

# **LEGAL INFORMATION VS. LEGAL ADVICE**

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# **LEGAL INFORMATION VS. LEGAL ADVICE: SOME QUESTIONS**

**What is legal information?**

**What is legal advice?**

**How do you tell the difference between the two?**

**Why does that difference matter?**

# **WHY THE DIFFERENCE MATTERS**

**Clerk and Court staff have specialized knowledge that the public does not have regarding court processes and procedures.**

# **WHY THE DIFFERENCE MATTERS**

**The crucial role that Clerk and Court staff play in:**

- Promoting the efficient operation of the entire court system;**
- Serving as the most common point of contact between the public and the courts;**
- Demonstrating that we have a fair and impartial court system; and**
- Helping to ensure that judicial ethical rules are followed.**

**JUDGES HAVE TO FOLLOW RULES  
...AND YOU CAN HELP!**

# **SOME ETHICAL OBLIGATIONS THAT APPLY TO JUDGES**

- **Perform judicial and administrative duties competently diligently, and promptly;**
- **Avoid bias, prejudice, or harassment;**
- **Be patient, dignified, and courteous;**
- **Impartially decide cases;**
- **Maintain confidential information; and**
- **Avoid ex parte communications.**

# **ETHICAL OBLIGATIONS OF COURT AND CLERK STAFF, IN A NUTSHELL**

- **Provide high-quality service;**
- **Be patient, dignified, and courteous;**
- **Observe the duty of impartiality;**
- **Maintain confidential information;**
- **Avoid ex parte communications; and**
- **Give no legal advice.**

**AGAIN, THOUGH, WHAT ARE LEGAL  
ADVICE AND LEGAL INFORMATION?  
HOW DO WE DISTINGUISH THEM  
FROM EACH OTHER?**

# LEGAL INFORMATION

LEGAL INFORMATION EQUALS  
FACTUAL INFORMATION.

Rule of Thumb: If the question starts with “who,” “what,” “when,” “where,” or “how,” you probably can answer it.

# LEGAL ADVICE

LEGAL ADVICE EQUALS A JUDGMENT  
CALL THAT IS BASED ON FACTS AND  
THE LAW.

Rule of Thumb: If the question starts with “should” or something similar, you should not answer it.

# LEGAL ADVICE

Legal advice can only be provided by an attorney to his or her client.

# LEGAL ADVICE

**“A person who: . . . engages in the business of a practicing lawyer; without first having been admitted as an attorney by the supreme court commits a Class B misdemeanor.” IC 33-43-2-1(1).**

# LEGAL INFORMATION VS. LEGAL ADVICE – SOME EXAMPLES

## Legal Information Is:

**Describing common, regularly used court procedures, court rules, and administrative practices.**

## Legal Advice Is:

**Trying to interpret for a person what a rule, procedure, or practice means for that person's situation and/or suggesting which rules or procedures that person should use.**

# LEGAL INFORMATION VS. LEGAL ADVICE – SOME EXAMPLES

## Legal Information Is:

**Explaining or showing where to find statutes or procedural rules.**

## Legal Advice Is:

**Trying to analyze or interpret how a statute or procedural rule applies in light of the person's circumstances. Clerk and Court staff cannot do legal research for other people!**

# LEGAL INFORMATION VS. LEGAL ADVICE – SOME EXAMPLES

## Legal Information Is:

**Making copies of court forms available to a person or answering basic questions about how to complete forms.**

## Legal Advice Is:

**Filling out the form for a person, telling him or her what words to use or information to include in the court papers that he or she is going to file, or telling him or her what to say in court.**

# LEGAL INFORMATION VS. LEGAL ADVICE – SOME EXAMPLES

Legal information that you can provide includes:

**Public information that is found in a docket, calendar, index, report, or specific case file.**

Of course, you cannot provide information regarding the outcome of a case before it has been officially released to the litigants and public.

