

Guidelines for
Tennessee Court Clerks Who Assist Self-Represented Persons
(Approved by the Tennessee State Court Clerks Association and endorsed by the Tennessee Supreme Court)

A. The primary goal of court and clerks' staff is to provide high quality service to court users. Court clerks strive to provide accurate information and assistance in a prompt and courteous manner. However, in many or most situations involving *pro se* litigants (or represented litigants who come to the clerk's office without their attorneys), the best customer service might be to advise the litigant to seek the assistance of an attorney. The purpose of this rule is to provide guidance to court clerks about the services they may provide to self-represented persons without violation of the prohibition against engaging in the unauthorized practice of law. It is not intended to restrict the powers of court clerks as otherwise provided by statute or rule, nor is it intended to eliminate the collection of applicable fees or costs. Finally, it is not the purpose of this Rule to require court clerks to provide the assistance authorized by paragraph D.

B. Absolute duty of impartiality. Court clerks must treat all litigants fairly and equally. Court clerks must not provide assistance for the purpose of giving one party an advantage over another, nor give assistance to one party that they would not give to an opponent.

C. Prohibition against giving legal advice. As specified in paragraph C.2, court clerks shall not provide legal advice or recommend a specific course of action for an individual other than the advice to seek the assistance of a lawyer. (*See Guideline C.2 for examples of legal advice.*)

1. If a court user asks for legal advice, court clerks shall inform the person that the clerk is not authorized to provide legal advice and shall advise the person to seek the assistance of an attorney.
2. Court clerks shall not apply the law to the facts of a given case, nor give directions regarding how a litigant *should* respond or behave in any aspect of the legal process. For example, court clerks shall not:
 - a. Recommend whether to file a petition or other pleading.
 - b. Recommend phrasing or specific content for pleadings.
 - c. Fill in a form for the self-represented person, provided, however, that if a litigant has a physical disability or is illiterate and therefore unable to fill in a form, and the litigant explains the disability to a clerk's staff member and requests appropriate assistance, then the staff member may fill in the form. In such a case, however, the clerk's staff member must write down the *exact words* provided by the litigant, and another staff member must witness the action.)
 - d. Recommend specific people against whom to file petitions or other pleadings.
 - e. Recommend specific types of claims or arguments to assert in pleadings or at trial.

- f. Recommend what types or amount of damages to seek or the specific litigants from whom to seek damages.
 - g. Recommend specific questions to ask witnesses or other litigants.
 - h. Recommend specific techniques for presenting evidence in pleadings or at trial.
 - i. Recommend which objections to raise to an opponent's pleadings or motions at trial or when and specifically how to raise them.
 - j. Recommend when or whether a litigant should request (or oppose) a continuance.
 - k. Recommend when or whether a litigant should settle a dispute.
 - l. Recommend whether a litigant should appeal a judge's decision.
 - m. Interpret the meaning or implications of statutes or appellate court decisions as they might apply to an individual case.
 - n. Perform legal research.
 - o. Predict the outcome of a particular case, strategy, or action.
3. If a court clerk is uncertain whether the advice or information constitutes "legal advice," the clerk shall inform the person that the clerk is not authorized to provide legal advice and shall advise the person to seek the assistance of an attorney.

D. Authorized information and assistance. When a self-represented person seeks help -- excluding legal advice -- court or clerks' staff may respond to questions to the best of her or his ability. Court clerks are authorized to:

- 1. Unless prohibited by statute or court rule, provide public information contained in:
 - a. dockets or calendars,
 - b. case files,
 - c. indexes, and
 - d. other reports.
- 2. Provide a copy of or recite common, routinely employed:
 - a. court rules,
 - b. court procedures, and
 - c. administrative practices.
- 3. Show or tell the self-represented person where to access statutes or rules of procedure.
- 4. Identify forms [and informational booklets] that might meet the needs of the self-represented person, and provide forms [and informational booklets] that the Supreme Court [or trial judge] has [approved] mandated for the guidance of self-represented persons. When a clerk is reasonably certain about which form is most appropriate for use by a given litigant, the clerk should identify the appropriate form. However, clerks should avoid telling litigants that they *should* or *must* use a particular form. The appropriate approach in most situations is to tell the

litigant: a) a particular form probably will meet the individual=s needs; b) clerks cannot guarantee that this is the correct form; and c) the litigant should read the form very closely or consult an attorney to determine the appropriateness of the form for the litigant=s purposes.

5. Answer questions about how to complete forms (*e.g.*, where to write in particular types of information), but **not** questions about how the litigant *should* phrase his or her responses on the forms.
6. Define or explain terms commonly used in court processes.
7. Provide phone numbers for legal assistance organizations, mediator and lawyer referral services, and other judicially approved programs providing assistance to self-represented persons. .

E. Prohibition against revealing the outcome of a case before the information is officially released to the litigants or public. Court clerks shall not disclose the outcome of a matter submitted to a judge for decision until the outcome is part of the public record, or until the judge directs disclosure of the matter.

F. Ex parte communications.

1. If a litigant or attorney submits an *ex parte* **written** communication for a judge (*e.g.*, to grant a continuance; to stop or limit a garnishment), court staff **must** deliver it to a judge who should decide what action, if any, is appropriate.
2. If a party makes a **verbal** request that a judge take some type of **action** in a case, the clerk should tell the litigant to **put the request in writing** and:
 - a. address the request to the court;
 - b. include the case number (if any) on the document;
 - c. write the date on the document;
 - d. sign the written document;
 - e. print the person's name under the signature;
 - f. write the person's address and telephone number on the document;
 - g. deliver the written request to the clerk's office; and
 - h. serve a copy of the document on opposing litigant or litigant's attorney (in a manner consistent with the Tennessee Rules of Civil Procedure..
3. If a party or attorney contacts a court clerk by telephone with a verbal request for judicial action and there is insufficient time to deliver a written request to the clerk's office (*i.e.*, an emergency situation), the clerk may communicate the request to a judge in accordance with rules established by the chief or presiding judge(s) for handling such communications. The clerk, however, should tell the caller that the clerk cannot guarantee that the judge will grant the request.