



# LEGAL INFORMATION vs. LEGAL ADVICE

*A 25-Year Retrospective*

BY JOHN M. GREACEN\*

## In modern times, a key question in access to justice has been: To what extent can court personnel assist unrepresented litigants in filing and managing their claims?

The answer to that question has come in the form of a dichotomy: Court personnel may assist by providing legal information, but not by providing legal advice.

I first offered that distinction a quarter century ago, and it has since been widely embraced by courts. But “where to draw the line” between legal information and legal advice differs from place to place, and considerable confusion remains concerning the relevance of definitions of “the unauthorized practice of law.” I return to this topic here to suggest the general parameters of a national consensus on these issues and to address new questions about how the dichotomy may apply to individuals who are not employed by a court but who perform a similar helping role.

In 1995, I published “No Legal Advice from Court Personnel: What Does That Mean.”<sup>1</sup> In 2001, “Legal Information vs. Legal Advice: Developments During the Last Five Years”<sup>2</sup> followed. These articles argued that court clerks are incapable of interpreting and applying the vague legal standards pertaining to the unauthorized practice of law, observed that this ambiguity causes them to withhold assistance to patrons seeking help understanding court processes, and proposed an altogether different framework derived from the court’s ethical obligation of impartiality. The articles proposed the use of the legal information/legal advice dichotomy to address the ethical standard. The court community in the United States and elsewhere has now been working for over 25 years with the legal information/legal advice distinction. And it is a distinction that matters: Clarity on what court staff may and may not do frees them to help litigants understand and participate in the legal process, which, in turn, helps the courts process cases more efficiently and significantly expands access to justice among those most in need.

Much of significance has happened since the first article was published:

- The Self-Represented Litigation Network (SRLN) was formed in 2005. Under the inspired leadership of Richard Zorza and Katherine Altenecker, the network has developed multiple approaches to improve the experience for self-represented litigants in state and federal courts.
- Self-help centers are now available in courthouses throughout much of the United States and are available remotely on a statewide basis in Alaska, Arizona, Illinois, Maryland, Minnesota, and Utah.
- Congress appropriated funds for the Legal Services Corporation’s Technology Initiative Grant program, legal help websites are now available in every state, and legal forms are now widely available and often delivered via document-assembly software products.
- The United States Department of Justice created an Access to Justice Office, and several federal programs now provide funding for legal services to advance agency-specific missions, such as veterans affairs or housing assistance.
- Pressure from the Department of Justice during the Obama administration led many state courts to begin providing adequate assistance to non-English speakers.
- The United States Supreme Court’s decision in *Turner v. Rogers* held that state courts must provide some assistance to self-represented litigants in civil contempt proceedings arising from nonpayment of child support to ensure a fundamentally fair process as required by the 14th Amendment’s Due Process Clause.<sup>3</sup>
- A 2013 report on the Legal Services Corporation’s Summit on the Use of Technology to Expand Access to Justice<sup>4</sup> set a goal for the U.S. to provide access to some form of effective assistance for 100 percent of people with essential civil legal needs (the “100 percent challenge”). That target was adopted in 2015 by the Conference of Chief Justices and Conference of State Court Administrators as the aspirational goal for all state courts.<sup>5</sup>
- The Justice for All Project initiated by the Public Welfare Foundation is now funding the development and implementation of action plans to realize the 100 percent challenge in 14 states.<sup>6</sup>

Despite some academic criticism in its early years (discussed at length in the 2001 article), the legal information/legal advice dichotomy has now been adopted so widely that it is ►

fair to characterize it as the accepted standard of practice in both the federal and state court systems. Georgetown University's Mary McClymont published a study in 2019 of 23 "legal navigator" programs in 15 states.<sup>7</sup> Without exception, these programs follow the legal information/legal advice distinction in defining the services that their staff and volunteers render.<sup>8</sup> Thirty-eight states<sup>9</sup> and the District of Columbia have explicitly adopted policy guidance based on this distinction (or use a training curriculum based on the distinction), and the Federal Judicial Center has adopted similar training materials for staff in federal courts. Maryland constitutes a special case (see sidebar on Page 56). Colorado<sup>10</sup> and Illinois<sup>11</sup> have the most recently adopted policies. And two Canadian provinces — New Brunswick and Nova Scotia — have implemented such policies; Saskatchewan's 2022 policy is discussed later in this article. This list is not intended to be exhaustive (some of the other 12 states, or courts within those states, are undoubtedly using the approach) but shows how extensively the legal information/legal advice dichotomy has been adopted.

California's implementation has been the most sophisticated, with the promulgation of a comprehensive set of guidelines that includes ethical standards for court self-help staff.<sup>12</sup> And Rule 110 of the Minnesota General Rules of Practice for District Courts<sup>13</sup> itemizes a number of specific services that court staff must perform, are authorized to provide (such as using a child support calculator to show a party what the guideline child support amount would be under specific factual assumptions), and must not provide. These are excellent references for courts and other entities seeking useful starting points for developing or refining their policies.

The legal information/legal advice dichotomy has been used with increasing sophistication and nuance as courts have worked with it over the past quarter century, warranting an articulation of the current national practice. There have also been numerous occasions, for instance at national training events, in which knowledgeable court administrators and judges have demonstrated lack of familiarity with the current consensus — another reason to publish this summary.

This article sets forth the rationale for the prevailing understanding of the legal information/legal advice dichotomy, how it fits within general understandings concerning the unauthorized practice of law, and how it is applied in regularly recurring situations. It also explains Maryland's unique practice of providing limited legal advice through its local and statewide court-sponsored remote self-help centers. It concludes with a discussion of new

challenges for the prevailing information/advice approach and recommendations for addressing them.

## THE RATIONALE FOR THE LEGAL INFORMATION/LEGAL ADVICE DICHOTOMY

The 1995 article explored the premise that courts should limit staff interactions with court patrons based on definitions of the unauthorized practice of law. Research into the appellate case law on that topic disclosed that judges had universally declined to articulate such definitions; instead, they approached the issue on a case-by-case basis. If appellate judges could not provide a clear definition of the practice of law, it was hopeless to expect deputy clerks to define it as patrons approached them with questions and requests for help. The article suggested that courts approach the issue from a different perspective — informed both by the need for courts to provide information to patrons to ensure access to justice and by the need for court staff to maintain their impartiality in dealing with all patrons.

A study of uncontested divorce cases in Connecticut published in a 1976 article in *Yale Law Journal* found that 63 of 2,500 (2.5 percent) uncontested divorce cases filed in New Haven between December 1974 and May 1976 were filed by a self-represented petitioner.<sup>14</sup> By 1994, the phenomenon of self-representation was sufficient to cause the leadership of the Lawyers Conference of the American Bar Association's Judicial Administration Division to sponsor an annual meeting panel presentation on "Litigants Without Lawyers." Recent studies by the National Center for State Courts<sup>15</sup> show that 76 percent of nonfamily civil cases and 72 percent of family cases in state trial courts have at least one self-represented party. Over the past half century, the appearance of self-represented litigants has changed from a rare event for state courts to the reverse; what is rare today is a case in which both sides are represented. Given the complexity of court processes, people without a lawyer or law training need the assistance of court personnel in order to navigate the court system.