# **LEGAL INFORMATION VS. LEGAL ADVICE – SOME EXAMPLES**

**Legal Information Is:**

**Giving a person a copy of a pleading or a Court Order pertaining to his or her case.**

**Legal Advice Is:**

**Explaining the meaning of a Court Order to that person.**

# **LEGAL INFORMATION VS. LEGAL ADVICE – SOME EXAMPLES**

**Legal Information Is:**

**Defining a term commonly used in court processes.**

**Legal Advice Is:**

**Interpreting that term for the litigant's situation.**

# **LEGAL INFORMATION VS. LEGAL ADVICE – SOME EXAMPLES**

**Legal Information Is:**

**Giving contact information for a pro bono legal service.**

**Legal Advice Is:**

**Referring a litigant to a particular attorney or law firm.**

# **A QUICK RECAP: LEGAL INFORMATION VS. LEGAL ADVICE**

**Legal Information Is:**

**Factual information.**

**Questions starting with “who,” “what,” “when,”  
“where,” or “how.”**

**Legal Advice Is:**

**A judgment call that is based on the facts and law.**

**Questions starting with “should.”**

**AND NOW FOR A LITTLE QUIZ . . .**

**SO, WHO'S READY FOR SOME FUN  
ROLEPLAY EXERCISES??!!!**

**WHAT'S THAT?**



**OF COURSE I LOVE  
ROLEPLAY EXERCISES!**



**I AM POSITIVELY ECSTATIC.  
SO, SO ECSTATIC.**

**GOOD NEWS!**  
**IT IS SCRIPTED AND THERE IS A REWARD!**  
**LET'S GET STARTED!**

**TEAM JEOPARDY!**

Category 1	Category 2	Category 3	Category 4	Category 5	Category 6
<u>200</u>	<u>200</u>	<u>200</u>	<u>200</u>	<u>200</u>	<u>200</u>
<u>400</u>	<u>400</u>	<u>400</u>	<u>400</u>	<u>400</u>	<u>400</u>
<u>600</u>	<u>600</u>	<u>600</u>	<u>600</u>	<u>600</u>	<u>600</u>
<u>800</u>	<u>800</u>	<u>800</u>	<u>800</u>	<u>800</u>	<u>800</u>
<u>1000</u>	<u>1000</u>	<u>1000</u>	<u>1000</u>	<u>1000</u>	<u>1000</u>

## **CATEGORY I FOR 200**

**Question: “My neighbor’s tree has been dead for years. It fell on my house last night. Will I win my case if I sue him?”**

**Does this call for legal information or legal advice?**

## **CATEGORY I FOR 400**

**Question: “How many copies of this do I need?”**

**Does this call for legal information or legal advice?**

## **CATEGORY I FOR 600**

**Question: “How many days do I have to answer?”**

**Does this call for legal information or legal advice?**

## **CATEGORY I FOR 800**

**Question: “I need to set aside this judgment that was entered against me. Where do I find the court rules for that?”**

**Answer: “The Indiana Rules of Trial Procedure have information about that. You can use a search engine to find the rules online.”**

**Is this answer legal information or legal advice?**

# CATEGORY I FOR 1000

Question: “I am going to file to set aside the judgment that was entered against me. Which part of Trial Rule 60 should I use in my motion?”

Does this call for legal information or legal advice?

## **CATEGORY 2 FOR 200**

**Question: “I got an Order of Dismissal that says the case was ‘dismissed with prejudice.’ What does that mean?”**

**Does this call for legal information or legal advice?**

## **CATEGORY 2 FOR 400**

**Question: “The sheriff just brought me these divorce papers that my wife filed. She is asking for maintenance. What is that?”**

**Does this call for legal information or legal advice?**

## **CATEGORY 2 FOR 600**

**Question: “The sheriff just brought me these divorce papers that my wife filed. She is asking for maintenance. Do I need an attorney to represent me for this case?”**

**Does this call for legal information or legal advice?**

## **CATEGORY 2 FOR 800**

**Question: “The judge has issued his order and I don’t agree with it. What do I do next?”**

**Answer: “You should file a Notice of Appeal.”**

**Is this answer legal information or legal advice?**

## **CATEGORY 2 FOR 1000**

**Question: “How do I schedule a hearing in my case?”**

**Does this call for legal information or legal advice?**

## **CATEGORY 3 FOR 200**

**Question: “The judge has had my case under advisement for over 90 days and hasn’t made a decision. Should I file to have a new judge assigned to the case?”**

**Does this call for legal information or legal advice?**

## **CATEGORY 3 FOR 400**

**Question: “I’ve got three misdemeanors, a Class D felony, and a Class C felony that I want expunged, but these expungement forms are so confusing! If I give you my address, Social Security Number, date of birth, and convictions, can you fill out these forms for me? Don’t worry – I’ll sign it when you’re done.”**

