

Legal Information VS. Legal Advice

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Legal Information

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Legal Information

- Courts are able to provide information about court processes to parties and potential litigants
- However, it is critical to avoid crossing the line from legal information to legal advice

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Legal Advice

- One of the most consistent issues facing justice court judges and clerks
- Can be more difficult in smaller or more rural areas

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Legal Advice – Why is it a Problem?

- **Not allowed by Canons of Judicial Conduct**
- **Impossible to give legal advice without knowing all facts, can't know all facts without ex parte communication – see bullet 1!**

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Legal Advice – What Can Happen?

- **Judge has a complaint filed**
- **Party demands refund or other relief due to getting “bad” legal advice**
 - **Only thing worse than giving legal advice is giving bad legal advice!**

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“Do I Need to File an Eviction?”

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“How Do I Get Paid on This Judgment?”

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“Who Can I Sue for This?”

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“Can They Do This?”

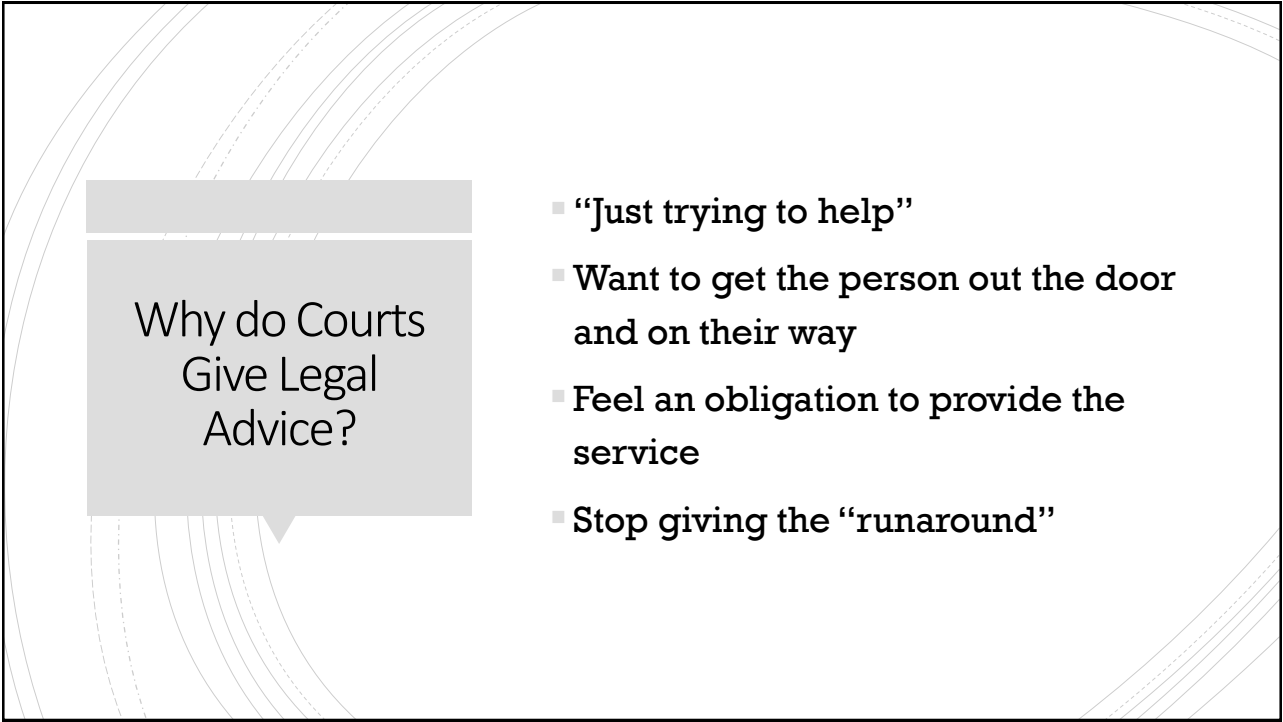
Most Common Legal Advice Requests

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How to Provide Legal Information Instead of Legal Advice

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Why do Courts Give Legal Advice?

