confidence and integrity and with the support of the state court of last resort.¹⁹

What, then, is the role of the court system employee? The curriculum pays particular attention to this question through discussion with participants. After this objective was drafted, there were two opportunities to test its effectiveness. The first opportunity primarily explored the role of the court system employee and involved approximately 35 employees who worked for

¹⁷Faretta v. California, 422 U.S. 806, 95 S.Ct. 2525, 45 L.Ed.2d 562 (1975)

¹⁸Sampson, Kathleen M., Project Director, A Report and Update April 2001, National Conf. On Pro Se Litigation, Nov. 1999, Scottsdale, AZ: American Judicature Society, State Justice Institute, Open Society Institute

¹⁹Graecen, John. *Legal information vs. legal advice – Developments during the last five years.* 84 Judicature 198 (January-February 2001)

the same office within a court system. The participant responses to the question “What is your role within the court system?” followed the general theme of “helping” people involved in litigation and “being helpful” to the public. In fact, the role of court system employees is to assist court users by providing them with information that will be helpful to them as they make choices about how to proceed with their legal situation without affecting their legal rights. This may be a very fine distinction, but it is a very important one because the word “help” implies some sort of benefit has occurred to the person being helped. As these court system employees discussed this concept, they acknowledged how much easier and less stressful their jobs would be if they could learn to think of themselves as conduits of information rather than “helpers.” Easier because they would be confident and competent at providing necessary and adequate information without giving legal advice or being perceived as having given legal advice, and less stressful because the pressure to “help” was lifted. This test demonstrated the necessity of exploring roles.

A subsequent test involved approximately 40 court system employees from around the state with various responsibilities within the court system. Again, participants appreciated the importance of understanding the branches of government and the roles of each branch of government. They were also able to make a clearer connection between that understanding and providing legal information without giving legal advice, as well as recognize that court users have expectations from the judicial branch of government based on their experiences with other branches of government. The curriculum was well received in this test environment.

In 1987, the National Center for State Courts, the Bureau of Justice Assistance, the State Justice Institute and the Commission on Trial Court Performance Standards developed the Trial Court Performance Standards, which have been endorsed and institutionalized in the last few years. Supreme courts nationwide adopt and teach these standards in order to improve the operation of courts. These standards provide the framework from which court leaders can design programs that have positive impact on court accessibility, accountability and public trust and confidence. All of the standards relate in some way to the interaction between court users and

court systems. The impetus for development of the Trial Court Performance Standards was the recognition that the public is entitled to equal access to swift, fair justice. Access to the courts is, itself, a broad and difficult concept. While access is commonly considered a mechanism by which someone can obtain information concerning court matters, it is really the function of public access to allow citizens to monitor each branch of government. Most states have enacted public access rules that expand the concept to include rules that make it easier for a litigant to prosecute his or her legal position. In Boddie v. Connecticut, 401 U.S. 371, 91 S.Ct. 780 (1971), the U.S. Supreme Court was clear in its decision that inhibiting the public's right of access violated the right to due process. In his concurring opinion, Justice Brennan wrote "The right to be heard in some way at some time extends to all proceedings entertained by courts." Bodie at 783. If a court user walks away from a service counter in frustration, access has been effectively denied.

Daniel H. Straub, Ph.D., as faculty to the Institute for Court Management's Court Executive Development Program, lectures on court leadership. He touches on topics such as management styles, diagnostic assessment, team development and performance. He also lectures on public service and suggests the importance of court system employees understanding the many obstacles court users encounter before they even have a chance to ask for assistance with their legal matters. Using an exercise entitled "Cindy Comes to Court," court system employees walk through the steps of a court user from the time they enter the court facility (i.e. parking garage, security station, unmarked hallways) to the time they approach the public assistance counter. Even prior to leaving their homes, most court users have experienced some sort of trauma that has set them on this path, but along the way, events not directly related to public service can cause an amount of stress and confusion that affects their ability to help themselves as court users. Court system employees prepared to provide assistance to court users will be equipped to do so if they understand the importance of public access and appreciate the frustration of court users attempting such access. While access to the courts is considered a right of the public, it is an essential component for holding court systems accountable for their actions.

OBJECTIVE B

TEACH COURT SYSTEM EMPLOYEES THE DIFFERENCE BETWEEN LEGAL INFORMATION AND LEGAL ADVICE, ALONG WITH THE IMPORTANCE OF PROVIDING LEGAL INFORMATION

There are two categories of court personnel -- judicial officers and non-judicial court system employees. Judicial officers include judges, magistrates, commissioners, etc. The traditional role of any judicial officer is to determine the law to be applied to the facts in specific situations. While juries are called upon to determine the facts of certain cases, judicial officers also find themselves with that responsibility in legal situations when a jury is not utilized or required. The non-judicial court system employees such as clerks, judicial assistants and bailiffs are charged with such responsibilities as maintaining court records and collecting and distributing financial transactions, and are often the first people litigants come into contact with as they enter the court system. They are the first impression of any court system.

In 1999, the Arizona Supreme Court Data Report reflected that there were 365 judicial officers compared to 3587 non-judicial court system employees in the general and limited jurisdiction courts.²⁰ After adjusting for approximately 40 legal research/assistance personnel, it is surprising to know that approximately 90% of Arizona's court system assists the public with their legal matters without the benefit of formal legal training. This information is important in developing a curriculum that serves to assist court system employees in learning how to provide adequate assistance to court users. Adequate assistance is only provided when court system employees are able to make the distinction between providing legal information and giving legal advice.

Is it possible for court system employees without formal legal training to differentiate between legal information and legal advice? In order to answer this question and design this curriculum, each of these concepts must be thoroughly examined. As previously stated, the term

²⁰Arizona, Administrative Office of the Courts, Supreme Court, Data Report 1999.

“legal advice” has no inherent meaning and has not been clearly defined by any court. The guidelines suggested by John Graecen have become a sort of standard nationwide for many states, including Michigan, New Mexico, Ventura County in California, Florida, Iowa, Utah and Maricopa County in Arizona, in their quest to implement programs to improve public service by providing more user-friendly services. Still, courts have yet to specifically define the term. Through discussion of each of Graecen’s five guidelines, this curriculum explores the development of a standard application of the term “legal advice.”

1. **Court staff have an obligation to explain court processes and procedures to litigants, the media and other interested citizens.**

Clearly, this guideline embodies the idea that any information available to court system employees should be provided to court users. Many court processes and procedures are unique to each court and may not be in written form, which makes providing this information in a consistent manner a difficult task. Without written guidelines, many court system employees rely upon institutional memory when assisting the public. Others rely upon their co-workers to remember the guidelines. More progressive courts, and those with adequate resources, develop and continue to improve written procedures for the most common legal processes. Providing relevant legal materials and information to litigants facilitates more efficient court proceedings by assisting litigants in making fully-informed choices with respect to their legal situations.²¹

2. **Court staff have an obligation to inform litigants, and potential litigants, how to bring their problems before the court for resolution.**

Graecen suggests that court system employees are familiar with the processes and procedures necessary to bring a matter before the court and that it is their responsibility to share

²¹Virginia, Office of the Executive Secretary Supreme Court. Guidelines on Mediation and the Unauthorized Practice of Law, (1999)

that knowledge with court users. Court users seek resolutions of their legal disputes or a “day in court.” This curriculum focuses on the importance of providing information that affords court users such relief rather than to inadvertently restrict the access of a litigant by refusing to provide any information at all. It should be the goal of every court system employee to ensure that no court user is frustrated with the operation of the court system. Admittedly, there are many situations in legal matters which cause frustration on the part of the litigant, but access to courts should not be one of them.

3. **Court staff cannot advise litigants whether to bring their problems before the court, or what remedies to seek.**

As important as it is to provide adequate and meaningful information, it is mandatory that the decision of a litigant regarding whether or not to initiate litigation, or what to ask of the court if they initiate such litigation, be made by the litigant alone without interference or suggestion from a court system employee. For example, if a potential litigant requests information regarding a name change, it is entirely appropriate for court system employees to inform them of the forms, procedures, statutes, rules, etc. If the potential litigant then asks whether or not they should pursue a name change, court system employees have no obligation to answer that question nor should they. It is a decision to be made by the potential litigant.

4. **Court staff must always remember the absolute duty of impartiality. They must never give advice or information for the purpose of giving one party an advantage over another. They must never give advice or information to one party that they would not give to an opponent.**

According to Russell Engler, Professor of Law and Director of Clinical Programs at the New England School of Law, true impartiality exists when both parties are fully informed of their rights, their procedural options and the benefits and detriments arising from the exercise of

those rights and options.²² Informed litigants are afforded the opportunity to make informed decisions regarding their legal situations. The treatment of all court users in a fair, consistent and equal manner without regard to outcome guarantees impartiality.

