

PERFORMANCE STANDARDS FOR LEGAL AID IN THE STATE OF WASHINGTON

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INTRODUCTION

General observations

The Washington State *Access to Justice Board* was established by order of the Washington Supreme Court in 1994 and charged with the responsibility "to assure high-quality access for low and moderate income residents and others in Washington state who suffer disparate access barriers to the civil justice system."¹ In meeting that responsibility, the *ATJ Board* has adopted these **Performance Standards for Legal Aid in the State of Washington** (hereafter, **Performance Standards**) to serve as guidelines for the operation and performance of civil legal aid organizations in the state.

These **Performance Standards** revise the **Civil Equal Justice Performance Standards** (adopted 1999 by the *ATJ Board*) in order to reflect the continued evolution of the delivery system to meet the changing needs of low-income communities in the state. In addition, since the adoption of the 1999 **Performance Standards**, the American Bar Association has revised the national *Standards for the Provision of Civil Legal Aid* (2006) and the Legal Services Corporation has adopted revised *Performance Criteria* (2006). The **Performance Standards for Legal Aid in the State of Washington** reflect those revisions.

General principles of the Performance Standards

These Performance Standards should be read in the context of the *Hallmarks of an Effective Statewide Civil Legal Services System*, adopted by the ATJ Board in 2004, which state the core values and capacities of the Washington civil legal services system.² Six principles, which are also reflected in the *Hallmarks*, are particularly important to these **Performance Standards**. Those principles are:

- Responding to the needs of low-income communities and of persons who are served by the legal aid organization;
- Providing high-quality and effective legal assistance;
- Accomplishing just results for individuals and the low-income communities served;
- Treating persons served with dignity and respect;
- Expanding access to needed legal assistance and the civil justice system;
- Serving diverse communities with cultural and linguistic competence; and
- Coordinating and collaborating with the Alliance for Equal Justice in all pertinent parts of the legal aid organization's operation and operating in accordance with the

¹ Order of the Supreme Court of Washington reauthorizing the Access to Justice Board (November 2, 2000, <http://www.wsba.org/atj/board/2000order.htm>).

² The commentary to the **Performance Standards** cross references the Hallmarks and presents pertinent language from them. The full text of the Hallmarks can be found at <http://www.wsba.org/atj/documents/hallmark.htm>.

Introduction

Revised Plan for the Delivery of Civil Legal Services to Low-income People in Washington State (State Plan), adopted by the ATJ Board on May 8, 2006.

Organization of the Performance Standards

These **Performance Standards** are divided into eight separate Standards that address a range of issues. The Standards are interrelated and key aspects of a legal aid organization's operation may be addressed in more than one. The areas covered are:

- Identification of legal needs and planning
- Strategic deployment of resources,
- Client access,
- The production of high-quality legal work,
- Effective leadership management and administration,
- Governance,
- Resource development; and
- Use of volunteer attorneys.

The Performance Standards offer three levels of analysis. The first is the Standard itself which presents a succinct statement of how a legal aid organization should operate or what it should accomplish in the area addressed by the Standard. The second is the lengthier Commentary, which explains in greater depth the intent of the Standard or how it should be applied. Both the Standard and Commentary are integral to the **Performance Standards**, and both have been adopted by the Access to Justice Board. The third level of analysis consists of links to pertinent portions of the Commentary to the American Bar Association's *Standards for the Provision of Civil Legal Aid* and to the Legal Service of Corporation's *Performance Criteria* to further elucidate the application or use of Washington's Performance Standard. The analysis is offered as additional guidance to persons using the **Performance Standards**, but the language has not been formally adopted by the ATJ Board.

Application of the Performance Standards

These **Performance Standards** apply to all civil legal aid programs funded by the Legal Foundation of Washington, the Office of Civil Legal Aid or the Legal Services Corporation, although they will be of use to any organization whose predominant mission is to provide civil legal aid to Washington's low-income and vulnerable persons in need.³ The **Performance Standards** do not create mandatory requirements and non-compliance does not constitute a breach of a legal duty to a client or a funder. Nor do they expand or modify any ethical responsibility of a legal aid program or its practitioners under Washington's Rules of Professional Conduct. Legal aid organizations, however, must

³ Most such organizations will be members of the Alliance for Equal Justice, which was formed in 2004 to serve as an umbrella network of all civil legal aid programs in the state. See, http://allianceforequaljustice.org/index.php?p=Alliance_Members&s=204.

Introduction

operate in conformance with the Rules of Professional Conduct, and, in particular, in ways that assure that they can protect the confidentiality of information provided by clients and prospective clients.

How a Performance Standard applies in practice is a function of the nature of each legal aid organization and may vary based on a variety of factors. Those factors include size, structure, available resources and method of delivery, as well as other features, such as being targeted primarily on a specific population or legal issue, or, relying principally or exclusively on volunteer attorneys to assist clients. Compliance with some Performance Standards, such as those associated with outreach and access, may require coordinated efforts with Alliance for Equal Justice regional partners.

PERFORMANCE STANDARD ONE: IDENTIFYING LEGAL NEEDS AND PLANNING STRATEGICALLY AND COLLABORATIVELY TO RESPOND

The legal aid organization interacts with the low-income communities it serves to maintain awareness of the problems they experience and their most compelling civil legal needs and, in consultation with its Alliance for Equal Justice partners and stakeholders, makes deliberate and coordinated choices about how to respond to those needs. In active consultation with its delivery partners, the organization periodically assesses the effectiveness of its efforts to respond to the needs of the communities it serves and adjusts its approaches, as necessary.

Commentary

There are four core values reflected in *Performance Standard One*:

1. To be aware of the most compelling needs of low-income communities served based on ongoing interaction with those communities;
2. To plan strategically about how to deliver services that respond to those needs;
3. To coordinate with Alliance for Equal Justice Partners and stakeholders to maximize the effectiveness of the responses to clients' legal needs and to avoid duplication; and
4. To evaluate the effectiveness of program efforts and make necessary adjustments.

1. IDENTIFICATION OF THE MOST COMPELLING NEEDS OF THE COMMUNITIES SERVED

To be aware of the most compelling legal needs of low-income communities, a legal aid organization needs to be involved in ongoing interaction with those communities and with groups that work with them. They should interact with their low-income communities through a variety of means, including working with community groups and organizations and conducting outreach. The organization should strive to engage with all cultural and linguistic groups in its service area.⁴

Application of the Performance Standard to specialty, pro bono and smaller legal aid providers. Some legal aid programs in Washington target specific populations or issues or are relatively smaller or newer than other legal aid organizations. For such organizations, broad-based involvement in the overall low-income community may not

⁴ See **Hallmark One of Hallmarks of an Effective Statewide Civil Legal Services System**: "The system's effectiveness is dependent upon its commitment to assessing and responding to the most critical needs of clients as identified by low-income clients and potential clients."

