

Public Libraries and Access to Justice: 3. What Public Librarians *Can Do*



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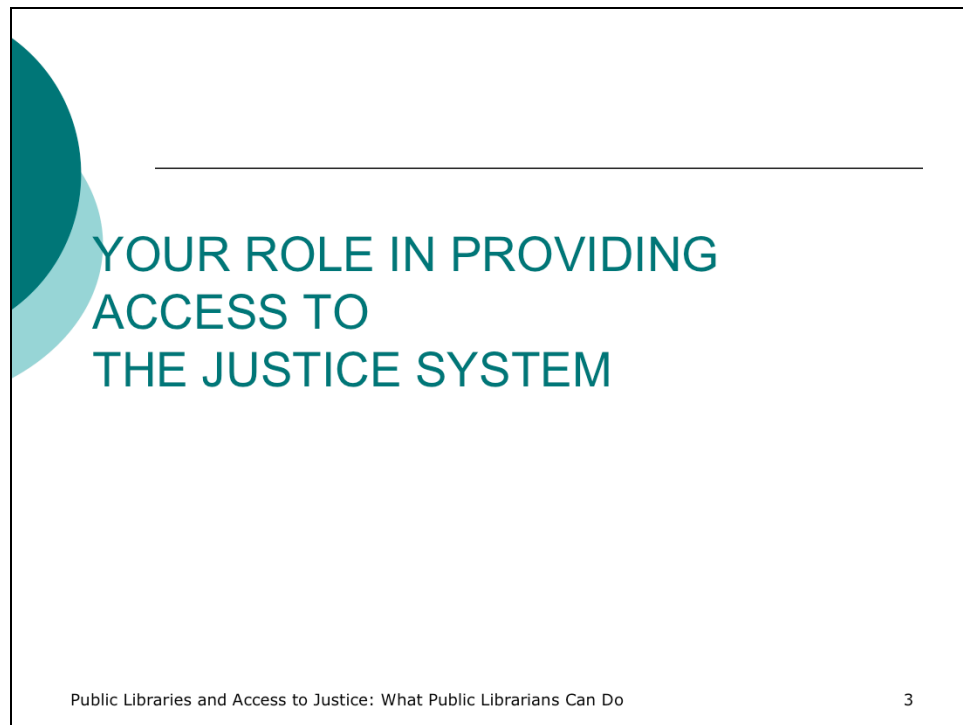


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With many thanks to John Greacen, Greacen Associates, LLC, who initially developed some of this content for training court staffs on distinguishing legal information from legal advice.




Our courts are challenged by the number of people who either must represent themselves because they either cannot afford an attorney or they cannot find one, or they have decided that it should be easy enough to do it for themselves. We don't have enough legal aid attorneys to go around, nor are there enough pro bono attorneys. Librarians can help us provide access to justice. You are a natural partner because of your stature in the community.

LIBRARIES

- First stop for those seeking information
- Trusted



Librarians are akin to apple pie in how people perceive them. Good, equal, appeal to all, and non-judgmental. Citizens are very comfortable in starting with the library when they are seeking information.



