

# Zen and the Art of Legal Reference

*Answering the Question Without Answering  
the Question*

Presenters:

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# Introductions & Objectives

# Introductions

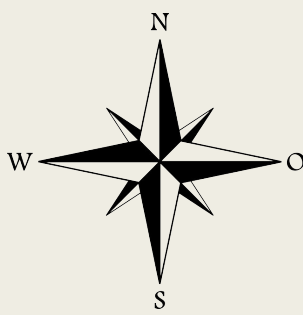


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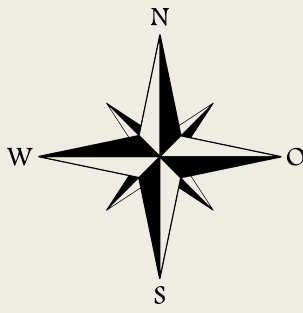
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# Objectives



- **Legal information vs. legal advice** (AKA “the unauthorized practice of law”)
- Legal **reference interview tips and scripts**
- The “**forms**” question
- **Practice questions** and discussion

# Legal Information vs Legal Advice

responding to patrons' legal questions



# Legal Information vs Legal Advice

- **License required** to practice law (ORS 9.160)
  - *Protects the public from **exploitation and incompetence***
- Oregon courts broadly define practice of law to include **“any exercise of an intelligent choice, or any informed discretion in advising another of his legal rights and duties.”** *Oregon State Bar v. Security Escrows, Inc.*, 233 Or 80, 89 (1962)
- Even so, library reference staffers **can do a lot to help patrons!**

# Legal information

# YES!

Wednesday, April 21, 2021



- **Facts** about the law
- Legal authority from **statutes, cases, or rules**
- **Authoritative print and online** resources, including **instruction on how to use** these resources
- Relevant **referrals**

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# Legal advice

NO  
NO  
NO

Wednesday, April 21, 2021



- **Interpreting or explaining** statutes, court rules, court procedures, or other aspects of the law
- **Recommending a specific course** of legal action
- **Applying the law** to a patron's specific legal problem

PRO TIP: If there is **more than one answer to a question**, it's likely a legal advice question!

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# Reference Interview Tips & Scripts

best practices for “answering” legal questions

# Reference Interview Tips & Scripts



- A legal reference interview is:
  - *The **same** as any other reference interview → **listen well**, keep an open mind*
  - ***Different** from regular reference → you will **not find “the answer”** but rather resources/referrals*



# Reference Interview Tips & Scripts

- **Never** start response to patron with **what you CAN'T do**
  - ***Don't hide behind a legal shield and say you can't help** because you're not an attorney - offer effective assistance by **connecting patrons with materials or services that potentially can help***



# Reference Interview Tips & Scripts

- Use your **listening skills**
- **Reframe the question** into one you CAN answer
- **Paraphrase** the question back to the patron
- Watch out for **“red flag” questions** (*legal questions are almost never “just a simple question”*)

PRO TIP: **Admit to ignorance** openly and often.

# Reference Interview Tips & Scripts



- **Reframe** the question

- *My ex-wife won't let me see our son, and she wants to move with him to California. How do I stop her?*

***Reframe: I need information about out-of-state custody and visitation rights.***

- *Is it legal for me to leave my 7-year-old daughter at home alone?*

***Reframe: Does the law say anything about the age a child can be left alone?***

# Reference Interview Tips & Scripts



- **Reframe** the question

- *I ended a lease and my landlord returned my security deposit. Now he says there's damage and I need to pay back some of the deposit. Can he do that?*

**Reframe: What does the law say about security deposit returns?**

- *I'm in Oregon and want to file a small claims case. The company I'm suing is in New Jersey. Where do I file?*

**Reframe: I need information on small claims court in both Oregon and New Jersey.**

# Reference DON'Ts



- Never be invested in the **case outcome**
- Don't advise a patron about a particular **legal course of action**
- Never promise **unreasonable expectations**

