

American Bar Association

Standards
for Providers of
Civil Legal Services
to the Poor

2002 Edition

Standing Committee on
Legal Aid and Indigent Defendants

Approved by the American Bar Association House of Delegates, August, 1986, as limited by the general introduction. The American Bar Association recommends appropriate implementation of these Standards by entities providing civil legal services to the poor.

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AND INDIGENT DEFENDANTS**

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Committee Liaison
American Bar Association
Chicago, Illinois

Debra Thomas
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American Bar Association
Chicago, Illinois

Foreword

The Standing Committee on Legal Aid and Indigent Defendants was gratified that without dissent, the American Bar Association House of Delegates, at the 1986 Annual Meeting, adopted revised Standards for Providers of Civil Legal Services to the Poor. These Standards are the fourth set of Association Standards on this topic. They represent the results of almost three years of consideration by the Standing Committee. We believe that the Standards will be of assistance to organizations and practitioners serving the legal needs of low-income persons as they struggle to provide high-quality legal representation within available limited resources at a time of great unmet need.

Background

In 1961, the American Bar Association first adopted standards for civil legal services to the poor. Five years later, after federal legal aid funds became available through the office of Economic Opportunity, the House approved revised Standards. This second set of Standards reflected the limited experience with federal involvement and increased funding for legal aid. Just four years later, the House adopted a third set of Standards. These remained in effect until the recent House action.

In the intervening sixteen years, many important developments affected the provision of legal services for the poor. The Legal Services Corporation was created by Congress in 1974 and became operational in 1975. The amount of federal, state, and private funding for legal services increased dramatically, as did the number of organizations providing civil legal assistance to the poor. The involvement of the organized bar in providing these services expanded to the extent that there are now more than 400 bar association pro bono programs throughout the country. Bar associations now appoint a majority of the members of the boards of directors of local federally funded programs. During this period, the Canons of Ethics gave way to the Code of Professional Responsibility which, in turn, has been superseded by the Model Rules of Professional Conduct, all of which bear on the obligations of lawyers to provide equal justice to all citizens. The 1970 Standards were clearly out of date.

Development of Standards

The Committee made an early determination that our process in developing the Standards would be thorough and open. The Committee first began working to revise the Standards in 1983 when a draft, developed by a committee of the National Legal Aid and Defender Association (NLADA) with funding from the Legal Services Corporation, was submitted to us. That version was considered and substantially modified, first by a subcommittee, and later during many full Committee meetings attended by representatives of other Association entities, the Legal Services Corporation, NLADA and legal services programs.

In February, 1985, the Committee was authorized by the Board of Governors to distribute its proposed Standards for review and comment. Copies of the Standards were sent to members of the House of Delegates, state and local bar associations, ABA sections and committees, the Legal

Services Corporation, legal services programs law school clinical programs, some non-federal funders of legal assistance and others interested in the provision of legal services to the poor. The Committee held three hearings later that year to receive oral comments - in April in San Jose; in July in Washington, D.C. in conjunction with the Annual Meeting; and in September in Chicago. Committee members also made a presentation on the Standards at the July, 1985 meeting of the National Conference of Bar Presidents. Extensive testimony and written comments were received from representatives of bar associations, law schools, legal services programs, the Legal Services Corporation and ABA sections and committees.

The comments helped the Committee to improve the circulated draft. Committee meetings were devoted to the consideration of each black letter standard and its commentary in light of each comment received. A substantially modified draft of the Standards emerged from that process and was widely circulated for further comment in February of this year. All but three of the comments received in response supported the Standards as proposed. The suggested revisions were thoroughly considered and the Committee adopted a number of modifications in order to address the concerns which had been expressed.

The document recommended by our Committee to the House of Delegates owes its final form to many organizations interested in legal assistance for the poor. The consensus achieved became clear when there was no debate and no dissent when the House of Delegates adopted the proposed Standards.

Acknowledgments

Many people made valuable contributions to the development and adoption of the Standards and we are very grateful for their insights and suggestions. Two people deserve special recognition, because without their determination and perseverance, this project would not have been completed. John Tull, our reporter, was always patient and ever-willing to try to satisfy new and recurring concerns. Because of his tact and skillful drafting, we were able to develop a consensus on many potentially divisive issues. Bill McCalpin began the Committee's consideration of the Standards when he was the chairman and continued to spearhead this effort after I succeeded him. Bill's long-time commitment to legal assistance for the poor is well known; his leadership of the Standards effort was another demonstration of the energy and wisdom he brings to furthering this movement.

Special appreciation is due to those people who endured with us during the long meetings and tedious review of a very lengthy document and still managed to maintain their good humor while contributing constructive comments: former Committee members Archibald Murray, Sheldon Portman, Robert Raven and Glenn Stophel, committee consultants Susan Lindenauer and John Arango; NLADA liaisons Esther Lardent, Benjamin Lerner, Jawara Lumumba and Clint Lyons; LSC representatives Basille Uddo, John Bayley and Dennis Daugherty; Young Lawyers Division liaisons John Geil and Allan Ramsaur; Law Student Division liaisons Don Gorton and Jordon Budd; National organization of State Support Units representative Jeffrey Barker; Organization of Legal Services Back-up Centers representatives David Kirkpatrick and Stephen Nagler; National Clients Council liaison Nelwynne Hollie and Project Advisory Group

representatives Leroy Cordova and Joseph Bartylak.

We also recognize the special contributions of those people who testified at our hearings and submitted written remarks. Wm. Reece Smith, Jr., Chairman of the Consortium on Legal Services and the Public, gave special assistance by his detailed review and comments on each draft.

Finally, the Chairman must thank our talented and conscientious Staff Director, Lynn Serman, and the entire Committee, each of whom contributed in his or her own way to the successful completion of this project.

John J. Curtin, Jr.,
Chairman

September, 1986

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Introduction

In a society based on law, justice is available only to those who can make the legal system work for them. A right is not a right unless it can be enforced; a remedy is not a remedy if it is available only in theory. For the poor, who lack the economic resources to hire a lawyer, justice historically has often been difficult or impossible to achieve. Lack of economic resources as well as dependence on public institutions and programs create a magnitude of legal problems for the poor that have been difficult to resolve.

The concept of public funding for entities providing legal services to the poor developed in direct response to this overwhelming need. Although public funding of civil legal services is a relatively recent development, these institutionalized efforts have become a fundamental part of the American system of justice. Their importance is affirmed by the sustained support they have received from clients, the organized bar, the judiciary, elected officials and the public.

The American Bar Association first adopted Standards for the operation of civil legal aid programs in 1961. Those Standards were reviewed and revised in 1966, and the Standards currently in effect were approved in 1970. The Standards for Civil Legal Aid have not been addressed by the American Bar Association since that date.

The past sixteen years have significantly increased the understanding of how to meet the legal needs of the poor most effectively, and have witnessed both a substantial growth in legal services efforts, and the emergence of a variety of delivery modes, involving both staff and private lawyers. These developments warrant the promulgation of a new set of Standards to apply to such practice. The continued evolution of systems for providing civil legal aid suggests the need for the continuing evolution of Standards to match new understanding.

The Purpose of the Standards

The Standards are written to serve several purposes. Indigent persons should receive legal representation of a quality as high as the client of any lawyer. The Standards are designed principally to guide organizations providing such civil legal assistance to the poor. Organizations representing the poor are confronted with a number of difficult operational and practice issues. The resources available to them to meet the legal needs of the poor are generally insufficient given the high level of demand that exists. Consequently, legal services providers are consistently faced with difficult choices regarding how to allocate scarce resources, while striving to assist practitioners to meet their professional obligation to their clients. The Standards are intended to provide guidance to such organizations by addressing issues that arise in the context of the competing demands for high quality legal work, efficiently produced within available resources.

The Standards may serve as a guide for civil legal aid organizations which are just being established. They may provide a basis for evaluating the effectiveness of legal aid organizations.

Definitions of Significant Terms Used in the Standards

Legal aid organizations are referred to throughout the Standards as "legal services providers." A legal services provider is an organization which regularly makes civil legal representation available to the poor without charge or at greatly reduced cost. The term does not include a private lawyer or law firm that accepts a referral from a legal services provider for representation of a client, or when they provide pro bono services.

The term "practitioner" as used in the Standards refers to an attorney who represents an indigent client under the auspices of a legal services provider or to a paralegal, law student, lay advocate or tribal advocate who is supervised by an attorney and engages in activities specifically authorized by federal, state or tribal law. In such circumstances the attorney is ultimately responsible for the work of the non-attorneys being supervised. In those circumstances where an activity requires a particular type of practitioner, such as an attorney, the Standards and commentary use the more appropriate descriptive term, rather than the term "practitioner."

Serving the needs of the poor for civil legal services involves the combined efforts of full time staff attorneys devoted to such work, and the substantial commitment of private lawyers' time, whether on a compensated or a pro bono basis. All such attorneys are included within the term "practitioner" as it is used in these Standards.

Application of the Standards

Some Standards focus principally on the responsibilities of legal services providers as organizations which serve the civil legal needs of the poor. Others address the role of the practitioner who represents an indigent client under the aegis of such an organization.

Many private lawyers represent poor clients free of charge, independent of any legal services organization. Because they are written as a guide for representation provided through legal services providers, many Standards are not appropriate for such individual efforts. Nevertheless, the Standards, particularly those pertaining to the responsibility of individual practitioners, may provide practical guidance to effective lawyering by those attorneys.

There is wide diversity in the form and organization of legal services providers. Some organizations operate principally, or exclusively, to provide legal services to the poor. For others, representation of the poor is incidental to their central purpose. Many organizations operate with a core of staff attorneys, supplemented by components that include the substantial involvement of private attorneys working on a volunteer or compensated basis. Some programs which use the volunteer efforts of private lawyers are sponsored directly by bar associations, either as an integral part of the association or as a free-standing operation. Law school clinical programs provide legal services through law students working under the supervision of faculty or private attorneys. Some programs are operated by church groups, ethnic societies or charitable organizations.

There are also many different funding sources for legal services providers. A majority of

providers receive some portion of their funding from the Legal Services Corporation, the predominant source of funds for indigent civil legal assistance. Funds from this source are governed by a number of specific requirements created by statute, regulation, and grant conditions. There are a number of legal services organizations, however, which receive all or part of their funds from other sources, including: Interest on Lawyers' Trust Account (IOLTA) programs; bar associations; private philanthropic foundations; community charitable fund raising organizations; federal, state, and local governmental agencies; and gifts. Typically, these funding sources impose relatively fewer conditions on the expenditure of their funds.

The Standards are written to provide guidance to all organizations providing legal services to the poor, whatever their method of delivery, or source of funds. The Standards recognize, however, that the institutional structure and funding of the provider will affect whether, or how, a particular Standard might be applied. Some Standards will not be appropriate for certain legal services providers for legal, practical and institutional reasons. Some bar sponsored pro bono programs, for example, would encounter difficulty complying with some of the Standards related to governance. Other Standards, pertaining to ongoing involvement with clients, may be impractical and unnecessary for some programs and for individual private practitioners who participate in a private attorney component of a provider. Where application of a particular Standard is not reasonable or is impractical for some types of providers it need not be followed. However, the Commentary to the Standard acknowledges the limitation and suggests how the provider might seek to serve the underlying principles embraced by the Standard by alternate means.

Use of the Standards

All lawyers are bound by the ethical standards adopted by the appropriate authority in the jurisdiction in which they practice. The ethical standards in virtually every state are based in whole or part upon either the Model Rules of Professional Conduct or the former Model Code of Professional Responsibility. The American Bar Association historically has taken the lead in developing and articulating the ethical norms which govern the practice of law. These Standards do not impose any different ethical requirements than those already contained in the Model Code of Professional Responsibility and the Model Rules of Professional Conduct. In some instances, they touch upon issues that are governed by the accepted rules of professional conduct, and elucidate their application in the context of the special circumstances of providing civil legal services to indigents. In those instances the commentary may make appropriate reference to, but does not alter, the controlling ethical requirement.

All attorneys should review and abide by the appropriate rules of conduct which govern practice in their jurisdiction. These Standards do not, and are not intended to, provide references to all the Model Rules and Model Code provisions which may apply to the representation of an indigent person.

The Standards are intended only as guidelines. They do not create any mandatory requirements for the operation of any legal services provider or the actions of any practitioner. Failure to comply with a Standard should not give rise to a cause of action, nor should it create

any presumption that a legal services provider or a practitioner has breached any legal duty owed to a client or to a funding source. Rather, the Standards represent the current combined and distilled judgment of a number of persons who have substantial experience in the area. Their adoption by the American Bar Association stands as a recommendation to legal services providers and practitioners regarding how they should operate in order to maximize their capacity to provide high quality legal services to their clients in the face of scarce resources.

The Standards themselves are set forth in bold face type. Each Standard is accompanied by extensive commentary to explain or illustrate the Standard, or to identify issues that might arise in its application. The commentary is not intended to expand any Standard beyond what is stated in the Standard itself.

The Underlying Principles of the Standards

A number of essential principles have guided the development of these Standards. These principles underlie all of the Standards and are basic to civil legal aid practice. Some are also specifically addressed by a separate Standard.

1. **High Quality.** The Standards are based on the competency standard which is stated as a minimum in the Model Rules of Professional Conduct (Rule 1.1) and the Model Code of Professional Responsibility (DR 6-101). They are also based on the belief that all practitioners should strive to provide representation of the highest possible quality, and therefore, they address issues of practitioner qualifications and training, supervision systems that support quality, specific quality assurance control mechanisms, and the fundamental elements of effective representation.
2. **Zealous Representation of Client Interests.** All lawyers have an ethical responsibility to pursue their clients' interests zealously within the confines of the law and applicable standards of professional conduct. This has particular implications for legal services providers which represent the poor.

When effective resolution of individual clients' problems is circumscribed by existing laws and practices, or when existing laws and practices result in the same or similar problems for many indigent clients, representation of a client may call for a practitioner to reach beyond the individual problem to challenge the law, policy or practice. The fact that such advocacy may be complex, difficult, or controversial should not be a barrier to a practitioner pursuing it. Furthermore, the range of legal problems that confront a provider's clients and the generally limited resources available to it to respond may call for a provider and its practitioners to use a variety of representational modes and innovative lawyering on behalf of clients.

3. **Client Participation in the Representation.** In all legal representation, clients should decide the objectives sought by the representation, within the limits imposed by law and the practitioner's ethical obligations, and should be consulted in determining the means used to pursue those objectives. (See Model Rules of Professional Conduct, Rule 1.2(c);

Model Code of Professional Responsibility, DR 7-101.) Particularly in the representation of low-income clients, there is great potential for developing an unequal relationship between the client and practitioner. The Standards recognize this reality and emphasize the need for specific efforts at every stage of representation to assure that practitioners communicate with their clients consistent with ethical requirements.

4. **Responsiveness to the Needs of Clients.** Legal services providers represent the principal organized effort to respond to the civil legal needs of the poor. Typically, their resources are extremely limited in the face of overwhelming need. Providers, therefore, have an acute responsibility to assure that those resources are utilized in a way that maximizes the effectiveness of their legal work and is responsive to the most pressing client needs. Generally, not all clients can be represented, and not all legal problems can be addressed. Frequently, as well, a choice must be made regarding whether the commitment of substantial funds and attorney time to a potentially costly representation is prudent or even possible given the limitations imposed by severely limited resources.

The Standards seek to give guidance regarding the factors which are appropriate to consider in making such difficult choices. Prioritization of legal problems in terms of their importance to clients is acknowledged as one legitimate factor to be considered among others. The Standards recognize that determining which matters are most significant to clients is a task fraught with difficulty. Accordingly, the commentary to various Standards suggests a number of ways for a provider to seek input from the eligible client population regarding which problems are perceived by them to-be most critical. In addition, providers are urged to consult with participating private attorneys, with the bar generally, and with agencies dealing with the poor.

Similarly, various policies regarding provider operation and delivery structure will affect its capacity to serve its clients effectively. The Standards espouse the principle that guidance from the clients to be served will assist the provider to make intelligent decisions about such matters.

Standards without Commentary

The ABA House of Delegates adopted these Standards, as limited by the general introduction in August, 1986.

I. Standards for Relations with Clients

Standard 1.1

A legal services provider and practitioner should strive to establish with each client an effective relationship which preserves client dignity and dispels any client fear or mistrust of the legal system.

Standard 1.2

The legal services provider and practitioner should establish a clear mutual understanding regarding the scope of the representation, the relationships among the client, the provider and the practitioner, and the responsibilities of each.

Standard 1.3

Consistent with ethical and legal responsibilities, a legal services provider and practitioner must preserve information relating to representation of a client from unauthorized disclosure.

Standard 1.4

A legal services provider should establish a policy governing any fees and costs for which a client is responsible. The policy should provide for the following:

1. The client should be fully informed at the initiation of representation of the provider policy regarding costs or fees.
2. A practitioner employed by the provider may not accept a client or an applicant for services as a private client for a fee, or otherwise receive a fee from such an individual.
3. A private practitioner representing clients referred by a provider on a pro bono or compensated basis may not accept a fee from the client for those services, except as agreed to by the provider prior to the initiation of representation.
4. A legal services provider and a private practitioner to whom it refers a client should establish an agreement prior to the initiation of representation regarding disposition of any attorneys fees which may be recovered from an adverse party.

Standard 1.5

Subject to the limitations imposed by law and ethical obligations, the practitioner must abide by the client's decision regarding the objectives of the representation, must consult with the client regarding the means used to achieve those objectives, and must keep the client reasonably

informed of the status of the matter.

Standard 1.6

A legal services provider should locate and operate its service facilities, extend the assistance of private practitioners, and structure its outreach and publicity efforts in a manner that facilitates access for clients.

Standard 1.7

To the extent practicable, legal services providers should have the capacity to communicate with clients directly in their primary language.

Standard 1.8

A legal services provider must avoid discrimination in employment. In addition, it will generally enhance the providers ability to communicate with clients effectively if to the extent practicable it employs personnel who reflect the general composition of the client population with respect to race, ethnicity, age, sex, and handicap.

II. Standards for Internal Systems and Procedures

Standard 2.1

A legal services provider should establish written guidelines to determine an applicant's eligibility for legal assistance.

Standard 2.2

A legal services provider should establish a policy governing the acceptance of representation which focuses resources on the identified priorities of the provider, considers the maximum number of legal matters the provider can reasonably handle and allocates available resources so that representation is of high quality.

Standard 2.3

A legal services provider should adopt, implement, and maintain internal systems for the timely, efficient, and effective practice of law, including:

1. A uniform system for maintaining client files,
2. A system for noting and meeting deadlines in the representation,
3. A system for handling client trust funds separate from provider funds.

Standard 2.4

A file should be established for each client which:

1. Records all material facts and transactions,
2. Provides a detailed chronological record of work done on each matter,
3. Sets forth the planned course of action delineating key steps to be taken with a firm timetable for their completion, and
4. Minimizes disruption in the event the representation is transferred to another practitioner.

Standard 2.5

A legal services provider should establish a clear policy and procedure regarding payment of costs in cases in which discovery, use of expert witnesses, and other cost-generating activities are appropriate. Where necessary, the-provider should budget sufficient funds for such costs.

III. Standards for Quality Assurance

Standard 3.1

A legal services provider should strive to assure that representation is provided by persons who are competent, sensitive to clients, and committed to providing high quality legal services.

Standard 3.2

A legal services provider should assign cases and limit individual work loads for its practitioners according to established criteria which include the following:

1. The practitioner's level of experience, training and expertise,
2. The status and complexity of the practitioner's existing caseload
3. The practitioner's other work responsibilities,
4. The availability of adequate support for and supervision of the performance of the practitioner, and
5. Other relevant factors which directly affect the performance of legal work.

Standard 3.3

To the extent that the provider is responsible for representation, it should supervise the performance of the practitioner to assure that the client is competently represented. A provider is responsible for representation undertaken by its staff practitioners. When a provider delegates responsibility for representation to a private attorney, it should offer the practitioner appropriate support and training.

Standard 3.4

To the extent that the provider is responsible for representation assigned to practitioners, it should review the representation using qualified attorneys. That review should:

1. Evaluate the quality of the representation,
2. Determine whether all pertinent issues have been identified and all remedies explored,
3. Ensure timely and responsive handling of all aspects of the representation,
4. Ensure that clients are appropriately involved in establishing objectives and the

means to achieve those objectives and are kept reasonably informed of developments in the representation, and

5. Identify areas in which the provider should offer appropriate training and assistance.

Standard 3.5

A legal services provider should provide systematic and comprehensive training of staff and private practitioners and other personnel appropriate to their functions and responsibilities.

Standard 3.6

The legal services provider should assure the availability of adequate resources for appropriate legal research and factual investigation.

Standard 3.7

A legal services provider should periodically evaluate the effectiveness of its operation.

IV. Standards for Generally Applicable Representation Functions

Standard 4.1

The practitioner should begin each instance of representation with an initial exploration of the client's problem which:

1. Begins development of an atmosphere of trust and confidence between the practitioner and the client,
2. Elicits known facts and circumstances pertinent to the client's problem;
3. Tentatively identifies the legal issues presented;
4. Establishes initial client objectives; and
5. Informs the client about the nature of the legal problem and the next steps to be taken by both the client and the practitioner.

Standard 4.2

Each client problem should be investigated to establish accurate and complete knowledge of all relevant facts, favorable or unfavorable to the client's position.

Standard 4.3

The practitioner should analyze each matter and research pertinent issues to determine the relationship between the client's problem and existing law, and whether there is a good faith basis to seek extension, modification, or reversal of existing law which is unfavorable to the client.

Standard 4.4

The practitioner should determine a course of action for handling each legal matter which:

1. Relates material facts to legal issues raised by the client's problem;
2. Identifies applicable law and available remedies; and
3. Enables the client and practitioner to make knowledgeable decisions about the means to pursue the client's objective at each stage of the representation, with full consideration of available resources and of the risks and benefits of each option.

Standard 4.5

The practitioner should effectively counsel and advise the client throughout the representation:

1. To reach a common understanding with the client of the nature of the legal problem and the client's objective in seeking legal assistance;
2. To identify and evaluate the means available for achieving the client's objective;
3. To assure the client understands the advantages, disadvantages and potential risks of each option and effectively participates in determining the means by which the client's objective is pursued.

V. Standards for Specific Representation Functions

Standard 5.1

A practitioner should pursue nonadversarial, informal representation when it may best accomplish the client's objective.

Standard 5.2

Negotiations should be planned and conducted according to a thorough analysis of the facts and law related to the matter and should be conducted with an adverse party so as to further the accomplishment of the client's objectives. A formal agreement with the adversary should be entered into only when the agreement is specifically authorized by the client.

Standard 5.3

The conduct of litigation should meet the following specific standards:

1. A clear, long-range strategy for prosecution or defense of the client's claim should be developed and should be periodically reviewed in light of new developments in the case and in the governing law.
2. Pleadings should be drafted so as to preserve and advance the client's claim in accord with the requirements of applicable law. The degree of specificity of pleadings, absent a mandatory requirement of applicable law, is a matter for tactical decision.
3. Motions should be considered to promote the successful, expeditious and efficient resolution of the litigation in the client's favor.
4. Formal discovery should be utilized when appropriate to the case, should be thoroughly prepared, and should seek to obtain necessary information in a timely manner and in a useful format.
5. All matters should be presented in a manner that is appropriate to the rules, procedures and practices of the tribunal, and that reflects thorough and current preparation in the facts and the law.
6. When a favorable judgment, settlement, or order is obtained, necessary steps should be taken to ensure that the client receives the benefit thus conferred.
7. A lawyer should remain aware of possible factual and legal bases for appeal from an adverse judgment or ruling, and should make a deliberate decision with appropriate client participation as to the need to preserve such issues for appeal in light of the overall litigation strategy.

8. If there is an adverse appealable judgment or order a decision should be made whether an appeal is warranted. The decision should be based on:
- the merits of the client's appeal;
 - the potential benefits and risks of pursuing the matter; and
 - established criteria which reflect identified priorities and available resources of the provider or the willingness and ability of a private practitioner to undertake the appeal.

The client should be advised at the outset of the representation that prosecution or defense of an appeal by the provider is not automatic. If the appeal is pursued it should be prosecuted or defended with all due diligence.

Standard 5.4

Representation of clients in adjudicatory administrative hearings should be effectively carried out in a manner appropriate to the procedures and practices of the hearing tribunal.

Standard 5.5

If representation before an administrative body regarding the adoption of rules, regulations, and orders of general application is appropriate to achieve client objectives, a legal services provider should strive to provide such representation unless prohibited by law or inconsistent with provider priorities.

Standard 5.6

If representation before a legislative body is appropriate to achieve client objectives, a legal services provider should strive to provide such representation unless prohibited by law or inconsistent with provider priorities.

Standard 5.7

When consistent with its priorities, a legal services provider may undertake community legal education which responds to client needs, advises clients of their legal rights and responsibilities, and enhances the capacity of clients to assist themselves collectively and individually.

Standard 5.8

When consistent with its priorities, a legal services provider may provide legal assistance to eligible clients in their creation and operation of entities designed to address their needs. Such representation should be provided by practitioners who have expertise in pertinent substantive law and the requisite skills to achieve client objectives.

VI. Standards for Provider Effectiveness

Standard 6.1

A legal services provider should interact effectively with poor persons in its service area to be aware of their legal needs; and based on that interaction and other relevant information should engage in comprehensive planning to establish priorities for the allocation of its resources.

Standard 6.2

The provider should establish a delivery structure tailored to local circumstances which will effectively and economically meet identified client needs through high quality work.

Standard 6.3

To maximize the efficient use of its resources the provider should explore the use of paralegals, tribal and lay advocates, law students and other legal assistants in the representation of clients. Representation of clients by non-attorney practitioners should be undertaken only as specifically authorized by state, federal or tribal law and appropriate ethical restrictions. The activities of such individuals should be supervised by an attorney who is responsible for the work performed.

Standard 6.4

A legal services provider should maintain active and cordial relations with the organized bar and should seek to involve the private bar in its activities.

Standard 6.5

A legal services provider should strive to achieve lasting results responsive to client identified needs and objectives.

Standard 6.6

A legal services provider should achieve institutional stature and credibility which enhance its capacity to achieve client objectives.

VII. Standards for Governance

Standard 7.1-1

A legal services provider should have a governing body which establishes broad general policies consistent with client needs, which assures compliance with applicable laws governing the operation of non-profit corporations, and which regularly reviews provider operations.

Standard 7.1-2

The governing body and its individual members shall not interfere directly or indirectly in the representation of any client by a practitioner.

Standard 7.1-3

The governing body should assure the financial integrity of the legal services provider by:

1. Adopting a budget within available resources consistent with client needs and objectives and the needs of staff for reasonable working conditions and compensation:
2. Monitoring spending in relation to the approved budget; and
3. Providing for an annual independent financial examination.

Standard 7.1-4

The governing body should hold the chief executive accountable for program operations through the following:

1. The governing body should establish specific criteria to recruit and select as chief executive the most capable and effective person available to carry out the duties established by the board to provider goals, to implement provider policy and to manage provider operations.
2. The governing body and chief executive should establish a relationship of open, honest communication based on trust, mutual respect, and a common understanding of the areas of responsibility and authority assigned to each.
3. The governing body should conduct ongoing oversight and periodic evaluation of the performance of the chief executive.
4. When necessary, the governing body should take corrective action to improve performance by the chief executive. If corrective action does not result in the desired performance, employment should be terminated in a fair and timely

manner.

Standard 7.1-5

The governing body should establish a policy and procedure governing complaints by applicants relating to denial of service and complaints by clients relating to the quality and manner of service.

Standard 7.1-6

The governing body should serve as a resource for the legal services provider, assist in community relations and fundraising, and when appropriate, engage in forceful advocacy on behalf of the provider.

Standard 7.2-1

To the extent practicable, membership of the governing body should be representative of the client and legal communities.

Standard 7.2-2

To the extent practicable, the governing body should include members who, when selected, are financially eligible to receive legal assistance from the provider.

Standard 7.2-3

All members of the governing body should:

1. Be committed to the delivery of high quality legal services that respond to client needs;
2. Have a concern for the legal needs of clients;
3. Recognize the need for communication with clients and the legal community;
4. Be committed to open dialogue between attorneys and clients on the board;
5. Be willing to commit adequate time to obtain the necessary understanding of provider operations to meet their board responsibilities.

Standard 7.2-4

The provider should strive to assure that all members receive orientation and training necessary for full, effective participation on the governing body.

Standard 7.2-5

Governing body members should not knowingly attempt to influence any decisions in which they have a conflict with provider clients.