- **“Just trying to help”**
- **Want to get the person out the door and on their way**
- **Feel an obligation to provide the service**
- **Stop giving the “runaround”**

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The Good News

- **Legal Information can address all of these issues!**

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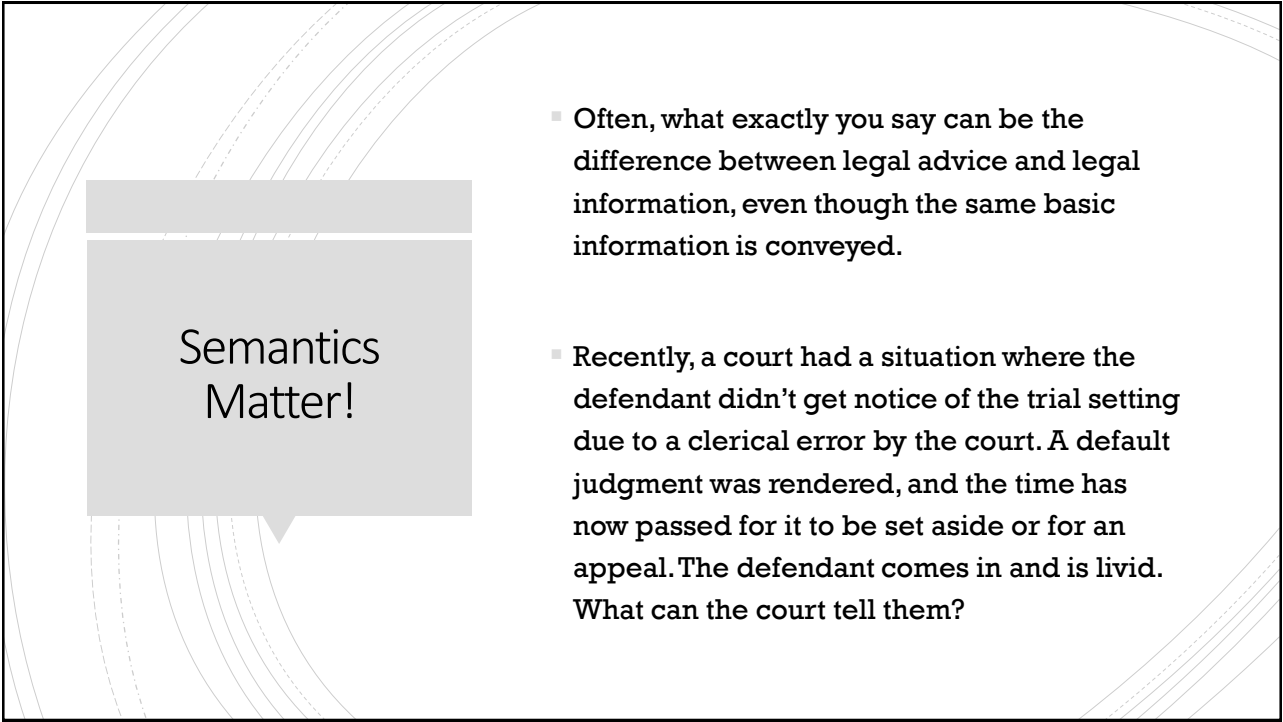
So What Can We Say and Do?

- **Always OK to provide forms for parties**
- **MUST provide access to the Rules of Procedure and Statement of Inability forms**
- **Always OK to explain court procedures and timeframes (for example, you get 5 days to appeal an eviction)**

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- Often, what exactly you say can be the difference between legal advice and legal information, even though the same basic information is conveyed.
- Recently, a court had a situation where the defendant didn't get notice of the trial setting due to a clerical error by the court. A default judgment was rendered, and the time has now passed for it to be set aside or for an appeal. The defendant comes in and is livid. What can the court tell them?

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Which one?