Information provided to one litigant should not give that litigant an unfair advantage over another. Litigants often come into court systems due to tragic and emotional circumstances in their lives. Impartiality includes the willingness of court system employees to listen to one side of a situation in order to provide the necessary assistance, but then recognize that there is another side to the situation that will also require assistance. All court users should be granted the same level playing field when it comes to the information they need from court system employees.

Generally, if information is provided to one court user, it should also be provided to opposing court users. For example, if a plaintiff receives information regarding setting a matter for trial and the required language or forms, the defendant in the matter should receive the same information if requested. If it is the policy of a court to adopt this curriculum and provide as much as information as possible to court users, it should be of little consequence to whom the information is given, as it will be beneficial to all court users.

In Arizona, 57% of its residents do not believe the legal system treats all citizens fairly or equally and 87% support proposals which would increase public education on how to utilize court services.²³ This curriculum emphasizes that such public education will occur through court system employees who are well trained and encouraged to provide information in a manner consistent and equitable to all court users. As public education increases, the perceptions about how court systems treat court users will improve.

²²Engler, *And Justice for All – Including the Unrepresented Poor: Revisiting the Roles of the Judges, Mediators and Clerks*, 67 Fordham L. Rev. 1987 (1999).

²³ Arizona. Arizona Supreme Court. Arizona State Court Citizen Survey “The Public Perspective” A Preliminary Report for the 1997 Judicial Conference. Phoenix: State of Arizona, 1997

5. **Court staff should be mindful of the basic principle that counsel may not communicate with the judge *ex parte*. Court staff should not let themselves be used to circumvent that principle, or fail to respect it, in acting on matters delegated to them for decision.**

Sometimes, conversations between court system employees and court users result in a communication of information by the employee to a judicial officer. There are situations where this may be appropriate, such as clarifying an order or to discuss a clerical error. However, court system employees must generally avoid this practice as it can cause an inadvertent circumvention around the prohibition against *ex parte* communication with judicial officers.

Summation of Graecen’s guidelines indicate that court processes and procedures, as well as how to bring problems before courts for resolution are important to court users and courts are obligated to provide this information. They also suggest that court system employees cannot indicate to court users whether to bring their problems before the court nor can they indicate what remedies to seek. Further, court system employees must remain absolutely impartial when providing information and provide it equitably to either party.

In addition to Graecen’s guidelines, there are two tests that are helpful in determining how to give information. The “reliance” test focuses on the person receiving information and whether that person believes that he or she is receiving legal services. A person is practicing law if others believe that the person is engaged in the traditional role of giving legal advice.²⁴ In other words, if self-represented court users are reminded that they are not being provided legal services or advice, they will be less likely to rely completely on the information provided to them by court system employees and will be more diligent about their own responsibilities. The “affecting legal rights” test determines that a person engages in the practice of law if he or she provides services that affect another’s legal rights.²⁵ Court system employees should be

²⁴See generally Andrew S. Morrison, “Is Divorce Mediation the Practice of Law? A Matter of Perspective,” 75 California Law Review 1093 (1987) at 1103

²⁵See Palmer v. Unauthorized Practice Committee, 438 S.W.2d 374 (Tex. Civ. App. 1969).

persevering in their efforts to avoid interference with the decisions made by court users that might affect their legal rights or positions.

The New York Supreme Court suggested specific definitions for the terms “legal advice” and “legal information.”²⁶ The Michigan Judicial Institute used the categorization approach to develop guidelines to help court personnel define what court users “can” and “cannot” do.²⁷ The Boston Bar Association, using Graecen’s guidelines, adopted Sample Staff Guidelines with “do’s” and “don’ts” for court staff. In Florida, Family Law Rule 12.750 sets forth those services to be provided by self-help personnel, as well as the limitations. Iowa suggested guidelines for clerks who assist pro se litigants.²⁸ New Jersey state courts provide a handout indicating what they *can* and *cannot* do for court users. The Supreme Court of New Mexico adopted by rule a notice of “Information Available from the Clerk’s Office.” All of these materials are included in this curriculum. (Appendix 2) A review and discussion of all of these suggestions and guidelines will be helpful to curriculum participants but ultimately lead to only one simple guideline: **court staff should provide to court users as much information and as many options as possible, without interfering in or directing the decisions to be made by court users or affecting their legal rights.**

In 1995, Jim Hustad, an Arizona attorney at the time, presented a seminar for court system employees on the unauthorized practice of law and how it was pertinent to courts in general. He ended his presentation with reference to the fact that no clerk had ever been sued for giving legal advice. He further suggested that the odds were with court system employees who were attempting to provide legal information so long as there was no intent to give legal advice.

²⁶Foulk, Stephen D. 2001. *Developing Court Guidelines for Assisting Self-Represented Litigants in New York*, Williamsburg, Va: National Center for State Courts Phase III Project.

²⁷Michigan. Michigan Judicial Institute. Legal Advice v Access to the Courts. Do YOU Know the Difference? Lansing: State of Michigan 1997

²⁸Iowa Supreme Court, Iowa Judicial Branch Customer Service Advisory Committee. Guidelines & Instructions for Clerks Who Assist Pro Se Litigants in Iowa’s Courts, July, 2000

His comments were intended to motivate the participants to be more helpful without being fearful of the ramifications. A Massachusetts court decided similarly when it said, “We know of no authority for treating as excusable neglect reliance on a clerk’s incorrect advice concerning a general principle of law.” Krupp v. Golf Oil Corp., 29 Mass. App. 116, 557 N.E. 2d 769, 771 (1990).

Court leaders, including judicial officers, who were previously reluctant to support programs emphasizing litigant assistance, whether the litigants are represented or not, become advocates once they see reductions in court delays, better prepared litigants and fewer complaints regarding access to the courts.²⁹ In all of the research conducted for this project, there was no indication that providing more information rather than less created problems for courts or for litigants.

OBJECTIVE C

EMPOWER COURT SYSTEM EMPLOYEES WITH THE CONFIDENCE TO PROVIDE MEANINGFUL ASSISTANCE TO COURT USERS

Once court system employees understand their roles in the court system and how to distinguish between providing legal information and giving legal advice, it is next crucial to vest those employees with the responsibility of providing adequate assistance that is meaningful to court users and that affords court users the true impartiality referred to by Professor Engler. The first step in this process is to again emphasize the level of support from court leadership.

The Conference of State Court Administrators recommended consideration of an “affirmative response to needs of the self-represented litigant as a means for further building trust and confidence in the courts” and endorsement of “information programs which will allow

²⁹Murphy, Beth Lynch. Results of a National Survey of Pro Se Assistance Programs: A Preliminary Report. American Judicature Society (2000)

litigants to make more informed decisions.”³⁰ According to Arizona’s Chief Justice Tom Zlaket in his 2001 State of the Judiciary address to the legislature, the judicial branch of the government “relies almost entirely on the trust and confidence of the public.”³¹ He established Justice 2002, a strategic agenda for completion by the end of 2002 to eliminate “barriers to accessing the court by reducing costs and providing information and assistance to people who come to court.”³² Clearly, court leadership in Arizona supports the contention that court system employees should provide assistance to court users to the extent possible.

Court system employees who work with the public often feel unsupported by their own judiciary. Frequently, judicial officers are overwhelmed with the responsibilities of the courtroom and they do not immediately recognize the difficult nature of providing assistance to court users before they make their court appearances. A curriculum in which the judicial leaders participate allows a true court team to emerge -- a team that works together to meet the objectives of the curriculum. Court employees must believe that their judicial leaders and their supervisors will defend them to the greatest extent possible, and that they will refrain from undue and unproductive criticism when it comes to the level or degree of information that has been provided to court users.

