

FACILITATING ACCESS TRAINING PROGRAM



REFERENCE MANUAL

VOLUME ONE

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I. Introduction

In recent years, courts throughout New York State have experienced an increase in the number of unrepresented litigants. These individuals, generally unfamiliar with the legal process, often ask court staff for information or advice about the courts and court procedures, judges and individual cases. Although most court staff know they are not permitted to give legal advice, they may have difficulty understanding exactly what that means in some situations.

Thus, staff may become unnecessarily cautious about providing the assistance that litigants need.

In an effort to address this concern, the Facilitating Access Training Program was developed to ensure that court staff have the knowledge, tools and resources to respond appropriately to the public's questions. The training program is aimed at helping court staff to understand: what information can be provided; what is and is not legal advice; and what are appropriate responses to frequently asked questions.

This manual, which was written to support and reinforce the training, is in two volumes. Volume One contains background material, a discussion of general principles, legal references to confidential records and a description of the guidelines court staff should follow when assisting court users. Volume Two contains suggested responses to questions frequently asked by the public.

Of course, a training manual cannot anticipate all the possible questions that court users might ask. When unfamiliar questions arise, court staff should refer to the guidelines and/or consult with their supervisor or other administrative resources within the courthouse.

II. Background of the Training Program

In 2000, the Facilitating Access Committee (“Committee”) was appointed to ensure that court staff have the knowledge and skills to fulfill the court system’s obligation to provide information to the public.

The Committee was comprised of representatives from every judicial district and court type. Of particular concern to them was the nature of the information that can be provided without giving legal advice. The Committee studied this issue and in Fall 2001, issued its report with recommendations to implement a statewide Legal Information vs. Legal Advice program.

Specific recommendations included development of:

1. a training program to be incorporated into new employee orientation and current employee training that would provide court staff with the tools needed to distinguish between legal information and legal advice;
2. a manual for court employees that includes a chart and guidelines describing what information can and cannot be provided, as well as frequently asked questions with appropriate responses; and
3. a Facilitating Access web-page that includes the manual, resources, links and a comment/suggestion page.

Building upon the work of the Committee, the training program, these manuals and the Facilitating Access web page at: www.inside-ucs.org/courts/nya2j/fatpoverview.shtml were developed. These tools are designed to ensure that court employees are aware of their obligation to provide information to the public and how they can fulfill this responsibility.

III. General Principles

Providing equal access to justice for all New Yorkers is one of the highest priorities of the Unified Court System. To achieve this objective, court employees must assist court users in accessing the courts effectively but may not give legal advice.

Why are court employees prohibited from giving legal advice? There are three main reasons:

1. **Impartiality.** Court staff have a duty to maintain absolute impartiality. They must never favor one court user over another in providing information. In other words, court staff must share their knowledge fairly.
2. **Neutrality.** Court employees must remain neutral. They cannot give any information that contains or implies a recommendation of a particular course of action for an individual's situation.
3. **Unauthorized Practice of Law.** The New York Code of Professional Responsibility prohibits the unauthorized practice of law. Only individuals licensed by the state to practice law can give legal advice. Clerks and other court staff who are attorneys are prohibited from practicing law while working for the court system (Rules of the Chief Judge § 50.6).

IV. Distinguishing Legal Information from Legal Advice

Court employees are required to provide information to people who request or require it. However, they are frequently asked questions that appear to require giving legal advice. How does a court employee determine what is and is not considered legal advice? When can information be provided and when is information prohibited? How can they know when they are crossing the line and giving legal advice?

While no script, book or manual exists to identify every question that court employees are asked and to describe which questions can be answered, there are general definitions and guidelines that may help court employees to distinguish between legal information and legal advice.

- **Legal Information** is a written or oral statement that describes and explains court procedures, the law, legal terminology and options available to court users without interpretation, reference or application to a specific actual or potential case or situation. Generally, questions seeking legal information contain the words “can I,” “how do I” and “what do I.”
- **Legal Advice** is a written or oral statement that applies or interprets the law as it relates to an actual or potential case or situation and/or recommends a specific course of action for the case or situation. Generally, questions seeking legal advice contain the words “should I” or “whether.”

Unified Court System employees can and should explain court processes and procedures to court users and inform them about available options without interpreting or applying the law. Ultimately, becoming comfortable about making the distinction between providing legal information and giving legal advice requires experience with handling the kinds of questions that court users frequently ask court staff.