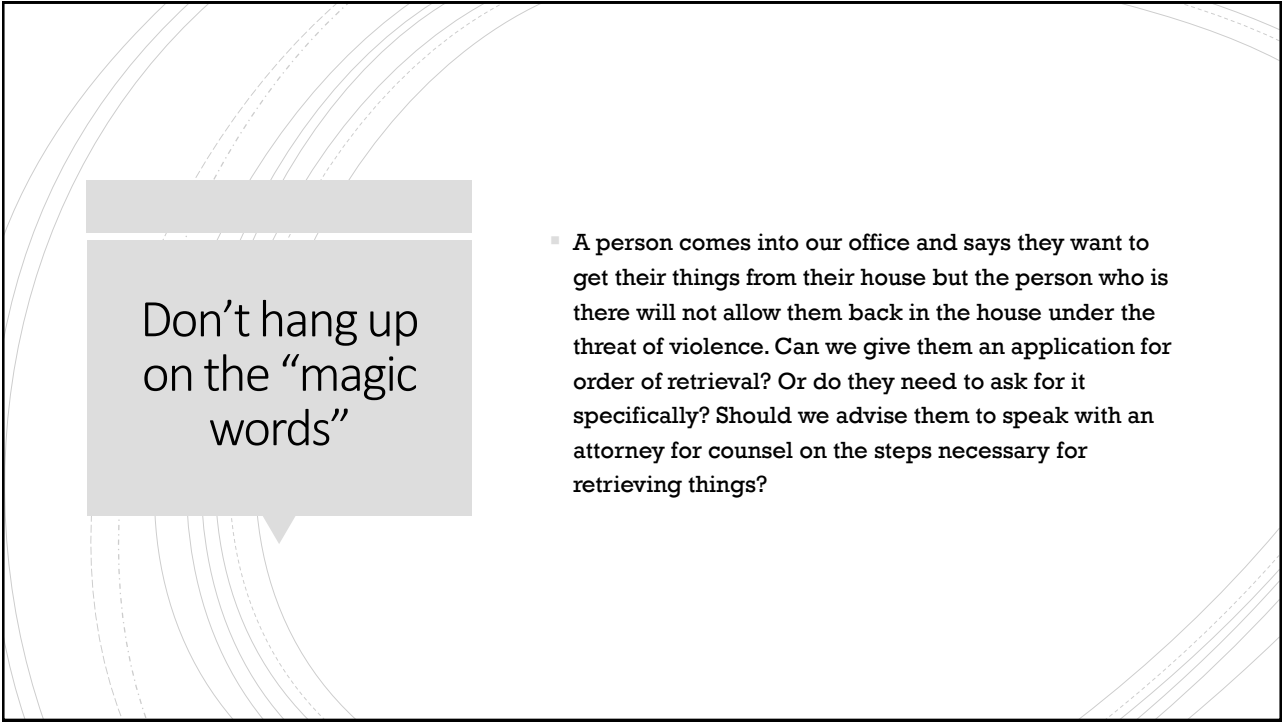
- “Oh, what you need to do is to file a bill of review! Fill out a petition and say that.....”
- “Unfortunately, there is no way to set aside the judgment at this point in time other than through a bill of review.”

