

Chapter 4

LEGAL REFERENCE VS. LEGAL ADVICE

*"No person shall practice law in California unless the person is an active member of the State Bar."*¹

In California, it is illegal for individuals who are not active members of The State Bar of California to practice law. California courts have defined the practice of law as:

" . . . doing or performing services in a court of justice, in any matter depending therein, throughout its various stages, and in conformity to the adopted rules of procedure. But in a larger sense it includes legal advice and counsel, and the preparation of legal instruments and contracts by which legal rights are secured, although such matter may or may not be pending in a court."²

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The Issue Presented

When or in what situations legal reference may constitute the unauthorized practice of law has been the topic of professional library literature since the early twentieth century.³ If one takes the most common sense view, the issue is whether a user who goes to a public library to do legal research reasonably believes that the communications between him or her and the librarian creates an attorney-client relationship. Most people, queried about this scenario, would probably answer with a resounding "no."

¹ California Business & Professions Code §§ [6125-6133](#).

² *Smallberg v. The State Bar*, 212 Cal. 113, 119 (1931), citing *Eley v. Miller*, 34 N.E. 836, 837-838 (Ind. Ct. Appt. 1893).

³ Margaret E. Hall, *Reference Work in a Law Library*, 31 Law Libr. J. 238 (1938).

However, while there is no documented case of a librarian being prosecuted for practicing law without a license, the real concern for the library profession is a matter of ethics. No librarian wants to give bad or inaccurate information to their library's users.

Nonetheless, it is foreseeable that in an effort to provide good service, a librarian may go beyond providing reference assistance and begin offering personal opinions or advice. Under this scenario, the librarian may inadvertently, but unduly, influence the user in deciding not only what his or her specific legal issue may be, but also the course of action which should be taken to resolve the legal issue.

It is important to remember that in times of stress, people often neglect to mention facts that may be crucial to the legal issue. If the librarian is mistaken in his or her understanding of the facts or legal issues involved (possibly because the user has not communicated his or her question clearly), the librarian's interventions could negatively affect the ultimate outcome of the user's legal problem.

Imagine the following scenario at the reference desk of your public library:

Library User: I would like information on security deposits. I just got a letter from my old landlord. He is not going to give me any of my security deposit back. I left the apartment cleaner than it was when I moved into it! In fact, I even painted the apartment while I lived there for almost a year. Now I get this letter from him saying I won't be getting my deposit back, and not only that, he is threatening to sue me for more money!"

Public Librarian: "Landlords can't do that! They have to provide you with a list of any deductions for repairs they make from your deposit," as she prepares to hand the user a copy of the Nolo book, [California Tenants' Rights](#).

Library User: "Really? In that case, I am going to the court to get the papers to sue him first right now." Out of the library he goes, without looking at the book being offered to him.

In this scenario, there is no issue of unauthorized practice of law. However, by commenting on the user's situation, the librarian may have inadvertently influenced the library user's course of action in dealing with this potential legal problem. Without conducting a thorough reference interview, the librarian was not able to assist the user in identifying the facts which may determine the legal issues involved.

It is possible that the landlord had to re-paint the entire apartment to cover the inappropriate colors (think neon pink, yellow & blue) chosen by Library User (who did leave the apartment clean). Also, Library User may not have paid rent for the last month he lived in the apartment, assuming it was covered by the move-in deposit. The cost of repainting the apartment may have been more than the amount the landlord was holding in the tenant's account, causing the landlord to demand more money from Library User. There are a number of unknown facts which could impact the legal issues of this landlord-tenant dispute.

This scenario is an example of how the comments of a librarian who does not know all the relevant facts might influence a library user to act in ways that may not be in the user's best interests. Presumably, no librarian would ever knowingly provide bad information to users, but when assisting those seeking legal information, additional sensitivity and caution is important. Conducting a thorough reference interview⁴ allows the librarian to assist the user in identifying potential legal issues such as:

Can the landlord deduct for the cost of re-painting the apartment when the tenant lived there for a year?

Is the letter Library User received the legal equivalent to the required "list of repairs and deductions?"

What a Non-Attorney Can and Cannot Do

Librarians in all types of libraries are committed to giving the best service possible. The list of "**dos and don'ts**" below serve as a guide when public librarians assist a user with legal reference questions. In general, librarians who recommend research sources, teach legal research techniques, and help in constructing searches, are providing legal reference.