My 1995 article argued that the risk that prohibitions on the unauthorized practice of law are designed to eliminate — delivering misinformation — is not present when information is provided by court staff; after all, lawyers commonly ask court staff to explain court procedures to them. Rather, the risk is that the court's impartiality could be compromised if a staff member took on an advocacy role for one side in the case. The information/advice dichotomy addresses the latter risk. To mitigate the risk of a loss of

impartiality, the dichotomy specifies that court staff must simply leave to the patron all decisions on what course of action to pursue.

The dichotomy also explicitly requires court staff to provide equal services to both sides of every case. As California’s policy states, “Self help staff must provide the same assistance, at the same level of service, to both sides of all types of cases served.”<sup>16</sup>

This equal-services requirement creates problems for specific case types in which advocacy groups exist to assist vulnerable persons, such as victims of domestic violence who often need special help to persevere in their decision to seek court protection. Domestic violence advocates do not help the accused batterer. The California policy has required court self-help centers to offer their services to the other party in these cases and to explicitly communicate the availability of such services when advocacy programs are housed in the courthouse or when their services are advertised there.

Over the past 25 years, it has become clear that court policies explicitly authorizing staff to provide certain types of legal information to court patrons exempt court staff from unauthorized-practice-of-law rules or statutes. The services may fall within the definition of actions that, if performed by a private citizen or a paralegal, would constitute the unauthorized practice of law under the decisions of a particular state. But when court policies specifically authorize court staff to perform them, they cannot be the *unauthorized* practice of law. This issue is discussed in depth in the 2001 article.<sup>17</sup> A committee of the Washington State Bar Association explicitly articulated the basis for creating a separate category for court staff<sup>18</sup>: For the court to function for people who are not represented by a lawyer, court staff must be able to provide information to them, and the risk of harm to those who receive help is minimal given the expertise and professionalism of court staff.

In addition, the legal information/legal advice dichotomy has influenced the interpretation and enforcement of unauthorized-practice-of-law rules and statutes.<sup>19</sup> In Texas, for instance, the legislature — in response to a bar ruling that

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Nolo (formerly Nolo Press) publications constituted the unauthorized practice of law — expressly exempted the provision of information about the law itself.<sup>20</sup>

A subsidiary concern about court and individual legal liability for giving incorrect information has proved whimsical. Millions of people have been helped in court self-help centers, and the author is unaware of a single instance in which such information has led to a lawsuit, let alone a liability judgment.

Finally, court guidelines are not uniform in their coverage. Some apply to all court staff. Others apply to specific categories of staff, e.g., family law facilitators or self-help center staff. Others extend beyond court staff to law librarians and “court volunteers.” The final section of this paper argues that expanding the reach of “safe haven” policies beyond court and law librarian staff to include “trusted intermediaries” from the community, such as community volunteers, is today’s access-to-justice challenge.

## THE LEGAL INFORMATION/ LEGAL ADVICE DICHOTOMY

The general understanding of the distinction between legal information and legal advice begins with a framework of universally accepted topics on which court staff do *not* provide information and then proceeds to guidance on what staff *do* provide, based on general analytical principles. Below I outline this general understanding and other principles based on my own years of experience teaching on this subject to court staff in dozens of states.

### Universally Accepted Topics on Which Court Staff Do Not Provide Information

There are several questions that court staff will not answer. These are areas in which court staff have no discretion. They are bright-line rules that do not require the application of a legal information/legal advice distinction.<sup>21</sup>



***Will the judge rule in my favor? Will I win? Is it likely that I will win?***

Current practice forbids court staff from predicting the outcomes of court proceedings.<sup>22</sup> Court staff do not attempt to predict the outcomes of court proceedings for a number of reasons: 1) they are not the judge in the case; 2) even though a judge usually acts in a particular way, there may be a peculiar fact or circumstance that leads the judge to a different outcome in one instance; 3) court staff do not have the time (or the expertise) to obtain all possibly relevant information from patrons to inform their prediction of a court outcome; 4) this information is not relevant to a patron's ability to present a case to the court; and 5) lawyers regularly make these sorts of predictions for their clients, and patrons have the option of obtaining private or legal aid counsel to obtain it.

However, some self-help portals could have the capability to offer predictions in the future. In the National Center for State Courts' 2015 requirements document for a state triaging litigant portal,<sup>23</sup> Tom Clarke calls for state courts to provide users with "probabilistic outcomes data." He describes the proposed service in this way:

Some evidence suggests that most common case types, especially those with many self-represented litigants, often follow only two or three simple case paths, with a very small percentage involving significant case complexity. Therefore, courts may be able to provide simple descriptive statistics on what usually happens when each possible path is chosen. Note that the portal does not make any recommendations about which path to take, so there is no issue around the practice of law or giving legal advice. It merely describes what typically happens (win or lose, amounts awarded, etc.).<sup>24</sup>

But we do not have that capability today.

***When will the judge decide?***

Court staff can provide general estimates of the time that will elapse between filing or hearing and decision. But they must qualify their answer so that a patron will not develop an inappropriate expectation. For instance, it would be appropriate to say that the state supreme court (or a state statute) requires a judge to decide a case within 90 days of taking it under advisement but to qualify that statement by advising that judges do not always meet the deadline.

***Will you give me the name of a good lawyer?***

Giving a reference to a particular lawyer violates the court's duty of impartiality toward all members of the bar and gives the impression that the court places special confidence in a particular lawyer, bringing into question the judges' impartiality in rulings in cases in which that attorney participates. Even though private lawyers regularly refer their clients to other legal specialists, court staff and judges never do.

***Will you please tell the judge what we discussed?***

It is always inappropriate for a staff person to convey information to the judge on a patron's behalf — an "ex parte communication." If asked to tell the judge something other than that a party or attorney is delayed or unable to appear, court staff explain that, with rare exceptions, a party to a lawsuit communicates with the judge only when the other side is present and has a chance to know what is said and to respond. That is why copies of all documents filed in a case are provided to the other side at the time of filing. If court staff carry a message to the judge, it is the same as if the party himself or herself spoke privately with the judge, which would not be fair to the other side in the case.

***The online docket says this paper is "sealed." I need a copy of it.***

Court staff must understand and comply with court rules distinguishing between sealed and publicly available court documents.

**How Court Staff Can Distinguish Between Legal Information and Advice**

For other questions, court staff can provide information, but not advice. In my training programs for court staff, I recommend distinguishing between the two with reference to the general principles shown below. Like the bright-line rules above, these general principles are also distilled from my extensive work teaching court staff around the country and reviewing state rules on the subject. They reflect my ideas and recommendations for state court staff training.<sup>25</sup>

***It is helpful to start from a simple definition of staff members' role — they are educators, not advocates.***

**Legal advice** is counseling:  
A lawyer is always asking, "What should this client do?" and giving the client the answer.

**Legal information** is educating:  
Court staff are always asking, "What information does this litigant need in order to be able to decide what to do?"