Standard 7.2-6

To the extent practicable, members of the governing body should be selected in a manner that reflects the diverse interests of the client population. Members should not be selected by employees of the provider nor by any institution or agency which is in conflict with the provider or its clients.

Standard 7.3

The governing body should strive to communicate effectively with the client population.

Standards with Commentary

I. Standards for Relations with Clients

Introduction

The development of an effective relationship between practitioner and client is the first essential ingredient of successful representation. This can be particularly difficult to achieve when clients are poor. A legal services provider, as the organization which makes free or low cost civil legal representation available to the indigent, may confront a number of barriers separating it and its practitioners from clients, including general mistrust of bureaucracies, lack of knowledge of the legal system, awe or suspicion of lawyers, and unique cultural values and traditions. In addition, there may be practical barriers involving such factors as language, availability of transportation, the need for child care, and the difficulty of getting time off from work to see a lawyer. Practitioners, as the individuals who provide representation, should strive to establish an effective, professional relationship with their clients.

The participation of clients on the governing body, the involvement of provider staff with clients, and the provider's reputation for high quality legal work all can help create positive attitudes about the provider. In addition, however, the provider should take affirmative steps to overcome barriers to effective relations with clients.

1. The provider should strive to facilitate the establishing of a relationship between its practitioners and their clients, which is based on mutual expectations, assures confidentiality, and allows effective client participation in the representation.
2. To the extent practicable, the provider should organize its physical facilities, office hours, use of private attorneys, and outreach and publicity efforts to facilitate access for clients.
3. To the extent practicable, the provider should have staff and participating private lawyers who can communicate directly with clients in their primary language and reflect the general composition of the client population with regard to race, ethnicity, age, sex, and handicap.

Relations with Clients

Standard 1.1 - Establishing an Effective Relationship with the Client

A legal services provider and practitioner should strive to establish with each client an effective relationship which preserves client dignity and dispels any client fear or mistrust of the legal system.

Commentary

Effective legal representation requires a relationship of mutual trust and candor which blends the professional skills and expertise of practitioners with the knowledge that clients have about their own needs and circumstances. In legal services practice, the provider and the practitioner should seek to overcome the barriers which may exist to establishing effective relationships with clients. For example, low-income persons may mistrust and fear lawyers as part of a hostile and unfamiliar legal system or as part of a social services bureaucracy from which they are already alienated. They may be intimidated by the "professionals" from whom they seek help. They may misunderstand what constitutes a legal problem or what remedies are available through the legal system. This may keep some clients from seeking legal assistance. For others, it may leave doubts about the representation they receive.

Because the intake process is the client's first point of contact with the provider, it should be designed to foster the trust necessary for an effective relationship between the client and practitioner. Intake procedures should demonstrate the provider's respect for prospective clients, assure the confidentiality of the relationship, and encourage active client participation in cases that are accepted. The provider should avoid methods such as long waiting periods which characterize other bureaucracies with which the client may deal and which suggest a disregard for the client's time and personal feelings. (See Standard 1.6 on Client Access.) The provider should be sensitive to the perceptions of its clients and should strive for a professional atmosphere in its offices which puts its clients at ease.

Some clients have deeply ingrained cultural values that may diverge widely from the values inherent in the adversary legal process. In such cases, effective practitioners need to bridge the two value systems. They are called upon to understand and empathize with their clients, while translating their values into the language of the legal process. They need also to recognize that a client may choose not to pursue a course of action recommended by the practitioner in order to minimize direct contact with the adversary legal system, even if that course decreases the possibility of success.

The provider should strive to preserve good will among those who are denied service. Reasons for rejecting a case should be explained clearly and promptly, and applicants who desire a review of the decision should be given immediate assistance to pursue their grievance. (See Standard 7.1-5 on Client Grievance Procedure.) The provider should strive to refer rejected applicants to other sources of assistance, if available. Such referrals should be made as quickly as possible to allow rejected applicants to seek other assistance if necessary to protect their rights.

A legal services provider should provide training and orientation to each person who has direct contact with clients to reinforce the importance of treating clients with dignity and respect for their values. (See Standard 3.5 on Training.)

Standard 1.2 - Establishing a Clear Understanding

The legal services provider and practitioner should establish a clear mutual understanding regarding the scope of the representation, the relationships among the client, the provider and the practitioner, and the responsibilities of each.

Commentary

In the relationship among the provider, the practitioner and the client, trust and openness will be enhanced if the expectations of all parties are clear at the outset. A written agreement with each client is an effective means to provide a clear statement of the relationship and the scope of the representation and to define the client's rights. As the case proceeds, further written statements of understanding may be useful to make clear the expectations and obligations of each party.

The provider and practitioner should determine precisely who is the client. In some situations, this may not be immediately clear. For example, legal problems affecting an entire family, a marriage, or a group can involve a number of clients each with an interest in the outcome of the case. The practitioner and each client need to agree at the outset who has the authority to decide what action to take to avoid unexpected and possibly unethical conflicts. (See Model Rules of Professional Conduct, Rule 2.2.) Where individuals seek legal services as representatives of a group, they should have clear authority to speak for the group and should understand the limits on that authority. It should be clear that the provider represents the interests of the group, not of any individual. (See Model Rules of Professional Conduct, Rule 1.13.) The group should retain the authority to participate in the conduct of the case. (See Standard 1.5 on Client Participation in the Conduct of the Representation.)

Clients should be informed of the degree of the provider's responsibility for the matter, and the extent to which the provider is responsible for the quality of the legal work and its satisfactory completion. If the practitioner who will undertake the representation is a private attorney, the relationship between the provider and the practitioner should be made clear. (See Standard 3.3 on Responsibility for the Conduct of Representation.) The provider should explain to clients what they should do in the event of dissatisfaction with the handling of their legal problems. (See Standard 7.1-5 on Client Grievance Policy.)

The client, the practitioner and the provider should agree regarding the responsibilities each has in the case. Each should understand that the provider and practitioner will protect the confidentiality of the information the client provides consistent with the practitioner's ethical obligations. (See Model Rules of Professional Conduct, Rule 1.6; Model Code of Professional Responsibility, DR 4-101; and Standard 1.3 on Protecting Client Confidences.) The client and the practitioner should agree who is to pay filing fees and other costs which may arise in the course of the case. Clients should understand who will retain attorneys fees, the provider or the practitioner, in the event they are obtained from an adversary. (See Standard 1.4 on Client and Attorneys Fees.)

Both client and practitioner should understand the client's right to be kept informed of the

progress of the case and to participate in key decisions regarding its conduct. Clients should be encouraged to initiate contacts with the practitioner and should know how to do so. They should recognize the importance of keeping the practitioner informed of changes in circumstances affecting the case and advising the practitioner and provider of their whereabouts so that they may contact the client easily when necessary. Clients should understand their responsibility to assist in preparing the case by locating witnesses, documents, or physical evidence; cooperating with discovery requests; and keeping records.

Clients to be represented by a private practitioner should be advised as to how to contact their attorney, and of the importance of keeping appointments. Clients should be advised that although they will be represented by a private lawyer, they will not be charged a fee without the provider's approval, (See Standard 1.4 on Client and Attorneys Fees.) and that their extension of common courtesy and cooperation will facilitate the retention of volunteer attorneys. Clients should be advised that the private attorney has agreed to represent each client only with regard to the matter referred and that clients who encounter other legal problems for which they seek uncompensated representation should contact the provider and not the private attorney to seek new assistance.

There may be limits on what a practitioner and provider can or will do on behalf of a client. For example, the client may have a number of legal problems, but the provider may agree to handle only one. Or, the provider may agree to undertake informal representation before an administrative agency, but not to litigate the matter. Further, the fact that the provider has accepted a case initially does not automatically mean it will handle an appeal. (See Standard 5.3-8 on Appeals.) At the outset of representation, the provider and practitioner must make certain that the client understands an limitations on the scope or nature of representation that will be provided. (See Model Rules of Professional Conduct, Rule 1.2(c); Model Code of Professional Responsibility, DR 7-101 (B)(1); and American Bar Association Formal Opinion 334 (1974), pp. 5-6.)

Standard 1.3 - Protecting Client Confidences

Consistent with ethical and legal responsibilities, a legal services provider and practitioner must preserve information relating to representation of a client from unauthorized disclosure.

Commentary

The attorney-client relationship depends upon the free and candid flow of information between client and practitioner. This will occur only if clients are certain that the information they provide will be protected from unauthorized disclosure. The provider must make certain that all personnel understand their ethical obligation to protect client confidences. (See Model Rules of Professional Conduct, Rule 1.6; and Model Code of Professional Responsibility, Canon 4.)

The responsibility to assure confidentiality begins at intake. The client must be guaranteed a private interview, whether it is conducted in person or by phone. The identity of each applicant and confidential information supplied in support of the application should be protected from improper disclosure.

The provider must be particularly sensitive to several risks of unauthorized disclosure. The first involves inadvertent disclosure of confidential information in casual conversation inside and outside the office. Client cases should never be discussed among provider staff when there may be other clients or non-provider personnel present.

A second risk to client confidences arises when funding sources, or others such as judges and opposing counsel, seek information about the legal services which are provided to a particular client, or about the basis on which a client was found to be eligible.

There may be a tension between the legitimate interest of funding sources to account for the proper expenditure of funds, and the need for providers to protect the confidences and secrets of their clients. The American Bar Association has specifically ruled in Informal Opinion 1394 (1977) that a legal services provider cannot ethically give a funding source access to confidential information in the absence of willing and informed consent by the client. The scope of the prohibition against disclosure is unclear, however, and ABA opinions provide only partial guidance. Informal opinions have found, for example, that protected information includes the identity, address, and telephone number of legal services clients (Informal Opinion 1287 (1974)), and information contained in client trust fund records (Informal Opinion 1443 (1979)). Ultimately, the scope of the protection is a matter of state law which should be examined to determine what, if any, information may be disclosed to a funding source without client consent. Both practitioners and the provider should be familiar with the ethical considerations involved, and should only disclose information to a third party, including a funding source, consistent with ethical prescriptions and applicable law.

Disclosure of protected information is often essential as part of representation of a client. Client approval of a particular course of action may implicitly authorize disclosure of information, but particularly sensitive information should be explicitly discussed with the client, and consent should be obtained before its disclosure. (See Rule 1.6 of the Model Rules of Professional Conduct; Model Code of Professional Responsibility, DR 4-101 and EC 4-4.)

Standard 1.4 - Client and Attorneys Fees

A legal services provider should establish a policy governing any fees and costs for which a client is responsible. The policy should provide for the following:

- 1. The client should be fully informed at the initiation of representation of the provider policy regarding costs or fees.**
- 2. A practitioner employed by the provider may not accept a client or an**

applicant for services as a private client for a fee, or otherwise receive a fee from such an individual.

- 3. A private practitioner representing clients referred by a provider on a pro bono or compensated basis may not accept a fee from the client for those services, except as agreed to by the provider prior to the initiation of representation.**
- 4. A legal services provider and a private practitioner to whom it refers a client should establish an agreement prior to the initiation of representation regarding disposition of any attorneys fees which may be recovered from an adverse party.**

Commentary

Legal service providers are organized for the purpose of assisting persons who are unable to afford legal representation. Nevertheless, clients may be asked to meet the costs of representation, such as filing fees, if they are able to pay them. In addition, some providers may charge greatly reduced fees to help allay the costs of representation. Some practitioners may agree to accept referrals in certain types of cases and to charge a nominal fee. However, such charges are inappropriate if they prevent an eligible client from receiving assistance that the provider offers, or if they result in competition with private attorneys and law firms in fee producing representation. Each client should be fully advised at the outset of representation of any costs or fees which they will be expected to pay. (See Standard 1.2 on Establishing a Clear Understanding.)

Representation of low income clients on behalf of a legal services provider is an appropriate activity by attorneys to fulfill their commitment to the principle that high quality legal services should be available to all. (See Rule 6.1 of the Model Rules of Professional Conduct, and Model Code of Professional Responsibility, DR 2-103(D). Practitioners must not use their association with a provider, however, as a means to obtain a fee for the rendering of legal services, beyond that fee, if any, which is agreed to between the provider and the practitioner prior to the initiation of representation. Thus, a practitioner may be compensated by the provider either through payment of a salary, in the case of practitioners who are employed by the provider, or at a pre-established contractual rate, in the case of compensated private practitioners.

A practitioner may not charge an additional fee to a client beyond that agreed to by the provider prior to the initiation of representation. To do so could defeat the purpose of providing service to those who cannot afford an attorney. Staff lawyers must never accept a client or applicant for services as a private client for compensation, nor otherwise receive any money directly or indirectly from such an individual.

Legal services providers should refrain from representation of clients in fee-generating cases, both to prevent improper competition with the private bar, and to avoid the expenditure of

limited provider resources on matters in which other counsel would be available to the client. Representation should not be undertaken by a provider, therefore, if its purpose is to obtain a fee, or where a private attorney would take the case independent of the provider because the fee is possible. At times, however, in the course of representation of an eligible client, an attorney's fee may be recovered from an adverse party. Recovery of such fees is appropriate, so long as it does not affect the recovery or the remedy which the client might obtain in the representation.

The provider and the practitioner should agree prior to the initiation of representation regarding the disposition of any attorney's fees. Generally, by agreement such fees are awarded to the provider, both to increase its resources available to assist eligible clients and to avoid any appearance of impropriety. The client should be advised when representation is undertaken of the disposition of such fees. (See Standard 1.2 on Establishing a Clear Understanding.)

Standard 1.5 - Client Participation in the Conduct of Representation

Subject to the limitations imposed by law and ethical obligations, the practitioner must abide by the client's decision regarding the objectives of the representation, must consult with the client regarding the means used to achieve those objectives, and must keep the client reasonably informed of the status of the matter.

Commentary

Effective legal representation requires a relationship of mutual trust which assures that the practitioner acts with the client's informed consent. A client seeks assistance of attorneys and paralegals because such persons have knowledge and skills which may be brought to bear on a legal problem. This special expertise, however, does not give the practitioner license to control all aspects of the client's case. Final decisions regarding the objectives of the legal work should remain with the client, who is the person directly affected by the case and who will live with the consequences of its resolution. Practitioners should use their professional judgment to identify strategic options for resolving the client's problem and to explain the potential risk and consequences of each, so that clients can participate meaningfully in decisions regarding major case strategy. (See Model Rules of Professional Conduct, Rule 1.2(a).) Practitioners should explain the limits of what they can do, as well as what clients can do to mitigate their situation.

Many legal services clients have little experience with the legal system and some may lack confidence to make necessary decisions about their case. As a consequence, legal services practitioners should make an extra effort to explain options and probable consequences to their clients.

Clients should receive full and timely information on developments in their case. Because practitioners are familiar with law and legal procedure, they may feel confident about the progress of a case. Clients do not have that experience, however, and are apt to feel anxious unless kept informed of the current status of their case and of future expectations. Clients should be informed immediately of any major developments, particularly if they require decisions about

new or revised strategies. Clients generally should be provided copies of major correspondence and pleadings. When a case is inactive for a long time, the practitioner should maintain contact with the client through a simple phone call or letter to ease the client's anxiety and to maintain confidence and trust in the practitioner.

The provider should make particular efforts to communicate meaningfully with clients whose special circumstances, such as mental or physical disability, make understanding more difficult. (See Model Rules of Professional Conduct, Rule 1.14.) Specialized nonlegal support or advocacy groups may be able to help assure informed consent from such clients.

Practitioners should be clear that their proper role is to advise any groups which they may represent, and not to lead them, even if the group seeks to place them in positions of control and authority out of deference to their skills and expertise. Practitioners should avoid substituting their judgment for that of the group.

There are circumstances where professional responsibility prohibits the practitioner from pursuing an objective or a course of conduct desired by a client. For example, a practitioner may not pursue a frivolous or malicious claim, allow a client to present false evidence, or aid a client in illegal activity. (See Model Rules of Professional Conduct, Rule 1.2(d), 3.1, 3.3, and 3.4; and Model Code of Professional Responsibility, DR 7-102(A), DR 7-106 and DR 7-109.) If a client indicates interest in such strategies, the practitioner must explain the ethical prohibitions. If the client persists, the practitioner may have to withdraw from the case.

There are times when an attorney may exercise professional judgment on tactical decisions without consulting a client, even though the decision involves a waiver of a client's right. During trial, for example, the duty to expedite proceedings may require such professional decisions. Nevertheless, the practitioner should always be conscious of the client's right to know what is happening and to participate in all but minor or technical decisions about the case.

Standard 1.6 - Client Access

A legal services provider should locate and operate its service facilities, extend the assistance of private practitioners, and structure its outreach and publicity efforts in a manner that facilitates access for clients.

Commentary

A provider's decisions about overall delivery structure should be made as part of comprehensive planning to address identified client needs. Those decisions need to balance the obligation to focus limited resources on achieving client goals through high quality legal work with the need to provide access for clients. (See Standard 6.2 on Delivery Structure.)

Once the overall structure has been established, however, the provider faces a number of operational decisions in which particular attention should be given to the impact on client access.

This is especially true for decisions about office location, design of facilities, use of staff and private attorneys, office hours and procedures, and outreach and publicity. Choices which reflect concern for the convenience of clients and sensitivity to their values not only facilitate physical access, but also create a favorable impression about the provider that will enhance development of an effective relationship with the client.

A provider should comply with federal and state laws regarding access to its facilities, and should be sensitive to the need to eliminate barriers which limit access for the handicapped. Many legal problems arise for such individuals as a direct result of their condition or status. Lack of easy access to public and private institutions frequently exacerbates those problems. Failure to address access barriers may leave important legal issues unattended as the provider becomes another part of the problem handicapped clients confront.

Office Location

The provider should select accessible locations for its service offices. Obvious considerations are the availability of inexpensive public transportation and free or low-cost parking for clients.

In locating its service office, a legal services provider should be sensitive to the many countervailing factors which relate to office location. On the one hand, location in or near a neighborhood where many clients reside may facilitate client identification with the office. On the other hand, identification with a particular segment of the client population may deter other clients from seeking service. Often a central location may provide the greatest access to public transportation.

The location of service offices of some providers may be affected by other institutional needs. For law school clinics, for example, proximity to the law school may be a significant factor.

There are obvious financial considerations to be weighed as well. These include rental or ownership costs of particular sites, as well as the proximity to courthouses and other state and local institutions before which provider practitioners represent clients. Supportive local governments, bar associations, or service organizations may be willing to donate free or reduced-cost space to a provider. Cost advantages of such arrangements should be carefully weighed against the potential disadvantages of identifying the legal services office with particular institutions. For example, clients may doubt that a provider sharing a building with a public welfare agency would vigorously advocate their interests in a dispute over public benefits. Location of the law office near public institutions which clients perceive as controlling their lives may suggest that legal services is part of that bureaucracy and may discourage access.

Utilization of private attorneys offers a unique opportunity to provide accessible service in a variety of areas that would otherwise be difficult to serve. In urban areas, offices of private attorneys may be located in diverse neighborhoods that are convenient to clients. In rural areas, private attorneys may be available to serve communities where it is not economically feasible to

maintain a staff office. At the same time, some private practitioners, such as counsel to a corporation, may not have office space suitable for meeting and interviewing clients. In such circumstances, the provider should make its offices available for those attorneys who request it.

Physical Facilities

The client service office should provide a professional atmosphere that reflects respect for clients. It should be clean, pleasant and physically comfortable. The office should be arranged to provide privacy for clients and easy access to personnel. There should be comfortable waiting space, with accommodations, if possible, for children who accompany clients to the office.

Access for the physically handicapped should be a prime concern in locating staff offices. Space with structural barriers should be used only if there are no alternatives and the provider is offering accessible services to handicapped clients elsewhere. Any construction or modification of facilities specifically for legal services should ensure reasonable access for the disabled.

The location of a staff office should be marked clearly with an easily readable sign. If a substantial portion of the client population reads a language other than English, the sign identifying the office should be printed in both languages.

Office Hours

Intake and office hours should be established for the convenience of clients. They should be flexible enough to provide access to clients who have limited time to come to the office. Effective utilization of private attorneys may increase the flexibility of a provider's service hours. Clients who are employed may not be able to take time off during regular business hours. Caretakers of small children or disabled persons may have little time when they can be absent from the home. Available public and private transportation may determine when some can come to an office. The hours set by staff and intake offices should accommodate such needs, if possible. Practitioners who are willing should be encouraged to see clients at night and on weekends. To the extent practicable, clients should not have to make multiple trips to an office to obtain service.

Outreach and Publicity

Legal services providers should take affirmative steps to inform eligible persons of their services in a manner that encourages them to seek assistance. One of the goals of community legal education should be to publicize the nature of available legal services and the steps a client should take to obtain them. (See Standard 5.7 on Community Legal Education.)

Special efforts may be required to overcome clients' suspicions of free or government-sponsored services or their reluctance to seek help. At the same time, the provider should be prepared to respond to the increased demand for service which such outreach may generate, and should not create expectations which cannot be met.

Effective outreach to the elderly, the physically handicapped and the institutionalized requires more than information. Lack of mobility or physical access barriers may keep such persons from legal services even when they are aware of them. Providers should establish outreach to groups and organizations who work with the handicapped, know how to handle their mobility problems, and can refer them to legal services. The provider should consider the need to bring services to the institutionalized and others who cannot travel to the office, but are eligible for service.

Outreach should be tailored to fit the particular cultural and ethnic background of eligible poor persons in the service area. It should strive to overcome barriers caused by provider identification with particular client groups. Specific outreach should be directed to groups of clients such as migrant farm workers and Native Americans who may face special access barriers because of cultural differences and unique lifestyles.

Standard 1.7 - Communication in the Client's Primary Language

To the extent practicable, legal services providers should have the capacity to communicate with clients directly in their primary language.

Commentary

Direct communication between client and provider is important at every level of operation, beginning with intake. An effective client-practitioner relationship depends upon the quality of communication between the two. The practitioner needs complete facts from the client to fully appreciate the issues raised in a legal matter. The client must fully understand available options and possible results. Important information may be conveyed through subtle nuances of language. The tone of voice and specific words which the client chooses to describe a problem may provide important clues about facts that are being shaded or left out altogether. When the provider/practitioner cannot communicate directly, such clues may be lost in translation so that the practitioner gets an incomplete picture of the matter.

An interpreter can inhibit the development of mutual trust that is essential to an effective client-practitioner relationship. Many clients find it difficult to discuss with a stranger the personal matter involved in their legal problems, and effective communication may be impossible if they are forced to speak through an interpreter.

Where significant numbers of clients use a primary language other than English and lack facility in English, the provider should actively recruit bilingual staff to the extent practicable. The provider should strive for a similar bilingual capability in its private attorney components. Providers should encourage existing staff to acquire or improve skills in the relevant languages through continuing education and contact with clients. This includes skills in sign language to communicate with clients who are hearing impaired.

Ideally, practitioners working directly with clients should be able to speak the client's

language, but it is not always possible to recruit bilingual practitioners, particularly when the language in question is limited to a small ethnic or cultural group. If a bilingual lawyer or paralegal is not available, the provider should strive to have bilingual support staff who understand the legal significance of questions asked and advice given, and can function as interpreters.

If practical, the provider should use interpreters who are employed by the provider. The provider must ensure that when interpreters are used, they are competent and reliable. Clients with limited English will often bring a friend or relative to translate for them. The client may feel more comfortable with such assistance, but the interpreter may be too closely involved with the circumstances of the case to provide neutral translation.

The provider also must assure the client of confidentiality when an interpreter is used. In most jurisdictions, use of an employee or private contractor as an interpreter does not constitute a waiver of the attorney-client privilege and the interpreter cannot be compelled to disclose the content of the translated communication. However, communication to interpreters with no employment or contractual relationship with the provider may not be protected. When outside volunteer interpreters must be used, the provider should stress their moral obligation to maintain client confidences and should explain to the client that the obligation may not be enforceable by law. (See Standard 1.3 on Protecting Client Confidences.)

Sensitivity to cultural differences can often be as important to effective communication as language itself. The provider should encourage its practitioners to understand the cultural heritage of the client population. Management should look for this sensitivity in recruiting and selecting personnel and should provide training to improve cross-cultural communication skills. (See Standard 1.1 on Establishing an Effective Relationship with the Client, and Standard 1.8 on Affirmative Action.)

Standard 1.8 - Relations with Clients - Affirmative Action in Employment

A legal services provider must avoid discrimination in employment. In addition, it will generally enhance the provider's ability to communicate with clients effectively if to the extent practicable it employs personnel who reflect the general composition of the client population with respect to race ethnicity, age, sex, and handicap.

Commentary

Concerted efforts to recruit and select personnel who reflect the heterogeneity of the client population enhance the provider's ability to serve its clients effectively. Relationships of mutual trust are developed more readily when clients see their heritage and experience reflected in the persons who serve them. The interaction of staff of varied cultural, ethnic, and linguistic backgrounds increases sensitivity to the divergent values of its clients. Such a staff provides an important statement to clients about the provider's receptivity to all parts of the community.

Such affirmative efforts also have an intrinsic value as a conscious effort to overcome unequal treatment of different segments of the society based on race, ethnicity, age, sex, and physical disability. A legal services provider is engaged in a practice aimed at countering injustice and assuring fair and equal treatment of its clients. The provider's own recruitment, employment, and contracting practices should have the same element of fairness.

Full utilization of disabled persons can be difficult, particularly if special equipment is required to enable employees to perform their job responsibilities fully. Nevertheless, disabilities which do not create an absolute barrier to satisfactory job performance should be accommodated. Additional costs alone are not an adequate justification to avoid responsibility to employ the disabled.

These goals can be enhanced by hiring employees from the eligible client population. Such employees will be familiar with the environment and culture of the community, and may have increased credibility with clients. Exclusively local recruitment, however, may restrict the range of experience available, particularly among professional staff, and may encourage a parochialism which limits the provider's vision about solving the problems of clients. The provider must balance these considerations, so that each hiring decision enhances its ability to serve clients effectively.

II. Standards for Internal Systems and Procedure

Introduction

A legal services provider should develop and maintain internal systems that promote efficiency, and support effective representation of clients. While such systems are important for any law firm, they are particularly critical for staff legal services providers where the large number of applicants for legal services, the high volume of legal work undertaken for clients, the turnover of personnel and the need for accountability place a premium on the completeness, consistency and continuity of record-keeping and office procedures.

At a minimum, the provider should maintain internal systems that:

- reflect applications for legal services,
- establish and implement eligibility guidelines,
- establish case acceptance policies,
- maintain records of provider clients and of activities undertaken on their behalf,
- facilitate file maintenance and case handling procedures, and
- record and control costs of representation.

Internal Systems and Procedures

Standard 2.1 - Eligibility Guidelines

A legal services provider should establish written guidelines to determine an applicant's eligibility for legal assistance.

Commentary

Different kinds of providers will have differing kinds of guidelines for eligibility. Most sources of funding for legal services set eligibility limits based on income or other financial criteria. Others, such as those funded under the Older Americans Act, may use other guidelines, such as age. Whatever its specific criteria, a provider should establish a written policy governing eligibility.

In setting financial eligibility guidelines, a provider should take into consideration local economic conditions, available resources, and established priorities. (See also Standard 2.2 on Case Acceptance Policy, and Standard 3.2 on Assignment of Cases and Work Load Limitations.) The guidelines should encourage common sense judgments at intake about the applicant's

eligibility consistent with provider guidelines. Specific written guidelines should cover a variety of objective criteria, including prospective income, liquid assets, family debts and work related expenses, which affect the applicant's financial situation at the time services are requested.

The policy may also consider factors such as the availability of other assistance to resolve the problem or the consequences to the applicant if service is denied. Judgments about the realistic possibilities of obtaining help elsewhere and the consequences of denying help should be reserved for legally trained staff persons. (See Standard 2.2 on Case Acceptance Policy.)

Eligibility guidelines should be adopted by the governing body and, if practicable, should be developed with client participation. The governing body should reevaluate the guidelines periodically, particularly when there are changes in provider resources or in economic conditions in the community.

Eligibility Determinations

The provider should obtain sufficient information during the intake interview to permit fair and thoughtful application of established eligibility guidelines. Data should be obtained in a manner that protects confidentiality, demonstrates respect for the client, and encourages trust in the provider. Information should be recorded in sufficient detail to document compliance with the guidelines and to provide a record for review in the event that the decision regarding eligibility is challenged. A decision regarding the applicant's eligibility should be made as quickly as circumstances permit to allow those who are denied service adequate time to take other steps to protect their interests. Applicants who are denied assistance should be referred to other sources of help, if available.

