LEGAL INFORMATION VS. LEGAL ADVICE

A GUIDE FOR COURT STAFF

ARKANSAS ACCESS TO JUSTICE

TABLE OF CONTENTS

pg. 1 INTRODUCTION

pg. 4 REFER TO LEGAL AID

pg. 5 EXPLAIN COURT PROCEDURES

pg. 6 PROVIDE FACT SHEETS & FORMS

pg. 7 OFFER PUBLIC ACCESS KIOSKS

pg. 9 USE PLAIN LANGUAGE

pg. 10 CONNECT LITIGANTS TO INTERPRETER SERVICES

pg. 12 SUPPLY THE CHILD SUPPORT GUIDELINES & CALCULATOR

pg. 13 EXPLAIN OPTIONS FOR HIRING AN ATTORNEY

LEGAL INFORMATION VS. ADVICE
A Guide for Court Staff

Introduction

The purpose of this guide is to provide court staff with an easy-to-use guide and concrete examples of what court staff can do and provide to the public, which will help to close the justice gap without verging into the practice of law or compromising judicial independence.

Arkansas Courts are called on to help Arkansans resolve thousands of legal issues each year. In 2022, there were 174,900 cases resolved by the courts.[1] Unfortunately, many of the litigants involved will be unable to afford an attorney to help them navigate the legal system. As of 2022, 619,420 Arkansans were living in poverty and qualified for legal aid.[2] However, Arkansas's legal aid programs had only 58 attorneys to serve this community.[3] In addition, Arkansas is experiencing a shortage of private practice attorneys to meet the needs of even Arkansans who are not living in poverty. Arkansas ranks 45th in the nation in attorneys per capita.[4] Rural areas are particularly underserved, with 84% of active attorneys located in five counties, which represent just 39% of the state's population.[5]

---

[1] Office of Research and Justice Statistics, *Arkansas Judiciary Annual Summary*, Arkansas Judiciary, https://public.tableau.com/app/profile/orjs.arcourts/viz/AR_Annual_Summary_Public_0/Dashboard1 (last updated June 7, 2023, 4:43 PM).

[2] Arkansas State Profile, Legal Services Corporation, https://www.lsc.gov/grants/our-grantees/arkansas-state-profile (last visited Sept. 27, 2023).

[3] *Id. (The n*umber of legal aid attorneys is measured as full-time equivalents and is rounded up to the nearest whole number.)

[4] *ABA Profile of the Legal Profession*, American Bar Association (July 28, 2022), https://www.americanbar.org/content/dam/aba/administrative/news/2022/07/profile-report-2022.pdf.

[5] *Profile of the Legal Profession 2021*, American Bar Association (Jan. 2020), https://www.americanbar.org/content/dam/aba/administrative/news/2021/0721/polp.pdf and U.S. Census Bureau, 2020 Population and Housing State Data, https://www.census.gov/library/visualizations/interactive/2020-population-and-housing-state-data.html (last updated Aug. 12, 2021).

Even in counties with large attorney populations, huge percentages of litigants remain unserved.[6] For instance, in Pulaski County, some case types had at least one unrepresented party in over 90% of cases.[7]

If we are to fulfill our nation's promise of justice for all, courts must be empowered to provide legal information which can help self-represented litigants resolve their legal issues. Many court employees have been hesitant to provide resources to self-represented litigants because they fear crossing the line between providing legal information and providing legal advice.

As a general rule, offering resources which provide information about the legal process is not the unauthorized practice of law. Activities which cross into the unauthorized practice of law are those which call for applying the expertise of a lawyer to the specific situation of an individual litigant. These are the "should" questions. Court staff must not advise litigants of what they should do. However, they can answer "could" questions by explaining to self- represented litigants what a court user could do, without endorsing a particular course of action. These kinds of answers provide general information about the legal process that are applicable to any person in the litigant's situation.

[6] *Exploring the Problem of Self-Represented Litigants in Arkansas Civil Courts*, Arkansas Access to Justice Commission (2011), https://arkansasjustice.org/wp-content/uploads/2017/04/Capstone-Report-AAJC-Final-1.pdf.

[7] Id.

This guide will present eight ways that court staff can assist in providing legal information to the public. The services covered include: (1) legal aid referrals; (2) court procedure explanations; (3) providing fact sheets and forms; (4) offering the use of public access kiosks; (5) use of plain language; (6) interpreter services; (7) child support guidelines & calculator; and (8) options for hiring an attorney. This guide has been developed and approved by the Arkansas Access to Justice Commission with input from the Unauthorized Practice of Law Committee.

Refer to Legal Aid

Judges and other court staff have an obligation to serve the public while maintaining the impartiality of the judiciary. However, the duty of impartiality does not prevent judges and court staff from connecting self-represented litigants to legal aid. The Arkansas Code of Judicial Conduct in Rule 2.2, Comment 4 explains that judges may accommodate self-represented litigants by "making referrals to any resources to assist the litigant in the preparation of the case . . . ." This includes referrals to legal aid organizations which may be able to provide advice, brief services, or full representation to litigants.