ABA Standard 2.1 on Identifying Legal Needs and Planning to Respond: "A provider should interact with low-income individuals and groups serving low-income communities to identify compelling legal needs and should implement plans to address those needs most effectively."

Performance Standard One

be practical or appropriate, beyond what is necessary to maintain effective engagement with its target population and the specific issues it is organized to addressⁱ.

Although this **Performance Standard** is grounded in a concept of ongoing interaction with low-income communities, it also recognizes that it is important to conduct periodic, focused assessments of legal needs. The legal aid organization should cooperate in regional and statewide needs assessments to maximize the efficient use of resources and facilitate a coordinated analysis of legal needs. Assessments should be designed to assure that the legal needs of all populations are identified, in spite of barriers, such as geographic and cultural isolation, lack of telephones, limited proficiency in English, institutionalization and working hoursⁱⁱ.

2. PLANNING STRATEGICALLY TO DELIVER SERVICES THAT RESPOND TO COMPELLING NEEDS

Knowledge of the compelling needs of low-income communities and individuals within them is a predicate to planning to decide how best to respond to those needs. Planning is instrumental in a legal aid organization responding effectively to clients' needs and being clear about the objectives for its legal work. Clarity of objectives is an essential element of the self-assessment of the effectiveness of the organization's legal work. Planning also offers a foundation for formally establishing priorities, setting case acceptance guidelines, and determining staffing and training needs. How planning is approached may vary, but it should result in the organization being effectively organized and administered to achieve its objectives^{5, iii}.

3. COORDINATION WITH ACCESS TO JUSTICE PARTNERS AND STAKEHOLDERS⁶

No program operates in a vacuum and **Performance Standard One** strongly reflects the importance of legal aid organizations consulting and collaborating with their Alliance for Equal Justice partners and other stakeholders in planning and delivering legal aid services. Such collaboration helps the organization be aware of the issues facing its low-income communities, informs it about resources that are available to respond, and permits the efficient use of available resources throughout the system and the avoidance of duplication of effort^{7, iv}.

⁵ **ABA Standard 2.1 on Identifying Legal Needs and Planning to Respond:** “A provider should interact with low-income individuals and groups serving low-income communities to identify compelling legal needs and should implement plans to address those needs most effectively.”

⁶ See the extended discussion of statewide collaboration and cooperation in Washington State Performance Standard Two.

⁷ See, *ABA Standard 2.3 on Participation in Statewide and Regional Systems*, “A provider should participate in regional and statewide delivery systems to improve the systems’ capacity to deliver a full range of services that address the legal needs of low-income communities.”

Performance Standard One

4. EVALUATION OF THE EFFECTIVENESS OF PROGRAM EFFORTS AND MAKING NECESSARY ADJUSTMENTS

Performance Standard One is grounded in the importance of a strategic focus for the work undertaken by all legal aid organizations in the state. That focus underlies the value that each legal aid organization should evaluate the effectiveness of its efforts in order to build on its strengths and to address its shortcomings. A legal aid organization should regularly assess whether it is producing high quality legal work, is accomplishing its objectives in response to the identified legal needs and is operating efficiently and effectively. A legal aid organization should take advantage of insights derived from assessments and peer reviews conducted by funders and others and should coordinate its self-assessment efforts with such reviews in order to avoid duplication⁸,^v.

⁸ See, *STANDARD 2.11 on Provider Evaluation*: "A provider should regularly evaluate the efficiency and effectiveness of its operations and its response to the legal needs of the low-income communities it serves."

PERFORMANCE STANDARD TWO: STRATEGIC DEPLOYMENT OF RESOURCES TO PROVIDE SERVICES THAT RESPOND TO THE COMPELLING NEEDS OF LOW-INCOME COMMUNITIES

The organization strives to achieve clients' objectives and to accomplish lasting results that respond to the low-income communities' most compelling legal needs. In collaboration with other partners and stakeholders of the Alliance for Equal Justice, it chooses delivery mechanisms and means of representation that support the availability of a full range of appropriate legal services for low-income persons in need.

Commentary

Three important values underlie **Performance Standard Two**:

1. Within the context of the statewide Alliance for Equal Justice, deliberately choosing modes of representation and delivery mechanisms that efficiently and effectively respond to the needs of low-income communities, including the effective use of volunteer attorneys;
2. Achieving lasting results for individuals and low-income communities;
3. Working collaboratively with other legal aid organizations to support the availability of a full range of assistance to low-income communities.

1. CHOICE OF DELIVERY MECHANISMS THAT EFFECTIVELY AND EFFICIENTLY RESPOND TO CLIENT NEEDS

A legal aid organization needs to make deliberate choices about the mode of representation and the delivery mechanisms it will use to respond to clients needs.⁹ It should establish an approach to delivery that responds efficiently and effectively to the most important legal issues facing the low-income population it serves. To this end, a legal aid organization should be aware of new delivery methods that evolve with changes in the practice of law, with new technology and with new ways that are developed to reach out to and serve clients. Innovative delivery methods should be undertaken when they are able to assist low-income persons in resolving legal problems that they encounter, and should not be adopted simply because they can provide service to large numbers of individuals. While some legal problems can be resolved by properly supported self help efforts, many cannot be addressed effectively without representation. It is important, therefore, that the legal aid organization thoughtfully decide the range and mix of service it will offer and that it periodically assess if the services provided are effective in resolving the legal problems identified^{vi}.

⁹ *ABA Standard 2.2 on Delivery Structure*: "Within the context of its regional and statewide delivery system, a provider should establish delivery mechanisms that effectively and efficiently meet its low-income communities' legal needs."

Performance Standard Two

Legal aid organizations comprised of professional, full-time staffed legal advocates play multiple roles within the context of the Alliance for Equal Justice. In addition to providing direct assistance to eligible clients, such programs often are expected to provide a range of other services including, but not limited to, training, mentoring and support for pro bono program staff and volunteer attorneys;

Legal aid organizations that rely on volunteer attorneys to represent low-income clients should make certain that those attorneys are properly supported and are engaged in work that takes advantage of the skills and experience of those attorneys to respond to the full range of low-income persons' legal needs. Use of volunteer attorneys is governed by **Performance Standard Eight on Effective Use of Volunteer Attorneys.**

2. ACCOMPLISHING LASTING RESULTS FOR INDIVIDUALS AND LOW-INCOME COMMUNITIES

A legal aid organization should seek to achieve clients' objectives and lasting results that respond to the low-income communities' most compelling legal needs.¹⁰ There are a number of ways in which lasting results can be achieved: 1) by achieving the client's objective in individual legal problems; 2) by educating low-income persons how successfully to address legal problems that they face on their own; and 3) by systemic work that improves laws, practices and policies that adversely affect large numbers of low-income people.

Systemic work is often the most efficient way to address recurring issues encountered by low-income communities. Repetitive representation of individuals to obtain a limited remedy that does not ultimately resolve an underlying legal problem can be expensive and time-consuming. Addressing the underlying cause of such legal problems may, on the other hand, ultimately expend fewer resources with more lasting benefits for large numbers of low-income persons^{vii}.