*The legal information/legal advice dichotomy begins with this basic definition:*

**Legal information:** Facts about the law and the legal process

**Legal advice:** Advice about the course of action a client should take to further his or her own best interests

*A series of three subsidiary definitions help staff members apply the basic definition correctly:*

**Legal information:** Staff can answer questions that call for factual information – questions that start with “who,” “what,” “when,” “where,” or “how.”

**Legal advice:** Staff cannot answer questions that call for an opinion about what a litigant should do – questions that contain the words “should” or “whether.”

**Legal information:** Staff can tell a litigant how to bring an issue to the attention of the court.

**Legal advice:** Staff cannot suggest whether it is wise to bring that issue before the court, how best to present the issue, or how the judge is likely to decide the case.

**Legal information:** Staff can inform a litigant of his or her options and the steps needed to carry out an option.

**Legal advice:** Staff cannot suggest which option the litigant should pursue.

*Finally, there is the “website” rule.*

Anything that is on the court’s or the state judicial branch’s website, or on any website to which those sites link, is legal information.

You can always refer people to websites or print out website content for them. But this is not a substitute for face-to-face assistance.

With the advent of information websites, it has become helpful to add this last principle to the definitions to create a large safe harbor within which court staff can operate. For example, what are the elements that a party must prove to obtain a change in his court-ordered child support? They are often found on a court or legal aid website. Material on an official court website – or on a website to which a party can link from the court website – has presumably been vetted to ensure its accuracy and currency.

### Applying These General Principles to Recurring Situations That Court Staff Encounter

Court policies are often written with patrons in mind so that court staff can post a copy of these guidelines next to

the clerk’s window for easy reference. They frequently contrast what court staff can and cannot do. Here are typical examples<sup>26</sup>:

#### What Court Staff Can and Cannot Do

Staff can explain court rules and procedures.	Staff cannot suggest which of several available procedures a litigant should follow.
Staff can provide information about past rulings in a case.	Staff cannot predict what the court will do.
Staff can provide cites to (or copies of) statutes, court rules, and ordinances.	Staff cannot provide an analysis or interpretation of statutes or ordinances based on the specific facts of a litigant’s case.
Staff can explain what records are kept by the court and can be made available to the public.	Staff cannot provide confidential or “sealed” case information.
Staff can provide public case information.	
Staff can explain how and where to file a complaint concerning a judge, court employee, or private attorney.	Staff cannot provide opinions about the conduct of a judge, court employee, or private attorney.
Staff can provide general referrals to other offices or persons, such as a legal aid office.	Staff cannot recommend the use of a specific lawyer or other legal system actor, such as a mediator, arbitrator, custody evaluator, or forensic expert.
Staff can provide forms and instructions and record on the forms information provided by the litigants.	Staff cannot provide or suggest the specific words that should be entered on the forms.
Staff can check a court user’s papers for completeness and inform the person of specific problems identified and how to fix them.	





## THE LEGAL INFORMATION/LEGAL ADVICE DICHOTOMY IN THE COURTS

In 2011, the U.S. Supreme Court was asked in *Turner v. Rogers* to hold that due process required the appointment of counsel in a child support enforcement matter in which a noncustodial parent was given six months in jail for contempt of court for nonpayment of support.<sup>27</sup> The Court declined to do so.<sup>28</sup> But the Court majority found that the trial court had violated the appellant's due process rights by failing to employ "substitute procedural safeguards" that were available.<sup>29</sup> It enumerated these safeguards:

- notice of the defense of inability to pay;
- a form to use for presenting the defense;
- an opportunity to address the issue in court; and
- an express finding on the issue.<sup>30</sup>

Through its holding, the Court introduced the 14th Amendment requirement of due process in analyzing a court's obligations to provide information about the law to unrepresented persons.<sup>31</sup> Although four justices dissented, no justice suggested that providing this information, which benefited only one of the two parties before the court, violated the judicial ethical duty of impartiality.<sup>32</sup> And the decision, in even its most narrow interpretation, put to rest the notion that a judge may not give legal assistance to a party; it held that the *failure* to inform the defendant about the affirmative defense of inability to pay in a contempt proceeding for nonpayment of child support violated due process. Of course, a significant line remains to be drawn between informing a party about the law and legal procedures and providing tactical advice on how to use the law to his or her personal advantage. And this is the line that courts have drawn between legal information and legal advice.

Although the ultimate extent of its holding remains undefined, *Turner v. Rogers* transformed the permissive "can" form of authorization of staff assistance for self-represented litigants into a "must" due process requirement for courts to provide the basic information litigants need to participate effectively in a legal mat-

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ter. And it is eminently sensible for a court to enlist its staff in performing this duty.<sup>33</sup>

Ideally, all courts should now follow the Minnesota example, which differentiates service that staff "must" provide, "can" provide, and "cannot" provide — moving increasing amounts of information to the "must" box. This is not a straightforward analysis, however. For instance, must staff provide information to every family law litigant about the affirmative defense of inability to pay in a child support enforcement action? Or is the obligation limited to child support enforcement actions, or certain child support enforcement actions? Creating too many affirmative information-provision "duties" for court personnel could well have a negative impact. When receiving recitations of unsought information, most people simply stop listening — a process that wastes the time of both patrons and staff.

### Policy Issues Over Which Courts Have Struggled

In my extensive interactions with courts, including research, interviews, and discussions during my trainings with court staff, I have encountered the following areas where staff struggle to find clear guidance on what is and isn't permissible.<sup>34</sup> The following are my suggestions for navigating some of the more common challenges.

*Use of the term "legal advice."* Over the years, we have learned that there is no need for court staff ever to use the term "legal advice" when interacting with a patron. If staff members say, "You are asking for legal advice; I cannot provide that," they are simply inviting an argument over the definition of legal advice. The best response to an inappropriate question is to simply provide the answer to an appropriate question that was not asked. For instance, if the patron asks if she should accept a settlement offer or go to trial, staff can respond, "I can give you a handout describing what you will need to do to prepare for a trial, but you will have to decide for yourself whether you want to go to trial." The touchstone is always the educational response: What does this person need to know to be able to decide what to do?

*Issues relating to forms.* Although some courts initially insisted that the patron had to choose the form to complete, it is now generally accepted that

court staff should provide patrons with the appropriate forms needed to accomplish the patron's stated legal objective.<sup>35</sup> Staff also now routinely review forms that patrons have filled out for completeness and sufficiency, including ensuring that all required attachments are present.<sup>36</sup> In many programs, staff will fill out a form on behalf of a person with a language barrier or other disability using information provided by the patron. In reviewing petitions for domestic violence or civil harassment restraining orders, staff in California and Minnesota will tell patrons if their factual declarations describing violent behavior or behavior that puts them in fear of violence are too vague or require more specificity. But the patron remains responsible for the actual words inserted into the form.