# Reference DON'Ts



- Don't select, fill out, or give advice on filling out **legal forms**
- Don't **interpret or explain** primary sources of law
- Don't recommend a **specific lawyer**



# Reference DOs



- Promote **effective and open access** to legal information
- Direct patrons to **resources** on court procedures, court rules, federal and state cases and statutes
- Provide **access to court-sanctioned legal forms** and instructions

# Reference DOs



- Share as many meaningful **options, resources, and referrals** as possible
- Allow patrons to **come to their own conclusions**

# Patron instruction



- Teach patrons **how to use indexes and tables** included with statutes, cases, and rules
- Demonstrate **how to search legal databases and navigate legal websites**

# Patron instruction



- Offer **word processing and printing guidance** for completing online court forms
- Provide advice on how to effectively use **Oregon State Bar's Lawyer Referral Service**
- Inform and educate on **county law library** resources and services

# The “Forms” Question

finding authoritative sources

# The “Forms” Question



## **Forms Pyramid**

*(ranked in order of where to look first)*

1. Is there an official, **Oregon court-sanctioned** local or statewide form?
  - Check **county circuit court** website
  - Check **Oregon Judicial Department [“Forms Center”](#)**

# The “Forms” Question



## *Forms Pyramid*

2. Is there a sample or template form in a **state-specific legal practice book**? (eg Oregon State Bar **BarBooks**, available at law libraries)

3. Can you find a sample form from a **reliable publisher**? (eg [Stevens-Ness Law Publishing](#))

# The “Forms” Question



## **Forms Pyramid**

4. Is there a sample form **on the web** (use with extreme caution - be VERY wary of free forms!)?

- [Nolo Store](#) (includes ‘limited’ Free Form Library; fee required for most products)
- [Findlaw/US Legal Forms](#) (fee required)



# The “Forms” Question



## PRO TIPS:

1. Remember the **“forms pyramid”**
2. Unless official form is available, aspire to **provide patron with 3-4 form “examples or templates”** for patron to compare/contrast
3. If official form has **instructions**, refer patron to those, as they can often help patron decide if form is right for them.



# The “Forms” Question

## PRO TIPS (con’t)

1. There is **no court rule that requires** pre-printed forms.
2. Many forms, even statewide-accepted forms, are **customized for local courts**. Never assume a form for one county may be used in another county.

# Practice Questions/Discussion

building confidence and sharing knowledge

# Practice Questions/Discussion



## **LEGAL QUESTION/ PROBLEM**

I need information on the emancipation process so I can help my 15-year-old niece get out of a bad situation.

## **DON'T SAY THIS**

This Nolo book is on family law, so I bet between the two of us we can figure out the process!

# Practice Questions/Discussion



## **LEGAL QUESTION/ PROBLEM**

My son won't let me see my grandchild. His ex-wife told me there is a form I can file called a grandparent's petition for custody. Can you help me find it?

## **DON'T SAY THIS**

Let's look on the Web – we can find just about everything there these days!

# Practice Questions/Discussion



## **LEGAL QUESTION/ PROBLEM**

My landlord took my name off the lease for the house I share with my two roommates. I need to find the law that says he can't do that.

## **DON'T SAY THIS**

I can help you search for that statute; it should be easy to find!

# Practice Questions/Discussion



- “How long does a landlord have to return my **security deposit**?”
- “What’s the difference between **a will and a living trust**? Which is better?”
- “The other party in my lawsuit filed a motion to dismiss my complaint. **How much time do I have to file a response**?”

# Practice Questions/Discussion



- “I want to quote *Things Fall Apart* in a speech to my Rotary chapter. Do I need to get **copyright permission**?”
- “I recently had an old felony conviction expunged. Is it **legal for me to possess a firearm** in Oregon?”
- “What do I need to do to get a **license as a masseuse**?”





# Questions? Now or Anytime!

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