A crucial element of this curriculum is the specific expression of support from the presiding judge of the court system in which the participants are employed. If participants are employed by an elected or appointed official that is different from the presiding judge, then such official should likewise express support for this curriculum. This support should stress the court’s commitment to providing excellent customer service and empowering employees with

³⁰Government Relations Office, Conference of State Court Administrators. Position Paper on Self Represented Litigation. Rapid City: State of South Dakota, 2000

³¹Zlaket, Thomas A. “State of the Judiciary.” Arizona State Legislature Address. Phoenix, Arizona. 29 Jan. 2001

³²Arizona. Arizona Supreme Court. Justice 2002, A Strategic Agenda “Building Trust and Confidence in Arizona Courts” Phoenix: State of Arizona (May 2000)

knowledge to be imparted to court users. Whether it is a brief oral presentation or a written, signed statement of support, it is necessary in empowering court system employees with the authority to do what is necessary to ensure the objectives of this curriculum are met. It is not enough to adopt guidelines or standards. It is not enough for the facilitator or supervisor alone to make such a statement. There must be an in-person statement from the presiding judge and/or other elected or appointed supervisor, or a written statement with their signatures. Only then can court system employees feel truly committed to their responsibilities and empowered to maintain a high level of conscientious and meaningful assistance to court users. Such support sets the mood for the entire training.³³

The next step is to identify what court users consider meaningful assistance and how it can be measured. What is meaningful assistance? The judicial branch of government is unique from the others in that the expectation from users is that, similar to their experiences in the executive branch, court system employees will help them through the steps of their litigations by providing direction and possibly forms. Meaningful assistance is providing mechanisms and tools that are helpful to court users in making decisions with respect to their legal rights and positions. To a court user, meaningful assistance is often determined by the results achieved in their litigation. An unfavorable result will likely generate a negative response from a court user when asked if court system employees were helpful. Likewise, a favorable result generates a positive response. To associate the results of a litigation with the type or level of assistance provided to a court user is unrealistic. It is important that court system employees communicate repeatedly to court users that assistance is not associated with results.

Here, the curriculum must reiterate that court system employees should provide to court users as much information and as many options as possible, without interfering in or directing the decisions to be made by court users or affecting their legal rights. Meaningful assistance to a court user should be focused on providing mechanisms and tools that are helpful to a court user

³³American Judicature Society. Serving the Public: A Curriculum for Court Employees, Chicago: State of Illinois (1998)

in making decisions with respect to their legal rights and positions. Meaningful assistance might be as simple as referring the court user to an attorney for guidance. Providing meaningful assistance also involves making sure court system employees are aware of the other resources available to court users, such as attorney referral services, mediation services, self-help centers, etc. Not only should court system employees be aware of this information, there must also be a procedure to ensure that a fair and impartial referral to such resources occurs.

Meaningful assistance can only be delivered when the following occur:

LISTEN TO THE QUESTIONS -

Let court users ask their questions and listen to them.

Do not predetermine what information or assistance they seek.

BE PATIENT -

Allow court users enough time to determine what assistance they really need.

Ask them questions to make sure you understand what they need.

EXPLAIN -

If you are going to provide information, it should be clear and concise.

If you cannot answer a question or provide assistance, explain why.

DO NOT HIDE BEHIND RULES -

Provide the information and assistance.

“Encouraging a [court employee] to provide examples of forms or pleadings . . . and explain the meaning of terms used in the court process, ensures that information is provided to the court in a proper form also permitting more efficient case processing and effective

participation of the pro se litigant.”³⁴ In other words, by obtaining meaningful assistance and information, court users often are able to participate more fully in their litigations by submitting proper documents in proper format and are able to make informed decisions regarding their legal situations. As litigants are more informed, court proceedings are more efficient.

The Arizona Judicial Ethics Advisory Committee issued this opinion:

“Clerks of the court who are involved in assisting the public with forms and pleadings must be careful not to advise the public as to its legal rights and responsibilities. Careful attention must be given to avoid the unauthorized practice of law. However, this does not mean that clerks of the court may not assist the public in the routine filling out of forms . . . [A] judge should promote public confidence in the integrity and impartiality of the judiciary . . . **If clerks of the court were prohibited from lending assistance to the public, the result would be a judiciary that is only accessible to those individuals able to afford counsel.** Clearly, such an effort would not be desirable or constitutional. Furthermore, assistance in filling out forms is desirable by allowing for an efficient flow of an individual’s case through the system.”(highlight added)³⁵

It is clear that equal access to swift and fair justice should not be impeded by the lack of assistance to court users.

The most controversial question is now asked: What happens if wrong information or advice is given? When mistakes occur, court system employees must be willing to accept constructive criticism and accept responsibility for their mistakes. In a team environment, it must be okay to have made a mistake so long as there is an education that would keep the mistake from reoccurring. Supervisors should also recognize that mistakes can be corrected and that an opportunity exists with every mistake and correction to create a learning opportunity for all involved in the mistake. Court system employees who acknowledge their mistakes and then participate in the process of correcting them not only gain new and important knowledge, they

³⁴Ginley, James W. 2001 *Developing a Civil Bailiff's Manual for the Cuyahoga County Court of Common Pleas*, Williamsburg, Va: National Center for State Courts Phase III Project.at 49

³⁵Opinions of the Arizona Judicial Ethics Advisory Committee, No. 88-5 (May 11, 1988)

can then apply that knowledge in a manner consistent with these objectives. These experiences should be shared with co-workers so that they also benefit from the process.

Clerical or procedural mistakes can often be addressed and rectified by judges while in court. For example, clarifications can be made on the record with respect to service and notice. Evidence can also be verified while a party is under oath. So long as the information or advice provided does not suggest a course of action for a court user that affects his or her legal rights, there is little to fear. Legal processes are complicated at best. Mistakes provide opportunities to learn. Sharing what is learned from mistakes helps others understand and appreciate the complicated nature of litigation. On a larger scale, written procedures may develop as a result of lessons learned from mistakes.

Throughout this curriculum there must be assessment of the participants. Each session of the curriculum contains methods of assessing participants at the beginning and end of each session. The final assessment is a review of the objectives of the curriculum and application of the knowledge gained from the curriculum to commonly asked questions. Discussions during this process will likely demonstrate that there is still some hesitation and confusion, but will also demonstrate to participants the methods by which they can apply their newfound confidence and knowledge to these questions. These are not lessons that can be learned by attending one presentation of this curriculum. There must be continuing education and application of the information obtained from this curriculum in order for it to be effective.

It is for the public interest and policy to make an end to litigation . . . [so] that suits may not be immortal, while men are mortal.

– Joseph Story, *Ocean Ins. Co. v. Fields*, 18 F. Cas. 532, 539 (C.C.D. Mass. 1841) (No. 10, 406)

CONCLUSION

It is certain there will be no end to litigation. Litigation has its place in the scheme of things and, in fact, is often necessary in order to ensure public and personal responsibility. It is the responsibility of all those involved in a court system to ensure equal access to the justice system in a swift and fair manner. Equal access begins with non-judicial court system employees and the level of information they can offer to court users.

To recap, research and surveys demonstrate that most non-judicial court system employees feel lack of direction and inconsistent support when faced with the responsibility of providing the public with meaningful assistance and legal information without crossing the invisible and undefined line of giving legal advice. A curriculum specifically designed to assist court employees with this responsibility is indisputably needed and frequently requested. The research also confirmed that there is no consensus within the ranks of judicial officers with respect to the level to which self-represented litigants should be assisted. Some judges still oppose “socialized legal services” and believe that self-represented litigants “clog the judicial system” and should be “limited” in their access.³⁶ This curriculum does not distinguish between represented and self-represented litigants and asserts that it is the court systems which stand to benefit from more informed court users. However, it is important that judicial leaders embrace the concepts of this curriculum before its presentation so that court system employees know their actions and efforts are endorsed and supported. This is the biggest obstacle for most court systems in deciding whether or not to adopt this curriculum, but the research does suggest that

³⁶ Goldschmidt, Jona. Department of Criminal Justice, Loyola University Chicago. Cases and Materials on Pro Se Litigation and Related Issues. Chicago: State of Illinois (1997)

this obstacle must be overcome in order for court systems to achieve the goals encouraged by the Trial Court Performance Standards.

Adults bring a life experience to learning situations that has richness and variety that must be tapped. Further, adults need to integrate new ideas with existing experience. Curriculums with objectives that attempt to make behavioral or attitudinal changes should expose participants to new and creative ways of resolving or at least thinking through familiar problems. The exploration of roles and responsibilities by curriculum participants provides this opportunity. Instructional methods should take advantage of the experience and learning styles of participants and allow opportunities for them to practice application of their new knowledge to the experiences, examples and frustrations they bring to this type of training.³⁷ This is accomplished during the assessment portions of this curriculum.

Courts must strike a balance between providing pro se litigants access to justice and maintaining the fairness and integrity of the judicial process.³⁸ It is the role of all court system employees, judicial and non-judicial, to ensure access by providing court users with legal information and meaningful assistance without giving legal advice or affecting a court user's legal rights. This must be done with careful attention to the concept of due process and impartiality, and must be in conformance with existing rules and procedures. This means that non-judicial court system employees must have a clear understanding of their roles and the importance of equal access to swift and fair justice. Teaching court system employees, through this curriculum, to be confident in the application of their knowledge and how to make the distinction between providing legal information and giving legal advice will begin the process of striking such a balance.