*Calculation of deadlines and due dates.* Court rules on counting days — e.g., when to include or exclude weekends and holidays — are not intuitive. Patrons need help in applying them, and over time many courts have agreed that court staff can provide this service.<sup>37</sup>

*Drafting court orders.* I have observed numerous courts in which self-help staff have been incorporated into courtroom processes, taking over the role of courtroom deputies in preparing orders for a judge's review and signature based on the judge's announced decisions during a hearing. In other courts, the judge might send a self-represented litigant to the self-help center with a handwritten shorthand summary of the terms of an order, to be prepared on the litigant's behalf by self-help staff and returned to the courtroom for signature by the judge.

*Explaining court orders.* Twenty years ago, it was common for courts to prohibit staff from answering questions about the meaning of court orders. As judges increasingly call on self-help staff to prepare those orders, it has become clear that preventing staff from explaining the meaning of court orders to patrons is needless, and the task is now a widely accepted job for court staff.

*Assisting litigants with specific issues that have arisen during a hearing or trial.* Another part of courtroom assistance is helping self-represented litigants understand legal or evidentiary issues that arise during a hearing or trial. If self-help staff are present in court for this purpose, the judge may call a recess so that staff can spend time with a confused litigant. The more usual process seems to be for the judge to call a recess and tell a confused litigant to go

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to the self-help center and ask for help. Sending the litigant with a completed form telling the self-help staff what the litigant needs is far more likely to produce the desired results than relying on the litigants to remember accurately the nature of the assistance they need. It is also essential to efficient court operations for the self-help center to give preference to persons coming from a courtroom with this sort of request.

*Assisting represented persons.* A persistent issue is whether and how to interact with people who are represented by counsel. Many courts ask whether a patron has

a lawyer as part of the initial screening process; patrons who are represented are then encouraged to instead seek help from their lawyer (the "exclusion rule").<sup>38</sup> The concern is that well-meaning self-help staff may confuse a represented party by explaining a possible course of action that the lawyer has rejected for good reason. The medical maxim "first do no harm" is a good characterization of the rationale for not assisting represented persons.

This is not a universal rule, however. Some courts recognize that there are sufficient instances of poor lawyer practice to warrant giving help. The converse is also true — some lawyers send their clients to self-help clinics for a basic grounding in the divorce or eviction or debt collection process to save the time and expense of explaining it themselves. And where the exclusion rule is in place, exceptions are generally allowed for assistance in responding to lawyers' motions to withdraw or to patrons' requests for help in firing their lawyers.

*Assisting litigants with complex legal issues.* Court staff are familiar with helping patrons understand legal concepts, often subtle ones — e.g., the distinction between legal custody and physical custody of children, and, in community-property states, the distinction between separate and community property and when property can change character from one status to the other.

But people often come to court staff with very complex family law situations involving large property holdings, family businesses (including closely held corporations), and issues relating to pensions and retirement accounts. Family cases that cross international borders, such as service under the Hague Convention or kidnapping of a child by a foreign national, can present very complex legal issues. Dissolution of marriage often includes qualified domestic relations orders (QDROs) that convey an interest in a future pension. ►



## THE MARYLAND EXCEPTION

Maryland's self-help services are unique in the nation in that they provide legal advice as well as legal information. This is true of the Family Law Self Help Centers in the circuit courts – Maryland's courts of general jurisdiction – as well as the walk-in services provided in some state district court (limited jurisdiction court) locations. And it is true for all remotely delivered self-help services provided by phone, email, and chat for both levels of court. In adopting the ABA's Model Rule 6.5, which allows lawyers providing brief legal services through court or nonprofit-based programs to dispense with conflict checks, Maryland excluded all language addressing the "infeasibility" of conflict checks. Consequently, lawyers providing only brief services are not obligated to conduct conflict checks even if checks would be feasible. Maryland self-help programs studiously avoid recording any name or other personally identifying information that would enable self-help lawyers to identify conflicts. If both sides of a case come together into one of the walk-in centers, staff are unable to avoid observing a conflict and neither party will be served. They are advised to leave and seek help by phone or walk-in services individually.

Maryland's remote self-help services are provided by Maryland Legal Aid, operating under contract with the court. (Interestingly, Maryland Legal Aid provides malpractice coverage for its attorneys working under this contract.) In other states, the distinction between contracted and employed staff would not be considered of any relevance to the ethical issues involved. And in some Maryland circuit courts, self-help lawyers employed by the court dispense legal advice. Maryland does not perceive any impropriety arising from a lawyer-client relationship between a court staff attorney or contractor and a litigant when only brief services are provided and no ongoing lawyer-client relationship is established. And Maryland courts' self-help staff also are expected to provide equivalent service to all parties seeking help, dispensing with the usual rule that Legal Aid staff may only help the first party to reach them.

In observing interactions between self-help service providers and persons seeking assistance throughout the United States, including in Maryland, I have noted that Maryland provides patrons with more information than the standard "legal information" provided elsewhere in the United States, and that the strategic and tactical advice patrons receive there is advantageous. During my time in Maryland, I was not uncomfortable with the specific advice I observed, or the adequacy of the information on which it was based.

Still, while it is clear that Maryland's unique practice benefits court patrons, I remain unable to reconcile the court's ethical obligation of impartiality with the concept that a court attorney staff member can enter into a lawyer/client relationship with a patron – however brief – that imposes on the attorney staff member the ethical duty of loyalty to the interests of the client.

These documents are often unique to a particular pension plan; within the private bar, preparation of QDROs is usually a specialty practice.

While the legal information/legal advice framework authorizes court staff to help patrons with these issues, there are significant reasons to decline to help. Staff – even lawyers serving in self-help centers – may not have the specialized expertise needed to address complex issues. The time and effort required to address them may constitute an inordinate drain on the limited resources of the self-help center staff. Helping one patron with a complex matter may prevent the staff from helping multiple people with more routine problems.

In the QDRO example, staff can decline to help with an untroubled conscience because patrons with these problems are likely to have sufficient assets to obtain the services of a lawyer. This is not always the case in other legally complex situations. Low-income people may become enmeshed in extraordinarily complex legal quandaries, such as cross-border custody and visitation matters. However, when one litigant's problems overwhelm available resources, it may be necessary – and best – for staff to refer them to a legal aid or pro bono resource.

## The Emerging World of Justice for All

The Legal Services Corporation's (LSC) 2017 legal-needs study, *The Justice Gap*, reported that only 14 percent of people at or below 125 percent of the federal poverty level receive the legal help they need.<sup>39</sup> It is generally acknowledged that individuals of middle income – who are not eligible for LSC-funded assistance – have even less access to legal assistance. Rebecca Sandefur's work has shown that roughly 80 percent of those with civil legal problems are not aware that their problems are legal in nature.<sup>40</sup> These facts underscore the challenge of attaining the Conference of Chief Justices/Conference of State Court Administrators' aspirational goal of 100 percent access to some form of effective assistance for individuals with essential civil legal needs.<sup>41</sup>

The prevailing strategy today calls for enlisting *trusted intermediaries* – persons to whom community members generally turn for advice on their problems – to identify the existence of a legal issue and to link them to information and the most appropriate service provider who can help with the identified legal problem. Trusted intermediaries are being recruited from the ranks of librarians, clergy, bankers, municipal offices, hospital staff, postmasters and postal workers, and staff of senior centers and other community support entities. This expanded structure will require that a

much larger group of people be included within the safe harbor of persons authorized to provide legal information. The same analysis used by the Washington State Bar Association will justify that expansion — the Sandefur research shows that people outside the legal profession will have to be able to provide assistance if we are to reach individuals who do not know that they have legal issues. Online resources developed for use by trusted intermediaries will minimize the risk that members of the public will receive incorrect information from persons trained in their use.

