

# Answering Legal Questions: Reference or Unauthorized Practice of Law?

by Janet Sinder

**W**orking at the reference desk, librarians in all types of libraries are asked questions concerning legal issues. These questions can take a wide variety of forms, ranging from requests for help locating a specific citation to outright requests for legal advice.

In determining what type of reference service to offer in these situations, several different issues arise. One is the question of the unauthorized practice of law, prohibited by statute in North Carolina and every other American jurisdiction. If a patron relies on erroneous information, there could be a question of librarian malpractice. There is also the broader question of what types of help reference librarians should give to patrons with legal questions.

This article will not deal with librarian malpractice. The topic has been addressed elsewhere<sup>1</sup> and is not a problem that is limited to legal materials.<sup>2</sup> The potential exists for any librarian to be charged with malpractice for the provision of inaccurate information. Although librarians have written about it, the issue has never arisen in court.

Unauthorized practice of law by librarians is another issue that has been written about, but never addressed in a court case.<sup>3</sup> It is worth discussing here, however, because it illustrates some of the limits librarians face when answering legal reference questions.

North Carolina's statute on the unauthorized practice of law reads in relevant part:

[I]t shall be unlawful for any person or association of persons except members of Bar, for or

without a fee or consideration, to give legal advice or counsel, perform for or furnish to another legal services, or to prepare directly or through another for another person, firm or corporation, any will or testamentary disposition, or instrument of trust, or to organized corporations or prepare for another person, firm or corporation, any other legal document.<sup>4</sup>

Thus, non-lawyers are prohibited not only from appearing in court to represent others (a party is always entitled to represent himself or herself), but also from preparing any legal document or giving legal advice or counsel. It is, of course, the latter prohibition that must concern reference librarians.

**K**nowing that the giving of legal advice can be considered the unauthorized practice of law, librarians are faced with the question of what exactly constitutes legal advice. Robin Mills addressed this issue in her 1979 article, "Reference Service vs. Legal Advice: Is It Possible to Draw the Line?"<sup>5</sup> She found, after examining case law, that:

Answering a question about the law apparently becomes legal advice when the answer requires skill and familiarity with the law, or when the listener relies on the answer as an accurate statement of his rights and obligations, or when the answer is directed to the specific legal problem of an individual rather than to common problems of the public generally.<sup>6</sup>

Mills believes that the distinction between simply giving legal information and giving legal advice seems to depend on the particular circumstances of the situation, and that no clear standard can be given.<sup>7</sup>

Once again, librarians are not provided with much guidance in answering specific questions. Given this lack of concrete standards, librarians, especially those without legal training, need to be aware of the problems that can arise from even the simplest question. Mills begins her article with three hypothetical situations; the first illustrates that even what appears to be a straightforward reference question with a definite answer can contain unexpected problems.

In this example, a patron asks the librarian how long he has after an automobile accident to file suit. The librarian looks at the state statute and tells the patron that the statute of limitations (the amount of time following an event in which a lawsuit can be filed) in personal injury cases is two years. As the accident happened six months ago, the patron has another eighteen months in which to file suit. Unfortunately, the librarian was not told that the patron's wife died in the accident, and the statute of limitations for cases involving wrongful death is only one year.<sup>8</sup> If the patron relies on the librarian's answer to his question, he may not file his lawsuit in time.

Some might feel that the mistake could have been avoided by a thorough reference interview. If the librarian had asked whether anyone had died in the accident, the correct answer could have been found. But should the librarian be expected to know the correct questions to ask in this situation? Would he or she have the time or experience to uncover all the relevant facts, realize their relevance, and come up with the correct answer? After all, this is a

simple example; most legal questions are more complicated.

**P**eter Schanck has offered four reasons why librarians should defer to lawyers in the provision of legal advice: "(1) The attorney has better access to the facts in the case. . . (2) The lawyer usually has more complete knowledge of the law. . . (3) The attorney is able to research the law at his leisure. . . (4) The lawyer understands the practical functioning of the legal system."<sup>9</sup>

Schanck concludes that most librarians do not know the questions to ask or how to interpret the answers. Further-

law may have changed since the materials in the library were published. Even the most recent volume of the advance legislative service for North Carolina, which contains statutes more recent than those in the supplements to the *General Statutes*, is not completely up-to-date. North Carolina cases take approximately six weeks to be published and can take longer to be indexed. There is no index to the official reports, and cases may not appear in the *North Carolina Digest* for up to a year.<sup>11</sup>

Federal materials pose even more problems. Most non-law libraries receive the official, rather than the commercial, versions of federal statutes and U.S. Supreme Court cases.<sup>12</sup> Commercially pub-

lished resources have editorial additions that assist with interpretation and indexing and are published more quickly than most official publications. The official versions of these statutes and cases can take as long as two years to be published. In addition, most non-law libraries do not have all the materials necessary for complete legal research. For example, a

library may have the *United States Code*, but not the *Code of Federal Regulations* which contains rules and regulations promulgated by federal agencies. They also may not have all the case law necessary to determine how courts have interpreted the legislation.

If a patron is researching cases and statutes the librarian can demonstrate how these resources are organized, how to use the index to find materials, and where in the index a patron can begin a search. The patron should also be told that there may be other index terms that need to be checked. The more the librarian can do to inform the patron that the materials, not the librarian, will provide the information, the better.