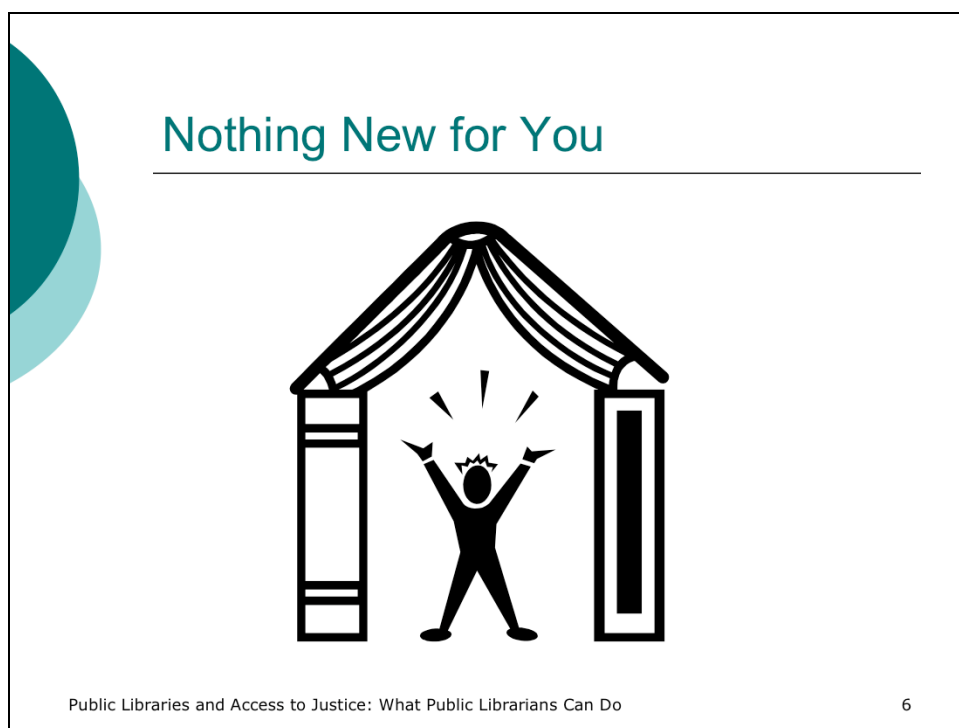
KEY CONCEPTS OF LIBRARIANSHIP

- ACCESS
- CUSTOMER SERVICE
- PROVISION OF ACCURATE
INFORMATION

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These are the key components of public librarianship. They are the same for the courts.



We really aren't asking that you take on a new role, rather we would like you to consider adding a familiarity to a subset of information that you may not have had before.



ACCESS

- The library's doors are guaranteed to be open to all.
- If customers do not understand how to open the doors to the court system, and there is no one to tell them, we are denying them access.
- By providing access to legal information, you can advance the administration of justice.


And speaking of doors – this is one thing libraries have to offer. Courthouses are generally open from 8 until 5, Monday through Friday. Libraries, on the other hand, frequently offer some evening and weekend hours. This is especially important for low income people who cannot get away from work during the day.

Your help in showing people how to access the law and how to find and use websites is critical to your community.



CUSTOMER SERVICE

- This is why we are in this business.
- We are competent, cooperative, and we do all we can to assist in a timely manner.



Not starting with a “NO”

Here’s how I can help you

Turning a “should I” into a question
you **can** answer


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As we discuss the difference between legal information and legal advice, remember that you almost always can turn a question around into something you can either answer or provide a referral for.



This is what librarians do best: we listen, then pick out the relevant pieces of the story that will lead to a solution to the problem.

It is vital to understand that many low income people who are in situations of generational poverty do not have large vocabularies. They also have difficulty in communicating in a linear fashion. The result is that they tend to communicate by telling stories. By carefully listening, you should be able to determine that they will need a custody/parenting plan petition. Or a packet to settle a small estate.



Active listening skills – paraphrasing
to make sure you understand the
question

Affirming – sounds like you’re having
a tough time, doing a great job ...

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An example of paraphrasing a question so that you could answer it:

Initial question: I need an attorney. I’m new in town, and don’t know any. I don’t want to call a stranger. Would you please recommend an attorney, or at least tell me what you have heard about certain ones?

Your response: I’m sorry that I can’t recommend a specific attorney. I do have the number for the lawyer referral service that is run by the State Bar Association. You can chat with the staff about your legal needs, and they will then set you up for an initial interview with a lawyer who will evaluate your case and let you know what it will involve. The cost for this first visit is very low. Or, if they don’t want to go that route, you can refer them to the yellow pages, and look at the subject specialties of attorneys.



Remember non-verbals

- Tone of voice critical
- Research on doctor's indicates a risk of malpractice complaints directly related to tone of voice

Emotions tend to run high for those who are accessing the justice system by themselves. They can be defensive, anxious, hostile – any emotion imaginable. Remember that half the litigants are in this situation not of their own choosing. They have been sued (by a neighbor, an ex-employee, a landlord) and they have criminal warrants against them that they believe are not justified. They do not know what to do, what to say, or what comes next. On top of that, sometimes they just are NOT NICE people – and that may have been the cause of their being thrust into the legal spotlight in the first place!

But your tone of voice shouldn't reflect the emotions *you* are feeling. We have read of a study that indicated there are fewer malpractice actions filed against doctors who talk in an everyday voice – pleasant and friendly! We know that the tone of voice can calm people down, make them less alarmed, and also more able to listen to what you can tell them.