If there is substantial reason to doubt the information the client gives, the provider should make appropriate efforts to verify that information. Any inquiry to third parties must protect privileged information the applicant or client provides. (See Standard 1.3 on Protecting Client Confidences.) The provider should inform the applicant of any attempt to verify eligibility information and should provide an opportunity for the applicant to explain or rebut any information obtained before a final determination is made.

Some providers may delegate eligible screening to persons or agencies other than itself. In such circumstances, the governing body should establish specific procedures for eligibility determination consistent with this standard and should closely monitor the third party for compliance.

Standard 2.2 - Case Acceptance Policy

A legal services provider should establish a policy governing the acceptance of representation which focuses resources on the identified priorities of the provider, considers the maximum number of legal matters the provider can reasonably handle and allocates available resources so that representation is of high quality.

Commentary

Nearly every legal services provider confronts legal needs and demands that far outstrip the resources available to respond. In order to allocate its resources rationally, the provider should establish a policy and procedure for determining which cases it will accept. Such decisions follow the determination of an applicant's financial eligibility and involve additional considerations. A case acceptance policy should meet two objectives:

- to allocate scarce resources to the legal problems identified as priorities in the provider's planning process, and
- to control specific demands on available time so that cases which are undertaken are handled with high quality legal work.

Provider case acceptance policies should not be used as an excuse for limiting the productivity of its practitioners or the efficiency of its operation. Management of legal work should be designed to maximize efficiency consistent with provider goals and the need for quality.

The policy should establish a procedure to determine as quickly as possible whether a case will be accepted by the provider for representation. Applicants with matters which will not be undertaken or which require a type of representation which the provider does not offer should be referred to other sources of assistance, if available. Such referrals should be made in a timely fashion to allow rejected applicants to take actions which are necessary to protect their rights.

Focusing Resources on Identified Needs

The goals and priorities established by a provider will identify a broad outline of issues affecting clients and will determine which legal problems the provider should address. (See Standard 6.1 on Identifying Client Needs and Objectives.) Actual implementation of that policy requires thoughtful evaluation of specific case matters to determine if case acceptance is appropriate. The provider may use specially trained intake staff to obtain all information required for case acceptance decisions as well as for eligibility determinations, or it may rely on practitioners directly engaged in representation to obtain necessary facts for such decisions. Regardless of approach, every individual who interviews prospective clients should be thoroughly skilled in interviewing and should have sufficient legal knowledge to develop a complete picture of the applicant's circumstances.

Some case types will be rejected out of hand because of priorities or other limitations. Many legal problems, however, will not fit neatly into an excludable category and the facts the client presents will need to be evaluated to determine the appropriateness of accepting or rejecting the case. The case acceptance policy should entail consideration of the following factors:

- the relationship of the issues presented to established priorities, and funding

source limitations;

- the potential benefit to the client if the case is undertaken and the potential consequence if it is rejected;
- the likelihood of success, based on the facts at hand;
- the existence of sufficient provider resources to assure quality representation if the matter is accepted; and
- the availability of other resources to help the client resolve the problem.

Controlling Demand on Available Resources

A legal services provider and its practitioners face a constant conflict between the desire to help every eligible person who comes to it with a critical legal problem and the realization that resources are inadequate to provide quality help for all who seek it.

The provider needs to plan deliberately to resolve this conflict and to develop efficient methods for service delivery and for management of legal work that maximize the amount of time available for high quality representation. Reasonable means should be pursued to increase provider resources. Private attorneys should continually be encouraged to participate in the representation of clients in order to increase the pool of attorneys and resources available to serve clients.

Beyond this, however, management should establish a case acceptance policy which will minimize the pressures on practitioners to accept work they cannot handle. Failure to articulate such a policy encourages ad hoc decisions to deny services arbitrarily when workload becomes intolerable, to accept only routine cases which present the most obvious legal issues, to serve only those clients who are most assertive or, when all else fails, simply to close the office doors. (See Standard 3.2 on Assignment of Cases and Work Load Limitations.)

Acceptance by Clients

Case acceptance policies serve the legitimate purpose of limiting work to permit the provider to address priorities with high quality legal work. (See Standard 6.1 on Identifying Client Needs and Objectives.) The provider should avoid indirect methods of controlling caseloads, such as limiting physical access, or employing intake methods that discourage clients from seeking help.

To the extent practicable, clients should be consulted by the provider in establishing the case acceptance policy. Potential clients should be kept informed of the legal matters the provider will accept. Publication of the policy may preserve the resources of both clients and the provider by saving needless contact by applicants seeking services that are not offered. The provider should recognize, however, that publication of the policy may discourage some client contacts

and, therefore, may deprive the provider of information about the existence of legal problems to be considered in its priority setting process. See Standard 6.1 on Identifying Client Needs and Objectives.)

The provider should reevaluate its case acceptance policy regularly, taking into consideration changes in priorities and in the socio-economic conditions which impact clients.

Standard 2.3 - Central Record Keeping

A legal services provider should adopt, implement, and maintain internal systems for the timely, efficient, and effective practice of law including:

- 1. A uniform system for maintaining client files,**
- 2. A system for noting and meeting deadlines in the representation,**
- 3. A system for handling client trust funds separate from provider funds.**

Commentary

A legal services provider should have internal systems which keep track of data regarding clients and their adversaries and of activities undertaken on behalf of clients. In legal services practice, the large number of clients, the high volume of legal work, and the turnover of personnel require systems that assure continuity in recording and retaining information, and facilitate its retrieval. Such systems should operate efficiently to avoid unnecessary paperwork and disruption of legal work. The exact nature of the systems adopted to meet the Standard may vary widely based on the needs and structure of the provider.

The systems in place for a staff legal services provider will differ significantly from those required for a provider that relies exclusively or substantially on private attorneys to represent clients. Where representation is provided primarily by staff practitioners, the legal services provider has significantly greater responsibility for developing and implementing systems that cover all the areas that are addressed by this Standard. To the extent that representation is provided by private practitioners, the provider's record keeping system should at a minimum be sufficient for it to maintain accurate records of referrals and their disposition, and to provide statistical data necessary for its own management needs and to meet any reporting requirements of its funding sources.

An Efficient System for Maintaining Client Files

The provider should have a filing system that assures easy location and speedy retrieval of legal work files. The exact nature of such systems will vary based on such factors as office number and size, and the deployment of provider staff. The extent to which a provider should maintain separate files for clients referred to private attorneys depends upon the degree to which

it retains responsibility for the conduct of the representation, and regularly collects information regarding the progress of the matter. (See Standard 3.3 on Responsibility for the Conduct of Representation.)

The system for opening case files should produce an accurate, current, and easily accessible record of all clients and should allow the case handler and other personnel quickly to locate case files pertinent to specific clients. When files are closed, they should be reviewed and evaluated and a case closing memorandum prepared to summarize succinctly the outcome of the legal matter, and to identify information to be entered in appropriate cross-reference files.

An adversary cross-reference file should be maintained and updated regularly for early identification of potential conflicts and should contain information sufficient to identify the adversary fully. The provider may establish other cross-reference files or indexing systems regarding substantive legal issues, attorneys, clients, expert witnesses, and social service providers which serve its clients.

Providers may wish to distinguish between closed files and dead files in its filing system. A closed file involves a matter in which representation by the provider has terminated but about which there is a reasonable possibility that there may be an inquiry. Dead files are those which have been closed long enough that revival of the case or significant inquiry about it is unlikely.

The filing system should assure that closed files are retained to the extent necessary and are reasonably accessible. The provider should develop standards and procedures for the disposal of unnecessary materials in closed files and for the return of clients' personal documents. The closed file should include sufficient material to assure that an individual reviewing the file can accurately and completely reconstruct the case.

The provider should develop additional internal standards for storage of dead files. Dead files should contain only critical documents and information. Standards for closed and dead files should take into consideration federal, state, and local rules on maintenance of records, the statute of limitations for malpractice or any other action which might be filed in relation to a particular matter, and those matters which by their nature may continue to have significance over a long period of time.

The provider should have a policy, which comports with the law in its jurisdiction, regarding the disposition of closed files in the event of the discontinuance of the provider's program. Consistent with the provider's ethical obligations, a provider that is terminating its operations should notify its clients, should provide for completion of ongoing representation and should return all important documents, if possible. Provision should be made for storage of all files which cannot be returned to the client or otherwise properly disposed of. In such circumstances, custody of closed and dead files may be transferred by agreement to a responsible institution such as another legal services provider, or a bar association.

A System for Noting and Meeting Deadlines in the Representation

The provider should have a system to assure that its staff practitioners meet all deadlines and scheduled appearances. Private practitioners should maintain their own docket control systems. The system should notify both the practitioner and pertinent office staff of all important dates and deadlines and identify any conflicts in scheduling.

The provider and its practitioners should maintain a tickler system for timely updating and completion of necessary actions on case matters. Most provider practitioners handle a number of individual cases and even the most diligent may overlook an important action which must be taken in a particular case. The tickler system should regularly remind the practitioner of key planned episodes in a case so that the adopted strategy is implemented according to the proposed timetable, and so that appropriate contact is maintained with the client.

Advancing computer technology offers an increasing number of efficient docket control and tickler systems. Such systems may be particularly beneficial to practitioners who work in large offices where the scale of practice and available resources are of greater magnitude. The provider should be familiar with new developments of such systems and should assess their potential in its operation.

A System for Handling Client Trust Funds

A provider may not commingle funds which belong to a client with its own funds. (See Model Rules of Professional Conduct, Rule 1.15; and Model Code of Professional Responsibility, DR 9-102.) The provider should establish a separate trust fund for all money received from or on behalf of clients, including filing fees, funds deposited by a client toward possible settlement, or funds received from an adversary for payment to a client. The provider should maintain accounts of such funds which provide immediate and accurate information on the amount held and expenditures made on behalf of each client. The provider should participate in any approved program for utilizing interest from client trust funds to generate revenue for legal services. All client funds held by the provider and due to the client should be returned to the client at the appropriate time. Costs paid by a provider on behalf of a client who is without funds should be paid from the provider's budget, and never from funds held in trust for other clients. (See Standard 2.5 on Policy regarding Costs of Representation.) Providers should take into consideration applicable state laws regarding the disposition of funds which cannot be returned because the client cannot be located.

Standard 2.4 - Case Files

A file should be established for each client which:

- 1. Records all material facts and transactions,**
- 2. Provides a detailed chronological record of work done on each matter,**
- 3. Sets forth the planned course of action delineating key steps to be taken with a firm timetable for their completion, and**
- 4. Minimizes disruption in the event the representation is transferred to another practitioner.**

Commentary

Client files should organize critical elements of a case in a logical and coherent fashion. Each should contain the following essential information:

- a full chronological record of client interviews, adversary contacts, witness interviews, field investigations and records searches, including dates, names of persons contacted, important facts ascertained and important statements, concessions and allegations made;
- an indication of the options available to and selected by the client, and a statement of the client's objective;
- copies of all correspondence, pleadings, legal memoranda, legal research and other documents representing work done on a legal matter, organized systematically for ready reference;
- consistent with the complexity of the matter, a specific case plan with a clear delineation of tasks and a timetable with deadlines for completion of each task; and
- a record of time spent on the matter adequate to support any request for attorneys fees if appropriate, and to meet the provider's management needs.

Standard Client Files

For those cases for which it has direct ethical and professional responsibility, a legal services provider should maintain standard case files which facilitate transfer of cases among provider practitioners and encourage good lawyering habits. A thorough, self-contained file which records progress on each case in a standardized fashion eases review of the representation by supervisors. New practitioners should be fully instructed in the established procedures to

assure uniform file maintenance.

Private attorneys providing representation should organize files for clients referred to them in conformance with the established procedures of the practitioner or firm handling the case. Some private practitioners or law firms which represent a large number of clients on contract with a provider may be expected to conform to provider policy regarding standard case files.

Transfer of Cases

Legal services staff often find themselves responsible for cases they did not initiate. This occurs because of staff turnover, program restructuring, or temporary absences for illness or vacation. Complete current files make it possible for a new practitioner to take up a case with minimum delay or disruption of the relationship with the client. Procedures for case transfer should be designed to minimize the impact of the transfer on the quality of the work. Whenever possible, the person who previously handled the case should prepare a succinct transfer memorandum analyzing the case and directing attention to the next steps to be taken and target dates to be met. Clients should be notified immediately of transfer of their cases and should be assured that their interests are fully protected. They should be told the name of the new practitioner with whom they should communicate about their case and be given an opportunity to meet with the practitioner as soon as possible.

Case Protocols

A legal services provider may wish to develop case protocols to guide practitioners for handling repetitive, simple legal problems. A protocol should set forth the basic issues to be addressed and the basic steps to be taken in each such case. Protocols should not become an excuse for overly routinized, unimaginative treatment of like cases. They should be a road map the practitioner uses positively and creatively to evaluate the particular objectives of the client given the circumstances in the case and to test for new and unique issues. Protocols may also be designed to draw attention to common fact situations or legal issues so that the provider may consider such problems in the priority setting process and direct the allocation of its resources to the efficient and economic resolution of such recurring problems. (See Standard 6.1 on Identifying Client Needs and Objectives and Standard 6.5 on Results of Representation.)

Standard 2.5 - Policy Regarding Costs of Representation

A legal services provider should establish a clear policy and procedure regarding payment of costs in cases in which discovery, use of expert witnesses, and other cost-generating activities are appropriate. Where necessary, the provider should budget sufficient funds for such costs.

Commentary

A legal services practitioner should be able to use all of the tools necessary for effective representation of client interests, including those, like discovery and use of expert witnesses, which may be costly. Because low-income clients can rarely pay such costs, the provider should assure that funds are available and, where necessary, should budget funds for these purposes. Providers utilizing private practitioners may agree with participating attorneys that such costs will be met by the practitioner's firm. The provider may work with the local bar association to seek out and establish other resources to fund such costs. The American Bar Association has ruled that a law firm may use its funds for an indigent client without violating ethical rules against an attorney advancing costs in litigation. (See ABA Informal Opinion 1361 (1976)).

Where appropriate, the provider should strive to budget sufficient money to permit the routine use of some form of discovery in all cases where it is appropriate. In addition, the funds available should be sufficient to permit the provider in appropriate instances to undertake costly major cases. Practitioners must have some assurance that once a legal matter is accepted, adequate funds will be available to pursue the - case fully. The provider should assure that extraordinary unanticipated expenditures for representation do not undermine its fiscal integrity.

The provider should establish a clear policy and criteria for spending funds for representation costs. Among the appropriate criteria for such a policy are:

- the likelihood of success in the matter,
- the need to incur costs in order to pursue the matter successfully,
- the relationship between the cost and the potential benefit to the client,
- the availability of less costly alternatives, and
- the potential for recovering the costs.

The criteria should be applied consistently in committing funds to major cases and in developing case strategy in routine legal matters. Participating private attorneys should be informed of the provider's policy regarding reimbursement of representation costs. In routine cases, practitioners in consultation with provider management should have the discretion to incur necessary costs in accordance with the established criteria. In major cases requiring extraordinary expenditures, the provider should determine before the case is accepted that sufficient funds are available to pursue the case and will be committed to it.

The provider should have a clear procedure for early identification of legal matters which may result in extraordinary costs. Practitioners should estimate legitimate costs at the earliest opportunity, as an integral part of case strategy, and should select the option that will best achieve the purpose of the cost-generating activity at the least expense. For example, interrogatories and requests for admissions may be adequate for some discovery purposes at a fraction of the cost of depositions. Similarly, the practitioner may be able to find expert witnesses who will testify at no cost or at a reduced fee, and court reporters who may offer their services on

a pro bono basis. Complete records of all costs should be maintained and practitioners should routinely seek and enforce orders awarding them costs.

In any case, it is unacceptable for a provider to accept a legal matter, proceed with a course of action and then find that it cannot sustain the necessary costs which result. Faced with that situation, the provider would on the one hand have to abandon or limit the adopted course of action with the risk of committing an ethical violation or malpractice, or, on the other hand, risk its own fiscal integrity. Management should continually monitor total expenditures of funds for costs of representation so that timely steps can be taken to adjust the budget, seek new resources, restrict commitments to new cases, or otherwise prevent such conflicts.

III. Standards for Quality Assurance

Introduction

The provision of high quality legal services is a principle that underlies the entire body of these Standards. All providers, regardless of their method of service delivery, and all practitioners should strive to assure that clients receive high quality representation. Each time a case is accepted, a legal services provider enters into a contractual relationship with the client which defines the provider's institutional responsibility for the quality of the legal work performed. The specific actions undertaken to assure quality will vary based on the relationship between the provider and the practitioner.

Legal services providers who use staff practitioners to represent clients are directly responsible for the work performed by their practitioners. (See ABA Formal Opinion 334 (1974).) Accordingly, the Standards and commentary describe a variety of mechanisms and activities designed to encourage high quality representation. They include such diverse factors as the selection, training and supervision of staff; the assignment and review of representation; and the provision of adequate research materials for practitioners to perform high quality work.

Quality assurance considerations raise a number of questions in the context of representation undertaken by private attorneys. The relationship between a provider and practitioner may differ among various types of service providers. The provider should consult with the organized private bar and with participating private attorneys to determine the extent of back-up, support and supervision appropriate to foster high quality representation. The extent of the provider's direct responsibility for the quality of legal work performed by participating private attorneys depends on their contractual relationship, and the extent to which the provider assumes responsibility for the conduct of the case. The nature of a provider's quality assurance measures will vary commensurate with its level of responsibility. A client referred to a private attorney should be advised of the agreement between the provider and the practitioner and of any limitations on the responsibility of the provider. The Standards and accompanying commentary address mechanisms and activities which may be appropriate to foster quality representation, including training, case assignment policies, case progress and case outcome reports, and the provision of research backup and support.

Quality Assurance

Standard 3.1 - Characteristics of Personnel

A legal services provider should strive to assure that representation is provided by persons who are competent, sensitive to clients, and committed to providing high quality legal services.

Commentary

Legal services for the poor should be provided by persons who are professionally competent, sensitive to their clients, and committed to high quality legal work. To this end a legal services provider should actively recruit employees and private attorneys who possess such characteristics. Providers should also operate in a manner which encourages the continued involvement of effective practitioners in the representation of provider clients. This requires management that facilitates high quality work, and the opportunity for professional development. For private attorneys it also requires procedures and policies that meet the practitioners' interests and concerns, refer cases appropriately, and respond to the practitioners' need for backup and support. For staff it involves considerations of fair compensation and satisfactory working conditions.

Like all lawyers, practitioners representing the poor should have the professional skills and knowledge to provide the quality representation to which their clients are entitled. They should also be committed to providing high quality representation to their clients, and to improving their legal skills and expertise. Many of the Standards pertaining to quality assurance reflect the provider's responsibility to oversee legal work, as appropriate, and to encourage the professional growth of its practitioners. (See Standard 3.3 on Responsibility for the Conduct of Representation, Standard 3.4 on Review of Representation, and Standard 3.5 on Training.)

High quality representation calls for practitioners who can communicate effectively with their clients regarding their representation. Accordingly, the provider should seek out practitioners who can empathize with an indigent client and bridge differences which are apt to exist in education and sophistication regarding the legal system. (See Standard 1.1 on Establishing an Effective Relationship with the Client, Standard 3.5 on Training, Standard 4.5 on Counseling and Advice, and Standard 6.1 on Identifying Client Needs and Objectives.)

Standard 3.2 - Assignment of Cases and Workload Limitations

A legal services provider should assign cases and limit individual work loads for its practitioners according to established criteria which include the following:

- 1. The practitioner's level of experience, training and expertise,**
- 2. The status and complexity of the practitioner's existing caseload,**
- 3. The practitioner's other work responsibilities,**
- 4. The availability of adequate support for and supervision of the performance of the practitioner, and**
- 5. Other relevant factors which directly affect the performance of legal work.**

Commentary

To assure the quality of legal work, the provider should assign cases to those individuals who are best able to handle the particular legal matter presented by the client. This involves considerations of available time and of substantive expertise. Control of work loads and the assignment of cases involve different considerations with regard to participating private attorneys and staff practitioners.

Staff practitioners generally work primarily or exclusively for a provider which, therefore, has greater responsibility for considering the available time of the practitioner, and assigning cases accordingly. This Standard, therefore, has more immediate application regarding assignment of work to staff practitioners. The provider should limit open caseloads for individual practitioners and offices to assure that both the provider and the practitioner meet their ethical responsibilities to clients.

The overall work load of private practitioners who represent clients on behalf of a provider will largely be determined by their private clients. The principles of the Standard, however, have application in the assignment of cases to participating private attorneys as well. The provider should encourage participating private attorneys to modulate their acceptance of - referrals according to the attorneys' best judgment of their time available to undertake the matter. The assignment of a particular matter will be affected by the expertise of the private practitioner, and by the number and character of other matters that the provider has referred to the practitioner. The provider should keep accurate records of the numbers and types of cases referred to private practitioners to assure an equitable distribution.

The Availability of Adequate Time to Represent the Client Competently

Professional ethics recognize the need to ensure adequate time for preparation of a case and for acquiring sufficient knowledge and skill to handle every accepted case with professional competence. (See Model Rules of Professional Conduct, Rules 1.1 and 1.3; and Model Code of Professional Responsibility, DR 6-101.) Ethical considerations suggest that practitioners have a responsibility to reject cases unless they are certain they can provide service at least at the minimal level of professional responsibility. (See ABA Informal Opinion 1359 (1976).) Case assignment should, therefore, take into consideration the amount of time a practitioner has available and will need for competent legal work.

In addition to ethical considerations, if staff practitioners are consistently unable to give their best efforts to individual cases because of excessive work load, they may lose confidence in their own effectiveness and become more inclined to restrict their work to the simple and routine. They may begin to treat all similar cases alike and fail to recognize and fully investigate unique fact patterns that suggest legal issues significantly different from the routine. To keep time commitments to a minimum, they may be tempted to define narrowly both the legal issues in new cases and the potential relief to be sought.

Concerns about overloading practitioners, however, should never be used to excuse

inefficiency. Effective provider management should be directed toward enhancing productivity and efficient use of time and resources. Providers should also recognize that effective private attorney components can increase the resources available to clients and should encourage the widest possible participation by private attorneys to maximize the services available to clients.

The Practitioner's Level of Experience, Training and Expertise

Assignment of cases to staff and private practitioners and individual caseloads of staff practitioners should reflect the level of their training and experience. Practitioners should be encouraged to work deliberately and carefully and the number of legal matters assigned to them should allow for thorough preparation of each case at all stages. Each matter undertaken by less experienced practitioners provides an opportunity for the practitioner to expand professional skills, and adequate time for development of good work habits should be factored into the work load. As practitioners' skill levels and knowledge increase, they should efficiently handle an increasing number of legal matters of greater complexity.

The degree of specialization in the practitioner's work will also affect optimum work load limits. Specialty units may increase the capacity of provider staff to handle high volume caseloads in limited categories of legal problems without sacrificing quality in the individual case. (See Standard 6.2 on Delivery Structure.)

The Status and Complexity of Pending Legal Matters

Case assignments and work load limitations for staff practitioners should take into consideration the time required to handle each case competently. The provider should evaluate the status and complexity of its staff's pending legal matters to predict time demands of the existing caseload. An efficient case planning system will facilitate this evaluation. (See Standard 4.4 on Case Planning.)

Periodic written reports should be prepared by each staff practitioner which:

- outline numbers and types of legal matters being handled;
- identify cases in litigation, those requiring extensive discovery, those set for bench or jury trial, and those on appeal;
- identify cases involving nonlitigation strategies and the steps necessary to complete representation; and
- predict dates for completion of each major step in more complex matters.

Preparation of such reports should give each practitioner an awareness of future time commitments and the capacity to accept new assignments. In addition, they enable supervisors to identify patterns that require adjustments in case assignments and to evaluate the progress on open cases.

The provider also should have a reasonably objective estimate of potential time demands of legal matters before they are accepted, to determine whether personnel are available to do the work properly.

Non-Legal Work Responsibilities

Many practitioners have responsibility for training, administrative and supervisory duties which require substantial time commitments. The work load of staff assigned to such duties should be adjusted to assure adequate time for such essential activities.

The Provider's Capacity for Support and Supervision

The nature and amount of legal work a practitioner can handle effectively is affected by the amount of available support. The availability of substantive law specialists and litigation directors for co-counseling and other assistance will affect the productivity of individual practitioners. For example, isolated, inexperienced practitioners and nonspecialists in rural offices often receive less regular support from senior practitioners and may need more time to do high quality work. The provider should consider the availability of research and co-counseling assistance from outside the provider, through private attorneys, the organized bar and state and national support centers designed to provide backup in substantive legal areas.

Other Relevant Factors that Affect the Performance of Legal Work

Other factors related to the environment in which the provider and its practitioners operate will influence the amount of time required to represent each client. For example, the distance between the office and the courts and other adjudicative agencies, as well as the organization and congestion of forum dockets, will affect the time a case requires. In rural areas, it may be difficult or expensive to communicate with clients, adversaries, and courts. The time required for travel will directly affect the time available for case work. Rural and urban practices have different logistical problems. Each provider should consider the impact of its particular environment in establishing work load limits.

The provider should also give appropriate consideration to such logistical factors in the design of a delivery system. (See Standard 6.2 on Delivery Structure. Many involve issues of client access in remote and isolated areas. Effective utilization of private attorneys in areas which are difficult to serve because of distance can alleviate such problems, increasing the amount of time available for direct case work.

Standard 3.3 - Responsibility for the Conduct of Representation

To the extent that the provider is responsible for representation, it should supervise the performance of the practitioner to assure that the client is competently represented. A provider is responsible for representation undertaken by its staff practitioners. When a provider delegates responsibility for representation to a private attorney, it should offer the practitioner appropriate support and training.

Commentary

The responsibility and authority for supervision of representation are grounded in the ethical and legal responsibility the provider assumes for each accepted case. For staff legal services providers, this institutional responsibility arises from the relationship which is created as a contract between the provider and the client, as articulated in the pertinent ethics opinion of the American Bar Association:

It must be recognized that an indigent person who seeks assistance from a legal services office has a lawyer-client relationship with its staff of lawyers which is the same as any other client who retains a law firm to represent him. It is the firm, not the individual lawyer, who is retained . . . Staff lawyers of a legal services office are subject to the direction of and control of senior lawyers, the chief lawyer, or the executive director (if a lawyer), as the case may be, just as associates of any law firm are subject to the direction and control of their seniors. Such internal communication and control is not only permissible but salutary. It is only control of the staff lawyer's judgment by an external source that is improper. (ABA Formal Opinion 334 (1974) p.7.)

The fact that primary responsibility for cases rests with the provider does not absolve the individual practitioner from the duty to represent each client competently. Rather, it creates the obligation for the provider to assure reasonable supervision and for the practitioner to accept that supervision. Supervision of work by senior attorneys of the legal services provider is not improper interference with the independent judgment of individual attorneys, but is mandated by ethical considerations. (See Model Rules of Professional Conduct, Rule 5.1.)

Supervision of less experienced practitioners is necessary to assure that clients' interests are not jeopardized by inexperience and to facilitate development of proficient practitioners. More experienced practitioners also benefit from supervision to assure the effective use of their skills and expertise to assist clients and to facilitate their effective involvement in the provider's service delivery structure. Effective supervision includes the obligation to withdraw legal work assignments from ineffective practitioners and to assign the work elsewhere, if necessary.

The nature of a legal services provider's responsibility for the work of an affiliated private attorney is governed by the contractual relationship between them and with the client. The extent to which the provider can directly supervise the conduct of each case is a function of the extent to which it stands within the attorney-client relationship that is created. If the provider stands

outside the relationship between the client and the private practitioner, it cannot ethically obtain confidential information about the case without the client's consent, nor can it interfere with the professional judgment of the lawyer. (See Model Rules of Professional Conduct, Rules 1.6 and 5.4; Model Code of Professional Responsibility, DR 4-101 and DR 5-107(B).) Its authority to supervise the representation is, therefore, necessarily circumscribed. If on the other hand, the provider and the private practitioner share in the attorney-client relationship, the provider has both greater responsibility and greater authority to supervise the handling of each case matter.

The provider should consult with the organized bar and with its panel of attorneys regarding what back-up and supervision it is appropriate to provide to participating private attorneys; Whenever a case is referred to a lawyer who is not employed by the provider, there should be an explicit determination of the level of responsibility the provider assumes for the case and of its authority to oversee the representation. A number of factors should be resolved by specific agreement between the legal services provider and the private attorney.

- The extent to which the attorney-client relationship includes the provider within its purview. Among other things this will indicate whether the provider will have access to confidential information, beyond that necessary to determine eligibility, and the nature of the legal matter for purposes of referral.
- The extent of involvement of the provider's staff in strategic decision making prior to referral and during the course of the representation.
- The procedures that the provider will utilize, if appropriate, to assure that the specific case is handled competently.
- The procedures that the client will be expected to follow in the event of a complaint regarding the representation.