Secondary sources are another option. Nolo Press and others publish a large number of self-help law books which are held by most large public libraries. Self-help law books focus on the types of cases in which the patron would be acting affirmatively, doing such things as buying a house, drawing up a will, or patenting an invention, rather than re-

sponding as a defendant in a civil or criminal case.<sup>13</sup>

The best answer in some instances, as with other types of reference questions, is a referral. Does the patron qualify for legal aid? Can the question be answered by some government agency? Should the patron be given the number of the North Carolina Attorney Referral Service?<sup>14</sup> Is there a library in the area that has more legal materials? If there is a nearby law library, the librarians there are bound by the same restrictions on the giving of legal advice. However, the law library will have a large selection of legal materials in the collection and may have staff members with more experience and a better understanding of what the patron needs to do research. If the best solution is for the patron to examine primary materials, those at a law library will probably be more up-to-date. Law libraries, with their larger collections, tend to have both the official and the commercial versions of cases and statutes.

**T**o understand North Carolina law on a particular subject, patrons may find some of the treatises written for lawyers helpful. There are books on topics such as family law, real estate, and criminal law that deal specifically with the law in North Carolina.<sup>15</sup> Although written for attorneys, they may help patrons doing their own research. They have the benefits of being directed specifically to the law in North Carolina, and of analyzing and explaining the subject.

There are ways that librarians in almost any library can assist patrons with legal problems. The key is to explain that

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more, they do not have the time required to discover all the facts and do the necessary research. Schanck recommends that librarians, when asked for legal advice, should, even while providing some help, repeatedly urge patrons to contact an attorney.<sup>10</sup>

With these caveats, what exactly can reference librarians do when confronted with a legal question? There are several options, and the most appropriate one depends on the particular question. Basically, the choices are showing the patron how to use the primary sources to find information, recommending secondary sources on the subject, or referring the patron to another library or agency.

When faced with a legal question, the librarian should conduct a normal reference interview to discover what the patron wants. This does not require knowledge of the entire history of a legal question (allowing the patron to explain this should probably be avoided), but the librarian should know whether the patron is looking for something specific, wants to understand what his or her attorney is talking about or is just curious about an area of law.

If patrons are using primary legal materials, such as North Carolina cases and statutes, they should be advised that the

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legal research may be very different from research in other subjects because of the interaction of statutes, cases, and administrative regulations. The law is constantly changing, and there is rarely a clear answer on any issue. Librarians can show the materials to patrons, recommend books to read for background, and refer patrons to



other agencies that might help them. They should never give advice, but this does not mean they cannot help. Being aware of the difference between providing the materials to answer a question and providing an answer should help reference librarians confronted with legal questions.

## References

1. See e.g., Dragich, "Information Malpractice: Some Thoughts on the Potential Liability of Information Professionals," *Info. Technol. & Libr.*, Sept. 1989, at 265.

2. See, e.g., Gray, "The Health Sciences Librarian's Exposure to Malpractice Liability Because of Negligent Provision of Information," 77 *Bull. Med. Libr. Assoc.* 33 (1989).

3. For a recent article on the subject from a Canadian perspective, see Rice, "Reference Service versus Unauthorized Legal Practice—Implications for the Canadian Reference Librarian," *Legal Reference Services Q.*, Vol. 10, Nos. 1/2, 1990, at 41.

4. N.C. Gen. Stat. § 84-4 (1985). For example, it has been held to be unauthorized

practice of law for a motor club to allow members to write letters on club stationery concerning automobile accidents, advising others that they were liable under the law for damages and then to draw up receipts for settlements made because of these letters. *State ex rel. Seawell v. Carolina Motor Club, Inc.*, 209 N.C. 624, 184 S.E. 540 (1936).

5. Mills, "Reference Services vs. Legal Advice: Is It Possible to Draw the Line?" 72 *Law Libr. J.* 179 (1979).

6. *Id.* at 186 (footnotes omitted).

7. *Id.*

8. *Id.* at 179.

9. Schanck, "Unauthorized Practice of Law and the Legal Reference Librarian," 72 *Law Libr. J.* 57, 59 (1972).

10. *Id.* at 64.

11. If a library receives the West version of the court reports, there will be digests (subject indexes to the cases) in each volume of the reports.

12. Official publications of cases and statutes are those published by the government. As there is no copyright in any of these materials, they are very often reprinted by commercial publishers. For example, the *United States Code* is the official version of the

federal code. *United States Code Annotated*, published by West Publishing Company, and *United States Code Service*, published by Lawyers Cooperative Publishing, are two commercial versions. Sometimes the official code is published by a commercial publisher. This is the case in North Carolina, where the *North Carolina General Statutes* are published by the Michie Company.

13. See, e.g., D. Clifford, *Nolo's Simple Will Book* (2d ed. 1989); P. Miller, *The Common Sense Mortgage* (3d ed. 1989).

14. The North Carolina Referral Service (1-800-662-7660) is run by the North Carolina State Bar Association. It is a free service, which will give the caller the names of several local attorneys who work in a specific subject area.

15. See, e.g., L. Kelso, *North Carolina Divorce, Alimony and Child Custody* (2d ed. 1989); J. Webster, *Webster's Real Estate Law in North Carolina* (3d ed. 1988).

## NOMINEES NEEDED FOR TECHNICAL SERVICES AWARDS

The Executive Committee of the Resources and Technical Services Section is seeking the names of promising and practicing librarians for its Student and Significant Contribution awards. The two winners will receive plaques and \$250 cash awards during the RTSS business meeting at the NCLA Biennial Conference.

The **STUDENT AWARD** is open to students actively enrolled in library education in North Carolina as of July 1, 1991. Recent graduates who are North Carolina librarians are also eligible. Nominees must show a potential for contributing to technical services and must intend to pursue a technical services career. Self-nomination is permissible.

The **SIGNIFICANT CONTRIBUTION AWARD** is open to North Carolina librarians who have made an important contribution in technical services, either to their institutions or to the profession in general. At least part of the nominees' current work must involve an aspect of technical service. Applicants must be nominated by a current member of NCLA.

The nomination deadline for both awards is **August 31, 1991**.

To submit nominations for either award, please contact:

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