

**Task Force on
Legal Information v. Legal Advice**

Final Report and Recommendations

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EXECUTIVE SUMMARY

A vital mission of the Arizona Supreme Court is to provide meaningful access to the courts. Essential to this mission is ensuring that Arizona consumers of court services are knowledgeable. Chief Justice Ruth McGregor advises in *Good to Great, A Strategic Agenda for Arizona's Courts* “To ensure that citizens have meaningful access and an opportunity to be heard, Arizona courts must develop alternative and more effective methods to provide assistance to litigants so that they are not denied justice because they lack the benefit of counsel.” To achieve this goal, the court system has an obligation to provide the public with as much information and assistance as possible about the courts and court procedures. There are difficult challenges facing those who provide information and assistance to those who represent themselves for they often seek more substantive legal assistance.

The Task Force was established by Administrative Order No. 2006-40 on May 3, 2006, to address the request to develop alternative and effective methods to provide assistance to court users, specifically the concern about what information court staff can provide to litigants. The Task Force has members who represent the judicial districts and court types statewide. This report sets forth the efforts of the Task Force and its recommendations.

The Order mandated “that the Legal Advice – Legal Information Guidelines Task Force established to review materials and information gathered from other states that have adopted policy statements, develop standards adopting authoritative distinctions between legal information and legal advice for guidance of court staff, determine the best method(s) for implementation of the proposed standards in Arizona’s courts that will promote consistent quality service, and prepare a final report and recommendations to be presented to the Arizona to be presented to the Arizona Judicial Council for adoption.”

The Task Force reviewed the work of authorities, the legal advice – legal information guidelines and directives from every state that has guidelines. In addition, they reviewed the training materials and manuals from those states. The Task Force then created guidelines and additional materials to assist court staff and determined a proposal for implementation of those standards in Arizona courts.

The Task Force proposes and recommends the following components of a uniform statewide “Legal Information v. Legal Advice” program:

- The Guidelines should be approved and incorporated into Court’s Code of Conduct for Court Staff.
- The Signage should be approved and the Supreme Court issue an order requiring the signage be prominently displayed at court service counters, self-service centers, and law libraries open to the public.
- The manual for court employees that includes policy, guidelines, glossary of common terms, and question and response handbook should be available to court personnel and be included with their training.
- New employee orientation should be required to include a Legal Advice v. Legal Information component and current employees be regularly required to participate in a review program.
- The manual, glossary, and questions and helpful response, as well as interactive review modules should be available for court personnel on the intranet.

INTRODUCTION

Arizona court clerks, court reporters, judicial assistants, bailiffs, librarians, and other court staff serve on the front lines of Arizona's courthouses. Viewed as an important source of information, these court employees are a vital link between the courts and the public. Court customers rely upon court staff to provide information about cases, judges, court procedures and other legal concerns. The growing numbers of self-represented litigants pose even greater challenges to court staff because their questions are more case specific.

The Arizona Supreme Court has recognized the vital importance of court personnel providing information about the courts and court procedures to ensuring meaningful access to the courts; however, the courts must balance this against the obligation to be neutral and impartial. While court personnel are admonished not to engage in the practice of law, they are being asked to use their knowledge about the courts and court procedures to facilitate access to the legal process.¹

Balancing these obligations can be both frustrating and problematic in the absence of training and guidelines to help court personnel distinguish between legal advice and legal information. Court personnel has been trained in an informal haphazard manner with guidelines and examples gleaned from other state programs and those members that have participated in the training have found it helpful. Yet, there is a no comprehensive training program that specifically addresses court personnel concerns about the inherent difficulty of responding to court user's questions without violating rules of impartiality, neutrality, or the unauthorized practice of law.

The Task Force was established in May 2006 to address these concerns. At its first meeting on June 16, 2006, the committee established the following goals or mission:

- A. Develop standards adopting authoritative distinctions between legal information and legal advice for guidance of court staff.
- B. Develop useful guidelines and written policies for court staff.
- C. Publish, post, and disseminate these guidelines and policies in appropriate areas.
- D. Recommend and develop training programs that instruct court staff in the skills needed to effectively provide information and access to the courts and to distinguish between legal advice and legal information.

This report discusses the work of the Task Force and makes recommendations implementing a comprehensive program that addresses court staff concerns about providing information without giving legal advice.

¹ Although Arizona Rules of Court define "practice of law" and "unauthorized practice of law," the Rules do not define "legal advice."

MEMBERSHIP

The Task Force is ethnically diverse with representation from limited jurisdiction courts and superior courts. The members also represent the various roles of employees within the court system, including those with experience as administrator, judge, judicial assistant, clerk, trainer, educator, librarian and jury clerk. The areas of the law, including family law, probate law, criminal law, landlord tenant law, and juvenile law, are all represented on the Task Force. Furthermore, the membership is geographically diverse with members from both large and small judicial districts.

BACKGROUND AND DISCUSSION

The Task Force met for its first meeting on June 16, 2006. Each member received a binder that included introductory materials, court guidelines from other jurisdictions, training materials from Arizona and other states, articles written by authorities on legal advice-legal information issues, and questions and answers from jurisdictions in Arizona as well as other states.

The Task Force divided itself into three work groups, each designated with a specific task:

- Creating the guidelines
- Developing helpful questions and responses
- Recommending implementation methods.

The three groups met independently through the month of July and brought the results of their work to the second meeting on August 11, 2006. The Guidelines Workgroup created guidelines to present to the Task Force and continued to make revisions and additions consistent with the discussions at the August 11 meeting. The Question and Response Workgroup formulated and revised questions and responses in preparation for the September meeting.

The work groups continued to meet throughout the month of September. The Guidelines Workgroup revised the guidelines document consistent with suggestions from the August Task Force Meeting. The Question and Response Workgroup also met through the month of September to add and revise questions and responses which were organized and presented to the Task Force at the September 22nd meeting

The Task Force met again on October 4 and 25, 2006, during which time they reviewed and offered suggestions for the materials prepared by the work groups and implemented a procedure for proofreading the products. The Task Force approved the recommendations of the members.

The Task Force has presented the materials to the Commission on Minorities, LJC, Superior Court Presiding Judges and AJC and considered and incorporated the recommendations from each of the groups. The Commission on Minorities offered the suggestion that the signage and other appropriate documents also be available in languages other than English. The Task

Force recommends that the signage be available in Spanish. There is a concern from the Task Force that the signage in a language other than English may create the expectation for interpretation services that are not always available in some Arizona courts. For that reason, the Task Force suggests that Spanish signage be posted at the discretion of each court. Although the availability of interpreters issue is not an assignment of this Task Force, it encourages the courts to allocate resources to address this concern.

RECOMMENDATIONS:

The Task Force focused on court personnel's role in providing meaningful access, but this responsibility ultimately rests with the court itself. Court personnel will succeed in using the products of the Task Force only to the extent that each court commits to implementing them. Also these products are but one tool to provide access. The Task Force strongly recommends that each court continually develop additional tools to help customers access the courts, such as a self-service center, forms, instructional videos, resource lists, clinics and the like.

The Task Force is proposing and recommending the following components of a uniform statewide "Legal Information v. Legal Advice" program:

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