

Attorney Richard Smalley explains the dilemma for litigants without a lawyer, Court Clerks cannot give legal advice

By preventing clerks from dispensing legal advice to parties, courts protect the impartial administration of justice. Richard Smalley explains.

NORMAN, OKLAHOMA, UNITED STATES, September 29, 2019

/EINPresswire.com/ -- Many people who for one reason or another end up in Court do not have the financial means to consult with, or hire, a lawyer. Their first point of contact with the Court is in many cases the Clerk's office of the Court. While many court clerks want to help, they are limited in what they are authorized to do and say. Pro se litigants are not alone in this situation. Even experienced attorneys often wish they could ask Clerks about legal issues or procedures to resolve an issue. But lawyers know that they cannot ask such questions.



Attorney Richard E Smalley III, Oklahoma

“

court clerks are not allowed to dispense legal advice. That can make life more difficult for any pro se litigant, and may possibly burden the legal system”

*Richard Emory Smalley, III,
attorney in Norman,
Oklahoma*

In his new article, Oklahoma lawyer [Richard Smalley](https://richardsmalleylawblog.family.blog/) provides a brief overview of the issues facing pro se litigants and court clerks. The complete article will be published on his Blog at <https://richardsmalleylawblog.family.blog/>

You might have seen in movies where a person being sued runs to the courthouse, is sent from one desk to another, and finally one merciful court clerk with large, horn-rimmed librarian glasses, reveals the legal strategy that ends the legal quagmire. But that happens only in the movies. In real life, court clerks are not allowed to dispense legal advice. That can make life more difficult for any pro

se litigant, and may create more issues for the legal system.

That courts and clerks cannot provide legal advice in Oklahoma is prominently stated in documents and on websites. The website of Piedmont Court procedures notes:

“It is important to note right at the beginning that the City staff cannot give you any legal advice. The Judge and the Prosecutors are prohibited by the applicable rules of conduct from giving you legal advice concerning your charge. The court clerk and her staff are not attorneys and the law does not allow non-attorneys to give legal advice. Please do not ask these people for legal

advice." <http://www.piedmont-ok.gov/279/Court-Procedures>

The Handbook for County Clerks of Oklahoma notes: "Court Clerks cannot practice law in the District Court in which they serve. The Court Clerk or Deputies should make clear to any individual that providing legal information is unethical and illegal and they cannot give legal advice or recommend a particular attorney." <http://agecon.okstate.edu/ctp/files/CourtClerk2007.pdf>

Similarly, the info sheet of the United States District Court Western District of Oklahoma, Questions and Answers, notes "The time limit for filing a lawsuit depends on the types of claims raised in the lawsuit. This issue is one of federal and state law and the clerk's office cannot give you legal advice on the issue or tell you how long you may have to file a lawsuit." http://www.okwd.uscourts.gov/wp-content/uploads/2015/04/questions_and_answers.pdf

The situation is essentially the same in other states. The website of the United States District Court, Middle District of North Carolina, <https://www.ncmd.uscourts.gov/filing-without-attorney>, states that "Please be advised that the Clerk's Office and its employees are forbidden by law from giving legal advice. Legal advice could be described as, but is not limited to: interpretation of rules, recommending a course of action, predicting a judicial officer's decision or interpreting the meaning or effect of any court order or judgment."

A 2009 Report by the Alabama Access to Justice Commission (Christina Llop, Esq.) notes that "Judges and clerks find consistent problems with self-represented parties expecting them to provide legal advice, failing to understand rules of procedure and evidence, failing to bring necessary witnesses and evidence to court, and refusing to accept the court's rulings. In fact, Judge Jack Lowther expressed the same frustration heard from judicial officers around the nation: having to rule against a self-represented litigant not because they did not have a strong and possibly winning case, but because they did not know how to prove their case or their damages. The result, apart from the significant potential for failure to find redress for legitimate legal claims, is wasted judicial and staffing resources." (Report, page 10).