Not all legal aid programs in Washington can undertake costly, broad-based strategies aimed at systemic change. Some will be restricted by limited resources, others face funding restrictions on certain kinds of advocacy and others will have a program mission that focuses on individual work. Such individual work should be undertaken with a commitment to achieving client objectives and being alert to the potential systemic benefit of repetitive successful individual representation^{viii}.

¹⁰ *Hallmarks of an Effective Statewide Civil Legal Services System* —

4: "A legal services delivery system is effective only to the degree that positive results are achieved for clients, particularly in areas of high priority client need. "

#6: "Resources must first be committed to those efforts and activities that are most likely to result in longest term benefits in areas of the most pressing client needs."

Performance Standard Two

3. WORKING COLLABORATIVELY TO SUPPORT THE AVAILABILITY OF A FULL RANGE OF ASSISTANCE TO LOW-INCOME COMMUNITIES

Not every legal aid organization in the state is able to provide a full range of representation. There are many limitations ranging from size of the organization to a narrow and targeted focus that may lead it to offer only one or a few types of possible representation. The choices about the kinds of representation that will be offered, however, should be made deliberately and with an awareness of the services provided by other providers.

Washington’s legal aid organizations have a long-standing tradition of working collaboratively as part of an integrated state justice system. That collaboration is key to legal aid organizations’ individually and collectively meeting this Performance Standard’s charge to support a full range of services for low-income persons in the state. Decisions about the services that will be provided and the mechanisms for offering them should be made in concert with Alliance for Equal Justice partners in order to maximize the statewide system’s capacity to respond to the full range of legal needs of the low-income population^{11 ix}.

The forms of representation that should be available in the system include:

- *Legal advice and referral;*¹²
- *Brief legal services;*¹³
- *Assistance to pro se litigants;*¹⁴
- *Representation in negotiation;*¹⁵
- *Full representation in the judicial system and in administrative adjudicatory processes;*¹⁶
- *Community economic development;*¹⁸
- *Transactional representation*¹⁷
- *Mediation and other alternate dispute resolution mechanisms;*¹⁹

¹¹ ***ABA Standard 2.3 on Participation in Statewide and Regional Systems:*** “A provider should participate in regional and statewide delivery systems to improve the systems’ capacity to deliver a full range of services that address the legal needs of low-income communities.”

¹² ***See ABA Standard 3.4-1 on Representation Limited to Legal Advice and Standard 7.8 on Legal Counseling.***

¹³ ***See ABA Standard 3.4-2 on Representation Limited to Brief Service.***

¹⁴ ***See ABA Standard 3.5 on Assistance to Pro Se Litigants.***

¹⁵ ***See ABA Standard 7.9 on Negotiation.***

¹⁶ ***See ABA Standard 3.1 on Full Legal Representation; Standard 7.11 on Litigation; Standard 7.12 on Administrative Hearings.***

¹⁷ ***See ABA Standard 7.15 on Transactional Representation.***

¹⁸ ***See ABA Standard 3.3 on Community Economic Development.***

¹⁹ ***See ABA Standard 7.10 on Alternative Dispute Resolution.***

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- *Representation before state and local legislative, administrative and other governmental or private bodies that make law or policies affecting the legal rights and responsibilities of low-income persons;*²⁰
- *Community legal education, including providing legal information to low-income groups and individuals.*²¹

The term, full range of service, also involves the challenge of providing access to services for all populations, including those isolated by geography, language, culture, race, disability or institutionalization as well as limitations imposed by work hours.²² A legal aid organization needs to take deliberate steps to reach out to such populations and to work with other organizations to ensure such access^x.

²⁰ See ABA Standard 3.2 on Legislative and Administrative Advocacy; Standard 7.13 on Legislative and Administrative Advocacy by Practitioners.

²¹ See ABA Standard 3.6 on Provision of Legal Information.

²² See Performance Standard Three on Client Access.

PERFORMANCE STANDARD THREE: CLIENT ACCESS

The legal aid organization treats all persons seeking and utilizing its services with dignity and respect. It accurately identifies the legal needs of prospective clients and promptly responds to requests for assistance. It has policies and procedures to identify and address conflicts of interest and protect the confidentiality of clients' and prospective clients' information. The organization promotes access for all eligible populations including those that are isolated by geography, culture, language, disability and other factors that limit access. The organization coordinates with Alliance for Equal Justice partners and stakeholders to promote improved access to the civil justice system.

Commentary

A number of values are expressed in this **Performance Standard**. Some correlate to the operation of systems such as intake as well as important ethical obligations related to confidentiality and conflicts of interest. Others relate to the responsibility of the legal aid organization to strive to overcome barriers that exist for many low-income populations, because of geographic isolation, cultural difference, limited English proficiency and disability. Finally, some values relate to how the program operates and the effect of its internal operation on persons seeking access. The values expressed in **Performance Standard Three** are:

1. Treating persons seeking and receiving services with dignity and respect and fostering trust in any attorney-client relationship that is formed;
2. Accurately assessing the legal problem of persons seeking assistance and advising prospective clients for service promptly of the level of assistance that they will receive, if any;
3. Identifying and addressing potential conflicts of interest in ways that are consistent with ethical obligations, but do not unduly burden access to needed services;
4. Protecting information provided by prospective clients and clients from unauthorized disclosure;
5. Operating in a way that facilitates access and overcomes barriers to isolated low-income communities;
6. Operating in a way that reflects an understanding of and sensitivity to the values and cultures of all communities served;
7. Having the capacity to assist low-income persons in their primary language;
8. Being accessible to persons with disabilities;
9. Reaching out to all low-income communities, particularly to those with limited ability to identify and resolve their legal problems;
10. Promoting improved access to the justice system;

Performance Standard Three

11. Assuring that information technology is used in a way that promotes access to services and to the justice system.

1. TREATING PERSONS SEEKING AND RECEIVING SERVICES WITH DIGNITY AND RESPECT AND FOSTERING TRUST

A core value that underlies all Washington's Performance Standards is the importance of treating all persons who interact with the legal aid organization with dignity and respect. Because a potential client's first contact with the legal aid organization is often through its intake system, how that system functions is likely to have as affect on any attorney-client relationship that is formed. It is important, therefore, that the process foster confidence in the professionalism and capability of the organization, and that it engender trust in the potential client. The process should be respectful of the time and resources of persons seeking services and, as much as resources will allow, should avoid long waiting times for prospective clients to seek services and should promptly advise them if services will be provided^{23, xi}.

2. ACCURATELY ASSESSING THE LEGAL PROBLEM OF PERSONS SEEKING ASSISTANCE AND ADVISING THEM PROMPTLY OF THE LEVEL OF ASSISTANCE THAT THEY WILL RECEIVE

The intake process should accurately identify the legal needs of the person seeking assistance and should act promptly on the application and notify the individual of the level of assistance that will be offered, if any. Individuals who are not accepted for service should be notified promptly and provided legal information, if appropriate, on the steps they may take to protect their interests^{24, xii}.

