

2023 ANNUAL CONFERENCE



Ethics of Legal Advice vs Legal Information: How to be Ethical and Helpful

Morgan Spah
Supervising Attorney
Self-Represented Litigant Program—MN Judicial Branch
Morgan.Spah@courts.state.mn.us

About me:



- Supervising Attorney
- MN Judicial Branch **Self-Represented Litigant Program**
 - Statewide Self-Help Center and eFS Support Center
 - Joined team 7 years ago; supervising 4 years
- In private practice for 8 years prior to joining the MN Judicial Branch
 - Volunteer work with legal advice clinics
- Volunteered for the self-help center while in law school

17 years doing work with self-represented litigants



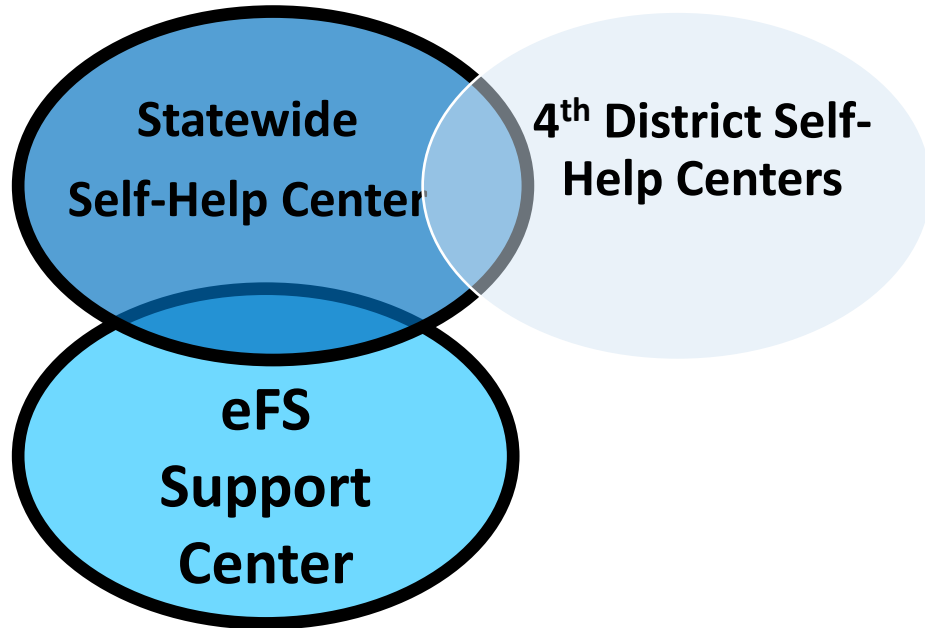
Self-Represented Litigant Program

- Unit within the Minnesota Judicial Branch
- One of the largest SRL/Self-Help Programs in the country
 - Team of about 30 people
 - Attorneys and paralegals
 - Staff speak 8 languages
 - 84,000+ customer interactions in 2022