Court staff, likewise, can and should direct self-represented litigants to legal aid. The primary sources of legal aid in Arkansas are the Center for Arkansas Legal Services and Legal Aid of Arkansas. Court staff should refer self-represented litigants with civil or record sealing cases to these organizations. Services are generally available to people earning 125% of the federal poverty level or below.[8]

Referrals to legal aid may be made by handing self-represented litigants brochures offered by legal aid providers, directing litigants to the statewide legal aid website (www.arlawhelp.org), or the statewide legal aid intake line (1.888.540.2941).

---

[8] 45 CFR Chapter XVI - Legal Services Corporation, https://www.ecfr.gov/current/title-45/section-1611.3 (last updated Feb. 2, 2023).

Explain Court Procedures

The court process can be intimidating for self-represented litigants, many of whom may be interacting with the courts for the first time in their life. Court staff are permitted to help self-represented litigants by explaining court procedures. As long as procedures are explained, but no particular course of action is recommended, the explanation remains legal information and not legal advice.

For instance, when a self-represented litigant approaches a court clerk to file a complaint, the clerk may explain that the next steps are the issuance of a summons and service of the summons and a copy of the complaint. The clerk can offer the court user a fact sheet with step-by-step instructions for accomplishing service.

Court staff may also explain the process for requesting a hearing or trial date, expectations for courtroom decorum, and any other local procedures. Self-represented litigants should also be informed of how to access Court Connect, if court documents or docket information are available on Court Connect.

Provide Fact Sheets & Forms

Self-represented litigants often lack the necessary information to understand their rights and the law that governs their case. Court staff can help connect self-represented litigants to resources without compromising impartiality by referring them to fact sheets and forms. These fact sheets and forms can be those provided by the Administrative Office of the Courts or legal aid programs. Clerks can provide access to fact sheets and forms in electronic form or by having paper copies of these forms available in-person.[9] While having paper copies is not required, it greatly reduces barriers faced by litigants who do not have access to a computer or who do not feel comfortable with technology. Paying for the printing of forms and fact sheets is an appropriate use of local law library funds.

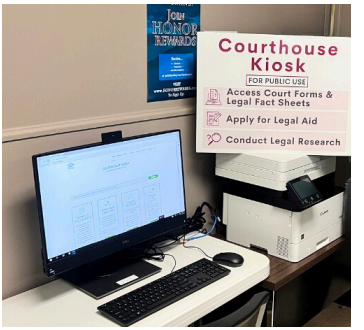
Probate forms, petitions for an order of protection, and other forms are available from the Administrative Office of the Courts at www.arcourts.gov/forms-and-publications/court-forms. Additional forms and factsheets on topics including: divorce, custody, guardianship, eviction, record sealing, etc., can be found at the statewide legal aid website, www.arlawhelp.org. The Arkansas Access to Justice Foundation periodically offers microgrants to court clerks to cover the cost of printing fact sheets and forms and associated expenses, including translation of these resources.

[9] If paper forms are kept, ensure the most recent version of the form is available at all times.

Offer Public Access Kiosks

Administrative Order 21 requires clerks of courts with electronic filing to make available a computer to be used by litigants for electronic filing. These devices can be purchased with court automation funds. Clerks should consider expanding the functions of the e-filing computers. These computers can serve as key access points to forms, fact sheets, and printing for low-income Arkansans with limited access to computers or internet.

Making public access computers hubs of information and resources is useful even in areas with law libraries or public libraries. Many times, these facilities are blocks or even miles from the courthouse and limited transportation options may mean a trip to the library is a challenge for a self-represented litigant. This is especially true for survivors of domestic violence and unhoused people.



Public access kiosks can be customized to fit any court budget or other resource constraints. For example, on the low-end, a tablet, tablet stand, and printer can be purchased for a few hundred dollars. The user experience can be customized using built in settings or third-party apps to restrict web access to only those websites approved by court staff. On the high-end, vendors can provide full-function kiosks that include computers, scanners, printers, security services, ADA-compliance services, and ongoing support. The cost of higher-end kiosks can vary, but can be several thousand dollars per terminal, with additional costs if ongoing IT support is needed.

Courts interested in implementing public access kiosks can contact the Arkansas Access to Justice Commission for help in identifying funding opportunities and technical assistance.

Use Plain Language

Many legal terms are confusing for court users. Court staff, from clerks to judges, should use plain language when communicating with the public when feasible. Arkansas Code of Judicial Conduct, Rule 2.2, Comment 4 permits judges to "[attempt] to make legal concepts understandable by using plain language whenever possible[.]" Given the fact that a judge can use plain language from the bench, other court staff can also use plain language to communicate with the public. This is because judges are not considered to be engaged in the practice of law while acting as a judge. And, if judges are not in the practice of law while on the bench, other court staff certainly are not and can use plain language to lessen a court user's confusion.