3. IDENTIFYING AND ADDRESSING POTENTIAL CONFLICTS OF INTEREST IN WAYS THAT ARE CONSISTENT WITH ETHICAL OBLIGATIONS AND DO NOT UNDULY BURDEN ACCESS TO NEEDED SERVICES

A legal aid organization and the lawyers who work for it are governed by the Rules of Professional Conduct, including the responsibility to avoid conflicts of interest with current and former clients in their acceptance of new matters.²⁵ A legal aid organization

²³ **ABA Standard 4.1 on the Provider's Intake System:** "A provider should design and operate an intake system that treats all persons seeking assistance with respect, accurately identifies their legal needs and promptly determines the assistance to be offered.

²⁴ Ibid.

²⁵ See, Rules of Professional Conduct governing conflicts of interest: Rule 1.7, Conflicts of Interest Current Clients; Rule 1.8, Conflicts of Interest: Current Clients: Specific Rules; Rule 1.9, Duties to Former Client; Rule 1.10, Imputation of Conflict of Interest: General Rule; Rule 1.11, Special Conflicts of Interest for Former and Current Government Officers and Employees; Rule 1.18, Duties to

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should adopt policies and procedures to identify potential conflicts of interest at intake and to take appropriate steps when they are identified.

Application of the rules governing conflicts of interest can be complex for legal aid organizations. A legal aid organization may be the only source of representation for two parties to a dispute, both of whom may be potentially eligible for services, may need legal representation and may seek the assistance of the organization. Sometimes, a person who is not eligible for representation may be the first to contact a legal aid organization, creating a potential conflict of interest for a person in need of assistance who would otherwise be eligible,²⁶ It is important that the legal aid organization adopt policies and procedures, consistent with its ethical duties, that do not unnecessarily impede access to assistance for such individuals.

For conflicts which it does encounter, the legal aid organization should seek to create a capacity to refer the otherwise eligible prospective client to other sources of help. It may, for instance, reach an agreement with other legal aid organizations in the region or a panel of volunteer attorneys to process conflicts and recommend if representation is appropriate.²⁷

The rules governing conflicts of interest are complex and staff involved in making decisions about the acceptance and referral of cases should receive training in their application and have access to a lawyer with expertise in the area to help determine appropriate responses when necessary.

4. PROTECTING INFORMATION PROVIDED BY PROSPECTIVE CLIENTS AND CLIENTS FROM UNAUTHORIZED DISCLOSURE

The legal aid organization needs to adopt policies and procedures that assure its compliance with the Rules of Professional Conduct pertaining to confidentiality of information.²⁸ Information obtained from both clients and prospective clients for service needs to be protected from unauthorized disclosure, and it is essential that the legal aid organization operate in a way to ensure that such information is protected by the attorney-

Prospective Client and Rule 6.5, Nonprofit and Court-Annexed Limited Legal Services Programs.

²⁶ There had been reported instances of persons knowing they are not eligible for legal aid services, who nevertheless, contact a legal aid organization with the intent of creating a conflict of interest to prevent the organization from representing the adverse party—who may be a person with a compelling need for representation.

²⁷ In adopting its conflict policies and procedures, the legal aid organizations should be aware of how the duties to a prospective client set forth in [Rule 1.18](#) of the Rules of Professional Conduct apply to it. It should also be familiar with the application of RPC, [Rule 6.5](#) that limits how the rules governing conflicts of interest apply to lawyers providing short-term, limited legal services through a legal aid organization.

²⁸ See, Rules of Professional Conduct, rule 1.6. See also, at the ABA Standard 4.3 on Protecting Client Confidences.

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client privilege.²⁹ Interviews should be conducted in a private setting. The legal aid organization should protect against revealing confidential information to a funding source or other government agencies, unless such disclosure is consistent with the Rules of Professional Conduct

5. OPERATING IN A WAY THAT FACILITATES ACCESS AND OVERCOMES BARRIERS TO ISOLATED LOW-INCOME COMMUNITIES

To the degree possible, the legal aid organization should function in a way that facilitates access to its services. There are many aspects of program operation that affect the accessibility of its services. Office and intake hours, office location, use of technology, availability of public transportation and overall delivery strategy all affect the degree to which persons needing assistance can apply for and receive legal services. Office and intake hours, in particular, can determine whether employed persons are able to seek and utilize available legal assistance, and to the degree possible, they should be set to accommodate such needs^{30, xiii}.

The legal aid organization should be aware of the access needs of other isolated low-income populations in its service area. Persons in remote geographic areas, persons with disabilities, the institutionalized and the elderly often encounter physical and other barriers to services. While telephone access can accommodate the access needs of many such persons, some will not have access to a telephone, or will not be comfortable seeking legal services through such means. The legal aid organization should strive to accommodate such needs through alternative means such as outreach, partnership with other organizations that serve the communities and creative use of technology^{xiv}.

Legal aid organizations that operate under restrictions that limit access to certain categories of clients or that limit their ability to provide certain types of client services should be aware of organizations and other resources otherwise capable of meeting client needs that they cannot serve and, within their legal capacity to do so, provide appropriate referrals to such organizations.³¹

²⁹ See, Rules of Professional Conduct, Rule 1.18.

³⁰ **Hallmarks of an Effective Statewide Civil Legal Services System:**

Hallmark 2: *“Those in poverty have an equal right to justice regardless of who they are, where they live, or the language they speak.”*

Hallmark 3. *“The justice system must be barrier free.”*

Hallmark 14: *“While taking into consideration the needs of the clients statewide, the system should identify and respond to unique issues and special needs of clients within individual regions, communities and Indian nations.”*

ABA Standard 4.5 on Access to Services: *“A provider should operate in ways that facilitate access to its service.”*

³¹ **Hallmarks of an Effective Statewide Civil Legal Services System:**

Hallmark 11: Recruitment, coordination and thoughtful use of the components of a legal services delivery system are essential to the system’s success, [including:]....

Performance Standard Three

6. OPERATING WITH UNDERSTANDING OF AND SENSITIVITY TO THE VALUES AND CULTURES OF ALL COMMUNITIES SERVED

It is essential that a legal aid organization operate with sensitivity to the diverse values, beliefs and customs of the populations it serves and with understanding of how those values, beliefs and customs affect communication with the legal aid organization, how the attorney-client relationship is viewed and how the conduct of the representation might be affected. To be culturally competent also involves understanding how diverse cultural mores influence how people react to their legal problems and how those problems should be addressed^{xv}.

A legal aid provider should demonstrate its commitment to cultural competence by striving for a workforce that reflects the diversity of the communities served. All legal aid organizations should make appropriate training available to their staff, both in sensitive cross-cultural interaction and in the cultural values of the various cultures in its service area. The development and implementation of training should be coordinated with others in the Alliance for Equal Justice to avoid duplication of effort^{xvi}.