Illinois took a small step in this direction when it included court volunteers within its safe-harbor policy.<sup>42</sup> However, the definition of court volunteer — persons “who are licensed attorneys, licensed law student interns and other persons working under the supervision of an attorney”— limits the term to persons within the current legal delivery system, and Sandefur’s research shows that system does not reach most persons with a civil legal problem.

Much has been written in recent years about programs of “regulatory reform,” such as Washington state’s Limited License Legal Technician, which created a different type of legal practitioner (like a nurse practitioner in the medical field), trained and licensed to perform some legal tasks.<sup>43</sup> Arizona is now implementing a similar, far less rigorous, program for Legal Document Preparers.<sup>44</sup>

These approaches are based on a model in which individuals take on a new professional identity as quasi-lawyers. This may turn out to be advantageous for improving access to justice. But it does not address the issue Sandefur raises: People who do not know they have a legal problem will not seek out lawyers or quasi-lawyers. Rather, these people will turn to and need to be helped by individuals in other professions, such as librarians, clergy, bankers, and social workers. The challenge is to provide a safe harbor for those other community members who are able to help people discern when a legal problem exists and provide assistance in understanding the legal principles applicable to the problem, the steps they can take to address the problem, and

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where they can find help in doing so.

Along these lines, Julie Mathews and David Wiseman, in a paper commissioned by the Community Legal Education Organization of Ontario, Canada,<sup>45</sup> propose that the staff of nonprofit community organizations be given a special status. They note that these organizations have for decades provided legal information, assistance, and advice in the areas of their specialized expertise — e.g., domestic violence or housing — without being prosecuted for the unauthorized practice of law. The authors further posit that this special treatment has arisen from two sources: a need for help among constituents who could not afford to retain a lawyer and the consistent excellence of the services these organizations have rendered. Mathews and Wiseman propose that these organizations be able to provide unlimited legal help, as long as they follow a series of best practices outlined in the paper and do not charge for services. They suggest that there is no need to apply an information vs. advice screen for the services they render.

This approach would provide a safe harbor for some, but not all, of those whom we need to enlist as trusted intermediaries. The best current example of a broadly inclusive safe-harbor structure for trusted intermediaries is in the province of Saskatchewan, Canada, which has for some time issued “comfort letters” to nonprofits assuring them that they will not be prosecuted for unauthorized practice of law for their current activities.

Furthermore, in 2018, the Provincial Legislature of Saskatchewan amended Section 30(3) of the Legal Professions Act of 1990 to add this proviso: “Nothing in this section affects the ability of a person or entity to provide members of the public with information of a general nature about the law and legal procedures or any other legal information as defined in the rules.”<sup>46</sup>

The “rules” referred to are the Rules of the Law Society of Saskatchewan, which govern the practice of law in the province. In December 2021, the Law Society included this definition of “legal information” in its rules, simply restating the standard from the Legal Professions Act: “the provision ►

of legal information of a general nature about the law and legal procedures to members of the public.”<sup>47</sup>

Saskatchewan’s approach is unique in the breadth of assistance that nonlawyers are allowed to provide, including identifying the legal issue at hand, locating and explaining information about the issue, identifying a needed form and helping to complete it, filing and serving the form in the appropriate court or tribunal, and identifying papers and electronic information needed in court and the steps needed to present it. Legal information providers may not make a “recommendation concerning the action a person should take,” and the information they provide must be “qualified with a warning to consult a licensed member of the Law Society to be sure about the application of the legal information to their situation.” In July 2022, the Law Society developed and published detailed guidelines for understanding and applying the definitions<sup>48</sup> in a reader-friendly brochure containing a list of “credible legal resources.” The guidelines specify who can provide legal information: “an organization, person, a person working within a for-profit or not-for-profit organization, or an automated service” — including not only free services but also those for which a fee is charged.

It is an excellent example that I highly recommend to readers (a direct link is available in the online version of this article at <http://judicature.duke.edu>).

If a court of last resort in the United States were to adopt the Saskatchewan approach for allowing community members — working with the state’s Access to Justice Commission and using information and referral portals on which they have been trained — to provide this “legal information,” it would provide a safe harbor from unauthorized practice of the law prosecution.

### The Upsolve Decision

A decision rendered by U.S. District Court Judge Paul Crotty on May 27, 2022,<sup>49</sup> may provide another avenue for protecting the role of trusted intermediaries. Upsolve Inc. — a nonprofit organization that has long provided assistance to low-income people seeking protection under federal bankruptcy law — developed a program for debt-collection lawsuits that embraces the “trusted intermediary” model. It trains nonlawyer community members to help people facing debt collection lawsuits by assisting them, free of charge, in completing a one-page, checkbox-answer form prepared by the New York court system to contest the entry of judgment in a case.

Upsolve did not initiate the program because the New York attorney general would not give assurance that trained per-

sons would not be subject to prosecution for unauthorized practice of law under various New York statutes. Upsolve and a pastor who wished to participate in the program sought to enjoin the attorney general from taking action against Upsolve or its trained volunteers on the grounds that such action would infringe their rights to free speech.<sup>50</sup>

Judge Crotty concluded that the behavior in which the plaintiffs sought to engage constitutes speech and that the New York unauthorized-practice-of-law rules should be examined using “strict scrutiny.”<sup>51</sup> He found that the New York law was not carefully limited in a manner that would pass the strict-scrutiny test and that, in contrast, the activities of the program — which were confined to the completion of a single state court-created form — were tailored to minimize any potential harm.<sup>52</sup> Determining that the threatened enforcement of those rules would infringe the plaintiffs’ First Amendment rights, he entered a preliminary injunction prohibiting the attorney general from applying New York unauthorized-practice-of-law rules against participants in the Upsolve program.

If upheld, the *Upsolve* case presents interesting possibilities: If the trusted intermediary is appropriately trained and the role is narrowly tailored to identifying the existence of a legal problem, linking the person to and explaining information contained in a “credible legal resource,” and making referrals to service providers — and does not include advocacy on the inquirer’s behalf — perhaps there is room for new models of assistance considerably broader in scope than the Upsolve program, under a protected-speech framework.

### SUMMARY

Over the past 25 years, courts in the United States and elsewhere have used and refined the distinction between legal information and legal advice to significantly expand the



**JOHN M. GREACEN** has served as director of the Administrative Office of the Courts of New Mexico, clerk of the U.S. Bankruptcy Court for the District of New Mexico, and clerk of the U.S. Court of Appeals for the Fourth Circuit. He also worked at the National Center for State Courts, ultimately serving as deputy director for programs.