The chart that follows contains ten specific types of help that court staff may provide (“CAN”) and an example of assistance within each one of these areas that would not be permissible (“CANNOT”).

CAN	CANNOT
1. Explain court rules and procedures	1. Suggest which of several available procedures a litigant should follow
2. Explain options available to litigants	2. Provide opinions as to which option to choose
3. Provide information about past rulings in a case	3. Predict what the court will do
4. Provide cites (or copies) of statutes, court rules and ordinances	4. Provide an analysis or interpretation of statutes or ordinances based on the specific facts of a litigant's case
5. Explain public court operations and roles of court personnel	5. Provide information derived from the decision-making process
6. Provide public case information	6. Provide confidential case information
7. Explain what records are kept by the court and can be made available to the public	7. Provide access to court records that are sealed or made confidential by law
8. Explain how and where to file a complaint concerning a judge, court employee or private attorney	8. Provide opinions about the conduct of a judge, court employee or private attorney
9. Provide general referrals to other offices or persons	9. Provide referrals to other offices or persons based upon personal preference
10. Provide forms and instructions, and, in appropriate circumstances, enter the information provided by litigants on the form	10. Provide or suggest the information that should be entered on the forms

Following is a review of each of these ten areas of assistance.

1. Explanation of Court Rules and Procedures

Court employees have an obligation to explain court processes and procedures to court users. They also have an obligation to inform litigants how to bring their matters before the court for resolution. This includes referring them to applicable state and local court rules, explaining how to file a lawsuit or request a hearing, and explaining specific court requirements for seeking certain relief. Court employees cannot suggest or recommend a specific procedure that a court user should follow.

Examples:

Question: How do I file a civil action? Where do I get the papers and what do I say?

Answer: Generally, you start a civil action by filing in the County Clerk's Office a summons and complaint, or a summons with notice, along with payment of the applicable filing fees. For most civil actions, there are no preprinted court-authorized forms. You will need to go to the law library to look at the form books or contact a legal stationery store. I am not permitted to tell you what to include in your papers. If you need assistance, you should consult with an attorney. I can provide you with the number for the local bar association if you wish to locate an attorney who could assist you.

Question: I'm the plaintiff in a civil action. I'm sick and can't come to court for my case today. Will the court put it off for another day?

Answer: I cannot predict what the judge will do. The judge could adjourn the case to another day or the judge could take another action, such as dismissing the case. I can only inform the judge that you called and said you were sick. If you have a lawyer, you should tell the lawyer about this immediately.

Question: I can't use my kitchen sink because my landlord hasn't fixed the sink drain for three weeks. What should I do?

Answer: I cannot tell you what you should do. If you want to ask the court to order the landlord to make the repair, you can start a Housing Part action. The filing fee for the court index number is \$45. If you cannot afford the fee, I can give you papers to request that the fee be waived. You will need an order to show cause to be signed by a judge and then a date will be set up for inspection of the drain.

2. Explanation of Options

Court employees may inform a court user of the various options that may be available and the steps to carry them out, but they may not suggest which option the litigant should pursue. Analyzing a litigant's particular fact situation and recommending a certain course of action based on the applicable law is a job for a lawyer, not for a court employee. Telling a person what the person should do, rather than explaining how to do something, is not permitted.

Examples:

Question: I'm thinking about filing for divorce and I need child support. Should I wait for the divorce or file for the support now?

Answer: You have a choice of filing for a divorce in Supreme Court and asking for the child support in that case, or filing for child support in Family Court. Family Court doesn't have the authority to handle divorce cases, but can issue temporary and final orders of support. I cannot tell you which is the better option for you. I would suggest that you speak to an attorney.

Question: It's my first offense. If I plead guilty, will I go to jail?

Answer: Whether or not you are sentenced to jail is up to the judge. You can look up the possible sentences for the offense in the Penal Law. I do not have copies of the law here but you can go to the Public Access Law Library and ask the librarian to show you the relevant statute book.

3. Information about Past Rulings in a Case

Court employees may answer questions about what has occurred in a court proceeding based upon the court documents contained in the court file. They cannot, however, predict how the court will rule or what actions it will take in the future.