Periodically, the legal services organizations should assess the degree to which persons from the communities it serves are not seeking and utilizing the legal assistance available to them and should make appropriate adjustments to increase their participation^{32, xvii}.

7. HAVING THE CAPACITY TO ASSIST LOW-INCOME PERSONS IN THEIR PRIMARY LANGUAGE

A legal aid organization also has a responsibility to communicate in the language of persons seeking and using its services. The organization should be able to conduct intake in the languages prevalent in its service area. It should have the capacity to communicate with all clients who are not proficient in English either through bilingual staff or a qualified interpreter. Legal information and community legal education should be offered in common languages spoken among the low-income communities it serves^{33, xviii}.

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- Maintenance of programs in as many varied configurations as are necessary to insure the low-income population has a meaningful level of access to the broadest possible range of representation and other assistance.
 - Collaborative relationships among staffed legal services programs; private attorneys; volunteer attorney programs; specialized advocacy programs; private and non-profit law firms; justice system workers; other professional disciplines; social service providers; client groups and individual clients themselves.
 - Communication, cooperation and coordination among these various components.

³² **Standard 2.4 on Cultural Competence:** “A provider should ensure that its staff has the skills, knowledge and resources necessary to provide assistance in a culturally competent manner.”

³³ **Standard 4.6 on Communication in the Primary languages of Persons Served:** “A provider should assure that all language groups within its low-income communities have access to its services and should assist persons using its services in their primary language.”

Performance Standard Three

8. ACCESSIBILITY TO PERSONS WITH DISABILITIES

The legal aid organization should eliminate barriers for persons with disabilities. It should periodically examine the degree to which its facilities and its technology are accessible to persons of limited mobility, cognitive disabilities and impaired sight and hearing. A legal services organization's attention to these accessibility issues may increase its awareness of and responsiveness to legal issues related to its disabled clients' access to other private and governmental services^{xix}.

9. REACHING OUT TO ALL LOW-INCOME COMMUNITIES

This Performance Standard reflects the important value of reaching out to low-income communities, and particularly those that may need assistance in identifying and resolving legal problems. Targeted outreach can be an essential ingredient of a strategy to encourage utilization of legal aid services by isolated populations. Outreach should inform members of isolated communities about their basic legal rights and how to access necessary civil legal services. Intake may be conducted at outreach sites for populations, such as institutionalized persons, the frail elderly and migrant farm workers. Outreach to isolated populations is a regional responsibility that should be addressed through cooperative efforts of regional partners and stakeholders in the Alliance for Equal Justice^{xx}.

10. PROMOTING IMPROVED ACCESS TO THE JUSTICE SYSTEM

Consistent with the underlying notion that access to justice is a fundamental right, a legal aid organization should improve access to the legal system through its own direct services and its advocacy, through delivery approaches that assist low-income persons to help themselves and through collaboration with partners and stakeholders in the Alliance for Equal Justice^{xxi}.

11. USING INFORMATION TECHNOLOGY IN WAYS THAT PROMOTE ACCESS TO SERVICES AND TO THE JUSTICE SYSTEM

Each legal aid organization should strive to comply with **The Access to Justice Technology Principles** that relate to the delivery of legal aid services. Technology Principle I states: "*Use of technology in the justice system should serve to promote equal access to justice and to promote the opportunity for equal participation in the justice system for all. Introduction of technology or changes in the use of technology must not reduce access or participation and, whenever possible, shall advance such access and participation.*"³⁴ To the degree possible, the development and implementation of

³⁴ **Access to Justice Technology Principles** (Adopted by the Washington Supreme Court, December 3, 2004)

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technologically based approaches to reaching out to low-income communities should be coordinated among participants in the statewide justice system^{xxii}.

PERFORMANCE STANDARD FOUR: THE PRODUCTION OF HIGH QUALITY LEGAL WORK

The organization produces high quality legal work. It seeks to recruit and retain a well qualified, client-sensitive and diverse workforce, and maintains systems, policies and standards that support the timely, efficient and effective practice of law.

Commentary

A number of interrelated values underlie this **Performance Standard**. The first involves a commitment to produce high quality legal work. A second set has to do with the characteristics of the staff that produces the work. The third group of values relates to systems that are in place both to support the practice of law and to support the staff that produces it. A fourth cluster of values relates to the policies that should be in place to guide how work is undertaken. An additional value has to do with the existence of standards to guide practitioners in their representation of clients.

More specifically, the values expressed in this **Performance Standard** are:

1. Producing high-quality legal work efficiently;
2. Recruiting and retaining a well qualified, diverse client-sensitive workforce;
3. Having the ability to connect competently across cultural and linguistic lines;
4. Having systems that support the efficient production of high quality legal work including,
 - Access to technical support and substantive expertise,
 - Supervision of legal work,
 - Training,
 - Periodic evaluation;
5. Having policies and procedures that promote the timely, efficient and effective practice of law, including:
 - Case acceptance and work assignment guidelines,
 - Case file maintenance,
 - Appropriate caseload and productivity expectations, and
 - Record keeping;
6. Striving to achieve high standards of practice.

1. **THE EFFICIENT PRODUCTION OF HIGH-QUALITY LEGAL WORK**

The organization should efficiently produce high-quality legal work that is responsive to the needs of clients.³⁵ At a minimum, the organization's advocates should meet the

³⁵ See also, **Performance Standard Two**.

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standard of competency stated in the Washington Rules of Professional Conduct (RPC, Rule 1.1), but they should strive to achieve a standard of high quality representation.³⁶

To this end, the Performance Standard speaks to staff qualifications and training, supervision systems that support quality, specific quality assurance mechanisms and the fundamental elements of effective representation.

2. RECRUITMENT AND RETENTION OF HIGH-QUALITY, DIVERSE, CLIENT-SENSITIVE WORKFORCE

The key to high-quality representation is the recruitment and retention of a well qualified, diverse and client-sensitive staff. Having a reputation for producing high-quality, effective legal work itself enhances the capacity of a legal aid organization to attract well qualified individuals to the organization. Staff are more likely to continue their employment with a legal aid organization over time, if they are given the support they need for professional growth, engage in work which has discernible importance to the communities served and are adequately compensated³⁷.

3. HAVING THE ABILITY TO COMMUNICATE COMPETENTLY WITH PEOPLE OF DIFFERENT CULTURAL AND LINGUISTIC BACKGROUNDS

Cultural and linguistic competencies are values that directly relate to the capacity of a legal aid organization to provide high quality legal representation. An essential ingredient of an effective attorney-client relationship is the capacity of the advocate to understand the objectives of the client and to explain the options available to pursue those objectives. Moreover, effective representation is dependent on the advocate fully understanding the client's circumstances and the facts which are pertinent to the representation. An unsurmounted language barrier can lead the advocate to misinterpret or misunderstand key aspects of a case or the client's objective, leading to an inadequate outcome. Similarly, different cultural norms may lead a client to seek an objective or pursue a strategy which to the advocate may seem inopportune. Cultural and linguistic differences that stand in the way of effective communication can undermine the establishment of a trusting attorney-client relationship and defeat the purpose of the representation³⁸,^{xxiii}.