**Does this call for legal information or legal advice?**

## **CATEGORY 3 FOR 600**

**Question: “I want to change my name and somebody said I have to give notice of it before I go to court. Who do I have to notify and how is that done?”**

**Does this call for legal information or legal advice?**

## **CATEGORY 3 FOR 800**

**Question: “My son is 15 and doesn’t want his dad’s name anymore. His dad only pays support and visits half the time but says he won’t agree. If I file to change my son’s name, will the judge grant it?”**

**Does this call for legal information or legal advice?**

## **CATEGORY 3 FOR 1000**

**“A person who: . . . engages in the business of a practicing lawyer; without first having been admitted as an attorney by the supreme court commits a \_\_\_\_\_.”**

**Fill in the blank. What level or class of felony or misdemeanor is this criminal offense?**

## **CATEGORY 4 FOR 200**

**“How do I look up the status of a court case online?”**

**Does this call for legal information or legal advice?**

## **CATEGORY 4 FOR 400**

**Question: “I have a jury trial in four weeks. Should I get an attorney?”**

**Does this call for legal information or legal advice?**

## **CATEGORY 4 FOR 600**

**Question: “My lawyer won’t listen to me about anything and is doing nothing! Would it be a good idea for me to fire him and represent myself or instead get another lawyer?”**

**Does this call for legal information or legal advice?**

## **CATEGORY 4 FOR 800**

**Question: “My public defender won’t listen to me about anything and is doing nothing! How do I get another public defender?”**

**Does this call for legal information or legal advice?**

## **CATEGORY 4 FOR 1000**

**What is the name of the set of ethical rules that Indiana judges have to follow?**

## **CATEGORY 5 FOR 200**

**Are you allowed to ask questions to get more information about what a person is seeking in order to determine whether you then can answer that person's questions without giving legal advice?**

## **CATEGORY 5 FOR 400**

**A litigant comes to your counter and tells you about his case. He wants a change in custody of his child because he is certain that the mother's boyfriend has been molesting the parties' child. No charges have been filed against the boyfriend. The father mentions that he is about to hire an attorney. You feel that that attorney has no experience with that type of case and that other attorneys in your community would be able to help the father much more. Can you steer him toward other attorneys?**

## CATEGORY 5 FOR 600

Question: “My son’s mother is putting him in danger. She’s doing drugs all the time! I know the judge’s order says she is supposed to get parenting time but do I have to let him go with her this weekend?”

**Does this call for legal information or legal advice?**

## **CATEGORY 5 FOR 800**

**Question: “I got arrested and my initial hearing is this morning. Look, I shouldn’t have done what I did. Wouldn’t it be a good idea if I just pled guilty today and got it overwith?”**

**Does this call for legal information or legal advice?**

# CATEGORY 5 FOR 1000

Who are these people?



## **CATEGORY 6 FOR 200**

**A litigant comes to the counter. She is mad as a hornet because her wages are being garnished. She says she never got advance notice and she wants a hearing with the judge. However, she doesn't know which of the judgments against her resulted in the garnishment order. Can you look up which case the garnishment was for and tell her?**

## **CATEGORY 6 FOR 400**

**Question: “My daughter wants to file a motion to modify custody. The dad has custody of their son and the son is telling her that the dad has been hitting him. Can my daughter get a custody change?”**

**Answer: “I don’t know if your daughter will win, but she needs to make sure she writes in the motion that the dad is hitting the son.”**

**Is this answer proper or not?**

## **CATEGORY 6 FOR 600**

**You have a person at the counter at your office who says that he wants to know which statutes relate to his case. Can you research that matter for him and give him a list of the important statutes that apply?**

## **CATEGORY 6 FOR 800**

**You have a person at the counter at your office who says that he wants to read the statutes that relate to his case. Can you refer him to the Indiana General Assembly's website for that? If not, why not? If so, what is the address of the website?**

## **CATEGORY 6 FOR 1000**

**A blind man comes to the courthouse and wants to file a court case. He asks you to read it to him and to fill it out in response to his direct dictation. Can you do that?**

# **GROUP DISCUSSIONS**

**QUESTIONS? CONTACT ME!**

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