Example:

Question: Why did the judge dismiss my case? I was called out of town on a family emergency. Is the judge allowed to penalize me this way?

Answer: The court record shows that your case was dismissed because you didn't come to court on the scheduled date. You may ask that the case be restored to the calendar, but I can't predict what the judge will decide.

4. Citations to Statutes and Rules

Court employees may refer court users to statutes, court rules and ordinances to assist them in bringing their cases before the court. They may also provide copies of these materials, such as in the form of information packets. In addition, court employees may recite common rules (e.g., "You have five days from the date of service to answer a petition for the non-payment of rent."). Court employees should not undertake independent research or search the statute books for a court user. When a statute is not readily available or commonly known, court users should be referred to a Public Access Law Library for their own research.

While citations and copies of statutes may be provided, court employees may not interpret the meaning of the statute or rule for a court user.

Example:

Question: My husband punched me and broke my jaw. Can I get an order of protection that is good for three years?

Answer: The judge can give a three-year order of protection only in certain circumstances. You can find the list of circumstances in Family Court Act §

827(a)(vii). What happens in court will also depend on the evidence you provide and on the judge's decisions.

5. Explanation of Court Operations

In order to ensure that court users are familiar with how the courts operate, court employees may provide public information about court operations (e.g., the random assignment of cases to judges, if applicable; the role of various court personnel). Court employees, however, are prohibited from divulging confidential communications or information derived from the decision-making process, such as communications between a judge and court attorney for the purpose of deciding a case or the reasoning a judge used to decide a case a certain way.

Examples:

Question: Why was my case assigned to Judge Jones?

Answer: Cases are randomly assigned by the computer. When an index number is put into the computer, the computer automatically assigns a judge. In your case, the computer assigned Judge Jones.

Question: Who determines when my case is called?

Answer: Your case is placed on the judge's calendar. Generally, the judge decides how the calendar is called. I will check if the judge assigned to your case has written rules and give you a copy. This will help you understand how the judge runs the courtroom.

6. & 7. Public Case Information and Records Access

Court employees may provide case information to court users that is public, including the material in most court files. It is always appropriate to answer questions about the court procedures and legal terms reflected in public court files, and to assist court users in finding the specific information they are seeking. However, some court files contain confidential information that should not be disclosed. Appendix A of this manual contains a chart which summarizes confidential records under New York law. If a court employee is uncertain whether a record is considered public or confidential, the employee should check with his or her supervisor.

Examples:

Question: My father's will was probated in this court. Can I look at the file?

Answer: I'm going to send you to our Records Room where you can give the clerk the specific information needed to locate the file.

Question: My parental rights were terminated and I heard the child is being adopted. I want to find out who is adopting the child. Can I see the adoption case file?

Answer: I'm sorry, but I am not permitted to say whether or not there is an adoption case for a child. Even if there were a case, the law makes the case records confidential.

8. Complaints

Court users may have complaints against judges, attorneys or court employees. Court employees should explain how and where these persons can file complaints. Appendix B of this manual contains a list of the offices which handle such complaints. However, court employees should never voice opinions of any kind about judges, attorneys or other staff.

Example:

Question: Judge Smith issued a decision against me. He's a bad judge, isn't he? Has he treated other litigants in a similar manner? I want to file a complaint against him. How do I do it?

Answer: If you wish to file a complaint about a judge, you can contact the local Administrative Judge, the Office of the Inspector General or the Commission on Judicial Conduct.

9. Referrals

When it is clear that a court user is seeking legal advice or does not understand the information you are providing, court employees should suggest that the person seek the assistance of an attorney. While court employees may not make referrals to a specific lawyer or law firm, they may provide referrals to bar associations and other organizations that provide legal services or information. A list of such organizations is available on the Unified Court System's CourtHelp website, www.nycourthelp.gov, by clicking "Lawyers." You can also look for referral sources listed on the NYS Courts Access to Justice Programs intranet site at: www.inside-ucs.org/courts/nya2j.

Example:

Question: I need a good lawyer. Who is the best?

Answer: I can't refer you to an individual lawyer. I can give you the number of the local bar association referral service if you want help in finding a lawyer who specializes in your kind of case. If you are unable to afford the services of an attorney, you can also check our website (www.nycourthelp.gov) or another web site, Law Help (www.lawhelp.org/ny) to find legal services.