³⁶ **Introduction to the ABA Standards:** *“The legal work undertaken by a legal aid provider should be of high quality and should be effective in responding to the need it is intended to address. The Standards state that, at a minimum, a practitioner should meet the competency norm that is stated in the Model Rules of Professional Conduct and should aspire to a benchmark of high quality.”*

³⁷ **ABA Standard 6.1 on Characteristics of Staff:** *“A provider’s staff should be diverse, well-qualified and competent, sensitive to low-income persons and their legal needs, and committed to providing high quality legal services.”*

Standard 2.5 on Staff Diversity: *“A provider should take affirmative measures to hire and retain a diverse staff that enhance its ability to respond effectively to the legal needs of low-income communities.”*

³⁸ **ABA Standard 2.4 on Cultural Competence:** *“A provider should ensure that its staff has the skills, knowledge and resources necessary to provide assistance in a culturally competent manner.”*

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4. SYSTEMS THAT SUPPORT THE EFFICIENT PRODUCTION OF HIGH-QUALITY LEGAL WORK

A legal aid organization should have systems in place that directly support the individuals providing representation. The program is ethically responsible for the conduct of the representation of its advocates and for assuring that it meets appropriate norms of quality. **Supervision and mentoring** of less experienced advocates is necessary, therefore, to assure that clients' interests are not jeopardized by inexperience and that advocates develop professionally at an appropriate pace^{39, xxiv}. Advocates should have access to expertise in the law and procedures that pertain to the representation they have undertaken^{40, xxv}.

Regular review of staff advocates' cases and case loads provides a direct means for assuring the appropriate conduct of cases, the advocates' productivity in handling cases and for identifying areas in which training is appropriate. Case and case load review can help assure that cases proceed in a timely manner, that clients are informed of key developments in their cases and are consulted regarding important strategy decisions. If work is identified which is not acceptable, case and case load review can provide an opportunity to remedy mistakes and cure delays to protect the clients' interests.⁴¹ Ongoing review of the cases of volunteer attorneys is not always practical and, if the program is not a part of the attorney-client relationship maybe ethically proscribed.⁴² Nevertheless, the pro bono program should use means such as case tracking and client satisfaction follow-up to accomplish the purposes of this requirement^{xxvi}.

Training. A legal aid organization needs to assure that its staff has access to relevant training that is responsive to the continuum of substantive, skills and related professional development needs of staff at every level of their professional careers. Program budgeting and investment in training and professional development (including leadership development) should be considered to be a part of an investment in essential infrastructure necessary to efficiently provide high quality legal assistance consistent with these standards^{43, xxvii}.

ABA Standard 4.6 on Communication in the Primary Languages of Persons Served: “A provider should assure that all language groups within its low-income communities have access to its services and should assist persons using its services in their primary language.”

³⁹ **ABA Standard 6.3 on Responsibility for the Conduct of Representation:** “A provider is responsible for the conduct of representation undertaken by its practitioners and should supervise the work to assure that each client is competently represented.”

⁴⁰ **ABA Standard 6.6 on Providing Adequate Resources for Research and Investigation:** “A provider should assure the availability of adequate resources for appropriate legal research and factual investigation.”

⁴¹ **ABA Standard 6.4 on Review of Representation:** “A provider should review representation provided to clients to assure that they receive high quality assistance and to identify areas in which the provider should offer training and support to its practitioners.”

⁴² See Performance Standard Eight on the Effective Use of Volunteer Attorneys.

⁴³ **ABA Standard 6.5 on Training:** “A provider should provide access to ongoing and comprehensive training for all personnel.”

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5. POLICIES THAT PROMOTE THE TIMELY, EFFICIENT AND EFFECTIVE PRACTICE OF LAW

A legal aid organization should also have policies in place which promote the timely, efficient and effective practice of law. Those policies relate to case acceptance, assignment and management of cases and work load, and maintenance of records.

- **Case Acceptance** — A legal aid organization should have criteria that guide its decisions regarding whom it will assist and the level of assistance it will offer. Case acceptance criteria should help assure that legal work that is undertaken relates to the compelling need of clients and that demands on case handlers' time is controlled so that high-quality assistance can be provided to the person served⁴⁴, ^{xxviii}.
- **Assignment and management of cases and workload** — The legal aid organization should have a process for assigning cases and other legal work and to establish performance expectations that assure that the individual undertaking the work has necessary substantive expertise or support, understands productivity expectations and has adequate time to carry out the work at an acceptable level of quality⁴⁵, ^{xxix}.
- **Case files and records** — The legal aid organization should have procedures on the maintenance of files to assure that all material facts and transactions are recorded and that there is a clear notation of the work done and planned⁴⁶, ^{xxx}. The organization should also have case handling systems to ensure that deadlines are met, conflicts of interests are identified and that client trust funds are appropriately handled⁴⁷.

6. STANDARDS FOR THE EFFECTIVE PRACTICE OF LAW

To the degree practical, a legal aid organization should have clear standards governing its practice of law. The *Hallmarks of an Effective Statewide Civil Legal Services System*

Standard 7.17 on Maintenance of Professional Competence: “*The practitioner should seek ongoing education, training and expertise to meet assigned responsibilities and to keep abreast of changes in the law and its practice.*”

⁴⁴ **ABA Standard 5.2 on Policy for acceptance of applicants for service:** “*A provider should establish a policy to guide its decisions regarding the assistance it will provide to persons accepted for service.*”

⁴⁵ **ABA Standard 6.2 on Assignment and Management of Cases and Workload:** “*A provider should assign and manage cases and individual workloads for practitioners and other staff to promote high quality representation and legal work.*”

⁴⁶ **Standard 5.4 on Case Files:** “*A provider should establish and maintain an electronic file in its case management system or a hard-copy file for each of its cases that records all material facts and transactions, provides a detailed chronological record of work done and sets forth a planned course of action.*”

⁴⁷ **ABA Standard 5.3 on Maintenance of Records:** “*A provider should have internal file maintenance and calendaring systems to help manage its legal work, note important deadlines, check for potential conflicts of interest and properly account for client trust funds.*” See also Rules of Professional Conduct, Rules 1.15A and 1.15B.

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have long presumed adherence to appropriate ethical and practice standards that apply to all lawyering, and in particular to legal aid representation. *Hallmark 13* states:

The system must embrace and reflect appropriate professional ethical and performance standards in every aspect of its practice.

Ethical rules.⁴⁸

Program policies.

Performance expectations in ABA Standards for Providers of Civil Legal Services to the Poor.⁴⁹

ABA Standards for Programs Providing Civil Pro Bono Legal Services to Persons of Limited Means.