The degree of responsibility that a provider assumes for a case referred by it and, therefore the nature of the quality assurance procedures that it employs, will vary among different types of providers. In some instances the provider and the private attorney may stand equally in the professional relationship created with the client and a full range of quality assurance measures, including direct supervision will be appropriate. In other cases, the staff of the provider may engage in substantial preparation of the case, including legal research, investigation, and preliminary counsel and advice to the client, but may relinquish further direct responsibility for the matter on consummation of the referral. In such circumstances the provider may offer research and other support, as well as discussing strategy with the private attorney.

A few providers, because of budget and staff limitations may simply forward cases to participating private attorneys in accordance with the policies and procedures agreed upon between the provider and its panel of attorneys, and may explicitly delegate all responsibility for the case to the private practitioner.

When a legal services provider does not directly supervise the work of participating

private attorneys it, nevertheless, should offer training, take reasonable steps to assure that referrals are made to lawyers of known competence, and provide backup and support.

Standard 3.4 - Review of Representation

To the extent that the provider is responsible for representation assigned to practitioners, it should review the representation using qualified attorneys. That review should:

- 1. Evaluate the quality of the representation**
- 2. Determine whether all pertinent issues have been identified and all remedies explored,**
- 3. Ensure timely and responsive handling of all aspects of the representation,**
- 4. Ensure that clients are appropriately involved in establishing case objectives and the means to achieve Those objectives and are kept reasonably informed of developments in the representation, and**
- 5. Identify areas in which the provider should offer. Appropriate training and assistance.**

Commentary

Where a legal services provider retains responsibility for the conduct of representation, case review can be one of the best means available to assure that clients are receiving timely, quality service and to promote continued growth in the professional skills of practitioners. The format of successful review systems may vary among providers, but each should meet the objectives set forth in this Standard. The extent to which formal review of cases is appropriate is governed by the level of responsibility the provider has for the conduct of the representation. For staff legal services providers a substantial review system is appropriate. For private attorneys the level of review will vary in accordance with the respective level of responsibility assumed by the provider and practitioner. (See Standard 3.3 on Responsibility for the Conduct of Representation.)

Objectives of Review

A review system should assure that quality representation is being provided, that all pertinent issues have been identified, and that appropriate remedies are being effectively pursued in accord with the client's objectives. It should also assure that matters are being pursued in a timely manner and that clients are kept adequately informed of the progress of the case and are consulted regarding important strategy decisions. It should allow the provider to identify when the quality of work is not up to acceptable standards, to remedy mistakes, and to cure delays

without prejudice to the client so that the provider can act promptly to protect the client's interests.

Case review can also serve as an effective tool to teach new skills and reinforce old ones, and can link formal training efforts with specific needs of individual practitioners. Review can also be a significant source of information to the provider about the effectiveness of its practitioners' legal work and can provide insight into the effectiveness of program structure. If practicable, to encourage candor about weaknesses in legal work, the ongoing quality assurance system should not be used as the primary means of performance evaluation related to salary increases of staff practitioners.

Key Ingredients of Systematic Review of Representation

Where a legal services provider is fully responsible for the conduct of representation, a formal and systematic review process is appropriate. To be effective, it should include periodic formal review of the individual practitioner's work, involving an examination by the reviewer of each open case file, followed by a conference between practitioner and reviewer to discuss the review.

The frequency of the review may vary according to the experience of the person being reviewed. The work of new and inexperienced practitioners should be reviewed more frequently to assure that their clients are competently represented and to foster each practitioner's development as an effective and competent professional.

Complex legal matters should be reviewed in depth to assure that all major issues have been adequately identified and that appropriate remedies have not been overlooked. Strategies should be reevaluated in terms of new developments in the course of representation. More routine cases should receive a sufficiently thorough review to determine if they are proceeding in a timely fashion with adequate client contact. Randomly selected samples of such cases should be reviewed in greater depth to identify any unacceptable patterns of practice.

The scope and direction of review should be controlled by the reviewer. While practitioners should have an opportunity to exchange ideas with their supervisors or with peers on legal matters which they find to be difficult, they should not be permitted to limit review to a self-selected portion of the work load. At times the very matters a practitioner would not select are the ones most in need of attention.

Reviewers should be successful, experienced practitioners with the demonstrated ability to identify legal issues and the substantive and procedural skills to implement strategies. The reviewer should command respect and be able to give constructive criticism to the practitioner whose work is being reviewed. In offices where experience levels are approximately equal, the review may be conducted among peers.

Other Methods of Review

In addition to formal case review, a number of methods of oversight are possible:

- day-to-day interaction between practitioners and supervisors, by means of formal conferences or informal discussions regarding pending legal matters,
- assignment of responsibility for complex representation jointly to a senior practitioner and one or more juniors to assure that the work of the least experienced staff is overseen by someone of proven ability,
- regular office or team meetings to inform supervisors and peers of the status of an individual's case matters, and
- frequent written reports to supervisors on the status of all open legal matters, in sufficient detail to signal a need for further inquiry in the event that a case is not proceeding properly.

Backup, Support and Review of Private Attorneys' Casework

The extent to which the provider should be directly involved in reviewing the quality of representation produced by a participating private attorney is governed by the agreement reached between the provider and the private attorney regarding the level of the provider's responsibility for the case. Practical considerations of staff size, in relation to the number of participating private attorneys, may also affect the extent to which systematic case review is possible.

A number of other mechanisms may be appropriate based on the agreed relationship:

- Research support and backup, including specifically assigning a staff lawyer to provide advice and support to the private practitioner;
- Working with the organized bar to establish systems for pairing less experienced private attorneys with more experienced private lawyers for consultation and assistance;
- Encouraging clients and participating private attorneys to keep the provider informed of significant accomplishments or of significant problems;
- Training, particularly if referrals involve areas not generally familiar to the participating private attorneys, such as public benefits, or indigent health care;
- Submission of a report at case closing indicating the resolution of the matter, and if the client's objective was achieved;
- Periodic submission to the provider of a brief written report regarding the activity taken in each case;

- Review by the provider of major non-confidential documents in the case, including pleadings, motions, leases, and articles of incorporation.

Standard 3.5 - Training

A legal services provider should provide systematic and comprehensive training of staff and private practitioners and other personnel appropriate to their functions and responsibilities.

Commentary

A legal services provider should allocate sufficient resources for training to assure that inexperienced individuals become proficient and that more experienced persons increase their competence. The provider should develop and implement entry level and ongoing training activities within the program and should assure access to outside training that is appropriate to personnel needs.

A provider facing severe budget reductions should resist the temptation to make disproportionate cuts in training. Expertise of current staff is crucial to maintaining a capacity for quality representation; it is short-sighted and ultimately costly to postpone or eliminate training as a response to limited funding.

Training should be thoughtfully developed to respond to specific needs. It should impart skills and expertise related to known and predictable duties of each job function. The substance of training should be updated in response to case review, performance evaluations and requests for training. Training of participating private attorneys can be an effective means to integrate the efforts of private attorneys and a staff component. Training often facilitates the recruitment and retention of participating private attorneys as well.

The provider should use a variety of training techniques designed to respond to the different means by which people learn. The provider should take advantage of relevant events sponsored by bar continuing legal education programs, national or state support programs, community or special interest advocacy groups, and other outside sources.

Training events which impart concentrated information in a short time period should be combined with activities which are designed to improve the quality of day-to-day work, including supervision and review of representation. (See Standard 3.3 on Responsibility for the Conduct of Representation, and Standard 3.4 on Review of Representation.) Co-counseling and other joint work on cases also permit new practitioners to work with more experienced ones on complex matters and to learn through example and direct interchange.

Quality work for clients requires that support staff function efficiently and effectively. The neatness and promptness with which pleadings and letters are typed, and the courtesy with which telephones are answered reflect on the quality of work that a practitioner produces. All

personnel, therefore, should receive training appropriate to their job duties.

Standard 3.6 - Providing Adequate Resources for Research and Investigation

The legal services provider should assure the availability of adequate resources for appropriate legal research and factual investigation.

Commentary

Resources for Legal Research

To provide high quality client representation, legal services practitioners should have access to adequate tools for effective legal research. (See Standard 4.3 on Legal Research and Analysis.) Each practitioner should have ready access to pertinent federal and state statutes, state and federal reporters, relevant treatises, and source material on poverty law issues. Research sources exclusively related to poverty issues, which are not apt to be available in public law libraries or the library of a private practitioner should be contained in provider libraries, and offered to participating private attorneys. Bar associations coordinating representation by volunteer lawyers would not be expected to create a law library, but may facilitate access for its volunteers to the more comprehensive libraries of large firms and other providers.

The provider should strive to maintain updated brief banks with easily retrievable research products of its practitioners so that the cumulative knowledge gained through successive representation of clients with similar issues is available to current provider practitioners.

If computer assisted research is available, the provider should determine its applicability to the needs of its practitioners and should make use of that technology if it will significantly enhance the effectiveness of its research efforts, and is cost effective.

A provider should encourage its practitioners to seek support and assistance from appropriate sources outside the program. A number of national, regional and state support centers have been established to provide co-counseling, research, advocacy coordination and training which can enhance the quality of representation provided clients.

Resources for Factual Investigation

Effective and thorough information gathering is essential to the success of representation. (See Standard 4.2 on Information Gathering.) The provider should offer such training to assure that its practitioners and staff are effective in this key function. If its budget allows, the provider should strive to devote adequate resources to permit the use of expert outside investigators when necessary and to maintain an in-house investigative staff, if appropriate. Such investigators generally should not be used for such tasks as service of process, where more economical alternatives exist.

Standard 3.7 - Periodic Evaluation of the Provider

A legal services provider should periodically evaluate the effectiveness of its operation.

Commentary

A legal services provider should periodically review its entire operation to determine if it is providing high quality representation to its clients and is accomplishing its objectives as determined by its priorities and other policies, and as agreed with its funding sources. The goal of such an assessment should be to encourage forward-looking and judicious management of the organization which attends to program weaknesses and reinforces program strengths.

The evaluation should encompass all the areas which are addressed by these Standards. These include:

- provider relations with clients,
- internal systems and procedures,
- quality assurance procedures,
- the representation of clients by staff and private practitioners,
- the effectiveness of the delivery system employed to address identified priorities, and
- governance of the provider.

A variety of techniques may be employed to assess provider operation. These range from internal reporting systems which regularly supply management with information regarding provider activities to formal review by outside evaluators. Whatever the assessment methods employed by the provider, they should supply it with a means to make objective judgments about its operation. Many funding sources periodically review the operation of their recipients. Reports from such evaluations may serve as a useful source of information to a provider regarding its effectiveness.

An essential measure of a provider's success is also the satisfaction of clients with the quality and the results of the representation undertaken on their behalf. Client satisfaction measurements can be used to evaluate general provider interaction with clients, and the effectiveness of its delivery structure to meet client needs. Measuring client satisfaction can provide particularly useful information on the following issues:

- Are clients being treated with dignity and respect?

- Do clients generally perceive their relationship with the provider to be positive?
- Are clients kept informed and properly consulted regarding the conduct of the representation?
- Are clients satisfied with the outcome in specific cases?
- Are priority issues being addressed successfully?
- Are clients that were referred to a private attorney satisfied with the referral process?

A legal services provider should use a variety of measures to assess periodically the success of its representation efforts. These can include:

- the extent to which the results achieved meet the client's objectives in individual cases;
- the extent to which clients have been provided access to the legal system for assertion of their legal rights;
- the extent to which the overall objectives identified in the planning process have been achieved; and
- the extent to which conditions confronting clients have been improved. For example, do clients have increased access to decision-making forums which affect their lives? Is there evidence of positive change in the practices, policies and procedures of institutions which interact with clients? Are clients individually better able to assist themselves in resolving problems they encounter? Is there an increase in resources available to meet the needs of clients? (See Standard 6.5 on Results of Representation.)

The legal community can be a useful source of information regarding the quality of representation produced by a provider. Judges and attorneys who observe provider practitioners may have insights into the strengths and weaknesses of the provider's practice of law. The provider should actively encourage the legal community to communicate such observations to it. It should also communicate regularly with the private attorneys representing clients on behalf of the provider regarding the effectiveness of its recruitment efforts, its referral systems, and its quality assurance procedures. Its participating private attorneys may also be able to offer valuable insight into the effectiveness of the provider's overall efforts, because of their familiarity with the provider and their perspective as private attorneys.

IV. Standards for Generally Applicable Representation Functions

Introduction

Certain functions apply to all legal work, regardless of the ultimate course pursued to resolve the client's problem. Whether the specific representation ultimately undertaken on behalf of the client is limited to advice and counsel or nonadversarial representation or extends through appellate litigation, the handling of each matter should include the following activities:

- initial exploration of the matter,
- information gathering,
- legal research and analysis,
- case planning, and
- counseling and advice.

The extent of each of these activities will vary according to the complexity of the case, but practitioners should engage in each to the extent necessary to pursue the client's objective effectively and to achieve the most positive result possible for the client. The Standards contemplate that these functions will be carried out principally by lawyers, although in some circumstances where specifically authorized by state, federal or tribal law paralegals, properly certified law students and tribal and lay advocates may undertake the activities. In all such cases, the work must be supervised by a lawyer who is responsible for the representation. (See Standard 6.3 on Use of Non-attorney Practitioners.)

Practitioners do not automatically possess all the skills necessary to perform these functions adequately. Some practitioners may downplay the importance of particular activities, especially in routine or familiar matters. The most talented litigator may not necessarily be an effective interviewer and listener, skills which are essential for effective initial evaluation of the problem.

The provider should assist practitioners to handle each case in a manner that meets these Standards and should provide the training necessary to assure that practitioners have the skills to perform these functions.

Standard 4.1 - Initial Exploration of the Matter

The practitioner should begin each instance of representation with an initial exploration of the client's problem which:

- 1. Begins development of an atmosphere of trust and confidence between the practitioner and the client,**
- 2. Elicits known facts and circumstances pertinent to The client's problem,**
- 3. Tentatively identifies the legal issues presented;**
- 4. Establishes initial client objectives; and**
- 5. Informs the client about the nature of the legal problem and the next steps to be taken by both the client and the practitioner.**

Commentary

At the outset of representation, practitioners and clients should jointly establish known facts and explore the nature of the legal problem presented. Some of this initial fact-gathering takes place in the process of determining whether the case will be accepted. (See Standard 2.2 on Case Acceptance Policy.) Additional information will be obtained through subsequent contacts between the practitioner and the client.

The provider should assure that facts elicited in each client contact are recorded and made available at subsequent contacts so that clients are not forced to repeat fact gathering at different stages. All such contacts should preserve the dignity of the client and protect client confidences. (See Standard 1.1 on Establishing an Effective Relationship with the Client and Standard 1.3 on Protecting Client Confidences.)

Pertinent Known Facts Should Be Obtained and Legal Issues Tentatively Identified

Initial interviews should obtain the facts which give rise to the legal problem or problems which the client seeks to resolve. Effective interviewing requires particular skills to extract the necessary information in a manner that keeps the flow of information open and assures that the client, not the practitioner, defines the problem. At the same time the interviewer should keep the discussion focused on relevant matters. Legal education generally does not teach the basic skills required to be a good interviewer and listener. To the extent appropriate, the provider should offer skills training in this area.

The client may not organize the facts in the same manner the practitioner would for effective presentation of a case. Moreover, the client may not perceive the relevance of some facts and may overestimate the importance of others. The interviewer should be a skilled listener

who can draw out facts and discern their importance. A good interviewer will let clients tell their story in their own words without losing sight of the legal problem in matters that are truly irrelevant.

The practitioner should guard against controlling interviews too strictly. Holding clients to a rigid set of questions may serve the practitioner's need to categorize information chronologically or to state essential elements of a case, but in practice may simply shut off information from the client. The client may feel inhibited by an unfamiliar situation and may be reluctant to volunteer anything unless asked with the result that significant facts are never revealed. The interviewer should encourage and allow the client to talk, but should intervene constructively to flesh out important issues and to pursue matters of particular relevance.

Interviews should not be narrowly circumscribed by the interviewer's initial definition of the legal problem being presented. If the problem is categorized too soon, the practitioner may not explore all of the issues which may be present. There is bound to be a complex connection between many aspects of the client's circumstances. The problem presented may be only a symptom of other difficulties which may be amenable to a legal solution. For example, a problem which is presented as an eviction for nonpayment of rent may be a symptom of suddenly diminished income resulting from an unlawful termination of public benefits. By artificially limiting the client interview to facts which pertain to the eviction, the practitioner may miss the other important legal issue.

The interviewer should be attentive to the risk that some clients may dwell on matters which turn out to be irrelevant. It is the interviewer's responsibility to keep the interview focused on truly pertinent matters. On the other hand, the interview should be flexible enough to allow the clients to present major concerns. An overstatement may be a symptom of a particular anxiety or misunderstanding about the case. The practitioner's awareness of and response to that anxiety may be important to effective client involvement in resolving the matter. Moreover, such facts may indicate other legal problems which should be explored, even though they are not related to the problem initially presented.

The Initial Exploration of the Matter Should Help the Client Determine the Objectives and Should Clarify the Nature of the Legal Problem and the Next Steps to Be Taken.

Initial interviews provide the first opportunity for the client to understand the risks and possibilities involved in the case. The client can begin to formulate tentative objectives, subject to further factual investigation and research of potential issues by the practitioner. (See Standard 4.2 on Information Gathering and Standard 4.3 on Legal Research and Analysis.) The client should receive a clear explanation in lay terms of the legal matters presented, of tentatively identified steps the practitioner may take regarding the matter and, most important, of steps the client should take or avoid. The person or persons conducting such interviews should understand clearly the type of information or advice they may appropriately give to clients in an interview and should have sufficient legal knowledge to recognize circumstances that require a more expert practitioner to speak with the client. Initial exploration of a legal matter by authorized non-attorney practitioners should be reviewed by a supervising attorney to assure that all appropriate

legal issues are identified. (See Standard 6.3 on Use of Non-attorney Practitioners.)

Standard 4.2 - Information Gathering

Each client problem should be investigated to establish accurate and complete knowledge of all relevant facts, favorable or unfavorable to the client's position.

Commentary

Effective representation of a client requires that the practitioner have all relevant facts which advance or impede the client's objectives. Normally, an initial strategy is formulated in response to facts presented by the client. Further investigation, however, generally identifies additional and sometimes contradictory facts which may not have been available to the client or the significance of which may not have been appreciated. Strategy should be constantly tested against these new facts. In most circumstances, investigation will uncover facts which are disadvantageous to the client. Awareness of unfavorable facts is as critical to the formulation of an effective strategy as is knowledge of favorable ones.

A practitioner should begin gathering information promptly upon undertaking a matter, to prevent committing a client to a strategy which later proves unwise. If a lawsuit is filed on the basis of incomplete information, facts may be discovered which destroy the basis for the claim. At best, valuable resources are squandered. At worst, the attorney and client may be irrevocably committed to a losing strategy which worsens the client's problem and undermines the credibility of the practitioner and the legal services provider.

The practitioner should understand the legal issues involved in the matter in order to determine whether information is relevant and material. Facts should be organized in relation to the legal issues to enable the practitioner to evaluate their impact on the client's objectives and to identify the need for further investigation or for information necessary to counter adverse facts.

Practitioners should investigate all potentially relevant sources of information and should record the results of the investigation in written memoranda for the case file while the facts are fresh. As appropriate, this should include the following:

- informal contact with opposing counsel or an unrepresented adversary (consistent with relevant ethical norms, such as Rule 4.3 of the Model Rules of Professional Conduct) to obtain the facts asserted by an opponent and to gain useful insight into the opponent's case strategy;
- if the matter is in litigation, formal discovery to obtain needed information which will not be disclosed voluntarily and to pin the opponent down to a particular version of the facts (See Standard 5.3-4 on Discovery);
- documents in the client's possession and those available through discovery, or

obtainable as public records or under the Freedom of Information Act; and

- personal observation of the scene at which key events took place.

It may be preferable to use trained investigators rather than practitioners in certain circumstances. Investigators may be more effective in locating and interviewing witnesses and in obtaining key documents and records because they may have special skills and specific knowledge about the community. They can also free the practitioner to carry out other representation functions. The provider may also need an expert to investigate and analyze specific facts especially in highly technical areas. If the results of the investigation are to be presented in testimony at trial, the practitioner should consider the ethical restrictions on lawyers testifying in cases they are litigating, and if appropriate, should use an investigator to avoid prejudice to the client. (See Model Rules of Professional Conduct, Rule 3.7; Model Code of Professional Responsibility, DR 5-101(B), DR 5-102, EC 5-9, EC 5-10.)

Standard 4.3 - Legal Research and Analysis

The practitioner should analyze each matter and research pertinent issues to determine the relationship between the client's problem and existing law, and whether there is a good faith basis to seek extension, modification, or reversal of existing law which is unfavorable to the client.

Commentary

Legal research and analysis are essential steps in effective representation of clients which are closely linked to planning and information gathering. The facts which define the client's problem determine the scope and direction of the initial research. That preliminary research, in turn, forms the basis of tentative legal theories which shape potential case strategy. In most legal matters, initial legal research will identify alternative theories which require further analysis of the facts and may suggest areas for additional factual investigation and more intensive research. Research and analysis should continue as part of the ongoing reevaluation of a range of strategies and theories toward the concentration of representation efforts on those issues which are most relevant and critical to resolving the client's problem.

A thoughtful legal analysis should be undertaken regardless of the apparent initial simplicity of the issue the client presents. Even in routine cases, important legal issues may be overlooked and creative responses stifled without adequate legal research and analysis. Legal research and analysis undertaken by authorized non-attorney practitioners should be reviewed by their supervising attorneys to assure that legal issues outside the expertise of the practitioner are not overlooked. (See Standard 6.3 on Use of Non-attorney Practitioners.) The purpose of research is to formulate the best argument that can be made on behalf of a client given the facts. It should also identify an adversary's likely legal position and should help shape the client's response.

Research should first explore whether existing law can be directly applied to further the

client's interests. If necessary, the research should determine if there is a basis for distinguishing law which disfavors the client's position.

The practitioner should be familiar with statutes, regulations, and case law which may have a bearing on the legal matter at hand. Research should not rely on secondary sources such as treatises, but should directly review primary sources to allow the practitioner to consider their relevance to the client's problem and to obtain full comprehension of the legal issues involved. The practitioner should also make certain each source is current by reviewing later interpretations of relevant citations.

Legal Research and Analysis Should, Where Appropriate, Develop Theories Which Seek the Extension, Modification, or Reversal of Existing Law to Further the Client's Interests

Effective representation of a client may require that a practitioner expand the scope of research to determine whether there is a basis for modifying, extending, limiting, or reversing a rule of law which is unfavorable to the client. (See Model Rules of Professional Conduct, Rule 3.1; Model Code of Professional Responsibility, DR 7-102(A)(1) and (2).) Research may identify a constitutional basis for striking down a statute or statutory grounds for modifying a regulation. Changing societal circumstances may provide the argument for modifying or reversing case law. Or research may determine that only a direct statutory or regulatory change by a legislature or administrative agency can adequately resolve the client's problem. (See Standard 5.5 on Administrative Rulemaking and Standard 5.6 on Legislative Representation.)

When research determines that a client's interest cannot be reasonably pursued without a major effort to modify existing law, the attorney and the provider should consider the following strategic factors in deciding whether to make that effort, consistent with the understanding established with the client at the initiation of representation. (See Standard 1.2 on Establishing A Clear Understanding.)

- the likelihood of success. The practitioner must have a persuasive argument to convince the relevant judge, hearing officer, legislature, or other decision maker. At a minimum, the attorney must have a good faith argument and must avoid defending or asserting a frivolous position. (See Rule 3.1 of the Model Rules of Professional Conduct; Model Code of Professional Responsibility, DR 7-102(A)(1) and (2).)
- the resources necessary to pursue the matter. Efforts to modify or extend current law often involve extensive time, substantial discovery costs, expert witness fees, expensive appeals, and other costs.
- the importance of the issue to the client and its relation to the provider's established priorities.
- whether other resources exist which might resolve the problem.

Standard 4.4 - Case Planning

The practitioner should determine a course of action for handling each legal matter which:

- 1. Relates material facts to legal issues raised by client's problem,**
- 2. Identifies applicable law and available remedies, and**
- 3. Enables the client and practitioner to make knowledgeable decisions about the means to pursue the client's objective at each stage of the representation, with full consideration of available resources and of the risks and benefits of each option.**

Commentary

Case planning should involve an open-ended evaluation of the facts presented and an identification of the legal issues which arise from those facts. In complex matters, the involvement of several people in the case planning process may help to identify issues which were overlooked in the initial evaluation and additional important facts which should be obtained. An attorney practitioner should be involved in case planning even where the course of action adopted is one in which non-attorney practitioners, properly supervised, are authorized to engage by state, federal or tribal law. Such attorney involvement is required in order to assure that all legal issues and possible courses of action are properly considered at the initiation of representation. (See Standard 6.3 on Use of Non-attorney Practitioners.)

Case planning provides an opportunity to assess the relationship between the problem presented by the individual client and problems which affect other clients. If the client's problem is part of a recurring pattern or one aspect of a broader problem affecting other provider or practitioner clients, that fact may be important in charting a case strategy. The pattern may have important evidentiary value in the individual case. It may also suggest a strategy which seeks a remedy on behalf of a group or class of clients, as well as the individual.

Case planning should evaluate a number of factors that can affect the outcome of a case, including the following:

- the state of the law regarding the issues involved, the particular facts in the case, and the relationship between the two;
- the client's personal circumstances including, for example, the strength and commitment to pursue a lengthy and uncertain strategy; and
- in appropriate circumstances, the existence of other parties with a stake in the outcome of the matter.

The extent of such an analysis will vary with the complexity of the case. The more complex the case and the greater its significance, the more critical becomes an expansive strategic analysis which includes a wide variety of factors which may influence its outcome.

Case planning creates a tentative road map for handling a case to achieve the desired client objective. At its earliest stage, the practitioner presents to the client various options which may be pursued. As the case develops, tentative strategies are adjusted in accordance with the client's right to determine objectives and to participate in key strategic decisions. The case plan also should be regularly reviewed and adjusted in response to significant developments in the case. Case plans developed for representation by non-attorney practitioners in the areas where such practice is authorized by state, federal or tribal law should be reviewed on a regular basis by a supervising attorney to ascertain whether developments in the case warrant a new course of action including ones which can be only undertaken by a lawyer. (See Standard 6.3 on Use of Non-attorney Practitioners.)

When a strategy is adopted, key steps for implementation should be determined with a firm timetable for their completion. Facts which need further development should be identified and a plan for investigation and discovery established. (See Standard 4.2 regarding Information Gathering.) Legal issues to be researched should be noted. (See Standard 4.3 regarding Legal Research and Analysis.) If more than one individual is involved in handling the case, responsibilities should be specifically assigned.

A firm timetable is important so that to the extent practicable the practitioner and not the adversary controls the pace and direction of the case. Generally, the practitioner should assume a defensive, reactive posture in a case, only if it is deliberately decided that it is strategically wise to do so.

Case planning should determine the approximate resources necessary to pursue the case. If extraordinary resources will be required, the practitioner must determine whether they will be available. (See Standard 2.5 on Policy Regarding Costs of Representation.) If they cannot be obtained, then another strategy should be developed.

Standard 4.5 - Counseling and Advice

The practitioner should effectively counsel and advise the client throughout the representation:

- 1. To reach a common understanding with the client of the nature of the legal problem and the client's objective in seeking legal assistance;**
- 2. To identify and evaluate the means available for achieving the client's objective;**
- 3. To assure the client understands the advantages, disadvantages and potential**

risks of each option and effectively participates in determining the means by which the client's objective is pursued.

Commentary

One of a practitioner's key functions is to assist clients to understand their problems fully and to help them decide how to respond. The client, not the practitioner, must ultimately determine the objective to be sought, within the limits imposed by law and the practitioner's ethical obligation. The practitioner's role is to utilize legal knowledge and problem solving skills to elicit the client's knowledge about the problem and to help identify the results it is possible to achieve.

The counseling role is an essential ingredient of the client-practitioner relationship which should be effectively performed, whether the client is simply seeking advice about matters that will not require further involvement of the practitioner, or whether the practitioner will directly represent the client in pursuing the objective the client defines.

This advice and counseling role calls for the following specific skills:

- the ability to listen and interview;
- the ability to identify and analyze the key elements of a problem and its potential solution;
- the ability to understand the legal ramifications of the client's situation and to know or to determine through research what may be done legally in response;
- the ability to evaluate the range of factors which contribute to the problem and favor or impede its resolution; and
- the ability to communicate professional judgments regarding the matter to the client.