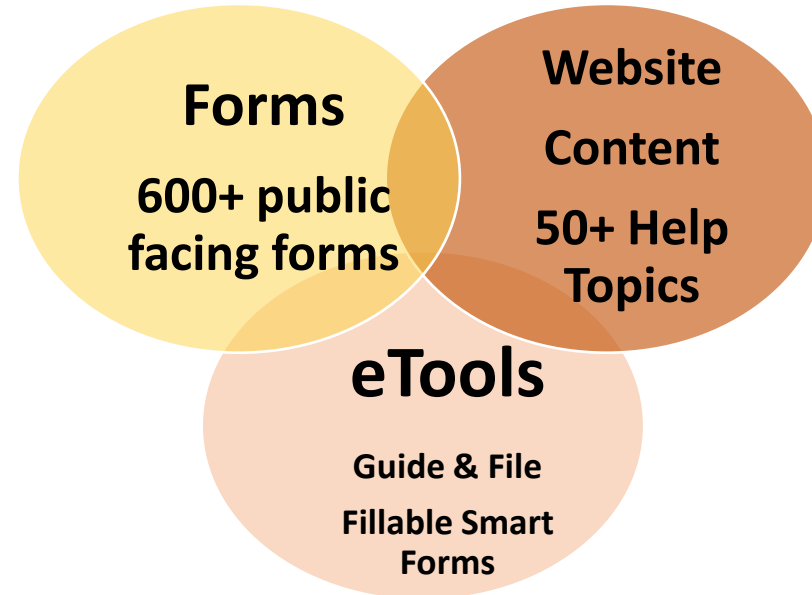
SRL Program Services



Direct Customer Service



Resource Development



Training and Outreach

- About all the above
- **Legal Advice v. Legal Information**
- Plain Language
- Customer Service

For the entire
Minnesota Judicial
Branch



- Direct service provided by a team of 6 people
- Help with **most case types**
- Provides services via **phone and email only**; no walk-in location
 - **Over 27,000** phone calls (2022)
 - nearly **6,000 emails** (2022)
 - Support for more than **600 court forms**
 - Knowledge and expertise in over **125 Help Topics**
- 91 public workstations
 - **In every county** courthouse and some public libraries
 - Phone that calls Statewide SHC directly
 - Computer and printer



The Law Part

(Let's earn those CLE credits!)

Minn. R. Gen. Practice 110

Adopted in 2003



- Authority to establish a Self-Help Program
- Defines the role of self-help personnel
 - Required acts
 - Permitted acts
 - Prohibited acts
- Performance of services by Self-Help Personnel in accordance with this rule **shall not constitute the unauthorized practice of law.** (Minn. §481.02)

Legal Advice vs Legal Information

Why the hesitation?



Ethical considerations for...

➤ IVD program

- Delegation of legal activities to non-attorney employees (Minn. §481.02, Subd. 2)
- Supervised by County Attorney (Minn. §481.02, Subd. 2)
- Duty to inform applicants/recipients there is no attorney-client relationship (Minn. §518A.47)

➤ Lawyers

Dealing with Unrepresented Person (MRPC Rule 4.3)

➤ Non-lawyers

Unauthorized practice of law (Minn. §481.02)

MRPC Rule 4.3

Dealing with Unrepresented Person



A lawyer shall...

- NOT imply or state they are disinterested
- Clearly disclose that the client's interests are averse to the unrepresented person (if they are)
- Correct misunderstandings of attorney's role as it relates to the unrepresented person
- NOT give legal advice to the unrepresented person when their interests conflict with client's

And, as you know....

Public attorneys involved in the collection of child support represent the public authority, not the individual seeking collection of the support. (Minn. Stat. §518A.47)

Minn. §481.02

Unauthorized Practice of Law



481.02 UNAUTHORIZED PRACTICE OF LAW.

Subdivision 1. Prohibitions.

It shall be unlawful for any person or association of persons, except members of the bar of Minnesota admitted and licensed to practice as attorneys at law, to appear as attorney or counselor at law in any action or proceeding in any court in this state to maintain, conduct, or defend the same, except personally as a party thereto in other than a representative capacity, or, by word, sign, letter, or advertisement, to hold out as competent or qualified to **give legal advice** or counsel, or to prepare legal documents, or as being engaged in advising or counseling in law or acting as attorney or counselor at law, or in furnishing to others the services of a lawyer or lawyers, or, for a fee or any consideration, to **give legal advice** or counsel, perform for or furnish to another legal services, or, for or without a fee or any consideration, to prepare, directly or through another, for another person, firm, or corporation, any will or testamentary disposition or instrument of trust serving purposes similar to those of a will, or, for a fee or any consideration, to prepare for another person, firm, or corporation, any other legal document, except as provided in subdivision 3.

Subd. 2. Corporations.

