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Greetings to my valued connections!

Another byte of law for your interest. Topic: Advisory Opinions/Judicial Advice
IS JUDICIAL LEGAL ADVICE THE SAME AS AN ADVISORY OPINION?

We have all heard it: the court may not give advisory opinions. But, that is not the full story. To truly understand this we need to take a “macro” and “micro” approach.

Macro: A case must be “ripe” before a judicial opinion can be given. Ripeness requires that the “controversy must be definite and concrete, touching the legal relations of parties having adverse legal interests.” *Pacific Legal Foundation v. California Coastal Commission* (1982) 33 Cal 3d 158, 170. Thus, courts may not give opinions on abstract differences of legal opinion before the record is developed in the case. *Id.*

Micro: During trial, however, the court is permitted (dare I say encouraged?) to give advice to a litigant or to a lawyer to ensure a fair trial. The law abhors a forfeiture. *Deutsch v. Phillips Petroleum Co.* (1976) 56 Cal.App.3d 586, 592. Judges are charged with ascertaining the truth, not just playing the referee. *Gamet v. Blanchard* (2001) 91 CA4th 1276, 1285. It makes no sense for a judge to stand idly by and allow matters to take place in the judge’s court which are unfair just because no one brings a motion. *Kennedy v. Eldridge* (2011) 201 CA4th 1197, 1204. Further, the court has an independent interest in ensuring that legal proceedings appear fair to all that observe them." *Id.* Court proceedings should be fair in appearance as well as in fact (*Wuest v. Wuest* (1942) 53 CA2d 339, 345, 127 P.2d 934) or appeal is appropriate.

So, for example, the judge can deny a Motion for Summary Judgment then educate a lawyer on how to re-file the motion correctly (*Security Pacific Nat. Bank v. Bradley* (1992) 4 CA4th 89, 92), the judge may explain the proper procedure for the admission of evidence (*Nelson v. Gaunt* (1981) 125 Cal.App.3d 623, 645, 178 CR 167), and, the court can define terms for the litigants. *Searle v. Allstate Life Ins. Co.* (1985) 38 Cal.3d 425, 435-36.

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Appeals, civil trials, family law, assist with trial preparation: 2nd chair, motions, research, witnesses, all aspects of trials, local counsel So. California, referral fees paid.

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