³⁷The National Judicial College. Judicial Education: A Guide to Curriculum Development. Reno: State of Nevada (1991)

³⁸*See Generally* Goldschmidt, Jonna, "How are Courts Handling Pro Se Litigants", Judicature 82.1 (1998): 13-22; Goldschmidt, Jonna and Ira Pilchen, User Friendly Justice: Making Courts More Accessible, Easier to Understand, and Simpler to Use Chicago: American Judicature Society, 1996

Research revealed many attempts in court systems throughout the country to develop and implement programs where court system employees are encouraged to provide as much information as possible to court users. All of these program materials contain different versions of how to determine what constitutes legal advice and what constitutes legal information. Practically all of the materials made reference to John Graecen's guidelines. This curriculum adopts all of the suggestions and guidelines and espouses the following as the standard application when distinguishing between "legal information" and "legal advice":

Court staff should provide to court users as much information and as many options as possible, without interfering in or directing the decision to be made by court users or affecting their legal rights.

Although this statement is not a definition of either legal advice or legal information, it encourages the dissemination of information and options, as supported by the research, and focuses on the responsibility of a court user to make an informed decision.

The success of this curriculum will be measured by the degree to which the efficiency of in-court processes is improved and the level to which trust and awareness by the general public in the court's operations is elevated. The Trial Court Performance Standards provides tools to assess efficiency by examining expedition and timeliness through the can measure of case processing times from filing to disposition. Public trust and confidence is measured specifically by asking court users about their experiences and perceptions. The information is then profiled to identify the success or failure of courts to meet these standards. Court system employees are also valuable resources with respect to measuring public trust and confidence. They are the public's contact with court systems and are the most knowledgeable when it comes to what court users need from court systems. The effectiveness of this curriculum or any training program can

be measured by asking court system employees what they think. Not only do court leaders get valuable information by doing this, the employees participate in the improvement of their court's operation, which then commits them to its success in achieving the goals identified by the Trial Court Performance Standards.

Another important measure of the success of this curriculum is the level to which it is utilized within courts. As mentioned in the Introduction, this curriculum is intended to be portable and practical. It is portable in that it does not require facilitation by an expert or attorney. It can be facilitated by virtually anyone, but preferably by someone the court system employees are comfortable interacting with. It is practical because it does not require much in the way of funding and because it is flexible enough that each section can be presented independently of the other if time limits or other factors deem it more suitable to do so.

Had time and circumstances allowed, there would have been more testing of the curriculum with groups of participants. Each time this curriculum is delivered, there will be opportunity for changes and additions to occur in its format and substance.

It would also have been helpful to include all of Arizona's counties in the survey process. Nearly 75% of Arizona's court system employees were not included due to logistics. Likely, the results would have been similar, but there would have been more substance to them.

Although courts tend to be slow to accommodate technological advances, it is hoped that this curriculum will be developed into one presented through videoconferencing. In the meantime, the nature of court systems and laws is that they are in consistently inconsistent. One process can and often does contradict another. The objectives and exercises of this curriculum provide court system employees with the tools they need to be consistent in their interactions

with court users in spite of the inconsistency of the court systems within which they work. No matter the method, the message must be delivered.

BIBLIOGRAPHY

- American Judicature Society. Serving the Public: A Curriculum for Court Employees, Chicago: State of Illinois (1998)
- Arizona. Arizona Supreme Court. Arizona Code of Conduct for Judicial Employees. Adopted by Administrative Order No. 96-27. (July 3, 1996)
- Arizona. Arizona Supreme Court. Arizona State Court Citizen Survey “The Public Perspective” A Preliminary Report for the 1997 Judicial Conference. Phoenix: State of Arizona, 1997
- Arizona. Arizona Supreme Court. Justice 2002, A Strategic Agenda “Building Trust and Confidence in Arizona Courts” Phoenix: State of Arizona (May 2000)
- Foulk, Stephen D. 2001. *Developing Court Guidelines for Assisting Self-Represented Litigants in New York*, Williamsburg, Va: National Center for State Courts Phase III Project.
- Fredrickson, Teresa. 2001. *Service to the Self-Represented and Court Staff Training, The Disconnect*, Williamsburg, Va.: National Center for State Courts Phase III Project.
- Ginley, James W. 2001 *Developing a Civil Bailiff’s Manual for the Cuyahoga County Court of Common Pleas*, Williamsburg, Va: National Center for State Courts Phase III Project.
- Goldschmidt, Jona. Department of Criminal Justice, Loyola University Chicago. Cases and Materials on Pro Se Litigation and Related Issues. Chicago: State of Illinois (1997)
- Government Relations Office, Conference of State Court Administrators. Position Paper on Self Represented Litigation. Rapid City: State of South Dakota, 2000
- Graecen, John M. “‘No Legal Advice From Court Personnel’ What Does That Mean?” The Judges Journal, Winter 1995: 10-15.
- Graecen, John. *Legal information vs. legal advice – Developments during the last five years*. 84 Judicature 198 (January-February 2001)

Iowa Supreme Court, Iowa Judicial Branch Customer Service Advisory Committee. Guidelines & Instructions for Clerks Who Assist Pro Se Litigants in Iowa's Courts, July, 2000

Michigan. Michigan Judicial Institute. Legal Advice v Access to the Courts. Do YOU Know the Difference? Lansing: State of Michigan 1997

Morrison, Andrew S., "Is Divorce Mediation the Practice of Law? A Matter of Perspective," 75 California Law Review 1093 (1987) at 1103

Murphy, Beth Lynch. Results of a National Survey of Pro Se Assistance Programs: A Preliminary Report. American Judicature Society (2000)

National Center for State Courts. How the Public Views the State Courts - A 1999 National Survey, Williamsburg: State of Virginia (1999)

National Judicial College, The. Judicial Education: A Guide to Curriculum Development. Reno: State of Nevada (1991)

Saljo, R. (1979). *Learning in the Learner's Perspective: I. Some common-sense conceptions*. Reports from the Institute of Education. University of Gothenberg, 76. As summarized in Psychology: Theory and Application.

Sampson, Kathleen M., Project Director, A Report and Update April 2001, National Conf. On Pro Se Litigation, Nov. 1999, Scottsdale, AZ: American Judicature Society, State Justice Institute, Open Society Institute

Virginia, Office of the Executive Secretary Supreme Court. Guidelines on Mediation and the Unauthorized Practice of Law, (1999)

Zlaket, Thomas A. "State of the Judiciary." Arizona State Legislature Address. Phoenix, Arizona. 29 Jan. 2001

APPENDICES

A1

SURVEY:

1. Does your court provide legal information (not legal advice) to the public and/or unrepresented litigants?

2. Does your court provide you with a definition of legal information?

If so, what is that definition?

3. Do you believe you have been adequately trained to know the difference between providing legal information and giving legal advice?

4. Would you like information on a training program on this topic for your court.

Note: This survey was electronically transmitted to more than 800 court employees throughout the state. Through a project entitled "Arizona Courts Automation Project (ACAP)," the Supreme Court provides a network of communication between the twelve of Arizona's rural counties and the Supreme Court. It was through this network that the survey was transmitted.

A2

SURVEY RESULTS (232 responses):

Question No. 1: Does your court provide legal information (not legal advice) to the public and/or unrepresented litigants?

Negative responses: 32
Positive responses: 178
Unsure responses: 14
No responses: 8

Question No. 2: Does your court provide you with a definition of legal information?

Negative responses: 154
Positive responses: 58
Unsure responses: 14
No responses: 6

If so, what is that definition?

(see Exhibit 1C for comments)

Question No. 3: Do you believe you have been adequately trained to know the difference between providing legal information and giving legal advice?

Negative responses: 134
Positive responses: 84
Unsure responses: 10
No responses: 4

Question No. 4: Would you like to institute an in-house training program on this topic for your court?

Negative responses: 10
Positive responses: 218
Unsure responses: 0
No responses: 4

Out of the 178 responses indicating that a court does provide legal information to litigants, 120 or 67% indicated no definition for legal information was provided.

A3

SURVEY COMMENTS:

Examples offered regarding definition of legal information:

Not to assist in completion of paperwork, not to engage in any behavior that would constitute the practice of law or to interpret legal texts as to their meaning. The public will have to do their own research with the assistance of a legal dictionary to define the meaning of words or concepts foreign to them.