No corporation, organized for pecuniary profit, except an attorney's professional firm organized under chapter 319B, by or through its officers or employees or any one else, shall maintain, conduct, or defend, except in its own behalf when a party litigant, any action or proceeding in any court in this state, or shall, by or through its officers or employees or any one else, give or assume to **give legal advice** or counsel or perform for or furnish to another person or corporation legal services; or shall, by word, sign, letter, or advertisement, solicit the public or any person to permit it to prepare, or cause to be prepared, any will or testamentary disposition or instrument of trust serving purposes similar to those of a will, or hold itself out as desiring or willing to prepare any such document, or **to give legal advice** or legal services relating thereto or to give general **legal advice** or counsel, or to act as attorney at law or as supplying, or being in a position to supply, the services of a lawyer or lawyers; or shall to any extent engage in, or hold itself out as being engaged in, the business of supplying services of a lawyer or lawyers; or shall cause to be prepared any person's will or testamentary disposition or instrument of trust serving purposes similar to those of a will, or any other legal document, for another person, firm, or corporation, and receive, directly or indirectly, all or a part of the charges for such preparation or any benefits therefrom; or shall itself prepare, directly or through another, any such document for another person, firm, or corporation, except as provided in subdivision 3.

Minn. §481.02 uses the phrase “legal advice” 8 times...but offers no definition of what legal advice is.

That clears things up, right?

So...what is legal advice?

The long answer.



- Not expressly defined by rule or statute
- But we have clues and generally accepted guidelines from across the country
 - Codes of conduct, policies, recommendations, analysis
 - ✓ Courts
 - ✓ Legal service organizations
 - ✓ National Center for State Courts
 - ✓ Law Review articles
 - Related statutes and rules like... **Minn. R. Gen. Practice 110**

Minn. R. Gen. Practice 110

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Yep. You saw this
slide before!

Required Acts under Rule 110



Self-Help Personnel shall:

- Educate Self-Represented Litigants about available pro bono legal services, low cost legal services, legal aid programs, lawyer referral services and legal **resources** provided by state and local law libraries;
- Encourage Self-Represented Litigants to **obtain legal advice**;
- Provide information about **mediation services**;
- Provide services on the **assumption that the information provided by the litigant is true**; and;
- Provide the **same services and information to all parties to an action**, if requested.

Permitted Acts under Rule 110



Self-Help Personnel may, but are not required to:

- Provide **forms and instructions**;
- Assist **in the completion** of forms;
- Provide **information about court process, practice and procedure**;
- Offer **educational sessions and materials** on all case types, such as sessions and materials on marriage dissolution;

(continued)

Permitted Acts under Rule 110 (cont.)



Self-Help Personnel may, but are not required to:

- Answer **general questions** about family law and other issues and how to proceed with such matters;
- Explain **options within and outside of the court system**;
- Assist in **calculating guidelines child support** based on info provided by the SRL
- Assist with **preparation of court orders** under the direction of the court; and
- Provide **other services** consistent with the intent of this rule and the direction of the court, including programs in partnership with other agencies and organizations.

Prohibited Acts under Rule 110



Self-Help Personnel may not:

- **Represent** litigants in court;
- **Perform legal research** for litigants;
- Deny a litigant's access to the court;
- **Lead litigants to believe that they are representing them as lawyers** in any capacity or induce the public to rely on them for personal legal advice;

(continued)

Prohibited Acts under Rule 110 (cont.)



Self-Help Personnel may not:

- Recommend **one option over another option**;
- Offer **legal strategy** or personalized legal advice;
- Tell a litigant anything she or he would not repeat in the **presence of the opposing party**;
- **Investigate facts** pertaining to a litigant's case, except to help the litigant obtain public records; or
- **Disclose information in violation of statute, rule, or case law.**

So, then what is legal information?

(We'll come back to the question "What is legal advice?")