Attorney Richard E Smalley III, Oklahoma



Attorney Richard E Smalley III, Oklahoma

Researchers & Industry Analysts

Richard E. Smalley, III

Additional Information

Richard E. Smalley, III is an attorney in Norman, Oklahoma. He is an AV-rated trial attorney with more than 30 years' experience. Mr. Smalley focuses on family law matters, including divorce, custody, child support, divorce modifications, paternity, and guardianship. He is also experienced in probate matters and wills. The practice presently includes, trial work, divorce, post-divorce modifications, child support collection, child custody litigation, paternity, guardianship, adoption, probate and wills. Mr. Smalley has appointed by judges and attorneys to serve as the Guardian ad Litem for children in dozens of contested child custody cases, and also serves as a mediator in family law cases.



Richard Emory Smalley, III, family attorney in Norman, Oklahoma

Attorney Profile Richard E Smalley III, Oklahoma

Thus, one of the Report's recommendations is to "Create clear statewide definitions of legal information and legal advice and guidelines applicable to clerk offices." Another recommendation, to assist those in need of legal advice, is to "Establish a pilot self-help center in Jefferson County's District and Circuit Courts." See <https://alabamaatj.org/wp-content/uploads/2013/08/Alabama-Final-Report-SRL-Services.pdf>

In 2002, the Judicial Council of California addressed this issue with a form called "MC-800, Court Clerk's Office: Signage" that allows court clerks to offer specified assistance to court users. See "May I help you? Legal Advice vs. Legal Information" (2003 by Judicial Council of California/Administrative Office of the Courts, available online at <http://www.courts.ca.gov/documents/mayihelpyou.pdf>; form at <https://www.courts.ca.gov/documents/mc800.pdf>)

The brochure issued by the California Judicial Council explains "that The Code of Ethics for the Court Employees of California requires you to 'furnish accurate information as requested in a competent, cooperative, and timely manner' but to avoid 'giving legal advice.' You may already know that you are not supposed to give 'legal advice' to court users. ... As a result, when people ask questions where the line between legal information and legal advice is blurry, you may avoid giving appropriate information about court procedures because you don't want to violate the Code of Ethics. Meanwhile, court users don't get the information they need and may become frustrated; more significantly, if they don't follow the right procedure, they may be denied access to the courts. In an effort to address these concerns, the Judicial Council of California recently approved form MC800, Court Clerks Office: Signage, for display in court clerks' offices throughout the state. The form is designed for posting at the clerk's counter or public window at each court location so that court users can read and understand the guidelines that you are required to follow." (Brochure, page 1).

Let us review the California approach, signage and brochure in more detail.

Code of Ethics

The nationwide rise in self-represented litigants has increased the need for assistance that people seek from the court staff. This is where the Code of Ethics comes into play. This code presents clear guidelines on how the Court Employees should "furnish accurate information as requested in a competent, cooperative, and timely manner". However, they must avoid "giving legal advice" on any matter that does not concern them.

People often get angry when they feel the response given to them is automated. What they don't know is that the court employees have to follow strict rules regarding legal advice and legal information. Both terms differ vastly and therefore, the court employees have to think before they speak or else they might risk violating the Code of Ethics.

From a legal standpoint, legal advice concerns areas on how the person can further pursue the actions against litigation. It specifically applies to the law. The court employees here cannot tell



the litigant whether they “should” file a case or not. On the other hand, they can explain the legal system and the law in general terms.

Here’s an example for you:

Procedural Definition

You are filing a lawsuit regarding an encroachment on your business land. You visit the court to get some legal information and seek assistance from an attorney.

Legal Information

You tell the court clerk the type of case you are pursuing and he tells you about the different reasons why the other party might want to adjourn the application.

Legal Advice

You are advised on what type of application you should submit and which court to visit. The attorney advises you on asking for adjournment at the next court hearing because...

A List of Things the Court Staff Can and Cannot Do For You

Following are seven areas where a court staff can and cannot assist you:

Can Assist In...

1. Answer Questions

The court staff can answer any questions regarding the case you are pursuing. Bear in mind that the information given will cover the surface of the problem, and it will not give you insight on how you should proceed rather the ways you can proceed.

2. Provide Referrals

The court staff can provide you with referrals for a local lawyer’s service, family law facilitator program, legal services program, and other such services where you can get access to legal information. Don’t expect to get information on the spot about any litigation.

3. Direction on Rules and Regulations

The court staff can provide you with information on court procedures, rules, and practices. This will help you to take the right steps when you are thinking about filing a lawsuit.