PROVISION OF ACCURATE INFORMATION

- We are obligated to provide accurate information.
- Accessibility is affected by this accuracy.
- Small mistakes can affect people's lives.

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PRINCIPLES OF THE JUSTICE SYSTEM

- EQUALITY
- IMPARTIALITY
- OPENESS

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These basic principles of the justice system can just as easily be applied to what librarians do. They guide what and how we provide our services.



EQUALITY

- All litigants must be treated fairly & equally.
- You may work to strengthen equality in the courts by helping people get access to information about the law, court procedures, requirements, & practices.

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You can provide F.A.Q.s that list court and justice agency websites and phone numbers. You can show people how to use your state code, so that they can read about the laws that affect them. You can show them how to find the Rules of Civil Procedure and other important compilations that they will need to be familiar with.



IMPARTIALITY

- Impartiality to the individual litigants and to the outcome of a particular case.
- Provision of the same information to either party.


No favoritism! Your knowledge or friendship with a litigant shouldn't make a difference in what you tell her.




OPENNESS

- Court proceedings are, in general, conducted in the open.
- An individual is permitted to participate in his/her proceedings.
- Openness also means that the participant and the public must be able to understand the process.

This is where we have fallen down. We claim to have an open process, but if people don't understand what is expected of them, or how to find the guidelines they must follow, then we are implicitly denying them full access to the justice system.

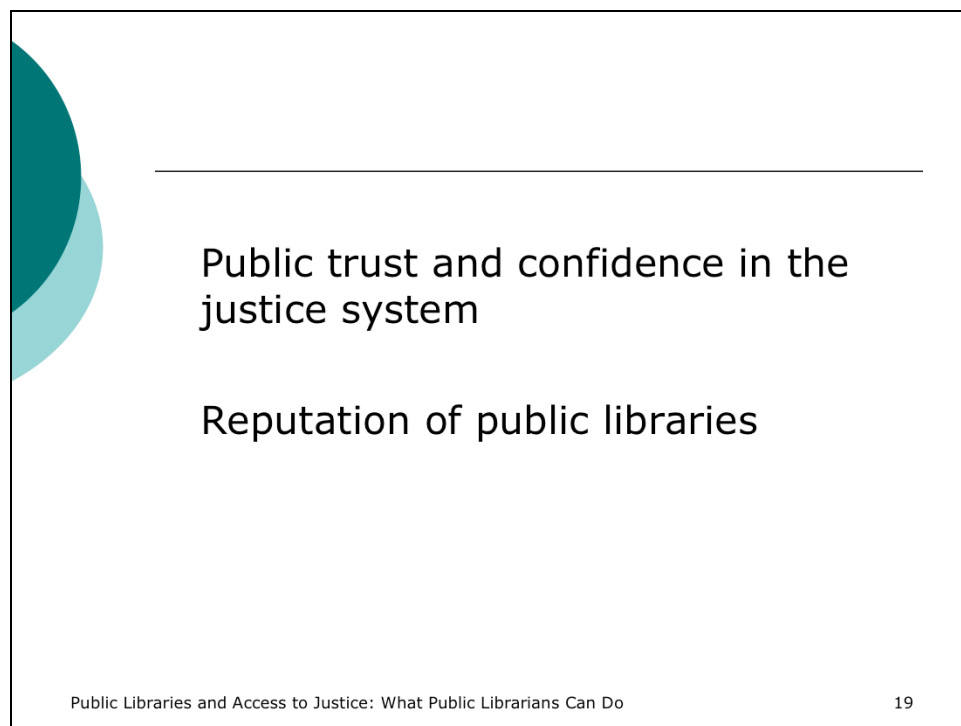


- It is not up to us to decide who needs information.
- We provide appropriate assistance to **anyone** who requests it.



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Whether it is the smelly teenage boy, the arrogant businessman, the woman with the 3 small children who speaks in broken English – we help them all the same way.



These are two public goods that can and should be joined. We should be working together, for the greater good of our shared constituencies.



We hear this. This is what we are afraid of being accused of.




Problems that arise from vague standards:

Practice varies from library to library and librarian to librarian, as well as day to day

Some library staff could tend to give less information; others will stray over the “Line” in their attempt to help



Problems with a vague standard



It Isn't Easy!

- Against laypersons and in favor of professionals
- Against difficult people and in favor of nice ones
- Depending on the workload
- Depending on how much sleep you had last night!