In addition to the requirements set forth in the Rules of Professional Conduct, the ABA Standards provide additional guidance regarding specific aspects of law practice. Not all the ABA practice Standards apply to every legal aid organization and its advocates in Washington. Many legal aid organizations only engage in selected forms of representation, and most will not undertake every mode of representation which is addressed in the Section 7 of the ABA Standards.⁵⁰ There are, however, nine ABA practice Standards which apply to all forms of representation, which are set out in the attached footnote.⁵¹ There are six additional ABA Standards that provide guidance to

⁴⁸ The Rules of Professional Conduct govern the conduct of attorneys and it is, of course, expected that the legal aid organization and its advocates will comply with those requirements. Rules of particular importance to the practice of law by practitioners in a legal aid organization include the following:

[Rule 1.1 Competence.](#)

[Rule 1.2 Scope of Representation and Allocation of Authority Between Client and Lawyer.](#)

[Rule 1.3 Diligence.](#)

[Rule 1.4 Communication.](#)

[Rule 1.6 Confidentiality of Information.](#) See also, Performance Standard Three.

Rules 1.7 — 1.10 Conflict of interest:

[RPC, Rule 1.7, Conflict of Interest; Current Client](#)

[RPC, Rule 1.8, Conflict of Interest; Current Client: Specific Rules](#)

[RPC, Rule 1.09, Duties to Former Clients](#)

[RPC, Rule 1.10, Imputation Of Conflicts Of Interest: General Rule.](#) See also, Performance Standard Three.

[Rule 1.14 Client with Diminished Capacity.](#)

[Rule 1.16 Declining or Terminating Representation.](#)

[Rule 1.18 Duties to Prospective Client.](#)

Note also, the Rules in Title 3 (Advocate) and Title 4 (Transactions with Persons Other than Client).

⁴⁹ Now revised and renamed: *Standards for the Provision of Civil Legal Aid.*

⁵⁰ The practice standards are all set forth in Section 7 of the ABA Standards.

⁵¹ The first is Standard 7.1 on establishing an Effective Relationship and a Clear Understanding with the Client. It reads:

The practitioner should establish an effective, professional relationship and a clear understanding about the representation with each client.

The second ABA Standard that applies to all representation is **Standard 7.2 on Client Participation in the Conduct of Representation.** It reads:

Consistent with ethical and legal obligations, a practitioner must abide by the client's decision regarding the objectives of representation, must reasonably consult with the

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practitioners of various forms of representation. Legal aid organizations in Washington State should be aware of those which apply to their form of practice. Those Standards without Commentary are set forth in endnotes.^{xxxix}

client regarding the means used to achieve those objectives and must keep the client reasonably informed of the status of the matter.

The third ABA Standard which applies to all forms of assistance provided a client is **Standard 7.3 on the Practitioner's Responsibilities to Protect Client Confidences**. The Standard which reflects the ethical duties which apply to all Washington lawyers reads:

A practitioner must not disclose information relating to representation of a client except as authorized by the client or by pertinent ethical rules and laws.

Note that Washington rejected the provision of Model Rule 1.6(b)(6) that permits a lawyer to reveal information related to the representation in order to comply with "other law." The commentary to the Rule states in part. "Washington's omission of this phrase arises from a concern that it would authorize the lawyer to decide whether a disclosure is required by "other law," even though the right to confidentiality and the right to waive confidentiality belong to the client. The decision to waive confidentiality should only be made by a fully informed client after consultation with the client's lawyer or by a court of competent jurisdiction." See Washington Rules of Professional Conduct, Rule 1.6 and Comment.

The fourth generally applicable Standard is **Standard 7.4 on Initial Exploration of the Client's Legal Problem**, which reads:

The practitioner should interview each client to explore the legal problem, elicit pertinent facts and circumstances, identify legal issues and the client's objectives and inform the client about the steps needed to address the legal problem.

The fifth generally applicable ABA Standard is **Standard 7.5 on Investigation**. It reads:

The practitioner should investigate each client's legal problem to establish accurate and complete knowledge of all relevant facts.

The sixth is **Standard 7.6 on Legal Analysis and Research**.

The practitioner should conduct a legal analysis of each client's legal problem and research pertinent legal issues, when necessary and appropriate.

The seventh is **Standard 7.7 on Case Planning**.

The practitioner should determine a course of action for handling the client's case that identifies applicable law and available remedies and enables the client and practitioner to make knowledgeable decisions to pursue the client's objectives.

The eighth is **Standard 7.8 on Legal Counseling**.

The practitioner should effectively counsel the client throughout the representation to assure the client understands available options and the potential benefits and risks of each.

And, the ninth is **Standard 7.9 on Negotiation**.

The practitioner should conduct negotiations when appropriate to further the client's objective, but should enter into an agreement with the adversary only when specifically authorized by the client.

PERFORMANCE STANDARD FIVE: EFFECTIVE LEADERSHIP, MANAGEMENT AND ADMINISTRATION

The organization has leadership that establishes and maintains a shared mission and vision for the organization and a commitment to carrying out the organization's roles and responsibilities within the Alliance for Equal Justice, and gives it institutional stature and credibility in low-income and legal communities. The organization is well managed and administered and has in place appropriate systems that enable staff to carry out work consistent with these Performance Standards.

Commentary

Five related values underlie this **Performance Standard**:

1. Leadership that establishes and maintains a shared mission and vision for the organization and a commitment to carrying out the organization's roles and responsibilities within the Alliance for Equal Justice, and that helps it achieve institutional relevancy and credibility in the low-income and legal communities,;
2. Management that supports the production of high-quality, responsive legal work consistent with the Performance Standards;
3. Effective administration of the organization;
4. Compliance with grant and contract requirements and other legal responsibilities;
5. Effective use of technology to support the operation of the organization, the production of legal work, and service to clients, consistent with technological capacities and needs of the Alliance for Equal Justice, the organization's mission and vision and the Access to Justice Technology Principles.

1. LEADERSHIP THAT HELPS ESTABLISH AND MAINTAIN A SHARED MISSION AND VISION FOR THE ORGANIZATION AND HELPS IT ACHIEVE INSTITUTIONAL RELEVANCY AND CREDIBILITY

One of the principal tasks of a legal services organization's leadership is to help establish and maintain a shared commitment to the organization's mission, including its roles and responsibilities as a member of the Alliance for Equal Justice, and the means by which to accomplish it. The organization should operate strategically and focus its legal work on the most compelling legal needs of the low-income communities it serves.⁵²

Leadership of the legal aid organization should support its achievement of *institutional relevancy and credibility* in the low-income and legal communities, as well as the public at-large. Institutional relevancy and credibility means that the organization is understood to provide services that are relevant and responsive to the needs of low-income

⁵² See Performance Standard One.

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communities and that the organization and its staff are viewed as credible and effective advocates for its clients. Institutional relevancy and credibility promote the organization's institutional stature within the community. This enhances the efforts of advocates as decision-makers, adverse counsel and clients perceive the organization as one which conveys responsiveness, effectiveness, professionalism and competence in its operations⁵³, xxxii.