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Magic
Words

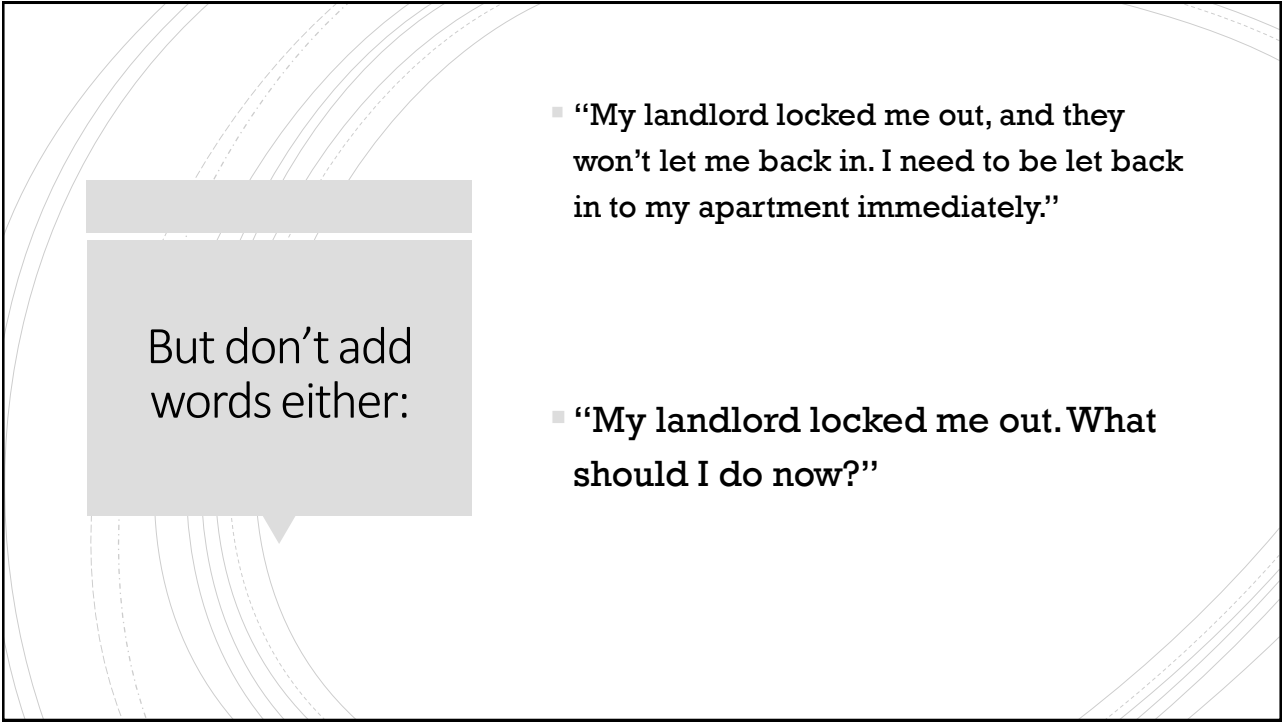
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Don't hang up
on the "magic
words"

- A person comes into our office and says they want to get their things from their house but the person who is there will not allow them back in the house under the threat of violence. Can we give them an application for order of retrieval? Or do they need to ask for it specifically? Should we advise them to speak with an attorney for counsel on the steps necessary for retrieving things?

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But don't add
words either:

- "My landlord locked me out, and they won't let me back in. I need to be let back in to my apartment immediately."
- "My landlord locked me out. What should I do now?"

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Which is OK?

- The court putting a “move-out” date in an eviction judgment.
- The judge explaining in court: “I am awarding possession of the premises to the landlord, effective immediately. You have 5 days to file an appeal. If you do not file an appeal or move out within that 5 day window, the landlord can get a writ of possession from the court. That will mean that you and your possessions are physically removed from the property.”
- The clerk telling a landlord who asks: “You must give a tenant a 3 day notice to vacate before filing an eviction case.”

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Which is not OK?

- Defendant: “I want to appeal.” Court: “Here is the form. You need to post a bond in double the amount of the judgment, and you have 21 days to do so.”
- Court: “Defendant, you should probably take the prosecutor’s offer. If you get convicted, the fine could be up to \$500, and here you would only pay \$50 plus court costs.”
- Potential plaintiff: “How much is it to file a small claims case?” Clerk: “The filing fee is \$46. Also, the defendant will have to be served with the citation. If you wish to have the constable do that it is \$90 more. If you don’t think you can afford the fees, here is a form you can fill out and the judge will evaluate it.”

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Resources

- **When you can't directly answer, you can always refer people to resources.**
 - Legal Aid
 - TJCTC Deskbooks
 - Rules and Statutes Websites
- **TJCTC's Self-Represented Litigant packets can be found at www.tjctc.org/SRL and should help with this issue!**