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These are the effects of different people applying a standard in different ways, when they really don't understand it.



Principles upon Which to Build a Sound Policy

- You may provide information to court users about *how* the processes works
- Connecting people to information is not legal advice


These are the underlying principles that allow librarians to assist with legal questions. This is WHY you can do it. The WHY SHOULD YOU? Is simple: you are providing access to justice! It's good for the citizenry, and it's good for the library!



Definitions

- **Legal information**
Facts about the law and the legal process
- **Legal advice**
Advice about the course of action someone *should take* to further his or her own best interests

Here is the beginning of the bright line we can draw, eliminating the vagueness that we have been afraid of.



General Guidelines

- **Legal information**
Who, what, where, when, how
- **Legal advice**
Opinions, conjecture, predictions

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If you ever studied journalism, you'll recognize these basis questions. They are all fact based. These are questions you can answer, IF YOU KNOW THE ANSWER. Legal advice calls for you to offer an opinion as to what the litigant should do.



General Guidelines

- **Legal information**

How to bring an issue to the attention of the court

- **Legal advice**

No suggestions as to best proceed, or judges' inclinations

It is perfectly permissible to tell someone that to get a matter before the court, so that a judge will rule, he must file a petition with the court. Or a complaint, if it involves an injury or injustice caused by someone else.

However, if your library customer tells you her story, and at the end asks you what the 'best' thing for her to do is, you turn it around and say that she **can** ... file a petition, a complaint, etc. Then you would gently say it is up to her to decide what to do, based on her own best interests.




General Guidelines

Legal information

Options can be described

Legal advice

Recommending specific options

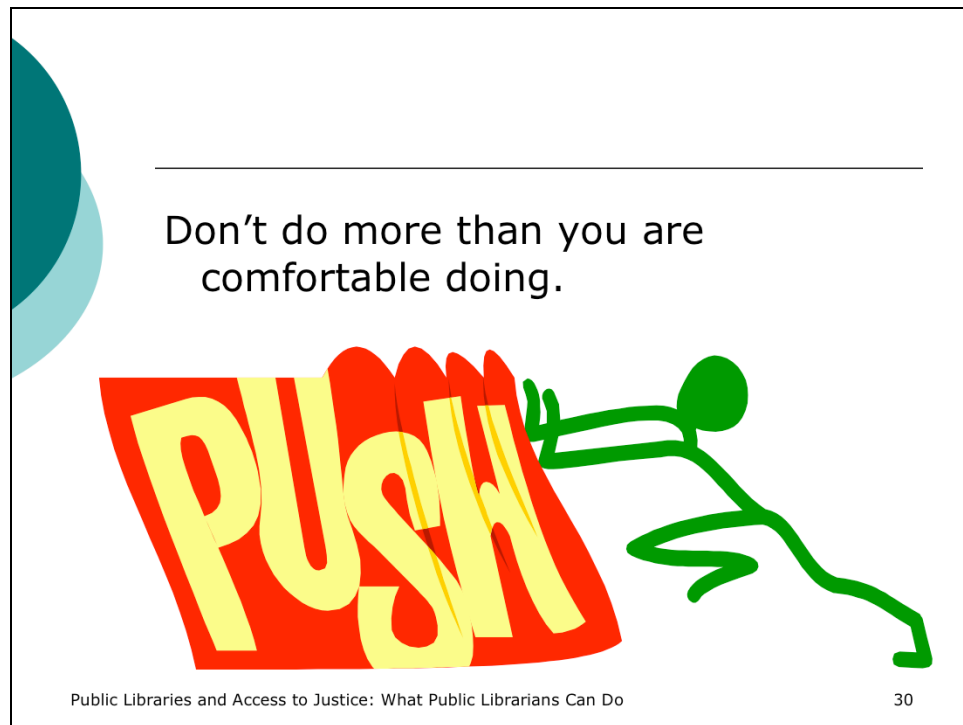


- If you don't know, don't guess.

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Customers are generally willing to accept a sincere apology or true statement that you'd be happy to help if you could, but you just don't know the answer – rather than discussing whether this would require you to provide legal information or legal advice.



We do not want to push you out of your comfort zone – well, maybe just a little!