10. Forms and Instructions

Court employees may provide court forms and, when available, instructions on how to fill out those forms. When a court user is unsure of which form to use, court staff should identify and provide the form that most appropriately meets the person's needs. When doing so, court employees should advise the person that the form will probably meet the need but that he or she cannot guarantee it. In addition, the person should be advised to read the form closely, do further research, and/or consult with an attorney for a definitive determination of the appropriateness of the form for the litigant's purpose.

Court forms can be confusing to people unfamiliar with the courts and legal terms. Court employees may answer questions about how to complete court forms, including where to write particular types of information and what unfamiliar legal terms mean. Staff may not, however, provide or suggest language or information to be entered on the forms. Court employees also can check forms for completeness and provide information about specific problems on the form and how to resolve them.

In circumstances where a person is unable to complete a form due to physical disability or other limitation such as illiteracy, a court employee is permitted to enter on the form specific information provided by the litigant. In such circumstances, the court employee is acting solely as a scribe, recording the exact words provided.

Example:

Question: The form says “relief requested.” What should I put there?

Answer: The “relief requested” question is asking you to state what you would like the court to do. I cannot tell you the words to use, but you should write there in your own words what you want the court to do. If you have any questions about the kind of relief that is available to you in your situation, you should consult an attorney.

V. Resources

There are many resources available to court employees, both in and out of the courthouses, to assist them in serving the public. When confronted with a difficult question or one in which the answer is not known, the court employee should refer to the guidelines contained in this manual and/or consult with a supervisor. If the supervisor is unavailable, court employees should reach out to a court attorney within their facility for guidance. The Court Operations Manuals are another resource and are available on-line. Of course, where the court user is clearly seeking legal advice, court employees should suggest that the court user consult with an attorney.

If a court user is seeking general information about a specific area of law, the court employee can refer the litigant to a number of web sites that contain this information. These web sites include:

- **New York State Unified Court System, CourtHelp**, www.nycourthelp.gov (web site for unrepresented litigants, including frequently asked questions and official court forms).
- **New York State Bar Association, Legal Ease Pamphlet Series**, www.nysba.org/Content/NavigationMenu/Public_Resources/Educational_Pamphlets/Educational_Services.htm (pamphlets in English and Spanish on a wide range of topics, including adoption, divorce and the right to appeal).
- **LawHelp**, www.lawhelp.org (a web site designed to assist low-income New Yorkers find legal resources. Contains self-help information on a wide range of topics.)

If the court has prepared informational brochures or fact sheets, these materials should be placed in an easily accessible area for distribution. If there is a DIY Form program available, the court employee should explain how to access the program. The court employee also can refer court users to the local Public Access Law Library (there is one in each county). Visit: www.nycourts.gov/lawlibraries/publicaccess.shtml to find the location in your county. At these libraries, the court user can obtain assistance from the librarians to locate specific legal resources. Many of these libraries also have public access terminals which allow the litigants to do on-line legal research.

If the court user needs a referral to an attorney, the court employee can provide the number of the local bar association (if they have a referral service) or the New York State Bar Association Lawyer Referral and Information Service (800-342-3661). For litigants who say they cannot afford the services of an attorney, staff should provide the telephone number of the local legal services program. If the court does not have the information, the person should be referred to LawHelp (www.lawhelp.org/ny), a web site searchable by zip code for legal services throughout New York State.

In addition, an on-line data base exists for court users seeking information for Nassau and Suffolk counties. Community Resource Database of Long Island, www.crdli.org, provides legal services, social services, and resource information on over 12,000 agencies in Nassau and Suffolk counties.

If it appears that mediation, arbitration or other dispute resolution options are more appropriate than the court process, the court employee can refer the court user to the local Community

Dispute Resolution center. Visit: www.nycourts.gov/ip/adr/ProgramList.shtml to find a location in your county

VI. Communication Skills

While it is critical to be able to distinguish between legal information and legal advice, it also is important to develop the necessary communication skills to ensure that the requested legal information is provided to court users.

In the courthouse, communication generally occurs in an atmosphere in which both the court employee and the court user are under stress. Such a situation is ripe for conflict and misunderstanding to occur. To avoid this, it is important to take a step back and examine the situation from the court user's point of view. Court processes and procedures can be confusing, particularly to those unfamiliar with the courts. The use of "legalese," jargon or acronyms can present a bar to understanding. Court staff should use "plain English" when communicating with court users, particularly the un-represented.