On the other hand, librarians who "take over" the user's legal question by interpreting and making conclusions about the legal problem may inadvertently cross the line. Librarians, paralegals, and other non-attorneys may know where to find legal information but are not trained in the procedures and rules of court, or in legal theory, and most importantly, are not licensed to practice law. It is imperative that users research their issues and come to their own conclusions about how the law applies to

⁴ See Chapter 3: Basic Legal Research Techniques for additional information on identifying relevant legal issues in a reference interview.

their particular situations.

Ultimately, it is the user's decision as to what the particular legal issue is and how or whether he or she will handle his or her own legal problem or obtain representation. There are plenty of legal procedures self-represented litigants can handle themselves, such as small claims court matters, but when issues get complicated, there is usually no substitute for a good attorney. Attorneys are trained in the law, they understand legal theory, they have experience with forms and court procedures, and they have malpractice insurance in case matters go awry.

LEGAL REFERENCE	(Probably) LEGAL ADVICE
Non-attorneys <i>do</i> :	Non-attorneys <i>do not</i> :
Recommend law books on particular subjects, including books that provide forms and will explain the law and procedures of the courts, and demonstrate how to effectively use them by explaining the indexes and tables of contents	Recommend a specific legal form, explain how to fill in the form, or fill out a legal form for the user. (It is permissible to refer users to form books. The user will need to decide whether to use those forms.)
Help to find the broad definition of legal words or phrases, with sources such as <i>Black's Law Dictionary</i> , <i>Cal. Jur. 3rd</i> , <i>Words and Phrases</i> , etc.	Offer an opinion as to how a user's specific legal problem should be handled.
Perform searches to provide the user with information which may be relevant to a legal question	Identify any single law as <i>the</i> statute (or regulation, or case) that will answer the user's legal question.
Suggest search terms when using indexes or finding tools	Help a person by interpreting the law (statutes, regulations, or cases)
Teach legal research techniques such as the use of digests and Shepard's	Write a brief, prepare a will, or draft a contract
Locate biographical information about attorneys and judges	Interpret any legal document from a court or an attorney

How to Help Users Find Legal Assistance

There may be a variety of legal resources, agencies, or other groups in your community that are not well-publicized. This section briefly describes three steps that librarians may take to prepare for law-related questions from library users. For further information, please see Chapter 9: Assisting Self-Represented Litigants for a description of the California Courts' programs for *pro se* litigants, as well as those offered by California county law libraries, nonprofit legal aid organizations, and local law schools.

First call or check out the Web site of the closest public law library

There are often legal resources available in the community to assist people who are reluctant or unable to consult an attorney when they are initially confronted with a legal problem. For public librarians in California, a great resource is the Council of California County Law Librarians' [Public Law Library](#) Web site. The Web site includes sections such as: (1) [Ask a Law Librarian](#), a service which lets you ask questions and get answers in real time. Hours are limited to week days; (2) [Self Help](#), which provides links to Web sites which include content for use by the self-represented litigant; (3) a [Find Your Nearest California County Law Library](#) directory; (4) [Mini Research Class](#) (under Self Help) is a mini research guide covers the basics of legal research. Sections include "Learning How to Research," "Finding the Forms You Need," and "The Importance of Updating Your Research;" and (5) [Resources](#) provides links to categories of legal research: "General," "California Resources," "Federal," "Local," "Directories," and "Forms & Rules."

There is a county law library in every county in California. Though they are funded separately from the public library, they are open to the public, and offer some reference service. They usually have a good collection of self-help law books, such as the [Nolo Press](#) publications. While many law librarians do have legal training, they do not give any legal advice--they provide reference service. County law libraries often compile a listing of local legal resource services (such as the State Bar-approved lawyer referral service or a legal clinic which offers *pro bono* services in the area), and they will be happy to share this information with public libraries. In addition, because many county law libraries are located in or near courthouses, the librarians may be able to provide information about domestic violence clinics which assist victims in getting temporary restraining orders, as well as other important programs, such as adoption clinics, mediation services for divorce, landlord-tenant, or neighbor disputes. Library users may be unaware of these resources, which may prove to be good starting points.