Clients can more effectively determine the objectives they seek and participate in significant decisions regarding the conduct of their cases, if they share the practitioner's understanding of their problem and potential remedies. A practitioner should translate legal concepts into clear terms the client can understand, and should be aware of the risk of manipulating a client into uninformed acceptance of the practitioner's own preferred objectives and strategies.

The practitioner should present potential remedies and reasonable strategies for achieving them. Frequently, a client will have limited expectations and the practitioner can present available options that go well beyond what the client thought possible. In other situations, the law may severely limit what can be done, even though the client may feel entitled to much more.

The client should understand the relative advantages and disadvantages of each option. A practitioner may explain the potential risks both for the individual and for other clients who may be affected by the strategy chosen. (See Model Rules of Professional Conduct, Rule 2.1.) Counsel and advice by non-attorney practitioners must be limited to areas in which non-attorney representation is specifically authorized by law. Proper supervision by an attorney is necessary to assure the advice is appropriate and to ascertain whether the client's problem involves areas of law outside the non-attorney practitioner's area of expertise. (See Standard 6.3 on Use of Non-attorney Practitioners.)

V. Standards for Specific Representation Functions

Introduction

This section addresses a number of forms of representation which a legal services provider and its practitioners may utilize to achieve client objectives. These include counseling, negotiation, litigation, nonadversarial representation, community education, administrative representation and advocacy, legislative representation and advocacy, and other forms of representation.

Identification of these specific means of representing clients is not intended to imply that a provider has an obligation under the Standards to undertake anyone of them. Indeed, few, if any, legal services providers will engage in all of these modes of representation. Some providers will limit their representation activities to one specific type of representation. A provider should decide as a matter of program policy whether it will undertake litigation, community education, administrative representation and advocacy, legislative representation and advocacy, or economic development. In some instances the scope of such activity or the ability to engage in it may be circumscribed by the structure of the provider or its source of funding. In other instances, a provider may rely on other providers in the service area to undertake certain activities such as community education or legislative representation. If such activities are undertaken, however, the Standards provide guidance regarding how they should be carried out.

Although the Standards address these representational modes as discrete undertakings, it is understood that they interrelate, and one or more methods may be called upon in a given matter. Thus, counseling, negotiation, and litigation regularly combine in representation in pursuit of a client's objective. Similarly, community education may be tied to litigation, if the matter affects a large number of clients.

Much that is contained in these Standards for Specific Representation Functions applies to civil practice generally. The Standards take into account, however, that legal services providers frequently confront issues related to the rational allocation of limited resources, and that such considerations necessarily impinge on strategic decisions, if the strategy involves substantial costs.

Generally attorney practitioners will carry out the functions described in this section. In some circumstances, however, when specifically authorized by state, federal or tribal law, paralegals, law students and tribal and lay advocates may undertake some of the specific representational activities described. Such activities must be undertaken under the supervision of a lawyer who is fully responsible for the work. (See Standard 6.3 on Use of Non-attorney Practitioners.)

Standard 5.1 - Non-adversarial Representation

A practitioner should pursue non-adversarial, informal representation when it may best accomplish the client's objective.

Commentary

Not all legal representation is formal and adversarial. Lawyers traditionally intercede informally on their clients' behalf. Many clients seek legal assistance in the belief that legal practitioners can assist them because of their knowledge of whom to contact to resolve a problem. (See Standard 6.6 on Institutional Stature and Credibility.)

Informal representation may be appropriate, for example, when a client is having difficulty obtaining a discretionary public benefit. A practitioner who understands the system may be able to assist the client with a simple phone call. The practitioner serves as a facilitator who can open doors for an individual client who does not know how to proceed, distrusts bureaucracy, or has difficulty articulating a problem. The practitioner may also be able to help with a decision-maker who is inclined to respond unfavorably to clients. Such representation should be undertaken in a manner that assists clients in overcoming these barriers and enables them to resolve similar problems for themselves in the future.

Where means to resolve the client's problem through alternative dispute resolution, mediation, conciliation, and arbitration exist, the practitioner should consider their use, if appropriate to achieve the client's objective.

Informal representation exists on a continuum with formal adversarial representation, which may be undertaken if informal efforts fail. Informal intervention on behalf of clients should not become an ineffectual pattern of response to problems that pervasively affect many clients. When many clients face a similar problem, the practitioner should consider representation which can obtain an enforceable remedy to protect all such persons. Informal advocacy undertaken in authorized circumstances by non-attorney practitioners should be reviewed by the supervising attorney to assure the quality of the work produced and to ascertain whether more formal representation which requires a lawyer is appropriate. (See Standard 6.3 on Use of Non-attorney Practitioners.)

Effective nonadversarial representation requires an awareness of developments in the local community which affect clients. The provider should be familiar with the legal environment and key individuals who are involved with agencies and organizations that interact regularly with clients.

Standard 5.2 - Negotiation

Negotiations should be planned and conducted according to a thorough analysis of the facts and law related to the matter and should be conducted with an adverse party so as to further the accomplishment of the client's objectives. A formal agreement with the adversary should be entered into only when the agreement is specifically authorized by the client.

Commentary

Negotiation is a representation function which arises in a variety of contexts. It may be a complete strategy. It may be a preliminary strategy to be followed by further representational strategies if the negotiation fails. Or it may be just one tactic within a larger overall strategy, such as litigation.

As with other forms of representation, the basic test of the appropriateness of negotiation is whether it may achieve the client's objective without unacceptable risks. Negotiation may be particularly appropriate when the other parties involved have interests which are different from but not necessarily hostile to the client's objectives, such as negotiation of a lease.

The appropriateness and timing of negotiation are particularly important in legal matters which may be subject to litigation. They should be considered as part of an overall litigation strategy which is based on a thorough analysis of the facts and the law and an evaluation of the circumstances of the client and the adversary. (See Standard 5.3 on Litigation.)

Negotiation can be a cost effective means to achieve a client's objective and generally should be attempted first, unless to do so would jeopardize the client's interest. Prelitigation negotiation is most likely to have positive results if the client's case is particularly strong or the risk of the lawsuit to the adversary outweighs the cost of prelitigation settlement. In other circumstances, negotiation prior to or early in litigation may be useful to obtain information about the opponent's case and potential strategy and to test the adversary's apparent resolve.

There are many circumstances, including the following, where negotiation is not appropriate, or at least not until litigation has been filed and the client is afforded the protection of the court:

- when notification of a potential lawsuit may subject a client to physical abuse or other retaliation from the adversary,
- when premature notification of the intent to sue may cause a defendant to leave the jurisdiction or to transfer assets in anticipation of an adverse ruling from the court,
- when an immediate court order is necessary to protect the client's right or interest, and

- when a client is seeking relief which cannot be legally obtained through compromise with the adversary. For example, relief may depend upon resolving the constitutionality of a statute and the defendant may not have the authority to admit its illegality.

The appropriateness of negotiation may be affected by local prevailing legal practices. In some communities, particularly rural ones, negotiation may be common and expected practice. Such local practice should be taken into account in developing case strategy. However, a client's interest should not be permanently compromised simply to conform to local practice and gain acceptance in the legal community.

Negotiation should not substitute for forceful representation which could achieve more of the objectives of a client, if the client chooses. The provider must assure that practitioners do not resort to negotiation in order to avoid having to pursue a more time-consuming and challenging strategy which may better serve the client's interest. Negotiations by non-attorney practitioners in areas such as public benefits where such representation is specifically authorized by law should be reviewed by the supervising attorney to assure that remedies which only an attorney can pursue are fully considered. Non-attorney practitioners cannot directly threaten litigation, nor hold themselves out to be lawyers. Consequently, any pre-litigation negotiations should be undertaken directly by an attorney even if the subject matter involves an area where non-attorney representation is otherwise authorized. (See Standard 6.3 on Use of Non-attorney Practitioners.)

Negotiations Should be Planned and Conducted According to a Thorough Analysis of the Facts and Law Related to the Legal Matter

The practitioner should develop a negotiation strategy, based on the legal and factual analysis of the case, which is designed to achieve the client's stated objective. The practitioner should be flexible, however, to respond to new information obtained during negotiation.

Before undertaking any negotiation, the practitioner should seek to know:

- the strengths and weaknesses of the positions of both the client and the adversary,
- the probable overlap between the range of settlements acceptable to each party,
- the client's opening position and potential fall back positions, and
- the points of leverage which will dispose the client, the adversary, or the practitioners for either side to reach agreement, including the personal, nonlegal considerations motivating each participant.

The practitioner should pay particular attention to any weaknesses in the client's position and should devise strategies to offset any advantage the adversary may derive from attacking them during negotiation. Practitioners should deal fairly and courteously with adverse parties.

Negotiations Should Reach a Formal Agreement Only When Specifically Authorized by the Client

Client authorization to negotiate is not authorization for a final agreement. The practitioner must seek specific client approval before a final agreement or settlement is offered or accepted. (See Model Rules of Professional Conduct, Rule 1.2(a).) At the outset of negotiations a client can identify a range of options which the practitioner is authorized to accept, or the client may withhold authorization until there is an opportunity to review each offer. The latter approach may have strategic advantages, as it gives the practitioner time to analyze each offer with the client and can prevent hasty acceptance of an inadequate settlement. In some situations, however, lack of specific prior authority to accept an adversary's offer may undermine the practitioner's effectiveness in negotiation and may give the appearance of bad faith. The client and practitioner should determine which approach is most appropriate given the particular representation.

The final agreement should be reduced to a clear formal written statement that covers all material issues and enforcement problems. Where appropriate, the agreement should be self-executing or should provide for formal enforcement in the event of non-compliance.

The practitioner should consider drafting the agreement so that minor differences may be resolved in favor of the client. The practitioner should understand, however, that any ambiguities in the agreement will generally be resolved against the party which authored the document and should give careful consideration to how wording may affect the client's overall interests.

At times practitioners may succeed in negotiating a possible settlement which in their professional judgment represents the most that could be achieved for the client even if the matter proceeded to trial. In such circumstances, if a client should unreasonably withhold consent, the practitioner may be put in the position of having to devote substantial resources to further representation that will be futile or subject the client to unwarranted risks. In such circumstances, if consistent with the practitioner's ethical obligations and permitted under local rules of court, the practitioner and provider may justifiably withdraw from representation.

Standard 5.3 - Litigation

The conduct of litigation should meet the following specific standards:

- 1. A clear, long-range strategy for prosecution or defense of the client's claim should be developed and should be periodically reviewed in light of new developments in the case and in the governing law.**
- 2. Pleadings should be drafted so as to preserve and advance the client's claim in accord with the requirements of applicable law. The degree of specificity of pleadings, absent a mandatory requirement of applicable law, is a matter for tactical decision.**

- 3. Motions should be considered to promote the successful, expeditious and efficient resolution of the litigation in the client's favor.**
- 4. Formal discovery should be utilized when appropriate to the case, should be thoroughly prepared, and should seek to obtain necessary information in a timely manner and in a useful format.**
- 5. All matters should be presented in a manner that is appropriate to the rules, procedures and practices of the tribunal, and that reflects thorough and current preparation in the facts and the law.**
- 6. When a favorable judgment, settlement, or order is obtained, necessary steps should be taken to ensure that the client receives the benefit thus conferred.**
- 7. A lawyer should remain aware of possible factual and legal bases for appeal from an adverse judgment or ruling, and should make a deliberate decision with appropriate client participation as to the need to preserve such issues for appeal in light of the overall litigation strategy.**
- 8. If there is an adverse appealable judgment or order a decision should be made whether an appeal is warranted. The decision should be based on:**
 - the merits of the client's appeal;**
 - the potential benefits and risks of pursuing the matter; and**
 - established criteria which reflect identified priorities and available resources of the provider or the willingness and ability of a private practitioner to undertake the appeal.**

The client should be advised at the outset of the representation that prosecution or defense of an appeal by the provider is not automatic. If the appeal is pursued it should be prosecuted or defended with all due diligence.

Commentary

Litigation is one of a variety of representation tools which may be used to address a client's problem. In many cases, clients seek legal help because they have been sued and thus are already involved in litigation. Many recurring legal problems of the poor, such as evictions, debts, consumer fraud, and family and custody matters, are traditionally the subject of litigation. The provider, however, should consider the advantages and disadvantages of litigation over other modes of representation as the appropriate means to resolve the client's problem.

Litigation has the advantage of providing the opportunity to obtain an enforceable order to remedy the client's problem. It often offers the most direct means to seek the client's objective.

On the other hand, in litigation, the client and attorney lose substantial control of the timing of representation efforts. Once the litigation is initiated, it may not be resolved for months or even years. Such a protracted strategy may neutralize the opportunity for more timely resolution through other legal means.

The conduct of litigation involves tactical and strategic decisions that make it difficult to lay down rules about what a lawyer should do in every case. In general, the practitioner must be diligent in researching all relevant facts, and legal theories in support of the client's claim or defense, and must be aware of procedural devices available to assert and protect clients' interests.

Standard 5.3-1 - Strategy

A clear, long range strategy for prosecution or defense of the client's claim should be developed, and should be periodically reviewed in light of new developments in the case and in the governing law.

Commentary

Litigation should be carefully and thoughtfully planned. Standards generally applicable to assessment and planning of all legal matters should have been employed by the practitioner and client in reaching the decision to litigate and should continue to guide the planning of litigation strategy. (See Standard 4.4 on Case Planning.) Development of an overall strategy for prosecution or defense of the client's claim should begin well before pleadings are filed. Legal research and factual investigation should have been sufficient to permit the lawyer to assess the strength and weakness of the case. (See Standard 4.2 on Information Gathering and Standard 4.3 on Legal Research and Analysis.)

The lawyer should understand how litigation will serve the client's objective. Timing of significant steps in the litigation should be carefully planned and, to the extent it can be controlled by the attorney, should be set for maximum advantage to the client. The plan should be periodically reassessed as the case progresses.

Long-range strategy planning should include the following:

- identification of facts that must be obtained through discovery and other means,
- identification of the legal issues involved to be researched, if necessary,
- assessment of the adversary's probable response to the client's claim and how it may be countered,
- an estimate of resources necessary and available to pursue the client's objective, and

- an estimate of the costs to the adversary and their possible impact on the willingness to compromise in favor of the client.

Early planning should include a thorough analysis of the case from the opponent's point of view so that the practitioner can anticipate the adversary's tactics and plan to counter them.

The attorney should proceed so as to be prepared if the client's claim or defense has to be established in a full hearing, and should base a long-range strategy on a realistic evaluation of likely success at that level. Frivolous claims or defenses should not be asserted with the underlying hope that the adversary will settle or that the matter can be delayed indefinitely. This is unethical, and seldom is successful. (See Model Rules of Professional Conduct, Rule 3.1; Model Code of Professional Responsibility, DR 7-102(A)(1) and (2).) A practitioner who proceeds from the outset on the assumption that the matter will go to trial will have an incentive to be well prepared and to advocate the client's interests forcefully. A clear commitment to go to trial can have a positive effect on settlement negotiations. An adversary who wishes to avoid trial may accept a settlement substantially more favorable to the client if the practitioner's resolve is clear.

Clients should be consulted regarding the planning of their cases. While certain tactical decisions require the litigator's use of professional judgment, major strategic decisions should be made in consultation with the client and the client should be informed of progress at each stage of the litigation. (See Model Rules of Professional Conduct, Rule 1.2(a), and Rule 1.4.) Lawyers should be aware of the extent to which their own attitudes about going to trial affect their judgment on strategy and should avoid manipulating the client's choice to meet their own concerns.

Legal matters which it is foreseeable may be appealed should be identified early to ensure that a sufficient record is made from the outset. If appellate review is likely, attorneys who will handle the case at each level should participate in developing strategy, if practicable.

Standard 5.3-2 - Pleadings

Pleadings should be drafted so as to preserve and advance the client's claim in accord with the requirements of applicable law. The degree of specificity of pleadings, absent a mandatory requirement of applicable law, is a matter for tactical decision.

Commentary

Generally, pleadings should be filed only after the lawyer has completed sufficient research and factual investigation to determine the most effective legal argument and the basis for the legal theory on which the client's position rests. In some circumstances, this is not possible. Some factual information may be obtained only through formal discovery which cannot take place until pleadings are filed. Immediate action may be necessary to protect the client's health or safety or to safeguard important rights. In such cases, pleadings should be prepared and filed based on available facts and preliminary research. When appropriate, subsequent motions to amend the pleadings should be prepared at the earliest opportunity, based upon a thorough factual and legal appraisal of the matter.

All elements of pleadings should be thoughtfully considered for their strategic and tactical impact on the case. Among other things, the following matters should be considered:

- The choice of parties should be based on their necessity to the case and their likely impact on such matters as the effectiveness of discovery or the breadth of available relief.
- The choice of forum should take into consideration jurisdictional limitations and the discretion of the forum to refuse the case.
- The choice of causes of action or defenses should take into account their import to overall strategy; potential impact on the court at trial, in negotiations, and on appeal; problems of proof; and the areas of discovery open both for the client and the adversary.
- The choice of remedies should be made from a broad range of available relief.

Pleadings should clearly set forth all necessary elements of the case required by applicable law. They should be typed neatly and correctly in compliance with pertinent court rules and should be filed in a timely manner. Court documents that are poorly prepared and presented can give the court a negative impression that may be difficult to overcome.

Standard 5.3-3 - Motion Practice

Motions should be considered to promote the successful, expeditious and efficient resolution of the litigation in the client's favor.

Commentary

Motion practice may be a key ingredient of an overall litigation strategy which can serve a variety of functions. First, motions can be the procedural vehicles by which the substantive issues in a case are reached and resolved.

Second, motions can be used to control the pace and direction of litigation and to maintain effective pressure on the adversary. If an adversary is tentative or poorly prepared, aggressive use of motions can result in early favorable settlement or in judicial rulings which improve the client's chances for ultimately favorable disposition of the case.

Third, motions can be used to protect the client's interest and to put the case in a posture which is more favorable to the client's cause. For example, a motion to consolidate trial on the merits with a preliminary injunction hearing may be essential to securing timely relief. Appropriate motions to compel discovery and for sanctions can be used to obtain from recalcitrant adversaries information to which the client is entitled in defense or prosecution of the case.

All motions and responses should be well researched and cogently argued. Where appropriate, motions may educate the court regarding the factual and legal basis for the case. This can be particularly important if the case involves an area of the law with which the court may be unfamiliar or may be unlikely to support the client's position without exposure to the legal basis for the claim.

The specific strategic purpose of each motion should be clear. Motions filed for frivolous or insufficient reasons are improper. Strategic planning also should anticipate adversarial motions and appropriate responses to defend the client's position effectively and to dispose the adversary toward favorable settlement.

Standard 5.3-4 - Discovery

Formal discovery should be utilized when appropriate to the Case, should be thoroughly prepared, and should seek to obtain necessary information in a timely manner and in a useful format.

Commentary

Formal discovery is an essential method for effective fact-finding and should be routinely used in contested cases unless there is a specific reason not to do so. Discovery may not be appropriate, for example, if there are no disputed facts.

Litigation strategy should include a discovery plan which identifies facts and information that must be obtained and their probable source. The client should be consulted, particularly with regard to potential discovery that may cause discomfort or inconvenience to third parties. The lawyer should use the least costly effective method to obtain the needed facts. For example, interrogatories and requests for admissions are relatively inexpensive. They may be inadequate to probe into an area of disputed facts, but they can isolate those areas in which direct questioning in a deposition may be necessary, thereby reducing the overall cost of a deposition. Use of mechanical recording instead of a stenographer can significantly reduce the costs of depositions. If the attorney intends to transcribe the depositions for use at trial, however, nonstenographic

means may not be practical, given the cost of secretarial time for transcription and the difficulty of obtaining quality recordings which separate and identify all speaking participants.

The lawyer should establish a tentative time frame for pursuing discovery. Generally, it should be undertaken as soon as possible to assure all pertinent facts are obtained well in advance of trial. In some cases it may be delayed for strategic reasons to maximize the possibility of settlement or to avoid premature disclosure of litigation strategy.

Discovery should be carefully prepared so that it elicits unambiguous responses to the questions that are put. Information obtained should be thoroughly and thoughtfully analyzed to permit follow-up to clarify ambiguities and to pursue new avenues of inquiry which may be opened. Written discovery provides ample time for such analysis and follow-up. Oral discovery through depositions requires skill in the examination of witnesses for effective pursuit of an issue.

Attorneys should know and scrupulously adhere to the rules of procedure and their application in the locale in which the litigation takes place. Local custom and practice frequently relax strict compliance with formal rules regarding discovery, and sanctions, particularly with regard to time periods and motions to compel discovery, may be disfavored. If the more relaxed standard does not prejudice a client's interests, the practitioner may follow local custom. The lawyer should make certain, however, that an adversary does not use local custom to avoid responding to a legitimate request for discovery. If this occurs, the practitioner should advise the adversary of the intent to enforce strict compliance with all pertinent rules and should proceed to do so.

Responses to an adversary's discovery efforts should be prompt and straightforward. Answers should be honest and responsive to the question put, but they should be carefully and thoughtfully prepared to prevent inadvertent, damaging disclosures and admissions.

Formal discovery should be used in concert with informal investigation. Discovery can be used to obtain facts and information as well as documents which would not be voluntarily disclosed. Because information is supplied under oath, an adversary can be pinned down to a particular version of the facts and later deviations can be effectively impeached by the prior sworn statements. Formal discovery can create a more permanent and official record and, in specific circumstances, may be directly admissible as evidence.

Some information, on the other hand, is more readily obtained through informal investigation. There are some disadvantages to formal discovery which limit its use for obtaining facts. Unless very carefully drawn, it can yield indirect or deliberately misleading answers. Formal discovery can be time-consuming and expensive. Information not specifically sought is generally not volunteered. The casual and natural interchange that can take place with informal investigation, on the other hand, may provide unexpected and useful disclosures. Facts obtained through investigation which may be disputed should also be sought formally through discovery to enhance their utilization at trial.

The provider should train its lawyers in the effective use of discovery and should insure its regular use. Practitioners should be trained in effective fact finding techniques, examination skills, and the use of depositions. Model interrogatories and requests for admission should be developed to provide guidance for discovery in cases with recurring issues. The provider should develop form motions for approval of the taking of depositions by nonstenographic means and should seek court permission for their use, if necessary. It should maintain form files for all other motions and documents appropriate to discovery.

Standard 5.3-5 - Trial Practice

All matters should be presented in a manner that is appropriate to the rules, procedures and practices of the tribunal, and that reflects thorough and current preparation in the facts and the law.

Commentary

The keys to effective trial advocacy are trial preparation, anticipation and presentation. Two kinds of preparation are pertinent. First, the litigator should be thoroughly trained in the effective use of trial skills and should fully understand rules of evidence, procedure, and local practice. Trial skills include examination of witnesses, oral argument to the judge and jury, jury selection, introduction of evidence, and preservation of the record.

The second type of preparation applies to the particular case and requires that the practitioner be fully familiar with all available relevant facts and legal issues. The lawyer should be fully prepared to present forcefully and cogently all legal arguments that support the client's position and should strive to be the most informed person in the courtroom. Fully prepared litigators should have a clear sense of the version of the facts to be presented to the judge and jury and how they will be introduced. They should also have a clear sense of the flow of the trial and should determine the timing and sequence of presenting testimony and other evidence so that the judge and jury have a compelling, cogent picture of the client's case. Witnesses should be thoroughly prepared to assure they can recall important facts about which they will testify and to reduce any anxiety they may feel about the trial.

There is a more subtle aspect of the individual practitioner's preparation for trial. The lawyer should be familiar with the environment in which the trial will occur and should make affirmative efforts to establish good working relationships with clerks, court stenographers, and other personnel of the court. Court personnel can be a useful resource to the lawyer in understanding local customs and specific events that impact the progress of the litigation.

The practitioner should be able to anticipate factors which will affect the outcome of the trial. The lawyer should be aware of the facts and arguments that are likely to have the most impact on the judge or jury hearing the matter. The adversary's case should be anticipated. The practitioner should know how damaging testimony will be countered or rebutted and what

arguments will be used to make the client's version of the facts more credible. Disputes regarding the admissibility of evidence should be anticipated and the arguments for admission or exclusion should be at hand.

If resources allow, effective trial practice can be enhanced, particularly in major cases, if more than one lawyer is involved in preparing and presenting the case. This provides opportunity for consultation as the case proceeds and increases the practitioner's capacity to respond to unexpected developments.

Standard 5.3-6 - Enforcement of Orders

When a favorable judgment, settlement, or order is obtained, reasonable steps should be taken to ensure that the client receives the benefit thus conferred.

Commentary

Effective representation of a client does not necessarily stop when a favorable judgment or settlement is obtained. The lawyer should take reasonable steps to assure that the adversary complies with the order, judgement, or settlement. Enforcement strategies should be part of long-range case planning from the outset of any litigation, including consideration of the predictable cost of enforcement. The relief sought in pleadings and at trial should be structured with an eye to enforceability and with specific plans for follow-up.

The provider should recognize those situations in which remedies obtained by litigation may benefit other clients. In such circumstances, steps should be taken to realize the benefits that result from its legal work for all clients whose interest may be affected. If an order is obtained that involves a class of persons, the provider should seek to have all affected persons notified and should enforce compliance.

Occasionally, particularly in complex matters, enforcement of compliance will become an extremely costly, long term endeavor that may be beyond the resources of the provider to pursue. To the extent that such costs are predictable the provider should by prior agreement at the onset of the representation establish with the client an understanding of the limits on what the provider will undertake on the client's behalf. (See Rule 1.2(c) of the Model Rules of Professional Conduct.) If otherwise consistent with the ethical duty owed to the client, a practitioner may withdraw from representation, if the continued representation will impose an unreasonable financial burden. (See Rule 1.16(b)(5) of the Model Rules of Professional Conduct.)

Standard 5.3-7 - Preservation of Issues for Appeal

A lawyer should remain aware of possible factual and legal bases for appeal from an adverse judgment or ruling, and should make a deliberate decision with appropriate client participation as to the need to preserve such issues for appeal in light of the overall

litigation strategy.

Commentary

Effective appellate work begins with initial case planning and continues throughout the case. Even though only a small percentage of cases are subject to appellate review, all cases should be treated as if they may be appealed. Attorneys should create a record at the trial or hearing level which will sustain positions taken on appeal. They should anticipate factual and legal issues that may be important upon review and should assure that they are raised properly and in a timely manner. New issues will arise during the proceedings as a result of rulings on motions and on the admissibility of evidence. Lawyers should make timely objections and offers of proof when necessary to assure the reviewability of issues which may affect the outcome of the appeal.

Standard 5.3-8 - Appeals

If there is an adverse appealable judgment or order a decision should be made whether an appeal is warranted. The decision should be based on:

- **the merits of the client's appeal;**
- **the potential benefits and risks of pursuing the matter; and**
- **established criteria which reflect identified priorities and available resources of the provider or the willingness and ability of a private practitioner to undertake the appeal.**

The client should be advised at the outset of the representation that prosecution or defense of an appeal by the provider is not automatic. If the appeal is pursued it should be prosecuted or defended with all due diligence.

Commentary

The provider should make clear to clients at the outset of representation that appeals are not automatic and that a separate decision on whether to represent the client on appeal will be made, if necessary. In part that decision will depend on whether the trial or hearing has been handled by the provider or has been assigned to a private practitioner.

Appeal by a Private Practitioner

If the client was represented at the trial or hearing by a private practitioner who assumed full responsibility for the case, then that attorney should make the initial decision whether an appeal is warranted. (See Standard 3.3 on Responsibility for the Conduct of Representation.) If such a practitioner determines to undertake the appeal on the same basis as that on which the

initial representation was initiated, then the provider has no additional responsibility except to offer such assistance or support as may be required. If the private practitioner declines to prosecute the appeal, the matter should be promptly referred back to the provider for consideration of whether it will handle the appeal, unless the client has made an informed decision not to pursue the matter further. In any event the provider should be informed of the outcome of the trial or hearing and the decision as to the appeal.

The Provider Should Make a Deliberate Decision Whether to Appeal

If the responsibility for representation at the trial or hearing was borne wholly or partly by the provider, the appeals decision should be made by it. A decision to prosecute or defend an appeal requires a deliberate evaluation by the provider which considers the following criteria:

- the client's desire to proceed,
- the likely outcome on appeal,
- the potential benefit and risk to the client,
- the resources of the provider required for prosecution of the appeal, and
- the relationship of the issue to established priorities. (See Standard 6.1 on Identifying Client Needs and Objectives.)