Since 2001 he has been the principal consultant with Greacen Associates LLC, consulting in 36 states. He has received numerous awards, including the National Association of Court Management’s Award of Merit, the Justice Management Institute’s Ernest C. Friesen Award of Excellence, and the federal courts’ Director’s Award for Outstanding Leadership.

assistance provided to patrons by court staff, whether or not those staff have a law degree. While few will argue that the line of demarcation is clear in every possible situation, the distinction — as it has been articulated with increasingly specific policy guidance and training for court staff — has proved to be understandable for court employees and supervisors and beneficial for court patrons.

Like any other part of court procedure, staff need recurring training and refreshers on this policy. It is hard — even after the concept has been in use for a quarter century — to

completely root out the centuries-long allegiance to those signs stating, “Court Staff Cannot Give Legal Advice.”

But the conceptual dichotomy has withstood the test of time. And, thanks to the example from Saskatchewan and Judge Crotty’s opinion in the *Upsolve* case, there are clear pathways for expanding its scope to enlist and protect community members who can help ensure access to meaningful assistance for every person with an essential civil legal need. Let us hope that it won’t take 25 more years for our courts to address this urgent, broader need.

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<sup>1</sup> See generally John M. Greacen, *No Legal Advice from Court Personnel — What Does that Mean*, 34 JUDGES J. 10 (1995), available at <https://www.srln.org/node/535/article-no-legal-advice-court-personnel-what-does-mean-greacen-1995>.

<sup>2</sup> John M. Greacen, *Legal Information vs. Legal Advice — Developments During the Last Five Years*, 84 JUDICATURE 198 (Jan.-Feb. 2001), available at <https://www.srln.org/system/files/attachments/Greacen%20ARTICLE%20Legal%20Information%20v%20Legal%20Advice%202001.pdf>.

<sup>3</sup> Discussed in detail below. The specific assistance required by the court in *Turner v. Rogers* was limited to the circumstances of the case before the court. But the case clearly stands for the principle that a court must advise a self-represented litigant of an applicable affirmative defense and provide a form for submitting information relevant to that defense.

<sup>4</sup> *Report of The Summit on the Use of Technology to Expand Access to Justice*, LEGAL SERVICES CORP. (Dec. 2013), [https://www.lsc.gov/sites/default/files/LSC\\_Tech%20Summit%20Report\\_2013.pdf](https://www.lsc.gov/sites/default/files/LSC_Tech%20Summit%20Report_2013.pdf).

<sup>5</sup> Conference of Chief Justices & Conference of State Court Administrators, Resolution 5, Reaffirming the Commitment to Meaningful Access to Justice for All, adopted as proposed by the CCJ/COSCA Access, Fairness and Public Trust Committee at the 2015 Annual Meeting, available at <https://ccj.ncsc.org/~media/Microsites/Files/CCJ/Resolutions/07252015-Reaffirming-Commitment-Meaningful-Access-to-Justice-for-All.ashx>.

<sup>6</sup> Alaska, Colorado, Florida, Georgia, Hawaii, Illinois, Kentucky, Louisiana, Massachusetts, Michigan, Minnesota, Montana, New Mexico, and New York. Three other foundations — JPB, Kresge, and Open Society — have joined in the funding effort.

<sup>7</sup> Mary E. McClymont, *Nonlawyer Navigators in State Courts: An Emerging Consensus*, NAT’L CTR. FOR STATE CTS. (June 2019), [https://www.ncsc.org/\\_data/assets/pdf\\_file/0024/53691/Justice-Lab-Navigator-Report-6.11.19.pdf](https://www.ncsc.org/_data/assets/pdf_file/0024/53691/Justice-Lab-Navigator-Report-6.11.19.pdf).

<sup>8</sup> *Id.*

<sup>9</sup> These 38 states are: Alabama, Alaska, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Iowa, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, New Hampshire, New Jersey, New Mexico, New York, North Dakota, North Carolina, Ohio, Oklahoma, Oregon, Pennsylvania, South Carolina, Utah, Vermont, Virginia, Washington, and Wisconsin.

<sup>10</sup> Supreme Court of Colorado, Office of the Chief Justice, Chief Justice Directive 13-01, Directive Concerning Colorado Courts’ Self-Represented Litigant Assistance (June 12, 2013), available at [https://www.courts.state.co.us/Courts/Supreme\\_Court/Directives/13-01.pdf](https://www.courts.state.co.us/Courts/Supreme_Court/Directives/13-01.pdf).

<sup>11</sup> Illinois Supreme Court, Illinois Supreme Court Policy On Assistance to Court Patrons by Circuit Clerks, Court Staff, Law Librarians, and Court Volunteers (originally effective Apr. 2015, amended Nov. 2018), available at [https://www.illinoiscourts.gov/Resources/33fb071a-03e1-44a9-8e28-5d41ab25b73e/Safe\\_Harbor\\_Policy.pdf](https://www.illinoiscourts.gov/Resources/33fb071a-03e1-44a9-8e28-5d41ab25b73e/Safe_Harbor_Policy.pdf) (known in Illinois as the “Safe Harbor Policy”).

<sup>12</sup> California Administrative Office of the Courts, Guidelines for the Operation of Self-Help Centers in California Trial Courts (issued Feb. 29, 2008, reaffirmed Feb. 28, 2011), available at [https://www.courts.ca.gov/documents/self\\_help\\_center\\_guidelines.pdf](https://www.courts.ca.gov/documents/self_help_center_guidelines.pdf).

<sup>13</sup> Minnesota Revisors Office, Rule 110, Self-Help Programs (Minnesota General Rules of Practice for District Courts) (Jan. 1, 2004), available at <https://www.courts.ca.gov/partners/documents/Rule110.pdf>.

<sup>14</sup> Deborah L. Rhode & Ralph C. Cavanagh, *The Unauthorized Practice of Law and Pro Se Divorce: An Empirical Analysis*, 86 YALE L.J. 104, 160 (1976).

<sup>15</sup> *Civil Justice Initiative: The Landscape of Civil Litigation in State Courts* iv, NAT’L CTR. FOR STATE CTS., (2015), available at <https://www.ncsc.org/~media/Files/PDF/Research/CivilJusticeReport-2015.ashx> [hereinafter *CJI Landscape Study*]; *The Landscape of Domestic Relations Cases in State Courts* 20, NAT’L CTR. FOR STATE CTS. (2018), available at [https://www.ncsc.org/\\_data/assets/pdf\\_file/0018/18522/fji-landscape-report.pdf](https://www.ncsc.org/_data/assets/pdf_file/0018/18522/fji-landscape-report.pdf) [hereinafter *FJI Landscape Study*].

<sup>16</sup> John M. Greacen, Principal, Greacen Assoc., LLC, Presentation at Cal. Conf. on Self-Represented Litigants (Apr. 29-30, 2010), available at <https://www.google.com/url?sa=t&rct=j&q=&src=s&source=web&cd=&ved=2ahUKEw-jz6Hwuaq2AhVxRN8KHU3CAiQQFnoE->

CAsQAQ&url=https%3A%2F%2Fwww.courts.ca.gov%2Fpartners%2Fdocuments%2Flegal\_info-advice.ppt&usq=AOvVawILYSDEixqA-OliB-VZD3tAo.