Information is defined as “The communication or reception of knowledge”
(Merriam Webster Dictionary)

Legal information = Your legal knowledge communicated
(Think: options without opinions)



- Neutral
- How to do something
- Where to find something
- Defining or explaining a word or concept
- Directing to a statute or court rule
- Anticipating issues and questions

Options without opinions = legal information



Choose Your Route			Choose Your Route			Choose Your Route		
Route #1	Route #2	Route #3	Route #1	Route #2	Route #3	Route #1	Route #2	Route #3
via MN-610 and US-169			via CR-14 and CR-52			via MN-610 and CR-12		
0hr 17min 16mi 🚗			0hr 19min 13mi 🚗			0hr 20min 15mi 🚗		
IRS Reimbursement:\$10.30			IRS Reimbursement:\$8.60			IRS Reimbursement:\$9.74		
View route directions			View route directions			View route directions		

You ~~SHOULD~~ **COULD**...and these are *some* things you could consider in your decision.

Or you COULD...

Or you COULD...

The **Rules** of the Game



Legal Information

“You **could**...”

The **Strategy** of the Game



Legal Advice

“You **should**...”

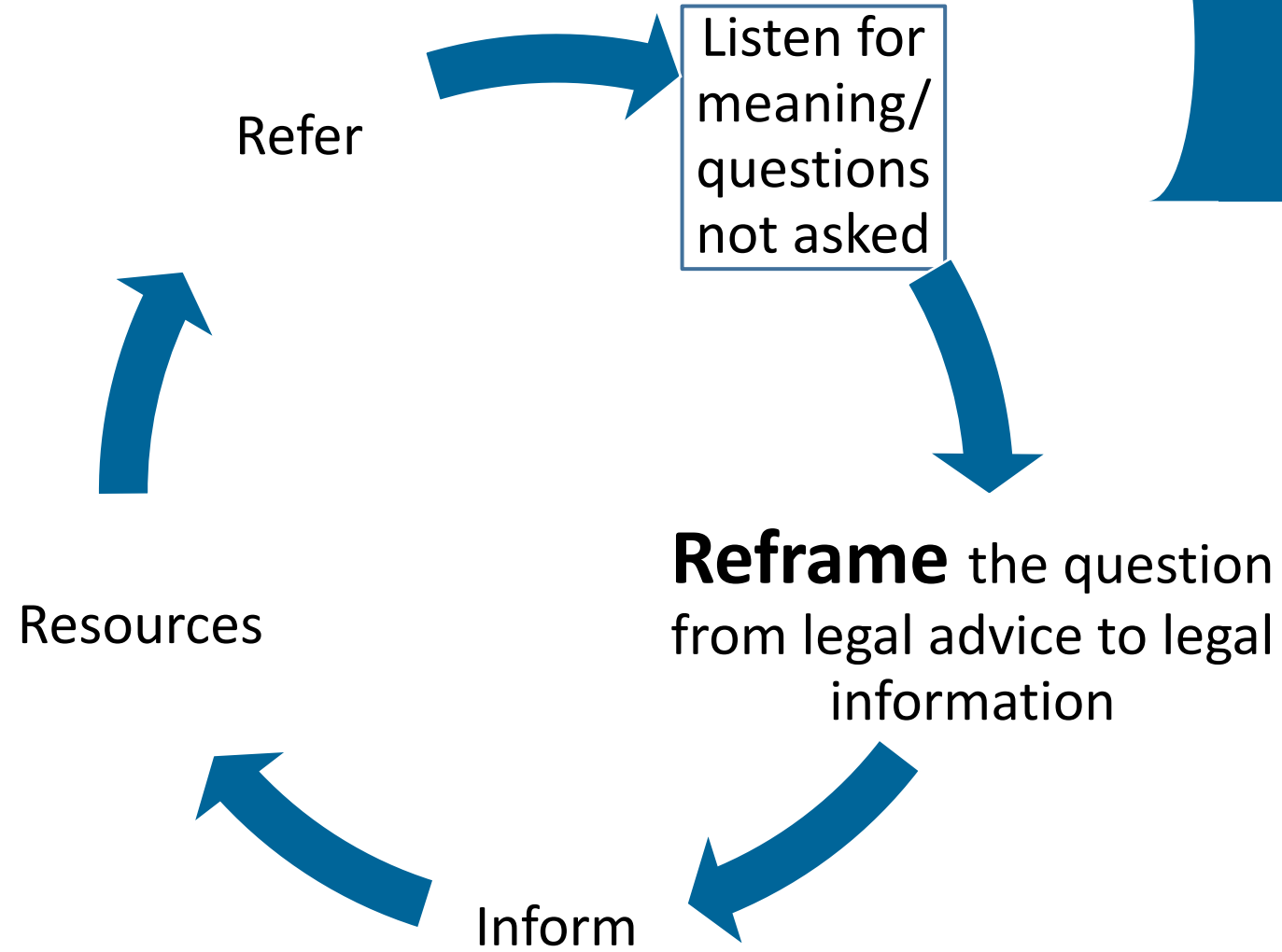
Legal Information

- “You could...” statements
- Answer questions about court rules, procedures, and ordinary practices
- Give general education on the law
- Provide court forms, instructions, handouts
- Answer questions about completing forms
- Explain terms and documents used in court cases or the purpose of a hearing
- Provide case-specific information from public records

Legal Advice

- “You should...” statements
- Suggest legal arguments
- Apply the law to a specific factual circumstances
- Interpret an aspect of the law, court rules, or court procedures
- Recommend a specific course of action an SRL should take
- Say “what to do” rather than “how to do it”
- Say what a judge probably will do

Legal information interaction cycle



Phrases



- You could...
- Generally...
- The general rule is...
- Some options may be...There may be other options.
- Some pros and cons may be...there may be others.
- One way to...
- I've seen cases/people...
- You may be able to/ The court may
- I can't give legal advice, opinions, or strategy, but I can point you to options, legal resources, and explain court terms and processes.

Helpful and Ethical Responses: Examples and Discussion

“My situation has changed. I can’t pay that much.”

- Person didn’t ask a question but is expressing a problem