Procedural information regarding what the rules provide.

Legal advice is what you can or should do, such as is given by a lawyer. Legal information is explaining how something works, such as rules, without giving a legal opinion.

Anything that occurs in an attorney's office on a regular basis is considered giving legal advice.

Can not answer "what should I do."

We will give out procedures. Most of that is in or on the forms.

Limited information is given.

My understanding is informing them what the procedures are and leave the decision making to the litigants.

Providing them with what services we offer not how to fill out paperwork, etc., or what form to fill out.

Information as to how to obtain legal advice.

Information is answering questions about procedural issues, services available, court schedules and case details; avoidance of the phrases "you should", "you need to", "if I were you, I'd", "you ought to"

When information is given by the court we provide information about the "process" of the action being inquired about.

As long as you don't specify what a person should do not in their case, you are giving information.

When someone calls for information, they are directed to call legal counsel, regardless of their status.

Either rules of the court or appellate handbook.

SURVEY COMMENTS (cont'd):

We give information regarding hearing dates and times.

What forms are available and what forms are needed to accomplish certain actions.

If you help them to reach a decision or tell them how to win their case, that is legal advice. General procedural help is information.

Clerks can explain court process. Written information packets are provided to citizens.

Court staff may describe status of case, etc. but can not advise party what choice to make or steps to take.

Whatever information we can give them to get them in front of a judge, but nothing that will influence their decisions.

Information that assists the customer to file & process their action/case, i.e. time constraints, locations, etc. vs legal advice which is information that includes consideration for one or more actions or strategies.

My own definition of legal information is being able to give the customer their options, but not tell them exactly what to do. Also, giving information as to procedures/steps. What may or may not happen. We help everyone to the best of our ability without telling them how and what to do.

We may give only procedural information, not legal advice.

We try to follow the rule of thumb that we will explain procedures that the court or judge will take without telling them what they should do or file.

Anything you say that assists a party to move a case forward against another party is considered legal advice.

It is understood that I can provide information concerning court procedures and refer parties to statutes and rules. I may not tell parties how to apply statutes or rules to their specific fact situations. I may also refer parties to sources that can provide them with legal advice if they are unable to hire an attorney.

LEGAL ADVICE VS LEGAL INFORMATION

A Curriculum for Court Employees

INTRODUCTION

This curriculum was developed for use by court system supervisors to teach non-judicial court system employees about their roles and how they can provide meaningful assistance to court users without giving legal advice. Although it is designed for use in Arizona, it will be adaptable for use in any state or local jurisdiction. It is designed to be brief and allow for as much interaction from the participants as possible.

The objectives of this program are to:

- A. Instill in court system employees an understanding of the role of the court system, the roles of the employees within that system and why public access to that system is important.
- B. Teach court system employees the difference between legal information and legal advice, along with the importance of providing legal information.
- C. Empower court system employees with the confidence to provide assistance to court users that is meaningful.

The curriculum is divided into three sections to coincide with the objectives. Each section contains facilitator notes, discussion exercises and handouts.

Vital to the introduction of this curriculum to participants is the demonstration of support from the judiciary and/or management. A verbal message from the presiding judge stressing the court's commitment to excellent public service is preferred, but in lieu thereof, a letter of such commitment would be adequate. In jurisdictions where clerks of court are elected officials, a joint show of support is necessary. Public service sometimes fails because court employees are not encouraged to provide much information to the public due to concerns regarding the giving of legal advice. If they are encouraged to do so, many are no confident in their ability to do so. If court system employees believe their leaders support the approach of this curriculum, then the utilization of the skills learned by participants is greater.

The learning environment is as important as the styles of learning that participants will bring to the session. The facility should be comfortable and arranged in a manner that is conducive to interaction by all participants. If possible, there should be no opportunity for some participants to “hang out” in the back of the room and not get involved. The facilitator should review the styles of learning and be prepared to “prod” the learning process when necessary to accommodate each learning style.

LEGAL ADVICE VS LEGAL INFORMATION

A Curriculum for Court Employees

PRE-PROGRAM PREPARATION

Facilitator's Notes:

Facilitators have many options in delivering this curriculum to participants. The handouts may be converted to overheads or to a PowerPoint presentation. If available, the materials can be transferred into a web-based training application. In some instances, the program can be delivered by videoconference. In any event, copies of all of the handouts should be provided to each participant. The cost for delivery is determined by the options chosen.

Prepare the room in a manner that allows for easy interaction and participation. For example, eliminate any unnecessary chairs that might allow participants to be too spread out. In a smaller group, a circular arrangement might be appropriate.

Curriculum facilitators should acquaint themselves with adult learning methods. Generally, adult training is for personal growth and development. Whether for professional or personal reasons, adults want to be enriched with valuable knowledge.

Tips for using visual aids:

- Flip Chart - REINFORCE message
REMIND of main ideas
CREATE picture of message
PRINTED in large letters
UNCLUTTERED
- Overheads - Focus audience attention by showing only one section at time;
cover rest with paper
Use pointer to direct audience attention
Use overhead pen in bright color
Turn projector off if more than 30 seconds between sections
Practice turning projector on/off and placing transparencies right side up
Stand to one side of overhead
Face audience, not screen

End Of Program – Ask each participant to complete curriculum evaluation form. No names are necessary. This information will be helpful in modifying or adding information to future presentations. This should be explained to participants.

Timetable for Curriculum Sessions:

Session	Outline of Session	Approx. Time	Total Time
Beginning the Program	Introduction of Facilitator	5 min.	
	Welcome & Support	5 min.	
	Participant Introductions	20 min.	
	Guidelines	5 min.	
	Review Learning Styles	5 min.	
	Review Objectives	5 min.	
	Complete Questionnaires	5 min.	50 min.
Break			10 min.
Objective A	Pre-Assessment	20 min.	
	Review Roles of Government	10 min.	
	Review Trial Court Performance Standards	10 min.	
	“Help” question	20 min.	
	Answer discussion	20 min.	
	Public Access	20 min.	
	Review and Re-Assessment	20 min.	2 hrs.
	Break		
Objective B	Pre-Assessment	20 min.	
	Review Roles	10 min.	
	What is Legal Advice	30 min.	
	Answer	10 min.	
	Review and Re-Assessment	20 min.	2 hrs.
Break			10 min.
Objective C	Pre-Assessment	20 min.	
	Review Commitment	5 min.	
	Meaningful Assistance	15 min.	
	Impartiality	15 min.	
	Wrong Information	15 min.	
	Review and Re-Assessment	20 min.	1.5 hrs

LEGAL ADVICE VS LEGAL INFORMATION

A Curriculum for Court Employees

CURRICULUM ASSESSMENT

Please answer each of the following questions in one or two sentences?

What was the most useful or meaningful thing you learned during this presentation?

What was the “muddiest” point in this presentation? In other words, what was least clear to you?

Did you actively participate in the discussions? Why or why not?

General Comments:

LEGAL ADVICE VS LEGAL INFORMATION

A Curriculum for Court Employees

BEGINNING THE PROGRAM

Facilitator's Notes:

Invite the presiding judge to welcome the program participants and stress the court's commitment to this curriculum. In jurisdictions where there is a separately elected clerk of court, it is important to include that elected clerk or a ranking supervisor to join in the presiding judge's supporting comments. This endorsement will set the mood for the training.

Handouts: Learning Styles (Handout A)
Objectives (Handout B)
Assessment Questionnaire (Handout C)

Outline of Session:

Introduction of Facilitator

Welcome and statement of support from presiding judge (and other supervisor if appropriate)

Ask all participants introduce themselves and identify their positions with the court system

Inform participants of guidelines for the group learning process, i.e.

- One speaker at a time
- Everyone participates
- All comments are important and should be respected
- Rank has no privileges

Review Learning Styles (Handout A)

Discussion: Important to understand how people share what they learn.
"I" know the difference, but co-workers do not.
Court system employees as learners

Court users as learners – coming to court is a learning experience and usually occurs after traumatic experience

Share Objectives (Handout B)

Discussion: Review each objective.
Does everyone understand why we are here today?
Are there any questions before we start?

Complete Questionnaires (Handout C)

No discussion at this time.
Ask participants to fold their answer sheets until further instruction.
Answers will be reviewed in subsequent curriculum sections.

LEGAL ADVICE VS LEGAL INFORMATION

A Curriculum for Court Employees

OBJECTIVE A

Instill in court system employees an understanding of the role of the court system, the roles of the employees within that system and why public access to that system is important

Facilitator's Notes:

Once court system employees understand their roles and responsibilities, they will become confident in their methods of delivering meaningful assistance to court users.