Application of these criteria should involve the practitioner then responsible for the case and other provider lawyers experienced in appellate work as well as provider supervisory or managerial personnel. A case may not be appealed without the client's specific authorization. A client's desire to appeal, however, does not automatically require that the provider pursue the matter.

The provider should make a professional judgment about the likelihood of success on appeal, taking into consideration the standards of practice at the appellate level and the reluctance of appellate courts to invade the discretion of the lower courts. This requires more extensive evaluation of pertinent law to determine whether the client's position can be successfully asserted in a higher court. The provider should not resist an appeal which depends upon an extension, modification or reversal of current law, but the legal research and analysis should be reexamined to assure a good faith basis for the legal position asserted. (See Model Rules of Professional Conduct, Rule 3.1.) In addition, the provider should carefully analyze the legal conclusion of the lower court for any misapplication of accepted law.

Not all adverse decisions at a trial level are entirely unfavorable. Frequently a client may lose an important issue but be successful on others. An appeal could risk losing ground gained at the lower level. Such possibilities need to be explained to the client in the course of making a decision whether to appeal.

In deciding whether to prosecute an appeal the provider should consider the costs to it in terms of both dollars and personnel resources. The provider should be cognizant of the additional costs it may incur in the preparation of transcripts and printed briefs, if they are required, and in presenting the case before an appellate court which may be located at a considerable distance.

These cost factors should be considered in light of the relation between the issue involved in the appeal and the priorities determined by the provider for allocation of its resources. An issue which was appropriate for representation at the lower level may not be of sufficient import or may not have been decided in such a way as to justify the investment of resources necessary to undertake a successful appeal.

At times the provider may determine that there is merit in an appeal which the client desires to pursue, but the provider may conclude that the appeal is not a prudent expenditure of its resources. In such cases, the provider should consider whether there are other ways by which the appeal might be prosecuted, and should seek to refer the client to other assistance if possible. Among such alternatives would be state and national support centers, other providers and the private bar.

In the event that the provider determines not to represent the client on appeal, it should nevertheless inform the client of the right to appeal. If necessary, it should assist the client to file a notice of appeal to assure that the right is not lost while the client seeks other counsel.

Practitioners Should Meet the Standards of Practice at the Appellate Level

Appellate advocacy requires particularly careful research and cogent written and oral argument. Appellate courts subject legal argument to rigorous and probing analysis. Appellate judges may have significant resources in the form of law clerks and assistants to research and analyze in depth the legal theories which are presented. Some issues may be more thoroughly analyzed on appeal than at trial because of their particular significance to the appeal. In addition, new legal issues may arise regarding the authority and jurisdiction of the appellate court.

Appellate courts strictly enforce their rules of procedure and practice. Many court rules of procedure are jurisdictional and failure to comply may be fatal to pursuit of the client's claim. Practitioners should be fully aware of all deadlines for filing notices of appeal, motions, briefs, and abstracts and transcripts of the record. They should also know the requirements regarding form and style of briefs and other documents.

Because of the high standards of practice involved and because rulings of appellate courts have substantially wider presidential importance, practitioners pursuing an appeal should have training which specifically prepares them for appellate advocacy. The practitioner who handled the case in lower court should seek the assistance of others experienced in appellate work and in the substantive law at issue. If necessary, more experienced attorneys should be assigned primary responsibility for handling the case on appeal to assure proper pursuit of the matter and to teach an inexperienced practitioner the requisite skills and knowledge. Whenever necessary, practitioners should seek and accept help from experienced individuals and institutions outside

the provider, including private practitioners and state, regional and national support centers with acknowledged expertise in the area in question.

Standard 5.4 - Administrative Hearings

Representation of clients in adjudicatory administrative hearings should be effectively carried out in a manner appropriate to the procedures and practices of the hearing tribunal.

Commentary

Because many legal problems of legal services clients involve disputes with government agencies regarding public benefits, a large number of contested cases are heard first, and often exclusively, in an administrative proceeding before an agency hearing officer. Practitioners should approach administrative hearings with the same dedication to high quality legal work which characterizes all litigation efforts. The client's case should be thoughtfully and clearly presented. The practitioner should be fully familiar with all the facts and law in the case, including those the adversary will present. Adverse facts and law should be anticipated and countered. The practitioner should make as complete a record as necessary for possible review by a court or higher tribunal. In many areas of the law which directly affect poor clients, such as public benefits, representation by non-attorney practitioners in administrative hearings is specifically authorized by law. Such work should be supervised by an attorney to assure its quality and that issues which may be litigated are properly preserved. (See Standard on 6.3 on Use of Non-attorney Practitioners.)

The practitioner should thoroughly understand hearing practice before the agency. Administrative practice is often relatively informal with few established rules of procedure. Advocacy should be appropriate to the level of formality, and should strive to use the flexibility of such proceedings to the client's advantage. For example, in administrative hearings, the rules of evidence are generally relaxed and practitioners may have wide latitude to affect the scope of testimony and evidence which is introduced.

Adjudicatory administrative hearings generally will not offer the same opportunity for formal discovery as is available in judicial proceedings. Nevertheless, practitioners must obtain as much information as possible from the adversary. The means available for discovery are usually a matter of local practice with the administrative agency. A welfare agency, for example, may permit full access to the client's case file, subject to a written release from the client. Frequently, discussions with the caseworker will be a valuable source of information regarding key facts and the position asserted by the agency. Such discussion may also overcome the caseworker's opposition to the client's claims and may even establish the worker as a potential ally regarding key issues in the hearing.

The importance of legal argument in administrative hearings may vary widely. Frequently, hearing officers have limited authority or inclination to apply law beyond the

regulations of the agency. Often there is no systematized procedure for formally raising legal issues in writing. While this may make it difficult for some practitioners to present a compelling case, it can have a strategic advantage because it provides latitude to raise issues orally through the course of the proceeding. The practitioner should cogently present the legal basis for the client's claim in every case and should preserve the record for later review if necessary.

Standard 5.5 - Administrative Rule-Making

If representation before an administrative body regarding the adoption of rules, regulations, and orders of general application is appropriate to achieve client objectives, a legal services provider should strive to provide such representation proficiently if permitted by law and consistent with provider priorities.

Commentary

Many administrative agencies adopt rules, regulations, and orders of general application that have significant lasting impact on the poor. Representation of clients in such proceedings can be a more efficient way to address important issues than costly and complicated litigation to challenge an adverse regulation after it is adopted. Some policies, such as those governing the administration of public assistance programs, are specifically directed to clients. Other policies of more general applicability, such as approval of rate structures by a public utility commission, also may have important implications for legal services clients. Some clients may seek assistance to pursue an objective that can only be achieved through application for a rule change before an administrative agency.

The governing body of a legal services provider should, in establishing provider priorities, determine whether the provider will represent clients in procedures which involve administrative rule-making. (See ABA Formal Opinion 334 (1974) and Standard 6.1 on Identifying Client Needs and Objectives.) Some legal services providers will elect not to engage in administrative rule-making because they may lack sufficient resources or do not have the expertise necessary for such representation. Each client must be advised at the initiation of representation of any limitations on the type of representation that the provider or its practitioners will undertake on their behalf. If the objective that the client seeks can best be achieved through administrative representation, and the provider does not engage in it, the client should be referred to another provider that can represent the client.

When such representation is undertaken, it should be guided by the following considerations. Representation in administrative rule-making should be forceful and affirmative. Practitioners should not be limited merely to reacting to rules proposed by others but should consider presenting reasonable alternatives which assert clients' interests. When effective representation of a client requires it, a practitioner may properly initiate proposed rule changes that achieve the client's objective.

Administrative Appearances Are Appropriate on Behalf of Clients In Response to Requests

from Public Officials, or In Regard to Matters That Directly Affect the Provider

A provider may undertake administrative advocacy on behalf of a specific client or client group. Although relatively relaxed rules on intervention may make it possible to intervene formally in a hearing without naming a specific client, the provider should do so only on behalf of clients who have determined that the issue warrants the effort.

A legal service provider may advise clients of matters affecting their interests which are being considered by relevant administrative agencies. Individual clients may not be aware of proposed rules or orders, which a provider may learn about in the course of client representation, through informal contacts with agency personnel or through formal notification by the agency itself.

If an administrative agency or one of its officials requests that a provider comment on a proposed rule or order, it should do so if the matter affects a provider priority. Consideration by an administrative body of an issue which would affect the operation or funding of provider warrants participation by the provider in the administrative proceeding. Some rule making procedures may be well adapted to direct testimony and argument by clients. Where appropriate, practitioners should seek procedural rulings which will facilitate direct client participation, reducing their dependence on the provider for representation.

Representation Should Be Appropriate to the Procedures, and Practices of the Administrative Body

Procedures and practices vary widely among administrative agencies. Some matters may be governed by longstanding rules of procedure. Others may be subject to ad hoc rules adopted for the particular matter being considered. The practitioner should know the pertinent procedures in the proceeding at hand. If rules are fashioned during the course of a hearing, the practitioner should oppose procedural requirements which may prejudice the client's case.

Some rule-making procedures may be well adapted to direct testimony and argument by clients. Where appropriate, practitioners should seek procedural rulings which will facilitate direct client participation, reducing their dependence on the provider for representation.

An administrative agency may consider many factors beyond the legal issues involved in rule-making. It may be particularly sensitive to political and economic considerations that are not directly apparent in the hearing record. The practitioner should anticipate the factors that motivate the decision-makers and tailor the representation accordingly. For example, if budget considerations are the agency's first concern, the practitioner might demonstrate the hidden economic costs of an adverse ruling.

Administrative representation should be tailored to the legal sophistication of the administrative agency and the complexity of the matter being considered. Some matters, such as public utility hearings regarding rate structures, are extremely complex and involve a well-established body of law and financial analysis. A practitioner should enter such proceedings

only with a full understanding of the conceptual framework in which the matter is being considered and with a strategy that is responsive to the agency's principal concerns. If, on the other hand, the practices of administrative agency are informal and the matter being considered is not complex, the practitioner should avoid over arguing legal points and stretching the tolerance of the agency.

Standard 5.6 - Legislative Representation

If representation before a legislative body is appropriate to achieve client objectives, a legal services provider should strive to provide such representation proficiently if permitted by law and consistent with provider priorities.

Commentary

The legislative process is an essential part of the legal system. At times, it may present the most efficient way to represent the interests of clients. By representing clients before a legislative body while a law is being enacted, for example, a provider may be able to avoid repetitive litigation to interpret a statute which affects its clients. In some situations, only legislative action will resolve the clients' problem. The Code of Professional Responsibility and the Model Rules of Professional Conduct recognize the special role of attorneys in representing clients' interests before legislative bodies and in improving the administration of the system of justice. (See Model Rules of Professional Conduct, Rule 9; and Code of Professional Responsibility, Ethical Considerations 8-1 and 8.2.) Legal services practitioners, because of their representation of the poor may provide an important perspective regarding laws that are being considered for enactment.

The governing body of a legal services provider should, in establishing provider priorities, determine whether the provider will engage in legislative representation. (See ABA Formal Opinion 334 (1974) and Standard 6.1 on Identifying Client Needs and Objectives.) Some legal services providers will elect not to engage in legislative representation because they do not have the expertise necessary for such representation or may lack sufficient resources. Limitations imposed by funding sources may circumscribe the extent to which a provider may engage in such activity. Each client must be advised at the initiation of representation of any limitations on the type of representation that the provider or its practitioners will undertake on their behalf. If the objective that the client seeks can best be achieved through legislative representation, and the provider cannot represent the client, a referral should be made to another provider that can represent the client.

Legal services providers which elect to engage in legislative representation should be aware of the implications of the activity. If they operate as a tax exempt organization, they should ensure that they comply with the requirements of the Internal Revenue Code and accompanying regulations.

From time to time legislative officials may request a legal services provider to comment

on or evaluate a matter before it. It is particularly appropriate for the provider to respond to such requests if they regard matters which fall within provider priorities. Similarly, when legislative bodies consider measures which impact upon operations or funding of a provider, it has an obvious interest in such deliberations, and can offer unique insight into the effect of the measure under consideration.

Legislative Representation Should Be Appropriate to the Legislative Process

Effective representation of clients before legislatures involves the same lawyering skills as representation in judicial forums, including careful fact-gathering and legal analysis, as well as direct advocacy of the client's interests. Each legislative body will have its own set of procedures governing consideration of legislation. However, key decisions are often made outside the formal legislative process. An effective legislative practitioner should understand and operate within both the formal and the informal decision-making processes and should interact well with all of the actors involved. A practitioner appearing before a legislature should comply with the laws pertaining to the registration of lobbyists, if applicable.

Legislative practitioners should understand the informal processes and the need to develop credible relationships with legislators. They should be cooperative and responsive to requests for information and assistance from the legislature. Practitioners should maintain effective relationships with staff who play an important role in the legislative process.

Legislatures respond to a variety of constituencies, some of which are far more influential than others. A legislative practitioner should be aware of other interests which may be affected by their clients' position and consider aligning their representation efforts with those of groups, institutions, and individuals who share their clients' objectives.

A legislative practitioner can be particularly effective in analyzing the long-term impact of legislation. Many legislators do not have the time to evaluate the wide ramifications of legislation being considered. An incisive analysis of proposed legislation on behalf of clients may demonstrate an effect beyond or contrary to the intent of the legislature and can have significant impact on the outcome of the legislative process.

Legislative intent is often not clear, either to clients affected by changes in the law or to agencies responsible for implementing them. The provider should be prepared to interpret newly enacted legislation for clients, when appropriate, so that they are aware of newly established rights, can take steps to avoid the consequences of negative policy changes, and can act if legislation is misapplied to their detriment.

Standard 5.7 - Community Legal Education

When consistent with its priorities, a legal services provider may undertake community legal education which responds to client needs, advises clients of their legal rights and responsibilities, and enhances the capacity of clients to assist themselves

collectively and individually.

Commentary

Community legal education which is linked to the provider's overall legal work effort can be a cost effective way to address client needs. A legal services provider should decide as a matter of policy if it can best serve client needs by engaging in community legal education. (See Standard 6.1 on Identifying Client Needs and Objectives.) If a provider undertakes community legal education, it should be guided by the following considerations.

Community legal education has great potential to benefit a number of clients cost effectively. Individuals may learn about their legal rights and responsibilities in order to avoid legal problems. Individuals may be taught to represent themselves before appropriate administrative agencies and courts, such as small claims and housing courts that are designed for pro se representation. Staff and volunteers for community organizations may be taught to provide lay assistance for clients in appropriate circumstances. Community legal education may be used to increase clients' ability take a more active independent role in decision-making processes that affect them. In addition, it can increase general awareness of problems facing clients, improve public opinion regarding the poor, and enhance the provider's institutional credibility.

The provider should recognize that community legal education can generate increased demand for services. Ideally, community legal education should be integrated into the service delivery scheme of the provider so as to complement the direct representation of clients in priority areas. The following are examples of such integration:

- On matters where direct representation is limited as a result of provider priorities, community legal education may teach clients to take steps themselves to resolve their problems.
- On some issues, a provider may adopt a strategy which involves both direct client representation and community legal education. For example, community legal education may advise clients of a result achieved through direct representation, so that its benefits reach those to whom it applies.
- Community legal education may advise clients that a specific problem, which may not traditionally be recognized as having a legal remedy, is amenable to a legal solution.
- Community legal education may keep clients informed of the provider's activities and of the availability of its services.

Private practitioners can significantly enhance a provider's community legal education efforts. Private attorneys often participate in community legal education seminars to discuss issues such as mortgage foreclosures, consumer matters, bankruptcy, probate and wills. Many bar associations sponsor their own community legal education programs. A provider should work

cooperatively with such efforts to enhance the effectiveness of its own efforts as well as those of the bar. Community legal education is valuable only if it actually conveys the desired information to clients and teaches them how to use that information. The provider should consider the following factors in choosing a particular community legal education technique:

- the literacy and sophistication of the client population,
- the predominant language or languages used by clients,
- the geographic dispersion of clients in the service area,
- available resources, including its own staff and available private practitioners as well as public service time or space on television or radio stations and other media, and
- the skills or information being conveyed.

Standard 5.8 - Economic Development

When consistent with its priorities, a legal services provider may represent eligible clients in the creation and operation of entities designed to address their needs. Such representation should be provided by practitioners who have expertise in pertinent substantive law and the requisite skills to achieve client objectives.

Commentary

Many common legal problems of clients arise from the lack of services to meet their needs. Frequently the required services can be provided through the creation of organizations, incorporated or not, which are designed for that purpose. Representation of clients in the creation of such organizations is sometimes referred to as economic development.

Economic development in this sense may take many forms. For example, clients might identify the lack of adequate long-term health care facilities for the elderly and seek to create an enterprise to provide home health care for persons who need it. Tenants in a low cost housing project may desire to create a tenant organization to enforce rules or regulations to improve living conditions. In a community where employment opportunities for single parents are limited by the lack of low cost day care, the provider might assist clients in the development of an enterprise to provide such care.

The resources of the provider should not be used to assist clients in such economic development if the required services can be obtained from a private lawyer on a fee or pro bono basis or where doing so would lead to unnecessary competition with ongoing businesses. While such entities will ordinarily be not for profit, they may operate as profit-making enterprises if necessary to provide the required service. Group eligibility requirements, provider priorities and

consideration of the feasibility of undertaking such projects will generally serve to limit provider participation to appropriate projects. A decision to undertake economic development involves a significant resource allocation question and should be made in the context of the provider's planning efforts and priority setting. (See Standard 6.1 on Identifying Client Needs and Objectives.) Such representation may include advice and counsel on the formation and operation of enterprises, representation on issues related to incorporation and taxation, and negotiation and drafting of loan agreements, leases and contracts. Economic development presents unique problems of resource allocation since it may not represent a high volume demand on provider resources and may require practitioners whose skills are not readily transferable to other areas of provider representation. If undertaken, the provider should offer training and support tailored to the unique skills and substantive knowledge which economic development requires.

Practitioners engaged in economic development should be effective working with groups and understanding the dynamics of relationships within and among groups. In addition, such practitioners should be proficient in the substantive law pertinent to the area. They should understand the operation of businesses and corporations, as well as banking and financial markets, and should be familiar with the agencies, boards, major corporations, and other decision-makers that substantially affect local and regional development.

Economic development of the nature described is an area where private attorneys can be particularly helpful if their practice involves related issues. Private attorneys whose practice consists largely of corporate clients, for example, can make a unique and important contribution to such representation. They can also assist the provider to gain access for clients to institutions and individuals who can provide assistance.

VI. Standards for Provider Effectiveness

Introduction

The effectiveness of a legal services provider is ultimately measured in terms of its success in providing representation that responds to the identified legal needs of its clients and accomplishes results that reflect their objectives. This means that the provider should:

- Identify the most important legal needs and objectives of its clients;
- Establish priorities and undertake representation that responds to those needs and meets those objectives;
- Maintain an institutional structure which maximizes the efficiency and effectiveness of its service delivery for clients; and
- Develop institutional stature and credibility that enhance its ability to serve clients.

A provider's resources typically are inadequate to address fully all of the important needs that clients identify. Inevitably, difficult choices must be made about where resources will be concentrated. Not all cases can be taken, and not all clients can be served. To maximize its effectiveness for its clients, a provider should seek to allocate its resources to address those legal problems which clients identify as most significant to them. While a provider can simply allocate its resources on a first-come, first-served basis without regard to the gravity of the problem presented, to do so invites the depletion of its resources on relatively insignificant problems, while more serious legal problems affecting clients go unaddressed. It is preferable for a provider to have a rational basis for allocating the scarce legal resources available for the poor.

Nevertheless, effectively identifying and responding to overall client needs can be a difficult task. There are many competing interests among clients, and no one group or individual represents them all. Some individuals and groups that purport to speak for clients have more legitimacy than others. With some client groups, it may be difficult to obtain any articulated statement of overriding needs. Moreover, the relative importance of particular client needs shifts with changes in the general society and in the laws and policies which affect the poor.

In spite of these difficulties, the provider should seek to maintain an awareness of the legal needs of clients and to provide legal services which respond to those needs. Effective client participation on the governing body and formal client participation in decision-making will contribute to this objective. (See Standard 7.2-2 on Client Board Members and Standard 7.3 on Communication with Clients.) Often more is required, however. Provider capacity to identify and respond to client needs will be enhanced through interaction with clients by its practitioners, management and staff; through periodic comprehensive planning to establish provider priorities related to client legal needs; through effective interaction with the bar and legal community; and

through regular appraisal of the results of representation.

The Standards recognize that ongoing interaction with clients may be difficult for some providers and for individual private attorneys who are primarily engaged in their own practice. The means by which a provider keeps aware of the needs of its clients will, therefore, vary. All legal services providers should strive to maintain effective communication with the client population to the extent feasible given the provider's institutional structure.

Standard 6.1 - Identifying Client Needs and Objectives

A legal services provider should interact effectively with poor persons in its service area to be aware of their legal needs; and based on that interaction and other relevant information should engage in comprehensive planning to establish priorities for the allocation of its resources.

Commentary

A legal services provider typically has severely limited resources to address the competing demands and overwhelming needs of its potential clients. To the extent that its resources are outweighed by demand, a provider should seek to allocate those resources to provide representation which addresses problems which most widely affect its clients. To do so requires some means to identify the legal problems which are most significant to clients.

An important ingredient of a provider's maintaining an awareness of clients' legal needs is its communication with them. One obvious avenue for such communication is the intake process, where by definition pressing legal problems of clients are presented. For many providers, other means of assessing client needs will be important, as well. A legal services provider should seek to have a clear understanding of the range of legal problems confronting its potential clients to allow it to develop a policy regarding which cases it will accept (See Standard 2.2 regarding Case Acceptance Policy.), and to appraise the extent to which it is reaching poor persons with significant, known legal problems.

Different legal services providers will have differing needs and capacities to communicate with potential clients through avenues other than intake. Several factors are significant:

- The institutional structure of the provider. Some providers operate primarily or exclusively to represent the poor, while others undertake such work as one of a number of diverse activities. Some providers have a large central staff, including full-time attorneys, while others operate largely with volunteer or partially compensated private lawyers who devote only a small portion of their time to legal services work. Providers which only incidentally provide such services, or operate with small staffs may not have the capacity to engage in substantial interaction with clients other than through intake. Full-time staff programs on the

other hand have significantly greater capacity, and commensurately greater responsibility to interact with clients and client groups in a variety of ways.

- The availability of other resources to serve clients. Various organizations coordinate the efforts of bar associations and individual practitioners to provide pro bono and reduced fee representation to the poor. Many work cooperatively with a federally funded legal services provider and seek to supplement the service provided by that organization. To the extent that a provider serves as the primary source of legal services for the poor in an area, it has a greater responsibility and need to consider the difficult resource allocation questions, on which the need for interaction with the eligible client population is premised. Thus, organizations which coordinate pro bono efforts to supplement other available services have less need (and generally less capacity) to engage in a full range of activities to interact with clients. Such organizations, however, should seek to cooperate with providers which do maintain many lines of communication with clients and client groups, to draw upon the insight and knowledge of such organizations.

- The nature of the service provided. Some providers are organized for a specific purpose, such as to provide representation in a discrete, predetermined area such as consumer debt or divorce. Some are organized to respond to the availability of volunteer private attorneys who offer services in an area in which they have specialized expertise; services which would not be offered in another substantive area. Legal services providers organized for such a focused purpose have less need to engage in a dialogue with its clientele regarding the substantive issues facing it than do providers established for a broader purpose.

To the extent that a provider has a central staff engaged in the direct delivery of services, and operates as the primary provider of legal services to the poor in its service area, it should seek to establish a variety of means to communicate with clients generally to meet the objective of the Standard.

Provider Communication with Clients

Interaction with clients regarding a provider's legal work involves an ongoing process. Regardless of the effectiveness of formal planning, a provider may never be fully aware of or understand all the needs and objectives of its clients, if its contacts with them are exclusively limited to the office setting. Consistent with the limitations discussed above, a provider should seek to interact with individual clients and client groups through other means. There are several reasons for such interaction.

First, the circumstances and legal needs of its clientele change constantly. The provider needs to recognize these changes, and to adjust its representation efforts, if appropriate.

Second, poor persons may not recognize that many of the problems they face present legal issues. Advising clients of legal actions which they may take is consistent with a lawyer's

responsibility to assist laypersons in recognizing legal problems. It is appropriate for a legal services provider to initiate advice to clients regarding the existence of a legal right of which they are unaware, if the advice is motivated by a desire to protect the clients, and is not motivated by the desire for personal benefit or to obtain publicity. (See ABA Formal Opinion 334, p. 4 (1974).)

Third, clients' perceptions of the provider's priorities may limit the nature of the problems for which they seek assistance. Effective communication with clients allows a provider to keep the client population informed regarding the services that it offers.

Full time legal services practitioners can interact with clients in several ways. Representation of individuals and groups provides the most immediate opportunity. Frequently, representation of groups requires interaction outside the office. To gain the full confidence of a group and to understand its objectives, a practitioner needs to interact with more than just the leaders or spokes people who formally seek assistance. Client eligible members of a provider's governing body may also provide insight into the range of legal problems which clients confront in the provider's service area.

Full time provider practitioners may also maintain informal contact with client groups and leaders outside the context of specific representation. Attendance at meetings and other community activities, where appropriate, can allow practitioners to be familiar with issues affecting clients.

To the extent possible, the provider should strive to assure that its contacts are not limited to one segment of its clientele. Open relations with a number of client groups can expose the provider to a wide spectrum of problems confronting clients and avoid improper dominance by a single issue group.

Many factors influence the feasibility of the type of interaction and communication envisioned here. For some providers such interaction will be impracticable. Bar sponsored programs which rely primarily or exclusively on volunteer or reduced fee lawyers, for example, may find it impractical or impossible to engage in extensive interaction with clients beyond that which occurs in the direct representation of individual clients. The examples given, therefore, are illustrative. They point to the underlying principle to be served, which is to strive to be aware of the most pressing legal needs of clients, generally. That awareness, in turn, enhances the capacity of the provider to make rational choices regarding its operation, encourages appropriate planning, and facilitates the establishment of provider priorities.

Comprehensive Planning and Priority Setting

Identification of the legal needs that clients consider most important provides the basis for a provider to plan comprehensively to meet those needs. The extent of the need for comprehensive planning and priority setting by a provider is subject to the same considerations that govern how extensively a provider needs to engage in ongoing interaction with clients. Issues related to institutional structure, relationship to other service providers, and pre-established and specialized focus of legal work may mitigate the need for such efforts. All legal services providers, however, should be rationally organized and effectively administered to achieve their objectives.

There is no one best approach to planning and priority setting in legal services. However, provider experience has identified two fundamental characteristics which enhance the success of any planning process. The first is, where possible, to provide face-to-face interaction and discussion among potential clients, the governing body, staff and private attorneys engaged in delivering services. Ideally, clients concerned with a broad range of issues should participate and key segments of the community should be represented, if possible, with regard to ethnicity, race, sex, age, handicap, and geographic location. Particular efforts should be made to obtain representation of the interests of individuals with compelling legal needs who are physically unable to participate in the planning process, such as the institutionalized, the homebound and children. The provider should seek guidance from other organizations, such as public defender offices and social service agencies, which serve the poor. It should also consult with bar associations and private practitioners regarding the legal needs of clients in its service area.

The governing body generally has the ultimate responsibility to adopt the plan and priorities and to assure their implementation. Staff and private attorneys providing direct service should be involved because they have valuable insight into clients' legal problems and the viability of representation which may be considered to resolve them. Equally important, provider practitioners and staff should share a common commitment to implement the plan which is adopted.

Second, planning and priority setting should result in a priorities statement sufficiently specific to guide the provider's decisions regarding delivery structure, case acceptance, resource allocation, and provider operation. The priorities established may identify broad categories of cases that the provider will accept for representation, may focus resources on specific issues, and may limit the types of representation that the provider will undertake. (See ABA Formal Opinion 334, pp. 8-9 (1974), Informal Opinion 1359 (1976), Standard 2.2 on Case Acceptance, Standard 5.3-8 on Appeals, Standard 6.2 on Delivery Structure, and Standard 6.5 on Results of Representation.)

Standard 6.2 - Delivery Structure

The provider should establish a delivery structure tailored to local circumstances which will effectively and economically meet identified client needs through high quality

work.