Situational Specific Guidelines

- You can tell litigants *how* to file a complaint or other pleading
- You cannot advise litigants whether to file a complaint or other pleading, whom to name as a defendant in a complaint, what sort or amount of damages to seek, what arguments to include in a complaint or pleading, or what arguments to make in response to a filing by the other side

In other words, you could show someone where to find the document on the website, and tell them this is where they would tell the judge what they want the judge to know. You just can't suggest the language they will use.



Ways to provide this assistance

- Know where to locate forms which help litigants submit appropriate information to the court
- BUT, be very careful of the source of the forms! Only go to reputable websites, generally your statewide legal aid or court sites.

Some for-profit firms for several years have been appropriating the forms prepared by courts and legal aid, and turning around and selling them online for upwards of \$1000. By just doing a Google search for “divorce form”, commercial sites often appear first. The unsuspecting consumer does not know that the same form may be available for free. The other caution is that they should be wary of whether or not a court would accept a form, whether it would be jurisdictionally correct, or include all the elements required by the laws of your state.




○ **Don't assume that television courtroom presentations represent the reality of a trial.**

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The illustration shows a judge with long black hair and a black robe, holding a gavel, standing behind a brown wooden podium. In front of the podium, a person is shown from the back, wearing a black suit and having their arms outstretched. The background is white with a teal and light blue curved shape on the left side.

Broadcast media have trivialized real courtroom experiences to the point that most lay people who never have been before a judge assume the procedure will be easy, with the judge soliciting all the information she will need to rule appropriately. The reality is far different.

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- You can explain the process for appealing a judge's decision
 - You cannot recommend whether a litigant *should* appeal a judge's decision



Appeals

- Critical for litigants to understand legal research, basic procedures

The appeals process is very different from trial practice. It involves a lot of legal research to find the best, persuasive authority to convince a court. This means that legal databases and legal treatises must be consulted. They are generally only available at a larger law library or law firm.



Situational Specific Guidelines


- Librarians can provide information about past rulings in similar cases by using either the court's website or a commercial legal database.
- Don't speculate as to what you bet the SRL's court, or judge, will do.

For case law – opinions of appellate judges – you can use Westlaw or Lexis if your library has a subscription.



Situational Specific Guidelines

- Librarians may show litigants how/where to find statutes, court rules, and ordinances; staff can go so far as to say that Title 40 of the state's code contains Family Law statutes.



- We can't provide an analysis or interpretation of statutes or ordinances based on the specific facts of a litigant's case, or state positively that one statute is THE statute the customer needs.

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If you did say something like that, you would be eliminating any other laws that might apply to the legal situation.




- Librarians may not perform legal research for a litigant



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There is just too much liability, for the reasons already mentioned. What we can do, however, is show people where something is on a website, how to use a law book, where the index is, etc.



- You can recommend the use of a lawyer and provide information concerning lawyer referral services and legal aid


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It is the rarity that someone would not be better off being represented by an attorney, or at least consulting with an attorney.



Just don't be tempted to recommend your brother-in-law, Joe, or your next door neighbor, Jill.




- Librarians can provide forms and copies of instructions;
- We may record on the forms information provided by the litigants *if the litigants are not capable of filling out the form themselves*

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The librarian or court staff can complete a form using the litigant's words. There easily could be problems for non-English speaking litigants, or those with literacy issues that prevent them from filling out the forms for themselves.



- We are not allowed to provide or suggest the information that should be entered on the forms

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Merely ask the questions, and wait for your customer to verbally answer. You then would record exactly what the person has told you.



Ways to help litigants


- Often can help explain basic concepts – get people started on forms
 - A petitioner is...
 - If an answer, use same name in the document as has been used in the complaint

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-
- Librarians can provide general information about the courts, procedures and legal terminology
 - We may not provide advice about the course of action a litigant should take to further his or her own personal interests



Guidelines are not enough

- Provide a resource list to which you can refer SRLs
- Be familiar with websites and on-line resources
- Provide standard handouts with FAQs, such as service of process

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- Informational websites can be just as helpful to the library's staff as in-service training.



Collaboration

- Consider identifying the library employees' questions about how things work in the courts.
- Take those questions to the Clerk of Court to find answers that you can put on an FAQ list.

If you provide in-service training for the library staff, assume that their questions are ones that a SRL would also have.