- Answer the question that wasn’t asked AND ask questions
- Legal information you could provide:
 - Mention options
 - Motion to Modify Child Support
 - Stipulation
 - Summarize the change in circumstances **statute in plain language**
 - Give them the statute number
 - Refer to resources
 - MN Child Support Guidelines Calculator
 - MNCourts.Gov
 - Help Topics
 - Forms
 - Self-Help
 - Legal advice resources

“Will my motion to modify be granted?”



- a. I can't answer that for you. I can't give an opinion on what I think the magistrate will do.
- b. I'm not able to give an opinion on what I think the magistrate will do but I can explain some of the factors the magistrate will look at (summarize the law).
- c. Here is the information for the self-help center. Contact them and they will help you.

“The other parent won’t let me see my child.
Why do I have to keep paying?”



- a. You still have a legal obligation to pay child support even if you don’t see your child.
- b. If the other parent isn’t following the court order about parenting time or custody, you could file a motion for contempt.
- c. ...you could file a motion for contempt, motion for parenting time assistance, or motion to change custody and parenting time depending on what your situation is. (Then briefly explain and refer to self-help).

“I received paperwork to change child support. My deadline to reply is today. What should I do?”



- a. Here is the information for the court's website and self-help center they will be able to help you.
- b. Unfortunately, I can't tell you what you should do because I can't give you legal advice.
- c. You should file your response today otherwise the court won't consider what you have to say.
- d. You could try filing a response today (offer resources)...(explain what could happen if the deadline isn't met, (which may not necessarily mean their response wouldn't be considered)).

Other types of common questions



- What should I do?
- What exhibits should I use?
- What's going to happen in court?
- How do I docket a judgment for unpaid child support?
- How do I collect/contest unpaid medical/dental expenses?
- Can I get paid back child support?
- Can I have the arrears forgiven?
- What will the magistrate/judicial officer do?

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Child Support

"Child support" is court-ordered payments for the financial support of a child. Under Minnesota law, a child has the right to be financially supported by both parents.

