

# Legal Reference and the Unauthorized Practice of Law

A Guide for Minnesota Public Librarians

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# Legal Concerns

- License requirement ([MN Stat 481.02](#))
  - Protect the public from exploitation and incompetence
- Impartiality—need to be able to help both sides with equal fairness
- Myth vs. Reality—no librarian has ever been prosecuted, but it's a matter of ethics as well as liability

# Legal Information vs. Legal Advice

- Legal Information
  - Facts about the law
  - Questions that start with who, what, when, where or how
  - Legal authority as provided in statutes, cases, or rules
  - Authoritative books and online resources



# Legal Information Examples

- Finding various court forms without telling a patron which form to use
- Finding a statute, rule or ordinance (either by index or exact citation) but not interpreting the statute
- Finding court cases on a particular topic but not applying the court rulings to an individual's personal circumstances
- Finding court rules for a particular court (state or federal) but not explaining the court process described by a rule

# Legal Advice

- Written or oral statements that interpret (explain) some aspect of the law, court rules, or court procedures or recommend a specific course of action a court user should take; applying the law to a court user's specific factual circumstances to further his or her own best interests

# Legal Advice Examples

- Advising a party about the legal option(s) he or she should pursue
- Identifying the proper jurisdiction for a party's claim or issue
- Questions about statutes of limitation
- Advising a party about how courts have reacted in the past to issues
- Interpreting a particular statute or statutes that are interrelated



# What Librarians Can Do

- Legal Reference
- Legal Resources - Online and Print



# Legal Reference

- Reference Interview
  - What to do/not do
- Patron Instruction
- Librarian Training



# Reference Interview—Do's

- Promote effective and open access to legal information
- Provide resources on court procedures, court rules, federal and state cases and statutes
- Provide access to legal forms and instructions
- Direct patrons to legal treatises, dictionaries or legal encyclopedias for explanations
- Provide options, resources and referrals (including websites)
- Allow users to come to their own conclusions

# Reference Interview—Don'ts

- Never be invested in the case outcome
- Never promise unreasonable expectations
- Don't fill out legal forms or give advice on filling them out
- Don't interpret or explain primary sources of law
- Don't recommend a specific lawyer
- Don't advise a patron about a legal course of action

# Patron Instruction

- Teach patrons how to use indexes and tables included with statutes, cases, and rules
- Help patrons decipher a legal citation
- Teach patrons how to navigate legal websites
- Instruct patrons in the use of word processing and printing if they need to complete court forms online



# Librarian Training

- Librarians can develop their expertise regarding new legal self-help resources
- Librarians can review websites that have current, authoritative information for self-help legal information
- Librarians should develop lists of referrals and be knowledgeable about local services that can assist patrons seeking legal assistance or representation
- Librarians can learn more about traditional legal research

# Legal Resources Must Be:

- Current
- Authoritative



# Collection Development Do's

- Know which legal publishers to contact
- Contact your county law library or the state law library with any questions about resources
- Consult the Minnesota Association of Law Libraries (MALL) list of resources for public libraries—see this [Core List](#) for recommendations on basic and advanced materials for public library collections

# Disclaimers

- Words to Use to Deter, Distract, and Divert Patrons to Appropriate Information (to reduce undue badgering of the reference staff)
- Words That Are Unhelpful

# Disclaimer Examples

- I can't apply the law to your situation, but I can point you to helpful information
- This may be a good place to start
- I'm a librarian, not a lawyer, so I can't interpret for you, but this might be helpful
- Here's a source for legal forms; you should check the instructions to see if these forms apply to your specific case
- If you have additional questions, you should probably contact an attorney, legal aid service or local law library; I can give you some referrals to contact

# What NOT to Say\*

- No, I can't help you at all!
- We don't have anything that can help you; you need to contact an attorney

\*Don't hide behind a legal shield—try to offer effective assistance by connecting patrons with materials or services that can help



# Referrals

- When you've exhausted local library resources, have a list of referrals handy
- When patrons begin badgering you for advice, explanation or interpretation, state that there are legal services available that might be able to assist
- Refer patrons to the [statewide MN Court Self-Help Center](#)—this has court forms and staff to assist users with court procedures
- Refer users to helpful websites; some have chat features ([Lawhelpmn.org](#))
- Refer to your [local county law library or the state law library](#)

# Policies

- Have a written policy (see samples at end of slides)
- Include disclaimers on materials (e.g., “information on this website/material should not be construed as providing legal advice”)
- ALA Code of Ethics (applicable sections):
  - I. We provide the highest level of service to all library users through appropriate and usefully organized resources; equitable service policies; equitable access; and accurate, unbiased, and courteous responses to all requests.
  - VI. We distinguish between our personal convictions and professional duties and do not allow our personal beliefs to interfere with fair representation of the aims of our institutions or the provision of access to their information resources.

# Minnesota Examples

- Cases
- Statutes
- Ordinances
- Forms



# Minnesota Cases

- Q. Where can I find information on cases having to do with invasion of privacy in Minnesota?
  - Or, by specific case name: Where can I find the Lake v. Walmart case about invasion of privacy in Minnesota?
- A. I'm not a lawyer and I don't know if these are the best cases for your situation but it may be a good place to start

(Sources to use online that are free: [MN Court opinion archive](#); [Google Scholar](#))

# Minnesota Statutes

- Q. What's the punishment for third degree DWI in Minnesota?
- A. Let's check the [Minnesota statutes online](#) or in print; I'll show you how to search the website or use the print index
- Q. My landlord hasn't fixed the leaky dishwasher in my apartment. Can I withhold rent until it gets fixed?
- A. I'm not an attorney and I can't interpret the law for you, but let's look at the Minnesota Statutes to learn more about the laws that apply to landlords.

# Minnesota Ordinances

- Q. How many pets am I allowed to have in my house?
- A. Questions about pets are usually governed by city ordinances. You'll have to tell me what city you live in and then I can show you a [website](#) that has most of Minnesota's city ordinances online. However, once we find an ordinance about pets, you'll have to reach your own conclusion about how it applies to your particular case.

# Minnesota Legal Forms

- Q. I'd like to do a Health Care Directive. Can you get me the form and is it the same as a living will?
- A. We have a couple of sources for the Health Care Directive—including a [suggested form](#) that's in the MN Statutes. I don't know if it's the same as a living will, but we can look for further information or I can refer you to our local law library for guidance.
- Q. I need forms for divorce. Do you have some?
- A. The [state court website](#) has several [MN divorce forms](#). You'll have to review the list as well as the forms instructions to help you know which forms to use.

# Sample Policy 1

“Because of the ethical and legal implications surrounding the unauthorized practice of law, patrons must be advised that the library staff may not engage in the following activities: Perform legal research; answer a legal question; advise any patron on the status of the law on a particular issue; recommend that a patron contact a particular attorney; explain legal procedure, court rules or jurisdiction; or interpret the text of a statute, legal opinion, or administrative regulation.”<sup>1</sup>

# Sample Policy 2

“This site offers legal information, not legal advice. We make every effort to ensure the accuracy of the information and to clearly explain your options. However, we do not provide legal advice – the application of the law to your individual circumstance. For legal advice, you should consult an attorney.”<sup>2</sup>

<sup>1,2</sup>(Source: Terrye Conroy, “Librarians and the Unauthorized Practice of Law”, University of South Carolina School of Law: Circuit Rider’s Program)

# Contact

- For further information about this guide, please contact:

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