Be familiar with local bar associations and other legal service providers

You may also contact your local county bar association to learn about resources available in your area. Many county bar associations in California have *pro bono* programs, where attorneys volunteer time to legal causes and to people who cannot afford an attorney. In addition, some law schools offer legal clinics run by students who are supervised by attorneys. Contact your local law schools to get more information regarding this option.

There are legal aid societies and community outreach programs which may host legal clinics. Often senior citizen centers will have a lawyer visit on a regular basis.

Be familiar with the basic online federal and state resources

Check out the Web sites of federal and state government agencies for answers to questions about their internal policies and procedures. This will assist library users who are involved in a dispute with these agencies. [The United States Government Manual](#) is often a good resource to begin a quest for information about federal agencies. For general information about federal laws and regulations, remember to refer the user to the USA.gov web page [Federal Laws and Regulations](#).

For information about California law and legal resources, you might refer the user to the official [State of California](#) Web site or WashLaw's [California Law & Government Resources](#) web page from the Washburn University School of Law Library.

Go to [The State Bar of California](#) Web site for information about [lawyer referral services](#) to the public.

Have a Written Policy

People who need legal help are often apprehensive and may even be desperate to get the answer they want. When a library staff member becomes overly eager in assisting users, it can give the impression that a library is willing to do more than the law allows. All library staff should be educated regarding giving legal reference assistance. A posted written statement of the library's policy is often useful in helping staff understand their limitations, as well as notifying the public.

Be sure to prominently display your library's policy regarding legal reference assistance. The following language may assist you in developing your library's policy:

**A MESSAGE TO OUR USERS
ABOUT LEGAL REFERENCE QUESTIONS:**

It is unlawful for members of the Library staff to help users interpret legal materials they read or to advise them how the law might apply to their situation because these actions would constitute the unauthorized practice of law. It would also require an amount of personal service that a staff of our size cannot provide if we are to carry out other duties. For those reasons, our staff must limit themselves to advising you which materials might be helpful to you, where they are located, and how to find information in them. Please do not think our staff is being uncooperative when they suggest that you interpret the materials you read for yourself and make your own decisions as to how the material you have read applies to your legal problem. Our staff will be happy to help you find the materials you need, and to show you how to use the various legal publications.

If you need further help to solve your legal problem, you may wish to consult one of the following legal service organizations:

[LIST YOUR LOCAL LEGAL SERVICE PROVIDERS HERE]

A file of organizations that offer legal services may be very useful. Keep track of organizations' URLs, addresses and phone numbers, as well as hours of operation, and services they provide. It is a good idea to note if they charge for their services, if they offer help over the phone, if an appointment is necessary, etc.

It is every librarian's goal to be helpful and to give excellent reference service. By recommending appropriate legal resources, teaching users how to use the sets (e.g., indexes, tables, etc.) in your collection, and helping choose search terms and translating legal citations, we are keeping ourselves within the bounds set by the law and our professional ethics. We are also doing more good than harm to a user's legal situation.

Suggested Readings

Yvette Brown, [From the Reference Desk to the Jail House: Unauthorized Practice of Law and Librarians](#), 13 Legal Ref. Serv. Q. 31 (1994).

Government Law Libraries, A Special Interest Section of the American Association of Law Libraries, [Unauthorized Practice of Law Toolkit](#).

Paul D. Healey, [Pro Se Users, Reference Liability, and the Unauthorized Practice of Law: Twenty-Five Selected Readings](#), 94 Law Libr. J. 133 (2002).

Larry D. Richmond, Jr., [The Pro Se Patron: An Ethical Rather than Legal Dilemma](#), 22 Legal Ref. Serv. Q. 75 (2003).



Internet Sources Cited in this Chapter

- Public Law Library: <http://www.publiclawlibrary.org/>
- [United States Government Manual](#) (1995-current edition)
- State of California: <http://www.ca.gov/>
- Washburn University School of Law's WashLaw, California Law & Government Resources: <http://www.washlaw.edu/uslaw/states/california.html>
- The State Bar of California: <http://www.calbar.ca.gov>
 - Lawyer Referral Services: <https://tinyurl.com/ybwmvqq3>
- USA.gov, Federal Laws & Regulations: <https://www.usa.gov/laws-and-regs>