Some court users are non-English dominant. Many courts have court interpreter employees who can assist in communicating the legal information being sought. To the extent possible, interpreters should be used to ensure that the requested information is provided and understood.

For a communication to be successful five basic elements should be taken into consideration: the listener; the speaker; the language; the environment; and feedback.

- **The Listener:** Communication starts with listening. Good listening encompasses more than lending an ear, it involves body language and feedback.
- **The Speaker:** As holders of the information being sought, it is important for court staff to ensure there is understanding and not leave it to the court user to interpret the words.
- **The Language:** The language chosen by court staff should be simple, clear and specific. Legal terms, acronyms and jargon should be avoided.
- **The Environment:** Distractions add to the challenge of providing technical and precise legal information. It is essential to focus on the legal information being sought.
- **Feedback:** Checking for understanding ensures that the legal information being provided is understood by the court user.

VII. Conclusions

Achieving the Unified Court System's goal of ensuring equal access to justice for all is an important undertaking. Essential to this work are the willingness and ability of court staff to provide helpful information to court users. Performing this task without giving prohibited legal advice can be challenging given the day-to-day pressures of New York State's busy courthouses. An understanding of the principles, rules and examples contained in this manual can help. The experience, expertise and ongoing commitment to public service of the Unified Court System's staff provide the best assurance of success.

APPENDIX A

CONFIDENTIAL RECORDS UNDER NEW YORK LAW

Criminal Cases	Statutory Authority
Sealed Records in Criminal Cases which end Favorably to the Accused	CPL 160.50
Grand Jury Minutes	CPL 190.24(4); Penal Law 215.70
Mental Health Records Submitted in Connection with Court Proceedings	CPL 330.20; Mental Hygiene Law Articles 9, 15; Mental Hygiene Law § 33.13©)
Probation Reports and Pre-Sentence Memoranda	CPL 390.50
Sealed Records in which the Defendant is Adjudicated a Youthful Offender	CPL 720.35(2)
Sealed Records of Criminal Cases Against a Juvenile Offender that are Removed to the Family Court	CPL 725.15
Court Records that Might Identify the Victim in Sex Offense Cases	Civil Rights Law § 50-b
Orders of Commitment of Mentally Ill Inmates	Correction Law § 402
Defendant Criminal History Records	42 U.S.C. § 3789g(b); 28 CFR Part 20
Alcohol and Drug Treatment Records	42 CFR Part 2.31 et seq.
Criminal Court Sex Offender Registry Forms	Correction Law § 168-b
Family and Matrimonial Matters	Statutory Authority
Records of Adoption Proceedings	Domestic Relations Law § 114
Information in Matrimonial Proceedings	Domestic Relations Law § 235
Records of Family Court Proceedings (not Open to Indiscriminate Public Inspection)	Family Ct Act § 166
Sealed Records in Juvenile Delinquency Proceedings upon Termination of an Action in Favor of the Respondent	Family Ct Act § 375.1
Miscellaneous Cases	Statutory Authority
Performance Evaluations in Personnel Records of Police Officers, Firefighters and Correction Officers	Civil Rights Law § 50-a
Attorney Disciplinary Proceedings	Judiciary Law § 90.10
Records that Identify Jurors	Judiciary Law § 509(a)

APPENDIX B

REFERRAL SOURCES FOR COMPLAINTS

Judges

To file a complaint against a judge, the complainant may contact: the Administrative Judge for the court in which the judge is assigned; the Office of the Inspector General; or the State Commission on Judicial Conduct. Links to contact information can be found at:

<http://www.nycourts.gov/ip/judicialconduct/index.shtml>.

Attorneys

To file a complaint against an attorney, the complainant may contact the Attorney Disciplinary/Grievance Committee. The appropriate office depends on the locations of the attorney's office. Links to contact information can be found at:

<http://www.nycourts.gov/attorneys/grievance/complaints.shtml>.

Court Employees

To file a complaint against a court employee, the complainant may contact: the Chief Clerk of the court in which the employee works (inside New York City); the District Executive in charge of the court in which the employee works (outside New York City); or the Office of the Inspector General. Links to contact information can be found at:

<http://www.nycourts.gov/howdoi/courtemployee.shtml>.