While access is commonly considered a mechanism by which someone can obtain information concerning court matters, it is really the function of public access to allow citizens to monitor each branch of government.

Handouts: Legislative, Executive, Judicial Branches (Handout D)
Trial Court Performance Standards (Handout E)

Outline of Session:

Pre-assessment (first three questions only):

Ask participants to verbally share their answers. All must participate. Don't ask for volunteers. Make them all give their answers.

No discussion or comments at this time.

Review the role of the three branches of government. (Handout D)

Discussion: Compare U.S. Constitution with state constitution

Public's perception and dealings with governmental entities, i.e. MVD, DES, legislature, courts

Rules are helpful, but statutes and case law difficult to understand

Rise in number of self-represented litigants subsequent to 1975. Prior to 1975, courts worked primarily with lawyers. Courts are still adjusting.

Review Trial Court Performance Standards. (Handout E)

Discussion: Were you aware of these standards and goals?

Are they helpful in your understanding of the role of courts and employees?

Question of Participants:

How many used the word “help” in their answers to Assessment Question Nos. 1 and 2?

Discussion: Do we help or do we provide information?

Answer: The role of court system employees is to assist court users by providing them with information that will be helpful as they make choices about how to proceed with their legal situation without affecting or altering their legal rights.

Discussion: Will this answer work?

Why is Public Access important?

Discussion: Public access ensures due process. How?
Court systems should be held accountable for their actions.

If a court user walks away from a service counter in frustration, access has been effectively denied.

Review and Re-Assessment:

Ask participants to review their answers to question nos. 1 through 3.

Would their answers be different now? How?

Ask each participant to share with the group what they have learned.

LEGAL ADVICE VS LEGAL INFORMATION

A Curriculum for Court Employees

OBJECTIVE B

Teach court system employees the difference between legal information and legal advice, along with the importance of providing legal information

Facilitator's Notes:

Handouts: Graecen guidelines (Handout F)
New York Supreme Court definitions (Handout G)
Michigan Judicial Institute Guidelines (Handout H)
Boston Bar Association Staff Guidelines (Handout I)
Florida Family Law Rule 12.750 (Handout J)
Guidelines for Clerks who Assist Pro Se Litigants in Iowa (Handout K)
Welcome to the New Jersey State Courts (Handout L)
Information Available from the Clerk's Office (New Mexico)(Handout M)
Arizona Code of Judicial Conduct, Canon 3(E) (Handout N)
Case Law (Handout O)

Outline of Session:

Pre-assessment (questions 4 & 5 only):

Ask participants to verbally share their answers. All must participate. Don't ask for volunteers. Make them all give their answers.

No discussion or comments at this time.

Review Judicial vs Non-Judicial roles

Discussion: More than 90% of court system employees are not law-trained
Court system employees are "first impression"

What is Legal Advice?

Review Graecen guidelines (Handout F)

Discussion: Obligation to explain processes & procedures
Obligation to inform litigants how to bring problems before court
Do not advise re initiation of litigation or what remedies to seek
Remember duty of impartiality
Parties may not communicate *ex parte* with a judge

Review info from other states:

New York Supreme Court definitions (Handout G)
Michigan Judicial Institute guidelines (Handout H)
Boston Bar Association Staff Guidelines (Handout I)
Florida Family Law Rule 12.750 (Handout J)
Guidelines for Clerks Who Assist Pro Se Litigants in Iowa's Courts (Handout K)
Welcome to the New Jersey State Courts (Handout L)
Information Available from Clerk's Offices in New Mexico (Handout M)

Discussion: Compare similarities & differences

Review Arizona Code of Judicial Conduct (Handout N)

Discussion: Arizona Supreme Court supports the concept of providing assistance to the public.

Review Case Law (Handout O)

Discussion: Not even law-trained are clear about definition of "legal advice"

Answer: Court staff should provide to court users as much information and as many options as possible, without interfering in or directing the decision to be made by court users or affecting or altering their legal rights.

Will this answer work?

Discussion: Benefits to court systems:
Reductions in court delays
Better prepared litigants
Fewer access complaints

Review and Re-Assessment:

Ask participants to review their answers to question nos. 1 through 3.

Would their answers be different now? How?

Ask each participant to share with the group what they have learned.

LEGAL ADVICE VS LEGAL INFORMATION

A Curriculum for Court Employees

OBJECTIVE C

Empower court system employees with the confidence to provide meaningful assistance to court users

Facilitator's Notes:

Express to participants that their time is valuable and you want them to be enriched with information that will add to their personal growth and development. Their interaction in this session is crucial.

Handouts: Meaningful Assistance (Handout P)
True Impartiality (Handout Q)
What To Do??? (Handout R)
Commonly Asked Questions (Handout S)

Outline of Session:

Pre-assessment (question 6 only):

Knowing what you know now, would you answer No. 6 differently? How?
Ask participants to verbally share their answers. All must participate. Don't ask for volunteers. Make them all give their answers.

No discussion or comments at this time.

Review commitment from judiciary

Discussion: Judges are individually conflicted with this idea, but court leadership generally recognizes importance of providing information.

What is Meaningful Assistance?

Discussion: How to provide meaningful assistance
(Handout P)

What is true impartiality for all parties? (Handout Q)

Discussion: Information
Options

What happens if the wrong information is given? (Handout R)

Discussion: Accept responsibility
Learn from mistake
Share experience with co-workers

Review and Re-Assessment:

Review Answers to Question No. 6. Any changes? If so, ask participants to share.

Review Commonly Asked Questions (Handout S)
Select participants randomly to discuss each of these

Discussion: Are you confident you know what information to provide to court users?
Are you confident you will be supported by court leadership?

HANDOUT A

ADULT LEARNING STYLES

Assimilators (abstract conceptualization/reflective observation)

Are motivated to answer the question, “what is there to know?” They like accurate, organized delivery of information and they tend to respect the knowledge of the expert. They aren’t that comfortable randomly exploring a system and they like to get the ‘right’ answer to the problem.

Accommodators (concrete experience/active experimentation)

Are motivated by the question, “what would happen if I did this?” They look for significance in the learning experience and consider what they can do, as well as what others have done previously. These learners are good with complexity and are able to see relationships among aspects of a system.

Convergers (abstract conceptualization/active experimentation)

Are motivated to discover the relevancy or “how” of a situation. Application and usefulness of information is increased by understanding detailed information about the system’s operation.

Divergers (concrete experience/reflective observation)³⁹

Are motivated to discovery the relevancy or “why” of a situation. They like to reason from concrete specific information and to explore what a system has to offer and they prefer to have information presented to them in a detailed, systematic, reasoned manner.

³⁹Kolb, D. A. *Experiential Learning: Experience as the source of learning and development*. New Jersey: Prentice Hall, 1984.

HANDOUT B

LEGAL ADVICE VS LEGAL INFORMATION
A Curriculum for Court Employees

OBJECTIVES:

- A Instill in court system employees an understanding of the role of the court system, the roles of the employees within that system and why public access to that system is important

- B Teach court system employees the difference between legal information and legal advice, along with the importance of providing legal information

- C Empower court system employees with the confidence to provide meaningful assistance to court users

HANDOUT C

LEGAL ADVICE VS LEGAL INFORMATION

A Curriculum for Court Employees

ASSESSMENT QUESTIONNAIRE

1. What is the role of the court system?
2. What is your role within the court system?
3. How would you describe public access?
4. What is legal advice?
5. What is legal information?
6. What is the most frustrating question you are routinely asked? What is your answer?

HANDOUT D

Branches of Government

LEGISLATIVE - enacts laws

U.S. Constitution info:

Representatives:	Elected every two years Over 25 years of age Citizen over 7 years One for every 30,000 citizens
Senators:	Two from each state Elected every six years Over 30 years of age Citizen over 9 years

EXECUTIVE - enforces laws

U.S. Constitution info:

President/ Vice President	Elected every four years Over 35 years of age Natural Born Citizen Resident of U.S. 14 years
------------------------------	---

JUDICIAL - interprets laws and applies laws to individual situations

U.S. Constitution info:

Judges:	Appointed by President Holds office during good behavior
---------	---

Alexander Hamilton suggested that the judicial branch was the weakest and most in need of protection because it possessed neither the executive branch's power of the sword nor the legislative branch's power of the purse.

State constitutions make different provisions for each of their branches of government. This information is for your amusement and discussion.