[Contact a Self-Help Center](#)

[Help Topics Homepage](#)

[Overview](#) | [Definitions](#) | [FAQs](#) | [Forms](#) | [Rules & Laws](#) | [Tools & Resources](#)

- > [How is child support calculated?](#)
- > [How can I get child support?](#)
- > [What is public assistance?](#)
- > [What is the "expedited process" \("Ex Pro"\)?](#)
- > [I live in another state, but I received paperwork for a MN court child support case. Why is this?](#)
- > [Is spousal maintenance the same thing as child support?](#)
- > [What if I'm afraid the other parent will harm me or my child if a child support case is started?](#)
- > [How do I modify \(change\) a support order?](#)

Child Support Help Topic

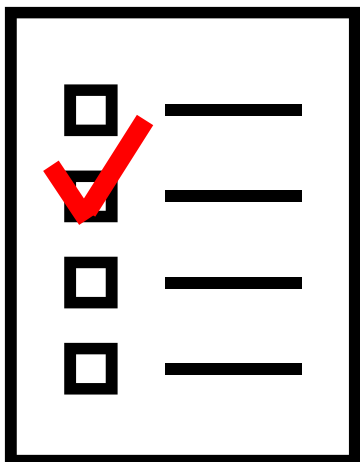
Some of the forms available:

Form Number	Form/Packet Name
[PACKET]	Motion for Review
[PACKET]	Motion to Contest Support Judgment Levy
[PACKET]	Motion to Correct Clerical Mistakes
[PACKET]	Motion to Modify Child Support
[PACKET]	Motion to Modify Medical Support (ExPro)
[PACKET]	Motion to Reinstate Driver's License
[PACKET]	Request for Continuance
[PACKET]	Request for County to Serve Papers
[PACKET]	Request for Subpoena
[PACKET]	Request for Transcript
[PACKET]	Request to Remove for Cause
[PACKET]	Response to Motion for Review
[PACKET]	Response to Motion to Correct Clerical Mistakes
[PACKET]	Response to Motion to Modify Child Support
[PACKET]	Response to Motion to Modify Medical Support (ExPro)

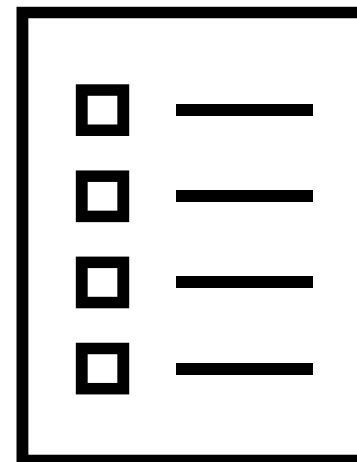
What is legal advice? What is legal information? The short answer.



Legal advice = options with opinions



Legal information = options without opinions



A note about plain language

***In the midst of
disseminating erudition,
invariably aspire to do so
at a scholastic gradation
that is intelligible.***



Give
information
in **plain**
language.

Why is plain language important?

The average
American
reads at an 8th
grade level.

More transparency

+

Better understanding

- Improved public trust and confidence More compliance
- Less frustration (for EVERYONE!)
- More efficient



There are some legal professionals that worry that plain language will not hold up in court.

But consider:

“First, you must distinguish things that don’t hold up in court because of legal insufficiency from ones that allegedly didn’t hold up in court because they were written [said/explained] in plain language.

I don’t think I’ve ever seen a case or a situation in which something was held insufficient because it was too simply written.”

“We could understand this! It can’t be enforceable!” [Laughs]

--Richard Wydick
Legal Writing Scholar

[illegible]

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Be Ethical and Helpful



- **Listen** carefully
- Ask **questions**
- Provide **legal information** and not legal advice
- Double check if the party is **represented** or planning to hire an attorney. MRPC 4.2
- **Clarify your role** (the county's interests – not to represent either party). MRPC 4.3(b)
- **Inform** on rights and **options without opinion!**
- Outline how hearings generally go (reminder they can ask for what they want and ask questions)
- Use **plain language** for all of the above



“So often people with the knowledge get exasperated with those who don’t but your team had a gentleness in how they helped me.”

—Self-Represented Litigant