An example of using plain language would be explaining that a "complaint", which is a technical, legal term, is just a paper filed with a court to start a lawsuit. If you are unsure of how to explain a legal term in plain language, consult a plain language legal dictionary, like the one found at www.law.cornell.edu/wex/all. A plain language legal dictionary should not be a substitute for using understandable terms when communicating with the public. However, providing a paper copy of such a dictionary to a court user is useful when court staff are unsure of the best way to make a complex legal term understandable.

Connect Litigants to Interpreter Services

Being able to understand what is being said in court is critical to due process. Unfortunately, many Arkansans who speak a language other than English or who have a hearing impairment may not be aware of their right to an interpreter or how to request one. Court staff should strive to notify court users of their right to an interpreter as soon as possible in the litigation process.

Courts are encouraged to implement a "no wrong way in" approach to language access. This means that court users should encounter a notice of their right to an interpreter at every possible court entry point. In practice, this means there should be a sign in all commonly spoken languages at the entrance to the courthouse and all key service points, like the circuit clerk's office. However, a language services notice should also be in other places where court users may interact with the courts, such as on court websites, summonses, and letters from the court. Providing notice of interpreter services at this early stage of litigation is not only helpful to the litigant, it can save court staff time and ensures compliance with federal civil rights laws which protect limited English proficiency court users.

Court staff can access language access resources developed by the Office of Court Interpreter Services (OCIS), including multi-lingual language access signage, at: https://www.arcourts.gov/administration/interpreters/court-

personnel-resources. The Office of Court Interpreter Services is also able to assist with translation of key signage and documents. If the Office of Court Interpreter Services is unable to assist in the translation of signage or documents, please contact Arkansas Access to Justice. Supplemental funding may be available for translation of such documents if OCIS's resources are limited.

Supply the Child Support Guidelines & Calculator

Domestic relations cases are a case-type with a high volume of self-represented litigants. This, combined with the large impact of child support on family budgets, makes it particularly important that the child support determination process be made as understandable as possible. Court staff should, at a minimum, provide court users with a copy of the child support guidelines and a link to the child support calculator when a self-represented litigant initiates or responds to an action involving child support.

By providing child support resources at the earliest stage possible, self-represented litigants will be able to better understand their rights and responsibilities. To the extent possible, these resources should be made available in paper and electronic format:

Administrative Order 10:
https://opinions.arcourts.gov/ark/ao/en/item/16691/index.do

Child Support Calculator, available at:
https://www.arcourts.gov/child-support-calculator/ChildSupp.html

Legal Aid Custody & Child Support Fact Sheet, available at:
https://a.arlawhelp.org/child-support-custody-visitation/child-custody-visitation

Explain Options for Hiring an Attorney

The overwhelming reason for court users being self-represented is a lack of resources to hire an attorney. For this reason, court staff should never advise someone that they should hire an attorney without also providing the resources discussed above. However, in some cases it is appropriate to explain a court user's options for hiring a private practice attorney. While court staff cannot recommend a particular attorney or firm, they may refer court users to attorney directories, such as the Arkansas Bar Association's Find-A-Lawyer service or a local bar association's attorney directory.

Court staff may also explain the different options for hiring an attorney. Many court users may believe that lawyers only work on a hourly basis, unaware that there are different options when hiring an attorney. These **three** options include:

Contingency Fees[10] - The lawyer takes a fee only if they get a settlement or win a case for their client. This is common in personal injury and employment discrimination cases.

Flat Fees - The attorney charges a set fee, regardless of the amount of time and effort it takes to complete the case. This is common in criminal defense and sometimes offered in family law cases.

---

[10] Prohibitions regarding Contingency Fees exist in some instances, see Ark. R. Prof. Cond. 1.5, https://casetext.com/rule/arkansas-court-rules/arkansas-rules-of-professional-conduct/rule-15-fees (last updated Oct. 6, 2022).

Limited Scope Representation - This model allows a person to hire a lawyer to handle only a part of their case, usually at a reduced rate. For instance, a lawyer may assist just with preparing pleadings and advice or represent a client at a single hearing. More information about limited scope representation and a directory of attorneys offering this service can be found at www.arkansasjustice.org/unbundling.

This guide has been developed and approved by the Arkansas Access to Justice Commission with input from the Unauthorized Practice of Law Committee.

Arkansas Access to Justice Commission
425 West Capitol Avenue, Suite 480
Little Rock, AR 72201
(501) 492-7175 (phone)

April 2024

ARKANSAS
ACCESS TO
JUSTICE

REPRESENTING HOPE