<sup>17</sup> See Greacen, *supra* note 2, at 204 (quoting a 1994 letter from the Vermont chief assistant attorney general to a bar member complaining about the assistance to the public duties included in a court job description published in a newspaper, concluding that the activities described did not constitute the unauthorized practice of law but “even if they did, since the activities are authorized by the Court and performed on its behalf, the Attorney General would be hard pressed to argue that they are unauthorized.”).

<sup>18</sup> See Washington State Administrative Office of the Courts, General Rule 24 (b)(2) and (b)(10), Definition of the Practice of Law (2002), available at [https://www.courts.wa.gov/court\\_rules/pdf/GR/GA\\_GR\\_24.00.00.pdf](https://www.courts.wa.gov/court_rules/pdf/GR/GA_GR_24.00.00.pdf).

<sup>19</sup> See the discussion of Saskatchewan’s elaboration of this principle at the end of this article.

<sup>20</sup> Tex. Gov. Code § 81.101(c) (June 18, 1999), available at <https://statutes.capitol.texas.gov/Docs/GV/htm/GV.81.htm#81.101> (exempting written materials, books, forms, computer software, or similar products if the products clearly and conspicuously state that the products are not a substitute for the advice of an attorney).

<sup>21</sup> For some examples of state rules corresponding to the topics above, see, e.g., *Why Can’t I Talk or Write to the Judge?*, Hawaii State Judiciary, [https://www.courts.state.hi.us/self-help/exparte/ex\\_parte\\_contact](https://www.courts.state.hi.us/self-help/exparte/ex_parte_contact) (discussing how court staff should handle questions about communicating with the judge); see also *Legal Information vs. Legal Advice: Guidelines and Instructions for Clerks and Court Personnel Who Work with Self-Represented Litigants in Texas State Courts*, Texas Office of Court Administration Texas Access to Justice Commission Texas Access to Justice Foundation Texas Legal Services Center (Sept. 2015), available at <https://www.txcourts.gov/media/1220087/legalinformationvslegaladviceguidelines.pdf> [hereinafter “Texas State Courts”] (providing an example of guidelines for how court staff should operate impartially — inability to recommend lawyers — and in compliance with court rules — inability to provide sealed documents).

<sup>22</sup> See, e.g., *Court Resources*, Magistrate Ct., FULTON CNTY., GA., <https://magistratefulton.org/150/Court-Resources> [hereinafter “Georgia Court Resources”] (allowing court clerks to explain court rules and practices but not provide ►



- predictive information).
- 23 Thomas M. Clarke, *Building A Litigant Portal: Business and Technical Requirements* NAT'L CTR. FOR STATE CTS. (Nov. 2015), <https://www.srln.org/system/files/attachments/Report%20Building%20a%20Litigant%20Portal%20%28Clarke%202015%29.pdf>.
- 24 *Id.* at 8.
- 25 For state resources on the distinction between legal advice versus legal information, see, *A Tiny Chat Companion: Legal Advice v. Legal Information*, NAT'L CTR. FOR STATE COURTS, [https://www.ncsc.org/\\_data/assets/pdf\\_file/0022/54544/Legal-Advice-vs-Legal-Info.pdf](https://www.ncsc.org/_data/assets/pdf_file/0022/54544/Legal-Advice-vs-Legal-Info.pdf) (providing links to different state policies on the subject and training materials); see *Legal Information v. Legal Advice: Examples*, SLRN, [https://www.srln.org/system/files/attachments/Legal%20Info%20vs%20Legal%20Advice%20binder\\_0.pdf](https://www.srln.org/system/files/attachments/Legal%20Info%20vs%20Legal%20Advice%20binder_0.pdf) (compiling eleven state's rules or policies for distinguishing between legal advice and legal information); see Appendix A: State Definitions of the Practice of Law, A.B.A., [https://www.americanbar.org/content/dam/aba/administrative/professional\\_responsibility/model\\_def\\_migrated/model\\_def\\_statutes.pdf](https://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/model_def_migrated/model_def_statutes.pdf) (listing every state's official definition of the practice of law).
- 26 Minnesota (*What Court Staff Can and Cannot Do for You*, MINN. JUDICIAL BRANCH, <https://www.mncourts.gov/Help-Topics/What-Staff-Can-Do.aspx>) and California (Code of Ethics for the Court Employees of California, Judicial Council of Cal. at 5 (adopted May 17, 1994; revised Oct. 23, 2009), available at <https://www.courts.ca.gov/documents/codethic-courttemp.pdf>) offer helpful examples. The full text of both examples is included in the online version of this article, available at <http://judicature.duke.edu>. At least 23 other states use nearly identical language as Minnesota and California, which is reflected in the table above and in state court staff reference guides, informational videos, and other official sources. For examples from these other states see [Alaska] *Making the Distinction Between Legal Information and Legal Advice: A Guide for Court Employees*, Alaska Court Sys. (updated Jan. 2014), available at [https://www.srln.org/system/files/attachments/Alaska\\_Making%20the%20Distinction%20Between%20Legal%20Information%20and%20Legal%20Advice%20A%20Guide%20for%20Court%20Employees.pdf](https://www.srln.org/system/files/attachments/Alaska_Making%20the%20Distinction%20Between%20Legal%20Information%20and%20Legal%20Advice%20A%20Guide%20for%20Court%20Employees.pdf); [Arizona] *Court Help v. Court Advice*, AZCOURTHelp (updated 2022), <https://www.azcourthelp.org/faq/can-and-cannot>; [Colorado] *What the Court Clerk Can and Cannot Assist You With*, FRUITA COLO., <https://www.fruita.org/municipalcourt/page/what-court-clerk-can-and-cannot-assist-you>; [Delaware] *Help & Support: Below is a list of some things that court staff can and cannot do for you.*, DEL. COURTS: JUDICIAL BRANCH, <https://courts.delaware.gov/Help/courtcando.aspx>; [Georgia] *Georgia Court Resources*, *supra* note 22; [Indiana] *How court staff can and cannot assist with your case*, SELF-SERVICE LEGAL CTR.: IND. JUDICIAL BRANCH, <https://www.in.gov/courts/selfservice/unrepresented/help/>; [Iowa] *Representing Yourself - Overview*, IOWA JUDICIAL BRANCH (updated 2022), <https://www.iowacourts.gov/for-the-public/representing-yourself/>; [Kansas] *Kansas Supreme Court Rule 1402, Providing Assistance to the Public* (2022 Kan. S. Ct. R. 1402), available at <https://www.kscourts.org/KSCourts/media/Ks-Courts/Rules/Rule-1402.pdf?ext=.pdf>; [Kentucky] *Legal Self-Help*, KY. COURT OF JUSTICE (updated 2022), <https://kycourts.gov/Legal-Help/Pages/default.aspx>; [Massachusetts] *Serving the Self-Represented Litigant: A Guide By and For Massachusetts Court Staff*, JUDICIAL INST.: ADMIN. OFF. OF THE MASS. TRIAL COURTS (released June 2010), at 3-4, <https://www.mass.gov/doc/serving-the-self-represented-litigant-a-guide-by-and-for-mass-court-staff/download>; [Michigan] *Employee Guide to Legal Advice*, MICH. JUDICIAL INST. (2016), at 6, <https://mjeducation.mi.gov/documents/resources-for-trial-court-staff/6-employee-guide-to-legal-advice/file>; [North Dakota] *What the Legal Self-Help Center Can & Can't Do for You*, STATE OF N.D. COURTS, <https://www.ndcourts.gov/legal-self-help/about-us>; [New Jersey] *This is a list of some things that the court staff CAN and CANNOT do for you.*, BOROUGH OF MIDLAND PARK N.J., <https://www.midlandparknj.org/municipal-court/pages/list-some-things-court-staff-can-and-cannot-do-you>; [Ohio] *What Court Staff Can and Cannot Do*, Montgomery County, Ohio, available at [https://www.mcoho.org/docs/What\\_Court\\_Staff\\_Can\\_and\\_Cannot\\_Do.pdf](https://www.mcoho.org/docs/What_Court_Staff_Can_and_Cannot_Do.pdf); [Oregon] *Self Help: Self-help information for residents in Clakamas County Circuit Court - Legal Information (Not Legal Advice)*, Or. Judicial Branch, <https://www.courts.oregon.gov/courts/clackamas/help/Pages/legal.aspx>; [Rhode Island] *Self-help Center*, R.I. Judiciary (updated 2014), <https://www.courts.ri.gov/Self%20Help%20Center/Pages/default.aspx>; [South Dakota] *How court staff can and cannot assist with your case*, S.D. LEGAL SELF-HELP (last updated 2022), <https://>