Referral Lists

- Where people can get specific help that is not really law-related
- Great opportunity for you to become part of the community to share information about what each does

Libraries have always provide referrals to helping agencies in their communities. By becoming familiar with those who provide legal help, you will add to the library's image in a new way, with a new, and fairly powerful segment of your community. This can be to your benefit the next time you have a mill levy on the ballot!



Sample Questions



Questions from Litigants

1. Should I hire an attorney? Do I need to have an attorney?
2. My ex refuses to let me have my daughter on Saturday nights even though that is what the court order says. What can I do?
3. My husband and I are separated. He is an illegal alien. I want to make sure he cannot get my daughter. What do I do?



Questions from Litigants

4. The father of my child is not on the birth certificate and has been away most of her life. He just showed up and wants to start supporting her and seeing her. I don't want to let him see her and am afraid that he will take her away from me. What do I do?
5. Do you have a form to establish joint legal custody?



Questions from Litigants

7. I did time for an assault three years ago. I want to get it off my record. How do I do that?
8. My daughter is 17 and she wants to “divorce” her mother. How does she do that?
9. My mother is in an assisted living facility but still owns a home. Can she get a refund on her property taxes?



Questions from Litigants

10. My mother can't afford her eye drops. She has Part D Medicare but it doesn't cover the drops. How can I get help paying for these drugs?
11. What if your landlord did not do a walk-through with you prior to moving in. Do I have to do a walk-through now that the lease is coming to an end? Can I use the deposit to pay the last month's rent?

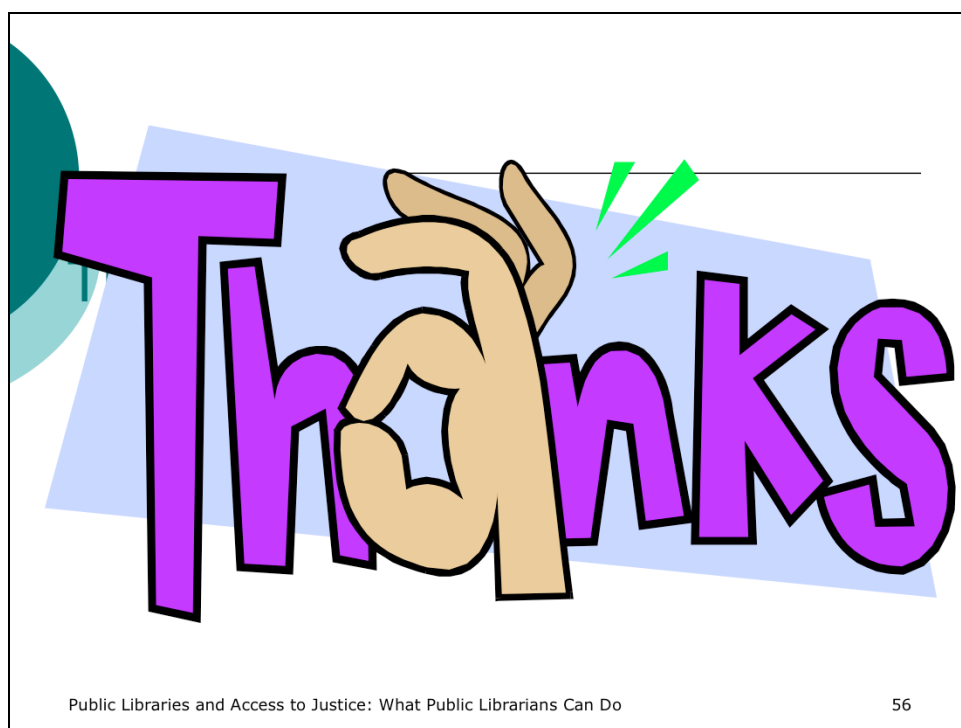


Questions You Might Have

- If a litigant asks for a form that you know is the wrong form, can I tell them what the right form is?
- Can I provide information on affirmative defenses and if so how?
- What about statutes of limitations?
- What about jurisdiction and venue?

You can describe the purposes of various forms, particularly if there is no uncertainty or ambiguity.

The 2nd, 3rd and 4th questions here involve significant legal research, and should not be attempted by any librarian. Ever.



Thank you so much for agreeing to be our partners in providing information to those attempting to access the justice system. It's a giant problem, but by working together we can assist many more people who simply cannot afford to hire an attorney.