4. Provide Court Schedules

As a first-time court user, you might not know which person and department to visit. Here, the court staff can give you information regarding various court schedules and how you can get the case filed. This will help you make timely appearances and avoid missing deadlines.

5. Review the Case File

Say your case file contains information that is difficult for you to understand. Here, the court staff can help you understand what the information means and where you can seek further help.

6. Provide Forms and Applications

The court staff can help you with the right applications and forms, as well as directions on where to file them.

7. Guidance on Deadlines

Every lawsuit has its deadline, and the court staff can assist you in meeting them. They will answer your questions on how early you need to submit your forms and may also provide you information on how soon your application will be approved.

Cannot Assist In...

1. Case Approval

The court staff cannot tell you whether you should take your case to the court or not.

2. Writing of the Form

The court staff cannot assist you on how to write an application. However, they will check the form for you to make sure it is complete. The few things that are noted include signatures, correct county name, notarization, legal document attachments, and the correct case number.

3. The Appeal

The court staff cannot tell you how to present your case or what words you should use to make your appeal sound more passionate.

4. Opinions

The court staff cannot tell you how your case will go once it is on the docket and you are at the court for the hearing.

5. Talk to the Judge

No matter what the case, the court staff cannot talk to the judge on your behalf, even if you have a personal relationship with the employee.

6. Tell You the Judge's Court Timings

The court staff cannot give out information on when the judge leaves the chambers, so that you can talk to him/her outside the court.

7. Change Legal Documents

Say your case hearing is on Monday. However, you have an important commitment you cannot get out of and now you are looking for a change in the date of your court hearing. The court staff cannot make any changes on legal documents whether it concerns the date or any other matter.

Now that you know what information you can get at the court from the court clerk, you can ask the right questions and not get twisted in circles, visiting one department from another. Keep in mind, you might not always get the information you are seeking, so be patient and ask for further directions rather than getting frustrated and breaking any rules and regulations.

Richard Smalley concludes that while the California signage and brochure clarifies the clerks' duties, it does not help pro se litigants in need of legal help. Also, the California approach does not lessen the burden on the court system, since it is unlikely that pro se litigants will read brochures such as "May I help you?" before asking a court clerk.

This issue will probably never be completely resolved. Legal self-help centers, flexible payment plans offered by attorneys, and allowing paralegal professionals to provide limited representation (as proposed in some States) may provide some relief.

About [Richard Emory Smalley, III](#)

[Richard E. Smalley, III](#) is an attorney in Norman, Oklahoma. He is an AV-rated trial attorney with more than 30 years' experience. Mr. Smalley focuses on family law matters, including divorce, custody, child support, divorce modifications, paternity, and guardianship. He is also experienced in probate matters and wills. The practice presently includes, trial work, divorce, post-divorce modifications, child support collection, child custody litigation, paternity, guardianship, adoption, probate and wills. Mr. Smalley has been appointed by judges and attorneys to serve as the Guardian ad Litem for children in dozens of contested child custody cases, and also serves as a mediator in family law cases.

References

Website: <http://smalleylawfirm.com/richard-e-smalley-iii/>

Blog: <https://richardsmalleylawblog.family.blog/>

News: <https://hype.news/richard-e-smalley-iii-family-lawyer-us/>

Attorney Profile: <https://solomonlawguild.com/richard-e-smalley%2C-iii>

Attorney Profile: <https://attorneygazette.com/richard-e-smalley%2C-iii#2d2e7913-7e09-4dcc-8c60-1f89053f64cd>

<http://www.americanregistry.com/business/richard-e-smalley/290254>

<https://www.linkedin.com/in/dick-smalley-8a3b799/>

Richard E. Smalley, III
The Smalley Law Firm
+1 405-801-2222
[email us here](#)
Visit us on social media:
[LinkedIn](#)

This press release can be viewed online at: <http://www.einpresswire.com>

Disclaimer: If you have any questions regarding information in this press release please contact the company listed in the press release. Please do not contact EIN Presswire. We will be unable to assist you with your inquiry. EIN Presswire disclaims any content contained in these releases. © 1995-2019 IPD Group, Inc. All Right Reserved.