HANDOUT E

TRIAL COURT PERFORMANCE STANDARDS

Performance Areas (equal in importance):

1. Access to Justice
 - 1.1. Open Conduct of Public Proceedings and Business
 - 1.2. Safety, Accessibility, and Convenience of Court Facilities
 - 1.3. Effective Participation Without hardship or Inconvenience
 - 1.4. Courteous, Responsive, and Respectful Treatment of Public
 - 1.5. Reasonable, Fair, Affordable Costs for Access to Proceedings and Records
2. Expedition and Timeliness
 - 2.1. Timely Case Processing
 - 2.2. Compliance with Established Schedules
 - 2.3. Prompt Implementation of Changes in Law and Procedure
3. Equality, Fairness and Integrity
 - 3.1. Fair and Reliable Procedures Consistent with Laws, Rules and Policies
 - 3.2. Representative Juries
 - 3.3. Individual, Fair Case Decisions
 - 3.4. Clarity of Decisions
 - 3.5. Responsibility for Enforcement of Orders
 - 3.6. Accurate Production and Proper Preservation of Records
4. Independence and Accountability
 - 4.1. Institutional Integrity and Comity in Governmental Relations
 - 4.2. Accountability for Public Resources
 - 4.3. Fair Employment Practices
 - 4.4. Community Education on Programs
 - 4.5. Anticipation and Response to Change
5. Public Trust and Confidence
 - 5.1. Public Perception of Accessibility of Court and Justice It Delivers
 - 5.2. Public Trust and Confidence in Expeditious, Fair, and Reliable Court Functions and Fair Decisions
 - 5.3. Public Perception of Court Independence and Accountability

HANDOUT F

Graecen Guidelines

1. Court staff have an obligation to explain court processes and procedures to litigants, the media and other interested citizens.
2. Court staff have an obligation to inform litigants, and potential litigants, how to bring their problems before the court for resolution.
3. Court staff cannot advise litigants whether to bring their problems before the court, or what remedies to seek.
4. Court staff must always remember the absolute duty of impartiality. They must never give advice or information for the purpose of giving one party an advantage over another. They must never give advice or information to one party that they would not give to an opponent.
5. Court staff should be mindful of the basic principle that counsel may not communicate with the judge *ex parte*. Court staff should not let themselves be used to circumvent that principle, or fail to respect it, in acting on matters delegated to them for decision.

HANDOUT G

New York Supreme Court ⁴⁰ definitions:

“**Legal Information**” is the 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, 3) requires the court employee only to have knowledge of nonconfidential court processes and generally know legal concepts and practices, or 4) is not likely to substantially affect the legal outcomes that may result for the litigant being assisted.

“**Legal Advice**” is the written or oral statement by a court employee that 1) interprets the law or recommends a specific course of litigant conduct in an actual or potential legal proceeding, 2) applies the law to the individual litigant’s specific factual circumstances, 3) requires the court employee to have knowledge of the law and legal principles beyond familiarity with court requirements and procedures, and 4) is likely to substantially affect the legal outcomes that may result for the litigant being assisted.

⁴⁰Foulk, Stephen D. 2001. *Developing Court Guidelines for Assisting Self-Represented Litigants in New York*, Williamsburg, Va: National Center for State Courts Phase III Project

HANDOUT H

Michigan Judicial Institute⁴¹ guidelines

Legal advice guidelines for court clerks:

CAN PROVIDE:	CANNOT PROVIDE:
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

⁴¹Michigan. Michigan Judicial Institute. Legal Advice v Access to the Courts. Do YOU Know the Difference? Lansing: State of Michigan 1997

HANDOUT I

Guidelines established for use by court staff in Massachusetts as result of joint effort between Probate and Family Court Department of the Trial Court of the Commonwealth of Massachusetts and the Boston Bar Association.

Court staff are expected to perform these tasks:

1. Provide public information contained in docket reports, case file, indexes, and other reports.
2. Answer questions concerning court rules, procedures, and ordinary practices. Such questions often contain the words “Can I?” or “How do I?”
3. To the extent available, provide examples of forms or pleadings for the guidance of litigants.
4. Answer questions about the completion of forms.
5. Explain the meaning of terms and documents used in the court process.
6. Answer general questions concerning deadlines or due dates.

In providing information, the staff will not:

1. Give information when they are unsure of the correct answer. Staff should transfer such questions to supervisors.
2. Advise litigants whether to take a particular course of action.
3. Take sides in a case or proceeding pending before the court.
4. Provide information to one party that they would be unwilling or unable to provide to all other parties.
5. Disclose the outcome of a matter submitted to a judge for decision, until the outcome is part of the public record, or until the judge directs disclosure of the matter.

Adapted from J. Gaecen. ‘No Legal Advice from Court Personnel’ What Does that Mean?. *The Judges’ Journal* (Winter 1995), at 10. Cited in BJI Report at 41.

HANDOUT J

Florida Family Law Rule 12.750

Rule 12.750. FAMILY SELF-HELP PROGRAMS

- (c) Services Provided. Self-help personnel may:
- (1) encourage self-represented litigants to obtain legal advice;
 - (2) provide information about available pro bono legal services, low cost legal services, legal aid programs, and lawyer referral services;
 - (3) provide information about available approved forms, without providing advice or recommendation as to any specific course of action;
 - (4) provide approved forms and approved instructions on how to complete the forms;
 - (5) engage in limited oral communications to assist a person in the completion of blanks on approved forms;
 - (6) record information provided by a self-represented litigant on approved forms;
 - (7) provide, either orally or in writing, definitions of legal terminology from widely accepted legal dictionaries or other dictionaries without advising whether or not a particular definition is applicable to the self-represented litigant's situation;
 - (8) provide, either orally or in writing, citations of statutes and rules, without advising whether or not a particular statute or rule is applicable to the self-represented litigant's situation;
 - (9) provide docketed case information;
 - (10) provide general information about court process, practice, and procedure;
 - (11) provide information about mediation, required parenting courses, and courses for children of divorcing parents;
 - (12) provide, either orally or in writing, information from local rules or administrative orders;
 - (13) provide general information about local court operations;
 - (14) provide information about community services; and
 - (15) facilitate the setting of hearings.
- (d) Limitations on services: Self-help personnel shall not:
- (1) provide legal advice or recommend a specific course of action for a self-represented litigant;
 - (2) provide interpretation of legal terminology, statutes, rules, orders, cases, or the constitution;
 - (3) provide information that must be kept confidential by statute, rule, or case law;
 - (4) deny a litigant's access to the court;
 - (5) encourage or discourage litigation;
 - (6) record information on forms for a self-represented litigant, except as otherwise provided by this rule;
 - (7) engage in oral communications other than those reasonably necessary to elicit factual information to complete the blanks on forms except as otherwise authorized by this rule;
 - (8) perform legal research for litigants;
 - (9) represent litigants in court; and
 - (10) lead litigants to believe that they are representing them as lawyers in any capacity or induce the public to rely upon them for legal advice.

HANDOUT K

Guidelines for Clerks who Assist Pro Se Litigants in Iowa⁴²

- C. Prohibition against giving legal advice.
2. Court staff should not apply the law to the facts of a given case, nor give directions regarding how a litigant *should* respond or behave in any aspect of the legal process. For example, court or clerk staff **should not**:
 - a. Recommend whether to file a petition or other pleading.
 - b. Recommend phrasing or specific content for pleadings.
COMMENT: Clerks may inform litigants that some general content may be required in a pleading (e.g., identification of the other parties involved in the accident; a description of the facts surrounding the accident.) But clerks may not tell a litigant whom to identify or which particular facts might be relevant in the pleading.
 - c. Fill in a form for the *pro se* litigant.
EXCEPTION: If a litigant has a physical disability or is illiterate and therefore unable to fill in a form, and the litigant explains the disability to a clerks' staff member and requests appropriate assistance, then the staff member may fill in the form. However, the clerk's staff member must write down the *exact words* provided by the litigant, and another staff member must witness the action.
 - d. Recommend specific people against whom to file petitions or other pleadings.
 - e. Recommend specific types of claims or arguments to assert in pleadings or at trial.
 - f. Recommend what types or amount of damages to seek or the specific litigants from whom to seek damages.
 - g. Recommend specific questions to ask witnesses or other litigants.
 - h. Recommend specific techniques for presenting evidence in pleadings or at trial.
 - i. Recommend which objections to raise to an opponent's pleadings or motions at trial or when and specifically how to raise them.
 - j. Recommend when or whether a litigant should request (or oppose) a continuance.
 - k. Recommend when or whether a litigant should settle a dispute.
 - l. Recommend whether a litigant should appeal a judge's decision.
 - m. Interpret the meaning or implications of statutes or appellate court decisions as they might apply to an individual case.
 - n. Perform legal research.
 - o. Predict the outcome of a particular case, strategy, or action.
- D. . . . Court and clerks' staff are authorized to:
1. Provide public information contained in:
 - a. Dockets or calendars,
 - b. Case files,
 - c. Indexes, and
 - d. Other reports
 2. Recite common, routinely employed:
 - a. Court rules,
 - b. Court procedures, and
 - c. Administrative practices.
 3. Show or tell the *pro se* litigant where to find pertinent statutes or rules of procedure.
 4. Identify forms that might meet the needs of the *pro se* litigant, and provide forms that the supreme court has mandated for the guidance of *pro se* court users.
 5. Answer questions about how to complete forms (e.g. where to write in particular types of information), but **not** questions about how the litigant *should* phrase his or her responses on the forms.
 6. Define terms commonly used in court processes.
 7. Provide Phone numbers for lawyer referral services.

