

**DISPENSING LEGAL ADVICE (?)  
THE [NOT SO CLEAR] DISTINCTION BETWEEN  
LEGAL INFORMATION AND LEGAL ADVICE**

The line between legal information and legal advice can often be blurry. For frequently asked questions your staff receives (e.g., court dates, court rooms, costs for various filings) you may want to develop standard responses for your staff. (See, Clerks Manual chapter on Code of Ethics for Clerks).

In all other instances follow this advice:

**"If there is a chance that what you say may be wrong, don't say it."**

I will illustrate how it works with a few examples.

Small Claims filings. The forms say you must file the action where at least one defendant resides. The clerk can answer or explain that. However, if the person asks "Is 123 XYZ Street in Caswell County?" the clerk should not answer because the clerk will not know if that particular address is in Caswell or an adjoining county.

Defining Plaintiff, Petitioner, etc. Simple terms such as this can be explained as follows:

"If you file this action you will be the Plaintiff (or Petitioner in SP)...."

However if the person asks should I file or is it too late to file, the clerk would not know the answer, so she/he should say "I don't know, and if you are not sure I suggest you contact a lawyer."

Calculating time. I recommend the clerk NOT calculate time for a person, because there are various factors that could change the calculation. For example, Columbus Day and Presidents' Day are not State holidays, but they are federal holidays. So, when a filing deadline is due on a weekend or state holiday the clerk should simply say:

"You have X days to file the Y. If the X day falls on a day the courthouse is not open, such as a weekend, you have until 5:00 on the next business day when the courthouse is open."

No more explanation is needed, and this avoids having to explain the difference between State and Federal holidays.

For rental payments simply tell them they have 20 days to pay, and that if they do not pay the plaintiff may seek to have them evicted. Do not help the party calculate time because there may be a fact that could change the outcome such as the landlord accepting rent.

Estates and Guardianships This is an area where it is very easy to cross the line from legal information to legal advice. Since all estates and guardianship proceedings in your county are

handled by your office, your staff is considered experts in this area. Even attorneys contact your staff for “advice.”

#### EXAMPLES

“Mother died last week after being in the hospital for three months. Her Will left everything to Daddy. I don’t need to open an estate do I? I don’t want to spend the money, if I don’t need to.”

“My brother had nothing, other than a car, mobile home that is not worth much, and a dog. He was killed at work, and all we have is his last paycheck that will cover the cost of the funeral. Do I have to open an estate?”

Clerks, including assistant and deputy clerks, are prohibited from practicing law. This includes Clerks that are licensed attorneys. G.S. 84-2.

Options that you can offer to assist without giving advice:

Estate Procedures

<http://www.nccourts.org/Forms/Documents/735.pdf>

Responsibilities of Guardians in North Carolina

<http://www.nccourts.org/Forms/Documents/1184.pdf>

#### Legal Assistance Sources

Legal Aid (income based for some services)

<http://www.legalaidnc.org/>

Legal Aid offices by county

<http://www.legalaidnc.org/public/learn/locations/>

Lawyer Referral Service of the NC Bar Association

1.800.662-7407

<https://www.ncbar.org/public-pro-bono/lawyer-referral-service/nc-find-a-lawyer>