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- ujslawhelp.sd.gov/courtstaffassist.aspx; [Texas] “Texas State Courts,” *supra* note 21 at 17, Legal Information v. Legal Advice; [Wisconsin] *Services for the public: Resources tailored for you*, Wis. COURT SYS. (updated Mar. 1, 2022), <https://www.wicourts.gov/services/public/selfhelp/procedures.htm>.
- 27 See *Turner v. Rogers*, 564 U.S. 431, 441 (2011).
- 28 *Id.* at 446–49.
- 29 *Id.* at 446.
- 30 *Id.* at 446–49.
- 31 See generally *id.*
- 32 *Id.*
- 33 For a recent discussion of these issues, including the applicability of *Turner v. Rogers*, inspired by the refusal of some state courts — on the grounds that it constituted the unauthorized practice of law — to allow their staff to disseminate copies of the required “declaration of eligibility” required to invoke the CDC’s nationwide eviction moratorium or even to inform tenants of the existence of such a form, see generally Lauren Sudeall, *The Overreach of Limits on “Legal Advice,”* YALE L. J. FORUM (Jan. 3, 2022) (suggesting redefining the unauthorized practice of law rather than rejecting altogether the application of that concept to the actions of court staff operating under guidance from the court system), available at [https://www.yalelawjournal.org/pdf/F7.SudeallFinalDraft-Web\\_vkn9pk17.pdf](https://www.yalelawjournal.org/pdf/F7.SudeallFinalDraft-Web_vkn9pk17.pdf). I favor the latter approach.
- 34 Research and interview materials on file with author.
- 35 See, e.g., *supra* note 11.
- 36 In the Fourth Judicial District Court in Hennepin County, Minnesota, self-represented litigants are required to obtain review of a form they have completed before it can be accepted for filing by the clerk.
- 37 See, e.g., *Court Help v. Court Advice*, AZCOURTHelp, <https://www.azcourthelp.org/faq/can-and-cannots> (detailing that the calculation of deadlines is qualified as court help and permissible for court staff to do).
- 38 For an example of something like the “exclusion rule” mentioned, see, e.g., *supra* note 12 at 8.
- 39 *The Justice Gap: Measuring the Unmet Civil Legal Needs of Low-income Americans*, LEGAL SERVICES CORP (June 2017), <https://www.lsc.gov/sites/default/files/images/TheJusticeGap-FullReport.pdf>.
- 40 Rebecca L. Sandefur, *Accessing Justice in the Contemporary USA: Findings from the Community Needs and Services Study*, A.B.A. J. (2014), [http://www.americanbarfoundation.org/uploads/cms/documents/sandefur\\_accessing\\_justice\\_in\\_the\\_contemporary\\_usa\\_aug\\_2014.pdf](http://www.americanbarfoundation.org/uploads/cms/documents/sandefur_accessing_justice_in_the_contemporary_usa_aug_2014.pdf).
- 41 *Supra* note 5.
- 42 *Supra* note 11.
- 43 That program has now been “sunsetting” by the Washington Supreme Court. Complete information about the program can be found on the Washington State website devoted to that topic. *Affordable Legal Services in Family Law by a Legal Technician*, WASH. STATE BAR ASSOC. (Oct. 8, 2021), <https://www.wsba.org/for-legal-professionals/join-the-legal-profession-in-wa/limited-license-legal-technicians>.
- 44 *Legal Document Preparer Program*, ARIZ. JUDICIAL BRANCH (2022), <https://www.azcourts.gov/cld/Legal-Documents-Preparer-Program>.
- 45 Julie Mathews & David Wiseman, *Community Justice Paper: Advancing Community-Based Access to Justice* (Community Legal Educ. Ontario, discussion paper, June 2020), [https://cleoconnect.ca/wp-content/uploads/2020/07/Community-Justice-Help-Advancing-Community-Based-Access-to-Justice\\_discussion-paper-July-2020.pdf](https://cleoconnect.ca/wp-content/uploads/2020/07/Community-Justice-Help-Advancing-Community-Based-Access-to-Justice_discussion-paper-July-2020.pdf).
- 46 *Unauthorized Practice of Law*, L. SOC’Y OF SASKATCHEWAN Sec. 30(3) (Jan. 1, 2020), available at <https://www.lawsociety.sk.ca/regulation/definition-of-the-practice-of-law/>.
- 47 *Rules*, L. SOC’Y OF SASKATCHEWAN Part 10 Sec. 1001 at 54 (Jan. 1, 2020), <https://www.lawsociety.sk.ca/wp-content/uploads/2022/01/RulesJan2022WEBSITE-SXNZFFRD-NYQ5-1563515717-1250.pdf>.
- 48 *Legal Information Guidelines*, L. SOC’Y OF SASKATCHEWAN (2022), <https://www.lawsociety.sk.ca/initiatives/access-to-justice/legal-information-guidelines/>. The complete guidelines can be found in the online version of this *Judicature* article.
- 49 *Upsolve, Inc. v. James*, No. 22-cv-627 PAC, 2022 WL 1639554, (S.D.N.Y. May 24, 2022) (holding the First Amendment protects Upsolve’s legal advice program as speech, even though the legal advice provided would constitute the unauthorized practice of law under several New York statutes).
- 50 *Id.* at 1, 9–18.
- 51 *Id.* at 14–18.
- 52 *Id.*

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