⁴²Iowa Supreme Court, Iowa Judicial Branch Customer Service Advisory Committee.
Guidelines & Instructions for Clerks Who Assist Pro Se Litigants in Iowa's Courts, July, 2000

HANDOUT L

Published by the New Jersey Judiciary

Things to Think About Before You Represent Yourself in Court

WHAT YOU SHOULD EXPECT IF YOU REPRESENT YOURSELF

While you have the right to represent yourself in court, you should not expect any special treatment, help, or attention from the court. The following is a list of some things the court staff can and cannot do for you. Please read it carefully before asking the court staff for help.

We can explain and answer questions about how the court works.

We can tell you what the requirements are to have your case considered by the court.

We can give you some information from your case file

We can provide you with samples of court forms that are available.

We can provide you with guidance on how to fill out the forms.

We can usually answer questions about court deadlines.

We cannot give you legal advice. Only your lawyer can give you legal advice.

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

We cannot give you an opinion about what will happen if you bring your case to court.

We cannot recommend a lawyer, but we can provide you with a telephone number of a local lawyer referral service.

We cannot talk to the judge for you about what will happen in your case.

We cannot let you talk to the judge outside of court.

We cannot change an order issued by a judge.

HANDOUT M

Information Available from a New Mexico Clerk's Office:

Court staff CAN provide:

- The status of a specific case, unless the case (or information in the case) is "sequestered" (not available for public inspection because of state law or a judge's decision);
- The court file on a specific case, unless the case is sequestered, for you to review;
- General information on court rules, procedures and practices;
- Court-approved forms (forms are not available for all legal proceedings);
- Court schedules and information on how to get matters scheduled.

Court staff CAN NOT:

- Give advice about whether you should file a case or whether you should take any particular action in a case;
- Fill out a form for you or tell you what words to put in a form;
- Advise you what to say in court;
- Speculate about what decision the judge might make or what sentence the judge might impose.

Court staff do not know the answers to all questions about court rules, procedures and practices. They have been instructed not to answer questions if they do not know the correct answer.

The court, including the judge and all court staff, must remain impartial. They do not take sides in any matter coming before the court.

All case files, unless sealed by court order or sequestered are public record and viewable by the public. Files and pleadings may not be removed, but photocopies may be made. There are also public-use computers available in the clerk's division, from which you can view the contents of a file. Historical records are on microfilm, and may be viewed in the Special Services Division. Specific case information is also available from the New Mexico Judicial Website (www.nmcourts.com).

Arizona Code of Judicial Conduct for Employees

Canon 3 (E)

- E. Legal Assistance. Judicial employees may assist citizens in identifying available procedural options and in understanding and complying with court procedures. Judicial employees shall not advise a particular course of action.”

Commentary:

Employees may assist citizens, consistent with the court’s resources, with matters within the scope of their responsibilities and knowledge. This assistance may include providing information contained in court records; furnishing examples of forms or pleadings; explaining court rules, procedures, practices, and due dates; and helping to complete forms with factual information provided by a citizen. Although a person may be informed of the options for addressing a matter, judicial employees should not advise citizens whether to take a particular course of action or attempt to answer questions outside their knowledge and experience. In performing their official duties, employees should not recommend the names of private attorneys to the public unless the employee works in a court approved lawyer referral program, but may refer members of the public to bar associations or legal aid organizations.

HANDOUT O

Case Law:

Crane v. Crane, 614 A.2d 935 (D.C. Ct.App. 1992) held that “ministerial” or “scrivener” services in which no legal opinion is sought or given does not constitute legal advice.

In State v. Bucci, 430 A.3d 746 (R.I. 1981), the Rhode Island Supreme Court held that legal advice is the “tendering of information to a client with a view to having him act thereon in furtherance of the client’s interest (or) business.”

A California court held that legal advice would not include “merely clerical” services such as making “forms available for the client’s use, filled the forms in at the specific direction of the client and filed and served those forms as directed by the client.” People v. Landlords Professional Services, 264 Cal. Rptr. 553 (CA. Ct.App. 1990)

The New Mexico Supreme Court held that “the line between what constitutes practicing law and what is permissible business and professional activity by non-lawyers is indistinct.” State Bar of New Mexico v. Guardian Abstract & Title Co., 91 N.M. 434, 439, 575 P.2d 943 (1978).

A federal District Court in Florida determined that advice is legal advice if it “affects important rights of a person under the law, and if the reasonable protection of the rights and property of those advised and served requires that the persons giving such advice possess legal skill and a knowledge of the law greater than that possessed by the average citizen.” In re Bachman, 113 B.R. 769, 772-73 (Bankr. S.D. Fla 1990).

Legal advice “requires the use of legal judgment requiring legal knowledge, training, skill and ability beyond that possessed by the average layman.” O’Connell v. David, 35 B.R. 141, 144 (Bankr. E.D. Pa. 1983), findings adopted in part, 35 B.R. 146 (E.D. Pa. 1983), aff’d 740 F.2d 958 (3d Cir. 1984).

“Due process” requires a meaningful opportunity to be heard, granted at a meaningful time, and in a meaningful manner: Logan v. Zimmerman Brush Co., 455 U.S. 422 (1982); Little v. Streater, 452 U.S. 1 (1981); Armstrong v. Manzo, 380 U.S. 545 (1965)

HANDOUT P

MEANINGFUL ASSISTANCE BEGINS WITH:

LISTEN TO THE QUESTIONS -

Let court users ask their questions and listen to them.
Do not predetermine what information or assistance they seek.

BE PATIENT -

Allow enough time to determine what court users really want from you.
Ask them questions to make sure you understand what they want.

EXPLAIN-

If you are going to provide information, make it clear and concise.
If you cannot answer a question or provide assistance, explain why.

DO NOT HIDE BEHIND RULES-

Provide the information and assistance. Just do it!!!

HANDOUT Q

TRUE IMPARTIALITY

According to Russell Engler, Professor of Law and Director of Clinical Programs at the New England School of Law, true impartiality exists when both parties are fully informed of their rights, their procedural options and the benefits and detriments arising from exercising them.⁴³

⁴³Engler, *And Justice for All – Including the Unrepresented Poor: Revisiting the Roles of the Judges, Mediators and Clerks*, 67 Fordham L. Rev. 1987 (1999).

HANDOUT R

**WHAT TO DO IF WRONG INFORMATION OR ADVICE
IS GIVEN?**

Accept Constructive Criticism and Responsibility

Learn From Mistakes

Share Experience With Co-Workers

HANDOUT S

COMMONLY ASKED QUESTIONS

QUESTION	INFO	ADV
What do I do with an amended complaint?		
What does (fill in any caption) mean?		
How do I file an answer?		
What do I write in my answer?		
When am I supposed to file the affidavit of default?		
How many copies do I need?		
How do I serve the him the papers if he is out of state?		
What copies do I give to the other party?		
Exactly which papers do I need?		
Are these papers filled out correctly?		
How many days do I have to answer? Does it include working days and weekends, or just working days?		
If I did not file my answer on time, and the plaintiff did not file default papers, can I still file my answer?		
What are my next steps for completing my lawsuit?		
What does dismissed with and without prejudice mean?		
How many years is a judgment valid?		
How do I schedule a hearing?		
What do I write in my answer?		
What do I need in a civil complaint? How do I go about filing one?		
How do I go about suing someone? Can you help me fill out the papers?		
How do I serve him/her?		
How do I go about filing a lawsuit to recover \$10,000 (or some other amount)?		