Commentary

A legal services provider should plan deliberately to assure that the delivery structure operates at the most efficient and productive level so that limited resources are focused effectively to respond to client legal problems. Where a variety of legal services providers exist in a given service area, they should strive jointly to establish a unified delivery structure in which differing organizations complement the efforts of each other to maximize the services available to clients. The provider should establish a delivery structure, based on the particular local circumstances in which it operates, which balances four competing goals:

- to achieve the objectives sought by clients;
- to assure the delivery of high quality representation through appropriate quality assurance measures and by attracting and retaining competent practitioners to represent clients;
- to facilitate access for clients; and
- to maintain institutional stability and continuity of representation.

Design of a delivery structure involves decisions about who will perform legal work - staff attorneys, private attorneys, and non-attorney practitioners - and how those practitioners will be deployed in the provider's service area.

The Use of Staff and Private Attorneys

Legal services for the poor has typically evolved through systems that use full-time staff lawyers to represent clients. The practical experience of legal services providers, has demonstrated the essential importance of private attorneys participating with providers to represent the poor. One common and effective pattern which has emerged, therefore, is a staff office with a substantial component that involves private attorneys on a compensated or voluntary basis.

In addition, many organizations have evolved which rely primarily or exclusively on private attorneys to provide service to clients. Such organizations frequently work in partnership with other legal services providers in the same service area, broadening the range and type of services offered to clients. In some instances, they are the sole legal services provider in the area.

The provider and appropriate bar associations should evaluate the skills, availability and interest of private attorneys in the provider's service area, and should determine the most appropriate mix of staff and private attorneys to achieve identified priorities. Both should consider the variety of ways that private attorneys may contribute to a provider delivery system, as volunteers or on a compensated basis:

- Private attorneys may directly represent provider clients; co-counsel with provider staff; or provide support, including training, community education, and consultation regarding unusual and difficult matters.
- They often possess expertise in areas of the law that full-time legal services practitioners typically do not enter.
- Some have extensive trial or appellate experience that provider staff lack.
- They may undertake major cases, particularly those that involve representation that the provider is unable to handle for economic and other reasons.
- Though each may be able to take only a limited number of cases, the aggregate of additional services available to clients can be substantial, particularly if many lawyers provide pro bono services.
- Private attorneys in diverse locations in a provider's service area may facilitate physical access for clients in rural areas or in the neighborhoods of large cities where the provider cannot economically maintain service offices.
- Based on their knowledge of the local legal community, private attorneys can advise the provider regarding organizational and institutional issues.

The Use of Specialization by Staff Legal Services Providers

Many staff programs organize their personnel into specialty units drawn to address provider priorities. Specialization involves the assignment of specific practitioners or groups of practitioners to particular substantive areas of the law or to discrete representation tasks, to the exclusion of other legal work. For example, a provider may have substantive specialists who are assigned to a general subject area, such as housing, or to a narrow case type, like evictions. Task specialists may perform specific functions such as appellate work, legislative representation, or community education.

Specialization can have the following advantages:

- Inexperienced practitioners can rapidly learn a discrete area of law that involves a limited set of legal concepts.
- Specialists who have a deeper understanding of a particular area of the law may be more able to fashion far-reaching and creative responses to specific legal issues.
- Specialization can increase the provider's familiarity with common problems faced by clients.
- Practitioners who are familiar with repetitive substantive issues and procedures

can handle a high volume of cases more efficiently.

- Intake and case handling procedures can be tailored to specific aspects of a substantive specialty.
- Consolidation of personnel into specialty units provides a ready structure for the ongoing supervision that is fundamental to quality assurance. (See Standard 3.3 on Responsibility for the Conduct of Representation.)
- If the provider priority is a type of legal problem that requires immediate action, such as evictions, a specialty unit may offer the most effective way to assure that practitioners are available to respond quickly. If handling a high volume of a particular type of case such as divorces is a priority, a specialty unit may develop standard forms and procedures for cases in which similar routine and narrow issues regularly appear. Standard case handling techniques are appropriate if they do not result in important issues being overlooked. Its use should be reevaluated periodically to assure that it is still justified by circumstances and that the creativity of practitioners is not stifled in out-of-the ordinary cases.

Specialization can have disadvantages as well. Specialization may inhibit identification of problems that fall outside the speciality areas of an office. A legal services provider which specializes, therefore, should utilize intake personnel who have a broad understanding of the law to avoid premature categorization of cases which are presented. Specialists may also become isolated in their practice specialty, treating cases in a routine fashion, which in turn may discourage development of legal work skills, stifle creativity, and lead to boredom and eventual burnout.

In nonspecialized practice, cases are assigned to practitioners without particular reference to case type or the task to be undertaken. This approach also has advantages, including the following:

- Practitioners gain a wider range of experience and may be more aware of the importance of ancillary issues in a client's overall circumstances.
- The provider has more flexibility to assign cases and keep practitioners' caseloads balanced.
- Experienced generalists may be able to provide more systematic supervision.
- Practitioners with a more diverse practice may avoid boredom.

In a nonspecialized practice, however, inexperienced practitioners may be less efficient and effective because they are required to research a broader range of unrelated and unfamiliar issues. They may miss subtle aspects of important legal issues and may be less able to address specific client problems with dispatch.

The amount of specialization in a provider's delivery structure should be guided by the provider's priorities, and its feasibility given the resources and the nature of the service area. The choice between specialization and a generalist practice is not absolute. The provider may adopt a mixed approach and may change the extent of specialization from time to time. In any event, the approach should be periodically reviewed and adjusted to reflect changing client needs and staff capabilities. (See Standard 3.7 on Periodic Evaluation of the Provider.) Specialization presupposes a staff of sufficient size for it to be practical. A small funding base, or geographic factors, such as a very large rural service area, may dictate small offices which will not permit specialization.

Some priorities may argue against specialization. For example, if the needs of a particular group of clients like the elderly or the handicapped have been identified as a priority, the provider must be able to respond to multiple interrelated legal problems that do not fit neatly into a system of specialization.

Specialization in the Referral of Cases to Private Attorneys

Provider policy regarding the referral of cases to private lawyers has implications for the effective utilization of both pro bono and compensated private attorneys. A variety of referral policies is possible. A provider can refer cases only in those areas in which a participating private attorney has indicated expertise or preference. Or, cases may be referred largely on a rotation basis without regard to the private attorney's familiarity with the legal issues. A number of factors are appropriate to consider in designing a referral policy:

- Interests of the participating private attorneys.
Many attorneys prefer to be referred cases which involve procedural and substantive issues with which they are familiar. Cases which disrupt the routine of a lawyer's practice by requiring a substantial commitment of time to research the background law governing the matter may discourage some attorneys from accepting more cases. On the other hand, repetitive referrals of routine cases can cause burnout, inadvertently devaluing the lawyer's time and commitment. Some private attorneys prefer diversity and the opportunity to be exposed to new and challenging legal issues, if they are offered adequate support.
- Quality assurance considerations.
Referral of cases to persons of identified expertise and interest can assist the provider to meet its responsibility to assure that cases are assigned to lawyers competent to handle them. Referral of matters which are unfamiliar to an attorney requires a commitment to support, including training and backup.
- Recruitment.
Recruitment of participating private attorneys may be enhanced by targeting specific types of legal problems for which their services are needed. At the same time, a narrow delineation of case type that the provider assigns to its participating private attorneys may discourage participation by some who have expertise in

areas not identified by the program, but which might benefit clients in a given situation.

- Provider priorities in relation to areas of expertise among the private bar.
The referral system should facilitate effectively serving as many clients as possible. It should reflect the priorities established by the provider, the range of resources available to meet the priorities, and the areas of interest and expertise of the participating private lawyers.

Some participating private attorneys will have expertise in priority substantive areas of the provider. Other priorities may involve areas of practice that are unique to the representation of the poor, such as public housing or indigent health care, issues which may be unfamiliar to some in the private bar. Referral of such cases particularly calls for the provider to offer training and support to practitioners who will handle the matters. It is desirable that cases which are referred to private lawyers be consistent with the priorities that have been identified by the provider. Adherence to the priorities, however, should not be used to discourage representation in other areas in which pro bono services are offered.

There is no one correct policy regarding referral of cases to private attorneys. A legal services provider should maintain ongoing, effective communication with the lawyers on its panel and strive to fashion a policy which responds to the interests of the lawyers, while maximizing the service offered to clients. The provider should periodically reassess its referral policy with its panel of private attorneys and should adjust it as appropriate to reflect the changing interests of the attorneys and the changing needs of its clients. (See Standard 3.7 on Periodic Evaluation of the Provider.)

The Number and Size of Offices

In staff legal services providers, decisions about the number and the size of provider offices are closely related to decisions about the types of practitioners and the extent of specialization. Such decisions will be influenced by considerations of cost-effectiveness, the availability of private attorneys throughout the service area, and the need for staff development and quality assurance. Often, a balance must be struck between direct physical access for clients and the provider's need to address priorities with high quality representation.

Traditionally, staff legal services providers have considered organizational patterns in terms of providing clients physical access to practitioners. Small neighborhood offices with relatively few attorneys have been a common pattern. Experience indicates, however, that in many cases clients may be served more efficiently and effectively through consolidated offices.

- Such offices may facilitate the supervision and training of staff and the implementation and operation of law practice systems.
- The provider has greater flexibility regarding specialization, and patterns of work assignment. For example, team counseling and task forces to deal with urgent

problems may be more feasible in larger offices.

- An environment where practitioners work in close proximity with others sharing the same goals may stimulate creativity and proficiency. Regular ongoing dialogue with peers can generate ideas for case handling as well as greater awareness of the purpose of one's work.
- Practitioners may have greater access to the physical resources necessary for quality work, including library materials and sophisticated office equipment, such as word processors, computers, videotape machines, and computer assisted legal research.

The most serious disadvantages of wide dispersion of staff in small offices are those of practice scale. A provider cannot offer the same resources for a one, two or three attorney office as it can for a centralized staff. Distance may make effective supervision and training unreasonably costly and time consuming. Lack of direction and of reinforcement can create substantial risk of malpractice by inexperienced practitioners. Isolation can also lead to staff frustration, stifle the incentive for professional growth, and contribute to turnover.

These considerations must be balanced against the important fact that scattered offices do establish a presence in the communities in which they are located and do facilitate physical access to services. The physical presence of practitioners may be significant to clients who are unaccustomed to dealing with lawyers. Particularly when a provider is reaching into areas never before served, it sometimes needs to encourage clients to seek out legal services. Staff in small offices may find it easier to learn about the communities they serve, to develop constructive relationships with the bar and social service agencies, and to become familiar with local practice customs.

Thus, a major disadvantage of centralization is the danger of the provider's isolation from distant segments of its service area. For many rural legal services providers serving enormous geographic expanses, consolidation may be infeasible. A provider choosing to consolidate offices should take positive steps to reach out to isolated parts of its service area and to assure wide distribution of information about legal services. Contact with client groups, with other organizations concerned with the interests of the poor, and with persons familiar with the legal problems in those areas can ameliorate the isolation. (See Standard 6.1 on Identifying Client Needs and Objectives.)

Effective utilization of private attorneys can greatly facilitate a provider's efforts to provide services directly to clients in the communities and neighborhoods where they live. In many large rural areas, the only practical way to provide service in some isolated communities may be through the volunteer or compensated efforts of private attorneys. There may be practical limitations to this, however, as some rural areas and some urban neighborhoods have few or no practicing private attorneys located in or near them.

Delivery Problems in Rural Areas

Rural areas present special problems to be addressed in establishing a delivery structure and allocating resources. Substantial distances and transportation costs may mean a central office is physically accessible only to those who live within a short radius, yet widely dispersed small offices are costly and relatively inefficient. A legal services provider is not likely to have enough resources to staff branch offices adequately in each community within its service area.

Providers should consider a variety of means to provide services in rural areas. The following are examples:

- Private attorneys in local communities who are willing to represent eligible clients free or for compensation can substantially improve the provider's capacity to make services available where clients live. The provider should coordinate how matters will be handled when there are conflicts of interest, unusually high costs, or substantive issues with which the local attorneys are not familiar.
- Use of circuit-riding and mobile vans can provide periodic temporary presence in local communities. These methods sacrifice efficiency, however, particularly in terms of practitioner travel time.
- Local paralegals and lay advocates under the supervision of a lawyer can provide intake and refer cases to the central office for representation. They can also aid clients directly in circumstances where non-attorney assistance to clients is permitted by law.
- A central telephone system for intake and representation can increase the provider's capacity to serve many clients. There are inherent drawbacks, however, in the lack of personal contact with the client and the mechanics of exchanging documents important to a case.
- Some providers have experimented with an intensive temporary presence in a community. After extensive publicity, participating practitioners meet with clients to identify priority legal issues affecting them. Cases are accepted in a limited substantive area and representation is then provided from the provider's regular office.
- Community education to advise clients of their rights and responsibilities may assist clients to respond to some problems without direct representation, or to avoid incurring problems through preventive measures. Community education can include the development of self help materials to assist persons with pro se representation, when it is appropriate.

At a minimum, providers serving sparsely populated rural areas should establish contact with client groups, bar associations and others familiar with the legal needs of the client population, in order to stay informed about serious issues affecting clients to enable it to respond with effective legal services where appropriate.

Standard 6.3 - Use of Non-attorney Practitioners

To maximize the efficient use of its resources the provider should explore the use of paralegals, tribal and lay advocates, law students and other legal assistants in the representation of clients. Representation of clients by non-attorney practitioners should be undertaken only as specifically authorized by state, federal or tribal law and appropriate ethical restrictions. The activities of such individuals should be supervised by an attorney who is responsible for the work performed.

Commentary

Most legal services providers encounter demand for services which exceeds resources available to respond. Limited resources place a premium on the most cost effective deployment of staff to respond to client needs.

Use of Paralegals, Lay and Tribal Advocates, Law Students and Other Legal Assistants

Paralegals, lay and tribal advocates, law students and other legal assistants supervised by an attorney have historically been an essential part of legal services practice. The nature and extent of their use by the provider should depend on ethical requirements, established priorities, cost considerations, and the capacity for career development.

Paralegals and other legal assistants may be appropriate practitioners when the following conditions exist:

- Representation by non-lawyers is authorized by state, federal or tribal law. Federal entitlement programs, such as welfare and food stamps, specifically authorize non-attorney practitioners. Many states permit non-attorney practitioners in unemployment compensation hearings. Agency rules permit non-lawyers to represent clients in certain immigration matters, and non-attorney tribal advocates are traditionally used in many tribal courts to handle a wide variety of cases.
- The law and procedure relative to the substantive legal work can be learned without a formal legal education.
- The problem does not involve ancillary legal issues that would require formal legal training to identify and address.
- Neither the provider nor the non-attorney practitioners implicitly or explicitly hold the non-attorney practitioners out to be lawyers.

Properly supervised, representation by non-attorney practitioners can be a cost-effective way of meeting client goals. The provider must be aware of the many areas of legal practice, however, where paralegal representation is foreclosed because of restrictions on the unauthorized

practice of law. (See Model Rules of Professional Conduct, Rules 5.3 and 5.5; Model Code of Professional Responsibility, DR 3-101(A).) Providers should exercise caution, as well, in utilizing paralegals for problem diagnosis. Effective identification of a client's problem requires a breadth of legal knowledge which an individual without a formal legal education may not have. (See Standard 4.1 on Initial Exploration of a Legal Matter.)

In addition to authorized direct representation of clients, paralegals may be used as legal assistants who work under the direction of an attorney to handle specifically assigned tasks. Such work may range from assistance preparing pleadings in routine matters, to assisting in the coordination of complex representation involving multiple clients and client groups. Paralegals should be subject to strict quality controls. Their work should be supervised by an attorney and they should receive adequate training to be proficient in the work which they are assigned. Because paralegals frequently have no formal legal education, provider responsibilities for effective training are particularly important. (See Model Rules of Professional Conduct, Rule 5.3.)

Law students may properly be used in a variety of ways to assist in the delivery of legal services to eligible clients. Providers may invite participation of law students as interns practicing under the direction of staff and participating private attorneys. Local rules of court may permit closely supervised court appearances by such students.

Many law students participate in student programs or in law school clinics which provide representation to low income clients. To the extent that a principal purpose of such enterprises is to represent the poor, they are legal services providers, and, to the extent possible, should operate in conformance with the Standards. Law student providers should utilize, when appropriate, the assistance and expertise available from other local legal services providers, and should work in close cooperation with such programs to coordinate referral practices and to set service priorities. Student programs have a particular responsibility to address the limiting factors which are unique to them, and which may affect the quality of work performed:

- Student programs experience frequent turnover requiring special efforts to ensure continuity in the representation of clients.
- Students require closer supervision than attorneys to ensure high quality representation.
- Students have academic obligations which compete for their time.

Standard 6.4 - Relations with the Private Bar

A legal services provider should maintain active and cordial relations with the organized bar and should seek to involve the private bar in its activities.

Commentary

A legal services provider has an important responsibility in the legal system of the community in which it is located. A legal services provider is not alone in seeking to improve the responsiveness of the legal system to all persons who seek legal redress, including the poor. It should, therefore, strive to work in partnership with the organized bar to integrate its operations into the local legal structure. This calls for regular consultation with the organized bar, including all local and minority bar associations, regarding its priorities and means of delivering service to its clients. (See Standard 6.1 on Identifying Client Needs and Objectives and Standard 6.2 on Delivery Structure.)

The provider should also participate in the affairs of the legal community of which it is a part. Staff lawyers should belong to local bar associations and should engage in appropriate committee work and other organizational activities.

Providers should recognize the important contribution to its effectiveness as an organization which results from involving the private bar in its delivery of service to clients. As discussed throughout the commentary accompanying these Standards, private attorneys can contribute in very significant ways to meeting the needs of clients for representation and can assist the provider to address a number of the institutional challenges which confront it. Utilization of private attorneys, for example, can substantially increase the capacity of a provider to offer access to clients throughout its service area. (See Standard 1.6 on Client Access.) Private attorney participation can increase the amount of resources available to serve clients, alleviating to a degree the problems which arise in the context of attempting to meet the demand for services which generally outstrip provider resources. (See Standard 2.2 on Case Acceptance Policy, Standard 3.2 on Assignment of Cases and Work Load Limitations, Standard 6.1 on Identifying Client Needs and Objectives and Standard 6.2 on Delivery Structure.)

Private attorneys involved in the representation of provider clients often become forceful advocates supporting efforts to meet the legal needs of the poor. They may have access to decision-makers who would be unavailable to staff of a provider. Private attorneys who participate with a legal services provider may also be leaders in local, state and national bar associations. Both the legal services provider and its clients directly and indirectly benefit from their exposure to the real legal needs of the poor, and their involvement in meeting those needs. (See Standard 6.6 on Institutional Stature and Credibility.)

Standard 6.5 - Results of Representation

A legal services provider should strive to achieve lasting results responsive to client identified needs and objectives.

Commentary

The effectiveness of a provider in achieving the objectives of its clients can be measured by the tangible lasting results of its representation. Lasting results for clients can be achieved in several ways: by resolving individual legal problems; by improving laws and practices that affect

clients; and by increasing client self-sufficiency.

The legal problems of individual clients often involve the most basic issues of survival. Problems which merely inconvenience persons with an economic cushion can have enormous long-term consequences for the poor and can disrupt every aspect of their existence. For example, an unlawful delay or cutoff of social security may leave a poor person with no money for food, medicine, shelter or utilities. Unlawful repossession of a car may mean a poor person cannot get to work or to necessary medical care. The provider should be able to respond quickly with high quality representation that favorably resolves these individual problems in a substantial percentage of cases.

A legal services practitioner should pursue the client's objective zealously within the confines of the law. In evaluating a client's case, the practitioner should identify the strategies which will be most effective to achieve the client's objectives. Often, however, the laws or policies governing the issues that the client presents do not favor the client's position. Legal research may identify a law, policy, or practice which may be ignored or misapplied by an agency or individual to the detriment of the client. Many laws, designed to protect the interests of the poor, as well as others, may not be applied uniformly, or consistently in accordance with their terms.

Other matters will involve laws which if unchallenged will prohibit positive resolution of the client's legal problem. In some cases, this may require litigation that raises either statutory or constitutional questions; administrative representation that seeks change in agency rules, regulations and practices of general application; or legislative representation that seeks statutory change.

Such representation frequently requires a substantial commitment of resources. A decision to undertake it should be made deliberately by the provider and the client, taking into consideration the potential for success; the resources necessary to proceed, balanced against the potential benefit or risk; and the provider's priorities. (See Standard 4.4 on Case Planning, Standard 4.2 on Information Gathering, Standard 4.3 on Legal Research and Analysis and Standard 6.1 on Identifying Client Needs and Objectives.)

Not all providers are organized so as to be able to undertake complex and costly representation which involves broad constitutional challenges, or administrative and legislative advocacy. Even for those that are able to, resource limitations will preclude undertaking every major case which is presented. Thus, a provider as a matter of program policy may legitimately determine the types of representation which it will undertake, and where it will devote its resources. (See American Bar Association Formal Opinion 334 (1974).) A provider which does not engage in certain types of representation, however, should assure that its practitioners undertake adequate research and investigation to advise and counsel their clients regarding the options open to them under the law, and to refer them to other sources of representation, if necessary.

Some legal services providers as a policy decision may concentrate their efforts on broad

challenges to legal problems confronting many clients. Such efforts may be the most cost-efficient way to utilize the limited resources available to meet the legal needs of the poor. Repetitive representation of individuals to obtain a limited remedy which does not ultimately resolve a recurring legal problem can be costly and time-consuming. Focused representation which addresses the basic cause of such legal problems may, on the other hand, ultimately expend fewer resources with more lasting benefits for many clients.

Increasing Client Self-Sufficiency

Many common conditions affect the ability of the poor to respond individually and collectively to legal problems which confront them. These include, for example, inadequate education, fear of authority, lack of the opportunity to make long-term plans, and general lack of knowledge about options available to resolve problems.

Many providers make particular efforts to increase client self-sufficiency, because it increases the capacity of clients to direct their own lives and to improve institutions that affect them. Furthermore, it may increase the responsiveness of those institutions to the needs of the poor and ultimately benefit the entire community. Finally, it can reduce client dependency on the provider for assistance at a time when demand far exceeds available resources.

Standard 6.6 - Institutional Stature and Credibility

A legal services provider should achieve institutional stature and credibility which enhance its capacity to achieve client objectives.

Commentary

Effective representation of clients is enhanced if the provider establishes a positive institutional presence in the community in which it operates. Like the good will that attaches to a business name, the provider's reputation belongs to the institution. It persists despite changes in staff and participating private attorneys and provides the backdrop against which all its practitioners practice. The provider should consciously seek to develop respect among clients, and with those who make decisions which affect them. It should see itself as part of a comprehensive legal system in which various institutions serve the interests of its clients. It should, therefore, seek to coordinate its efforts with other legal services providers, with local bar associations, with public defender offices, and with social service agencies serving the poor.

The institutional stature of the provider contributes to its success in several ways. First, it can assist positively in case strategies and can increase success in achieving results for clients. Adversaries are more inclined to settle favorably with provider clients. Judges are more willing to decide in favor of provider clients where the law may be ambiguous. Other decision-makers are more attentive and responsive to positions argued by clients and practitioners.

Second, it enhances the ability of clients to influence decisions. Key decision-makers seek

input from the provider and its clients before adopting policies affecting clients. Clients and practitioners are treated with greater respect. Public institutions more frequently act on their own initiative to protect clients' interests. Clients themselves regularly seek the assistance of the provider regarding major issues.

Third, it promotes high morale and discourages turnover as staff and others providing service to clients find increased satisfaction as part of an institution which commands the respect of clients and the community at large.

The provider's stature with the client population is developed through essential provider activities discussed in Standards 6.1 through 6.5:

- Responsiveness to clients' legal needs;
- Successful representation of clients;
- Effective interaction with clients;
- Provision of information and counsel to individual clients, client groups, and client leaders regarding significant legal developments which may affect them; and
- Support for activities which develop client self-confidence and ability to effectively assert their rights.

The provider's institutional status with decision-makers is achieved through consistent high quality work which promotes respect for legal services practitioners and their clients. Attorneys and judges who have both the opportunity and ability to evaluate litigation undertaken by the provider should know that the program handles all cases thoroughly and expertly. All legal work should be conducted skillfully with the demonstrable purpose of remedying significant problems for clients. Practitioners should be known for their willingness to pursue forcefully and competently any legitimate remedy to which their client may be entitled. At the same time, providers should be seen as possessing maturity and sound judgment and never squandering resources on meaningless posturing or frivolous claims.

Relations with all decision-makers should be honest and forthright. The provider should avoid confrontation, except where necessary to achieve a meaningful goal for a client. Managers and practitioners should realize that mundane aspects of daily operation, such as unconventional dress by staff, may be seen as deliberate challenges to community standards and may undermine respect for the institution.

The provider should understand the community in which it operates and be aware of the key decision-makers who affect the poor. This will include judges, other lawyers, legislators, hearing officers, and public and quasi-public officials. It will also include others who may be less obvious; for example, financial, business, medical and religious leaders. The provider should

understand what motivates key decision-makers, and practitioners should be able to appeal to those motives on behalf of their clients.

VII. Standards for Governance

Introduction

Most legal services providers will have a governing body which determines its policies and oversees its operations. The governing body should assure compliance with applicable law, with ethical and professional responsibilities, and with legal requirements imposed by funding sources through statute, regulation or contract. The governing body should also strive to maximize the capacity of the provider to serve clients effectively and responsively.

Clients have an immediate and direct interest in policy decisions affecting representation by the provider. They also usually have the least direct capacity to influence provider policy. In order for its policy decisions to respond to the needs of clients, therefore, a legal services provider should strive to involve clients and other groups serving the poor.

The composition and operation of the governing body may vary considerably based on the nature of the provider. Some providers are organized primarily or exclusively to offer legal representation for the poor. Others will be governed by a board of directors which has duties and responsibilities that encompass other activities in addition to overseeing the provision of legal services to the poor. The funding sources of many providers mandate certain governing body structures and functions. The Legal Services Corporation, for example, has a detailed regulation regarding the governing bodies of recipients of its funds (45 CFR 1607).

The application of the Standards regarding governance may vary among the many types of legal services organizations. For some, certain Standards will not apply at all. The Standard regarding selection, composition and operation of the governing body, for example, may not apply, in some instances, to a legal services provider operated as part of a bar association.

Standard 7.1 - Functions and Responsibilities of the Governing Body

Standard 7.1-1 - General Policy and Review

A legal services provider should have a governing body which establishes broad general policies consistent with client needs, which assures compliance with applicable laws governing the operation of non-profit corporations, and which regularly reviews provider operations.

Commentary

The principal responsibilities of the governing body are to set broad general policy for the provider and to review provider operations to assure implementation of that policy and compliance with statutory and regulatory requirements. The governing body should carry out its responsibilities in a manner that maximizes its capacity to serve its clients effectively. Individual

members should strive to be aware of and sympathetic to client needs and the governing body should operate in a manner that enhances consultation with clients. (See Standard 7.2-3 on Qualifications of Individual Members and Standard 7.3 on Communication with Clients.)

The precise policy role of the governing body will depend upon local judgment as to the appropriate division of authority and responsibility between the governing body and the chief executive. Generally, the governing body has broad decision-making authority on fundamental matters, such as determining delivery structure, adopting priorities, selecting the chief executive, adopting the budget, and establishing a salary structure for staff.

Once these policies are established, it is the chief executive who bears responsibility for day-to-day program operations. However, the governing body should regularly review provider operations to assure that established policy is being implemented properly and to identify problems that may require intervention. (See Standard 7.1-4 on Relations with the Chief Executive.)

A legal services provider may be a complex organization. The governing body should regularly review all of the interrelated factors that affect provider operations and should watch for early warning signs of problems which, if left unattended, will have repercussions for the entire program. Examples of such warning signs include:

- lack of success in its representation,
- a sharp change in the number of cases handled,
- significant deviations from the approved budget,
- an increase in client grievances,
- an increase in complaints from employees of the provider,
- an increase in complaints from participating private attorneys, the private bar and the legal community,
- a decrease in participation by private attorneys in representing clients of the provider.

To perform its continuing review function, the governing body should regularly receive and review internal reports from program management on financial matters, caseload statistics, disposition of cases, funding changes, and major provider undertakings. In addition, it should review monitoring and evaluation reports from funding sources, and the report on the annual financial examination. The governing body should determine the cause of any indicated problems or deficiencies and should assure that management takes corrective action.

Some legal services providers operate as part of a larger organization which may have a governing body responsible for a variety of organizational activities in addition to making legal

services available to the poor. Bar associations and law schools are two such entities. The broad range of responsibilities of such organizations may limit the time which their governing body can realistically devote to oversight of their activities as a legal services provider. In such circumstances, the governing bodies may find it appropriate to create an advisory body with specific responsibility for overseeing provider operations.

Standard 7.1-2 - Prohibition against Intrusion in Case Matters

The governing body and its individual members shall not interfere directly or indirectly in the representation of any client by a practitioner.

Commentary

Ethics opinions of the American Bar Association clearly establish that it is improper for the governing body or its members to interfere with the attorney-client relationship. Its Formal Opinion 334 (1974) permits the governing body to set priorities which may limit involvement in broadly identified categories of cases, but states that such limits must be established before a case is accepted. Once representation has been undertaken, board interference is strictly enjoined. According to the opinion, the governing body or an advisory committee of its lawyer members cannot have access to the confidence and secrets of the provider's clients, as such bodies stand outside the attorney-client relationship established with the practitioner. (Formal Opinion 334, at p. 7.) Moreover, lawyers employed, paid or recommended by the provider cannot ethically allow the provider to direct or regulate the lawyer's professional judgement in providing representation. (Model Rules of Professional Conduct, Rule 5.4(c); Model Code of Professional Responsibility, DR 5-107(B); Standard 3.3 on Responsibility for the Conduct of Representation.)

The prohibition against interference by a governing body or its members does not prohibit direct supervision of a practitioner by an attorney who is employed by the provider. "Staff lawyers of a legal services office are subject to the direction and control of senior lawyers, the chief lawyer, or the executive director (if a lawyer), as the case may be, just as associates of any law firm are subject to the direction and control of their seniors." (Formal Opinion 334, at p. 7.)

An exception to this prohibition may occur in the context of the client grievance procedure where a client explicitly waives protection against disclosure of confidential information in order to obtain review. In such situations, the governing body or a duly selected committee may inquire into the conduct of a case by a provider practitioner, but the body cannot specifically direct the practitioner to undertake or to refrain from any action in the case. (See Standard 7.1-5 on Client Grievance Procedure.)

Standard 7.1-3 - Fiscal Matters

The governing body should assure the financial integrity of the legal services provider by:

- 1. Adopting a budget within available resources consistent with client needs and objectives and the needs of staff for reasonable working conditions and compensation;**
- 2. Monitoring spending in relation to the approved budget; and**
- 3. Providing for an annual independent financial examination.**

Commentary

The governing body should assure that provider funds are spent and accounted for in a way which fully meets the provider's responsibility to its clients, its funding sources, and the public. This begins with the adoption of a budget which commits available resources to provider priorities. (See Standard 6.1 on Identifying Client Needs and Objectives.)

Budget responsibilities involve more than mechanical approval of broad spending categories and perfunctory review to assure that income and expenditures balance. The governing body should approach the budget as the mechanism through which it implements major policy decisions on provider direction and operation. It should recognize, for example, that decisions about the personnel budget may substantially affect the provider's capacity to serve specific geographic areas or to address specific substantive legal issues.

Budget planning also provides the opportunity to assess future resource needs and to plan for expected changes in available resources. Foreseeable expansion or retrenchment should be anticipated in current budget decisions to ease the transition to a new level of operation.

The budget should include adequate resources to encourage continued service to clients by experienced practitioners. Inadequate salaries and working conditions encourage staff to leave, depriving clients of the cumulative expertise and ability which is the product of experience. Inadequate support of participating private attorneys will likewise undermine their continued participation.

Management is responsible for spending resources according to the budget approved by the governing body. Budget decisions, however, cannot always anticipate the precise cost of provider activities or unforeseen contingencies. Some deviations will be unavoidable. The governing body should establish guidelines which give management flexibility to make reasonable adjustments in response to changing circumstances. Management should provide the governing body with periodic full reports of income and expenditures which permit the body to anticipate potential problems and keep apprised of activities as they are reflected in the expenditure of resources.

An Independent Financial Examination

A legal services provider should undergo an annual independent financial examination that measures compliance with sound accounting principles. The governing body should adopt procedures which assure the highest level of service from its auditors. It should consider establishing an active audit committee and the periodic solicitation of bids from accounting firms regarding its audit.

The governing body should select its auditors in a manner that reflects the provider's commitment to equal opportunity in hiring and assures the highest level of service from them. The contract should establish the work to be done and its maximum cost and should ensure a timely report, usually within 90 days of the close of the fiscal year. On receipt of the financial report, the audit committee, if any, should meet the examiners to discuss their findings, their recommendations for responding to identified problems, and their suggestions for improving and updating the provider's accounting system. The audit committee should report to the full board.

Standard 7.1-4 - Relations with the Chief Executive

The governing body should hold the chief executive accountable for program operations through the following:

- 1. The governing body should establish specific criteria to recruit and select as chief executive the most capable and effective person available to carry out the duties established by the board to achieve provider goals, to implement provider policy and to manage provider operations.**
- 2. The governing body and chief executive should establish a relationship of open, honest communication based on trust, mutual respect, and a common understanding of the areas of responsibility and authority assigned to each.**
- 3. The governing body should conduct ongoing oversight and periodic evaluation of the performance of the chief executive.**
- 4. When necessary, the governing body should take corrective action to improve performance by the chief executive. If corrective action does not result in the desired performance, employment should be terminated in a fair and timely manner.**

Commentary

Skills Required of a Chief Executive

The legal services provider's chief executive is the individual hired by the governing body to manage provider operations and carry out its policies. The chief executive is generally not a voting member of the governing body. The person selected will have a decisive impact on the provider's capacity to serve clients effectively. The position requires diverse skills including:

- effective management and leadership skills and the capacity and desire to act decisively and independently to carry out provider policies;
- an understanding of and sensitivity to the needs of clients, including problems unique to the provider's service area;
- the ability to interact well with major ethnic and language groups among the client population;
- the capacity to work effectively with the governing body;
- the ability to maintain effective relations with provider staff and participating private attorneys; and
- the ability to command the respect of members of the private bar, the judiciary, and others in positions of authority in the community.

No one person will possess fully all of these skills. Moreover, the balance of the skills the governing body requires in the chief executive will vary from time to time, depending upon such factors as the provider's history, the stability of its finances and personnel, provider priorities, and future plans.

Recruitment and Selection of the Chief Executive

The governing body should seek the largest possible pool of potential candidates from which to select its chief executive. This will require effective local, regional and national recruitment, including advertising, direct recruitment through personal contacts, and personal interviews with prospective candidates. The governing body should conduct an intensive background and reference check on all finalists to evaluate their abilities to meet the established requirements of the job. Recommendations from relevant bar associations, staff and clients may help the governing body to assess each candidate's ability to work with the private bar to solicit its cooperation and participation, and with staff to maximize their legal skills and to relate effectively to clients.

The Relationship Between the Governing Body and the Chief Executive

There is a natural tension between the policy-making and oversight authority of the governing body and the chief executive's responsibility for day-to-day operations. This can be overcome if the two develop an honest, open relationship based on mutual trust and a clear and specific delineation of areas of responsibility and authority of each.

Typically, the governing body retains broad decision-making authority for establishing priorities, adopting the budget and the overall service delivery plan, approving the salary structure and the salary administration plan, and determining personnel and administrative policies, as well as approving major capital expenditures and long-term contracts.

The chief executive, in turn, generally has authority for day-to-day operations, including implementation of the service delivery plan, recruitment of staff and participating private attorneys, approval of major litigation such as class actions and appeals and of other major representation efforts, approval of litigation expenses, and administration of established personnel policies, including decisions for individual salaries and on hiring, firing, and otherwise disciplining staff.

There are other operational areas where authority should be defined, including, for example, internal management systems, the hiring and firing of senior administrative and management staff, major equipment purchases, and hours of office operation.

The specific delineation of authority in all of these areas is a matter of local judgment and decision. The governing body and the chief executive should reach a specific agreement about where responsibility in each area lies. In addition, they should agree upon a mechanism for periodic, clear, and specific reports from the chief executive to the governing body.

Oversight and Evaluation of the Chief Executive

The governing body should exercise continuing oversight of the chief executive's work, through ongoing review of program operations and periodic evaluation of the executive's performance. Like any staff member, the chief executive is entitled to critical, constructive feedback on job performance. The governing body should establish a policy for periodic review of compensation for the chief executive and for appropriate salary increases.

The governing body should act directly and fairly to correct serious deficiencies in the performance of the chief executive. The individual should be advised of the nature of any perceived deficiency and of the steps required to eliminate it. If no other recourse is adequate, the governing body should remove the chief executive in a manner that minimizes trauma to the provider. Failure to act soon enough may leave long-term problems. The body needs to act fairly, however, obtaining a full understanding of the facts surrounding the alleged failures of the chief executive and affording the opportunity for response, explanation and, if possible, corrective action. The appearance of unfair treatment in the termination of a chief executive may create hostility and mistrust among staff or clients, which may adversely affect other important

activities of the governing body and the provider, and may take years to overcome.

Standard 7.1-5 - Client Grievance Procedure

The governing body should establish a policy and procedure governing complaints by applicants relating to denial of service and complaints by clients relating to the quality and manner of service.

Commentary

Legal services providers generally serve many clients. Over time, therefore, they will encounter applicants who are denied service and clients who are dissatisfied with the representation by provider practitioners. The governing body of a legal services provider should establish policies and procedures for handling such complaints. The nature of the policies and procedures will vary based on the nature of the provider.

If practicable, it is preferable for the provider to have an internal grievance procedure to give it an opportunity to correct its errors without disruptive intervention by outside entities. Such a procedure can also provide a sympathetic forum for an aggrieved client or applicant who may have no other means to complain about improper or inadequate service by the provider. The existence of a grievance procedure, however, should not be used to deter clients from seeking other appropriate remedies from bar grievance committees or from private counsel for alleged malpractice.

The provider should have a prominently displayed sign or handout at its intake office that advises potential clients at their initial contact with the provider of the grievance procedure. Each applicant for service should be told of the grievance procedure. Written material should be multilingual, if appropriate. Participating private attorneys should be fully informed of the nature of the policy and procedure.

The grievance procedure should provide an opportunity for a full and fair review of complaints against the provider regarding the nature and quality of service as well as a review of denials of service to applicants. Review should begin with the chief executive or a designee who should handle each complaint promptly and should actively attempt to resolve as many as possible without forcing clients to invoke a more formal hearing process. Individuals who are dissatisfied with the actions of the chief executive should be advised what other recourse they may have.

Internal procedures generally provide for appeal of the chief executive's decision, if the client requests it, to a grievance committee of the governing body which includes clients and attorneys in the same proportion as they are included on the governing body. The procedure may exclude from appeal straightforward matters, such as the proper application of established eligibility guidelines or of case acceptance policies that strictly exclude certain types of cases.

Complaining clients should receive assistance if necessary at the time the complaint is filed and throughout the procedure. Grievants should be allowed representation by persons of their choice, other than provider personnel. A full written explanation of the provider's decision should be given to each grievant.

A grievance that challenges the quality or manner of legal service may pose difficult problems. If the grievance involves a practitioner for whom the provider is responsible and if there is a potential malpractice claim, the provider faces a conflict between its duty to the client and the risk of losing insurance coverage of the claim if it admits malpractice. If in such case it appears reasonably likely that a grievance may involve irremediable malpractice, the provider's insurance carrier should be notified and the client referred to outside assistance.

A different situation arises if the grievance concerns a private practitioner to whom the provider has referred a matter. If it appears that the grievance is amenable to easy disposition, such as a failure to maintain communication with a client, the provider should intercede with the practitioner to resolve the complaint. If the grievance is more serious, the provider should at a minimum advise the practitioner, unless the client's interests would be impaired by doing so, and should consider referring the complainant to the appropriate bar disciplinary authority.

When a grievance concerns the conduct of a lawyer, ethical constraints prohibit the governing body or its grievance committee from ordering the practitioner to take or refrain from specific action. (See ABA Formal Opinion 334 (1974) and Standard 7.1-2 on Prohibition Against Intrusion in Case Matters.) In addition, the governing body is normally restricted from access to confidential client information which it is likely to need for effective review of the grievance (Ibid.). The grievant should be advised, therefore, of the prohibition against disclosure of client confidences and that a knowing waiver may be necessary for the grievance to proceed. Grievances concerning the quality of work should not go before the governing board if, as a result of board review, the client's legal rights would be compromised.

Standard 7.1-6 - Serving as a Resource to the Provider

The governing body should serve as a resource for the legal services provider, assist in community relations and fundraising, and when appropriate, engage in forceful advocacy on behalf of the provider.

Commentary

Serving as a Resource to the Provider

The governing body is prohibited from participating in actual representation of provider clients. (See Standard 7.1-2 on Prohibition Against Intrusion in Case Matters and American Bar Association Formal Opinion 334 (1974).) Individual members, however, can serve as a valuable resource for the provider in its provision of legal services, as the following examples suggest:

- Members with special knowledge of the environment in which the program operates can provide valuable insight to committees or task forces of staff, clients and others working on long-term strategies to deal with major issues affecting clients.
- Members may have skills or knowledge about the law or the community which can be used to train provider staff.
- Members may have particular knowledge of the community that can be used to help design and establish the provider's service delivery system.

Community Relations and Advocacy for the Provider

The governing body and its individual members have an opportunity to assist the provider by explaining the nature and purpose of legal services to other important elements of society. Attorney members can play an invaluable role through their relationships with other private lawyers and the organized bar. They may also have relationships with other groups and individuals who do not understand or sympathize with the problems of low-income persons. Client board members should serve as effective spokespersons for the provider.

This role can be particularly important given the lack of awareness of the role played by legal services providers for their clients. The primary responsibility of the provider is to represent the interests of its clients. Provider practitioners sometimes represent their clients against influential adversaries. On behalf of their clients, they may take positions or seek remedies which are unpopular. At such times, effective representation may create controversy and subject the provider to criticism. Governing body members have a responsibility in such circumstances to use their influence publicly and privately to defend the provider as an advocate within the adversary legal system and to help educate the public about the provider's mission to help make the legal system available to all.

Fundraising

Many philanthropic and charitable enterprises select board members specifically for their fundraising abilities. Members with individual contacts and credibility with funding sources should assist the provider in its public and private fundraising efforts.

Standard 7.2 - Membership of the Governing Body

Standard 7.2-1 -Representation of the Community

To the extent practicable, membership of the governing body should be representative of the client and legal communities.

Commentary

Several purposes are served by a provider having the community which it serves represented on its governing body:

- It can enhance the provider's awareness and understanding of the objectives and needs of all segments of the client population;
- It can improve the provider's capacity to respond to unique service delivery and legal problems of particular groups; and
- It can increase clients' trust of the provider.

To the extent practicable, members of the governing body should include persons from the major segments of the client community, particularly with respect to race, ethnicity, age and sex. It should also, to the extent practicable, contain representatives from the bar associations in the area which it serves. If the provider serves a large geographic area and a widely dispersed client population, the governing body should include members who live in representative locations and understand client needs particular to those locations.

A legal services provider that is part of a larger organization that exists for a variety of purposes only one of which is to represent the poor in civil legal matters may find it impractical or impossible to achieve the same level of heterogeneity on its governing body as organizations operated solely to provide such service to the poor. Many factors may dictate the makeup of the governing body of such a multipurpose organization. It should nevertheless strive to maintain other means of involving organizations and individuals who represent the diversity of the community, so that the provider's policies maximize the effectiveness of its service to its clients. The provider may, for example, maintain contact with groups that represent diverse interests of the community. The provider may also create advisory committees, the makeup of which reflects the community's heterogeneity. (See also Standard 7.2-2 on Client Board Members.)

Members of the governing body need to consider the legal needs of the entire client population, while maintaining sensitivity to the particular segments of the client population with which they may identify. In addition, they should be aware of the legal needs of isolated clients who may not be represented on the governing body.

To the extent consistent with effective operation, committees which are organized as an integral part of the governing body's decision-making processes should reflect the composition of the governing body.

Standard 7.2-2 - Client Board Members

To the extent practicable, the governing body should include members who, when selected, are financially eligible to receive legal assistance from the provider.

Commentary

If the governing body is to understand and respond to client needs in setting provider policy, its membership ideally should include clients who can articulate those needs. Therefore, if practicable, the governing body should have members who, when selected, are eligible to receive legal assistance from the provider.

A legal services provider that is part of a larger organization that exists for a variety of purposes in addition to representing the poor in civil legal matters may find it impractical or impossible to include clients on its governing body. The makeup of the governing body of such an organization may be dictated by many factors. It should nevertheless strive to maintain other means of involving clients and representatives of the client population, so that the provider's policies maximize the effectiveness of its service to its clients. It may, for example, create a client advisory committee to provide advice about delivery structure, priorities and other policy matters affecting representation of clients.

Clients' lack of economic resources may hinder their full participation on the governing body if, for example, they cannot pay for child care while they are at meetings, if they cannot take time off work without losing wages, or if they cannot afford transportation to get to meetings. The provider should pay reasonable expenses associated with client participation on the governing body and should schedule its meetings to facilitate all members' attendance.

Standard 7.2-3 - Qualifications of Individual Members

All members of the governing body should:

- 1. Be committed to the delivery of high quality legal services that respond to client needs;**
- 2. Have a concern for the legal needs of clients;**
- 3. Recognize the need for communication with clients and the legal community;**
- 4. Be committed to open dialogue between attorneys and clients on the board;**
- 5. Be willing to commit adequate time to obtain the necessary understanding of provider operations to meet their board responsibilities.**

Commentary

The governing body needs to make effective and prudent decisions which support effective legal work on behalf of clients. This calls for a combination of specific skills, knowledge, and attitudes enumerated in this Standard.

- Members should support forceful legal representation to resolve client problems.
- Members of the governing body should be concerned about clients' need for representation and should understand how policy decisions will affect that need.
- Members should recognize the importance of communicating effectively with representatives of the client population regarding how best to serve clients. (See Standard 7.3 on Communication with Clients.) They should also recognize the importance of establishing a firm link between the provider and the legal community to develop a more sympathetic understanding of clients and to encourage private attorney participation in representation of clients. (See Standard 6.2 on Delivery Structure and Standard 6.4 on Relations with the Private Bar.)
- Both attorney and client members should be committed to open discussion that promotes governing body decisions that respond to client needs. Attorney members should be sensitive to their numerical and personal ability to dominate board discussion and decision making. Both client and attorney members should participate fully in deciding important issues.
- Members should become fully informed about provider operations in order to make appropriate decisions regarding service delivery, budgeting, financial management, and other pertinent matters. (See Standards 7.1-1 through 7.1-6 on Functions and Responsibilities of the Governing Body.)

Standard 7.2-4 - Training of Members of the Governing Body

The provider should strive to assure that all members receive orientation and training necessary for full, effective participation on the governing body.

Commentary

The provider cannot assure that new members will be prepared for full, effective participation at the time they are selected. The provider can strive to assure, however, that members obtain the required skills and knowledge.

New members should receive orientation which includes information on:

- an historical perspective of legal services nationally and in the local community;
- the provider's structure and operation;
- national and local sources of funding for legal services;
- the nature of the legal services offered by the provider;

- any limitations or requirements imposed by statutes, regulations, contracts, and ethical obligations; and
- the role, structure and functioning of the governing body and any client advisory groups.

In addition, the provider should offer training for members of the governing body as needed. Such training should help provide skills and substantive knowledge related to: budgeting and accounting oversight; developments in legal services delivery and substantive legal issues that affect the provider; and other matters that relate to effective governing body operation.

Because members of the governing body are volunteers, they may have limited time for formal training apart from regular board activities. The provider should include in the agenda for regular meetings of the governing body items which will meet training needs.

Standard 7.2-5 - Conflicts of Interest

Governing body members should not knowingly attempt to influence any decisions in which they have a conflict with provider clients.

Commentary

Members of the governing body may not use their position on it directly or indirectly to further institutional or individual interests which are in conflict with the interests and objectives of clients of the legal services provider. Ethical considerations generally proscribe a lawyer's knowing participation in a decision or action of a provider, if the decision could have a material adverse effect on a client of the provider whose interests are adverse to the lawyer's client. Ethical constraints also prohibit provider attorneys from allowing any other interest, including one that pays for their service, to undermine the independence of their professional judgment. (See Model Rules of Professional Conduct, Rules 1.7, 5.4(c) and 6.3; Model Code of Professional Responsibility, DR 5-101(A) and (C), and DR 5-107(B).)

Board members may occasionally have conflicts which arise in a context other than representation of adverse interests, such as when a member has a pecuniary interest in a matter under consideration. In such cases the governing body and the member should be guided by the law in the jurisdiction regarding disclosure and recusal where such conflicts exist.

Even though members of the governing body adhere strictly to prohibitions against intruding in individual cases brought by the provider, there are risks in a member's representing or being closely associated with an institution or individual with interests that are adverse to clients. First, without interfering in any particular case, a board member can influence the provider's capacity to act against an institution or individual through decisions regarding priorities, allocation of resources, or provider structure.

Second, members can exert subtle influence, for example, through pointed inquiries to the chief executive regarding the conduct of a practitioner engaged in representation against a particular institution or individual. Even where a member has no intent to exert influence, a practitioner may feel inhibited from zealous pursuit of all aspects of a case against an individual or institution with whom a member of the governing body is identified.

Conflicts may arise in the representation by attorney board members of institutions or individuals who are in conflict with provider clients. Concern about the risks associated with conflict should not exclude from the governing body every person identified with an institution or individual with an adverse interest. A strict rule could exclude persons with skills and experience of benefit to the provider and could inhibit development of an effective relationship between the provider and the private bar. In rural areas particularly, where the pool of potential members is relatively small, it may be impossible to avoid all conflicts. The provider, however, should assure that the presence of members with potential conflicts does not inhibit forceful representation of clients.

Institutional Conflict

Institutional conflict may arise in different ways:

- An institution, by its nature, may have general interests contrary to those of clients. For example, a finance company has economic interests which are served by laws and policies favoring creditors rather than borrowers.
- An institution may have a specific interest that conflicts with the interests of clients. For example, a large financial institution seeking to develop an industrial park in the heart of a low-income neighborhood may be fundamentally at odds with the interests of clients in that neighborhood.
- An institution, such as a welfare agency or a housing authority, which perceives itself as acting on behalf of clients, may nevertheless be a frequent adversary of clients represented by the provider.

If a person is employed by or is otherwise significantly connected with an institution that is in conflict with the provider's clients, generally that person should not serve on the governing body. The person may serve, however, if there is evidence, such as the following, that the particular individual is not in actual conflict:

- The individual is not regularly involved directly or through a supervisory role in cases against provider clients.
- The individual does not have a policy-making role within the institution.
- The individual is not directly engaged in any activity which itself adversely affects client interests.

- It is clear that the individual will exercise independent judgment in serving as a member of the governing body.
- The individual is committed to the provision of legal services to the poor. Examples of such evidence would be previous experience in legal services work; participation as a private attorney in the representation of provider clients; a professional role consistent with legal services work, such as employment in a consumer fraud division of a county attorney's office; or previous experience on the provider's governing body.

(See also Standard 7.2-6 which prohibits appointment by an institution which is in conflict with clients.)

Individual Conflict

An attorney member of a governing body may occasionally represent a client who is an adverse party to specific clients of the legal services provider. Although the presence of the member in such a case may not create actual conflict, the appearance of impropriety raises ethical concerns.

Such potential conflicts involve enforcement of local rules of ethics and are subject to interpretation by the bar association and the courts of the jurisdiction in which the provider operates. Some jurisdictions have adopted a strict rule which prohibits a board member and a staff attorney from representing adverse parties in litigation. (See, for example, *Estep v. Johnson*, 383 F. Supp. 1323 (D.C. Conn. 1974).) Many have not spoken on the matter. The American Bar Association's Formal Opinion 345 (1979) addresses the issue, and would permit governing body members and provider attorneys to represent adverse parties, so long as both clients are advised of the circumstance and consent to proceed and so long as there is in fact no impact on the exercise of independent judgment by either attorney. (See also Model Rules of Professional Conduct, Rule 6.3.)

Provider attorneys who feel that their exercise of independent judgment will be undermined by the presence of the governing body member should not represent the client. (See Model Rules of Professional Conduct, Rule 1.7 and Rule 5.4; Model Code of Professional Responsibility, DR 5-107(B).) If the provider's client objects to the situation, both attorneys have a responsibility to cooperate to find alternative counsel which will eliminate the conflict. The attorney board member may choose not to represent the conflicting client or may resign from the governing body. Alternatively, the provider may find free outside counsel to represent its client.

Standard 7.2-6 - Selection of Members

To the extent practicable, members of the governing body should be selected in a manner that reflects the diverse interests of the client population. Members should not be

selected by employees of the provider nor by any institution or agency which is in conflict with the provider or its clients.

Commentary

The process for selecting members of the governing body will substantially affect the makeup and operation of that body. (See Standards 7.2-1 on Representation of the Community and 7.2-3 on Qualifications of Individual Members.)

The provider should assure that members are selected in compliance with any requirements imposed by law and by funding sources. The selection process for some organizations will be governed by rules and procedures which limit its capacity to meet the Standard. Bar sponsored pro bono programs, for example, may be subject to governance by a board of directors which is responsible for the operation of the entire bar. Such organizations will appropriately continue to select their members and determine their composition in conformance with their own procedures.

Many legal services providers designate representative groups to appoint the members of the governing body. Selecting groups should be fully informed of the provider's mission and operations and the responsibilities and desired characteristics of the members of the governing body.

The selecting groups should seek members who will reflect the diverse interests of clients the provider serves. No client population is homogeneous. Even in the exceptional cases where a provider serves a group of clients who are ethnically and culturally united (such as an Indian tribe), there will be differences within the community. A diversity of interests on the governing body protects against domination by a single group, assures that the needs of important subgroups of clients are not submerged, and promotes thoughtful debate of diverse points of view before policy is set.

Consistent with requirements imposed by funding sources, and the practical limitations imposed by its institutional structure, the governing body should seek representation from a cross-section of the client population, and from legal institutions and bar associations representing a broad spectrum of the bar interested in legal services for the poor. The provider should work cooperatively with bar associations and other appointing groups to keep them informed of the provider's activities and to encourage the appointment of individuals who can serve effectively as governing body members.

An institution or agency that is in conflict with the provider or its clients should not select members of the governing body. (See Standard 7.2-5 on Conflicts of Interest.) Thus, a welfare department or county attorney's office against which the provider regularly litigates should not designate governing body members. Provider employees are directly subject to the decisions of the governing body and should not participate in selection of board members.

Standard 7.3 - Governing Body Operations - Communication with Clients

The governing body should strive to communicate effectively with the client population.

Commentary

Communication by the governing body with clients and client representatives will facilitate the legal services provider's adoption of policies which increase the effectiveness of its service to clients. Therefore, the governing body should strive to operate in a way which encourages such communication. It should inform clients of its policies and actions through its meetings and publications, as well as through individual member contacts with client groups. Communications to clients should include information on budget matters, as well as issues affecting access to services, such as eligibility, office hours, and priorities for legal work.

Practical aspects of governing body operation, such as the time, location, frequency, and manner of holding meetings, can influence significantly the effectiveness of the body and of individual members. If practicable, these aspects should be designed to enhance informed participation of all board members, facilitate involvement of new members, and allow appropriate public involvement in decisions. Some providers will be governed by a board of directors which will be responsible for governance of an organization, such as a bar association, which engages in many activities in addition to its sponsorship of a legal services provider. For many such organizations, public participation in their deliberations would be impractical or inappropriate. In such circumstances, other means are appropriate to encourage public involvement in the adoption of policies regarding provider operations. Thus, such an organization might invite input through committee meetings, or by setting aside a specific portion of its meeting agendas for consideration of provider matters. The following policies and procedures should be considered as appropriate given the institutional nature of the provider.

- The governing body should meet frequently enough to have a full working understanding of program operations and issues.
- Meetings should be held at a time and place that assures the participation of board members, affected clients, and the interested public.
- Timely public notice of meetings should be given. The notice should fully indicate the agenda, time, date, and location of the meeting.
- Decisions about the operation of the provider should be made in open meetings and appropriate participation by clients and the public should be encouraged. Closed executive sessions should take place only when litigation in which the provider is a party or sensitive personnel matters are discussed.
- Full minutes of the governing body's deliberations and decisions should be kept and approved at the next meeting, subject to corrective amendments. The minutes

should capture fairly the essence of the issues treated at the meeting.

- A complete agenda should be published prior to each meeting. The agenda should be sufficiently descriptive to advise governing body members and other interested persons of the matters to be considered. Members should receive as much supportive and explanatory information as possible prior to the meeting to provide an opportunity for review and analysis of significant matters.

Committee work is an integral part of the governing body's decision-making processes. The agenda of board meetings is often too full to permit adequate consideration of the full range of details of complex issues. The governing body should appoint committees, when necessary, to consider issues in depth prior to board meetings and to make appropriate recommendations for action by the full governing body.