2. MANAGEMENT THAT SUPPORTS THE PRODUCTION OF HIGH-QUALITY, RESPONSIVE LEGAL WORK CONSISTENT WITH THE PERFORMANCE STANDARDS

For a legal aid organization to excel, it must have good management as well as effective leadership. Good management relates to the organization's capacity to get its work done efficiently to accomplish its intended objectives. A program that is well managed will have an effective management structure with well trained managers who can respond quickly and effectively to challenges and opportunities that confront the organization. Management should be diverse. All levels of management should be clear on their assigned authority and responsibility. The organization should create effective administrative procedures and effectively use technology and other tools that support internal operations as well as service to clients. It should periodically evaluate the effectiveness of internal and administrative operations^{xxxiii}.

3. EFFECTIVE ADMINISTRATION OF THE ORGANIZATION

An effective legal aid organization needs solid administrative systems to address its internal operational needs, including particularly its fiscal and personnel responsibilities.

Fiscal responsibilities. Fiscal planning and oversight are essential to a program's success. The organization's board of directors is ultimately responsible for its fiscal integrity and needs to assure that competent managers are in charge.⁵⁴ The organization's management should see its financial oversight, including the budget process, as integral to its implementation of major policy decisions affecting the organization's direction and operation. It should also assure that funds are spent in conformance with the adopted budget and consistent with the requirements of its funders^{xxxiv}.

Personnel. Effective personnel management is an important part of attracting and retaining high quality staff. It calls for effective supervision, as well as training and other opportunities for professional growth.⁵⁵ In addition, the organization should seek to retain

⁵³ **Standard 2.12 on Institutional Stature and Credibility:** "A provider should actively seek to achieve institutional stature and credibility in the communities in which it operates."

⁵⁴ **Standard 1.1-3 on Fiscal Matters:** "The governing body should assure the financial integrity and viability of the provider." See also, Performance Standard Six.

⁵⁵ See **Performance Standard Four on the Production of High-Quality Legal Work.**

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staff by providing satisfactory working conditions along with fair compensation and benefits^{xxxv}.

4. COMPLIANCE WITH GRANT AND CONTRACT REQUIREMENTS AND OTHER LEGAL RESPONSIBILITIES

It is important that the legal aid organization comply with grant and contract requirements and its other legal responsibilities. Careful attention to such requirements is important not only to assure retention of existing funds, but also to support the capacity of the organization and its partners in the Alliance for Equal Justice to attract new funds.

5. USE OF TECHNOLOGY TO SUPPORT THE OPERATION OF THE ORGANIZATION, THE PRODUCTION OF LEGAL WORK AND SERVICE TO CLIENTS, CONSISTENT WITH THE TECHNOLOGICAL CAPACITIES AND NEEDS OF THE ALLIANCE FOR EQUAL JUSTICE, THE ORGANIZATION'S MISSION AND VISION AND THE ACCESS TO JUSTICE TECHNOLOGY PRINCIPLES

Technology plays an increasingly important role in the operation of legal aid organizations, in the production of legal work and in direct service to clients. With the assistance of and in coordination with the Alliance for Equal Justice, the legal aid organization should plan for how it will acquire and deploy technology to accomplish its objectives. In compliance with **The Access to Justice Technology Principles**, it should guard against any use of technology that might reduce access to the justice system and should participate in the promotion of public knowledge and understanding of technologies that can increase access to justice.⁵⁶

The organization should consider the use of technology to respond to a variety of needs: 1) the production and management of legal work (including case management, document assembly, legal and factual research, collaboration and project management); 2) training and support of staff; 3) internal operations (including software for accounting, human resources and personnel management); and 4) expanding the range of services to clients and others in the community. The organization should stay informed of new developments and analyze the degree to which new strategies for serving low-income communities may be possible as a result of technological innovations^{57, xxxvi}.

⁵⁶ **Access to Justice Technology Principles** (Adopted by the Washington Supreme Court, December 3, 2004). See also, <http://atjweb.org/principles> which provides guidance to the effective implementation of the Technology Principles into organizational culture and decision making.

⁵⁷ **ABA Standard 2.10 on Effective Use of Technology**: “A provider should utilize technology to support efficient operations and the provision of high quality and responsive services.”

PERFORMANCE STANDARD SIX: GOVERNANCE

The organization has a governing body that sets policy and oversees program operation and participation in the statewide Alliance for Equal Justice. The members of the governing body are knowledgeable about and supportive of legal aid services and the statewide Alliance for Equal Justice. The governing body and its individual members serve as a resource to the legal aid organization.

Commentary

In most legal aid organizations, governance will be the responsibility of a board of directors. Not all legal aid organizations, however, are independent corporations; some pro bono programs, for instance, are operated as part of the activities of a Bar Association. In such cases, the functions described in this Performance Standard and Commentary may be carried out by a committee empowered to oversee the legal aid activities. The term, "governing body," is intended to encompass such committees, as well as board of directors of non-profit corporations dedicated to legal aid services.

This **Performance Standard** expresses a number of values that relate to different aspects of governance of a legal aid organization. One has to do with the proper functioning of the governing body, particularly with regard to policy making and oversight. The second reflects the appropriate characteristics of governing body members. Two others relate to activities of governing body members on behalf of the organization. The values are:

1. The governing body carries out its governance and oversight responsibilities effectively;
2. Governing body members are knowledgeable about legal aid services and supportive of the mission of the organization; and
3. Governing body members understand the role of the legal aid organization and its active participation in the Alliance for Equal Justice, and participate actively themselves, as appropriate;
4. The governing body serves as a resource for the legal aid organization.

1. THE GOVERNING BODY CARRIES OUT ITS GOVERNANCE AND OVERSIGHT RESPONSIBILITIES EFFECTIVELY

The governing body of a legal aid organization has six fundamental responsibilities that underlie its governance and oversight roles.

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- ***To determine the organization’s mission and vision, consistent with its role as a member of the Alliance for Equal Justice***⁵⁸.

The governing body should formally adopt the legal aid organization's mission and vision. The mission and vision should reflect the responsibilities of the organization in the context of the Alliance for Equal Justice. It is the responsibility of the executive leadership of the organization to ensure that there is a shared commitment to the mission and vision among staff of the organization^{xxxvii}.

- ***To adopt broad general policies for the organization to carry out its mission within the overall framework of the Alliance for Equal Justice***⁵⁹.

The governing body of a legal aid organization generally has decision-making authority and responsibility over broad items, such as setting substantive priorities, determining delivery structure and office location, creating a salary structure and determining fringe benefits^{xxxviii}.

- ***To engage in planning, along with the staff and executive management and in concert with planning efforts by the Alliance for Equal Justice, to guide how the organization responds to the legal needs of the low-income communities it serve***⁶⁰s.

The governing body should assure that the legal aid organization engages in planning consistent with Performance Standard One, and should participate actively in such efforts.

- ***To oversee the financial integrity of the organization.***⁶¹

Oversight of financial integrity encompasses financial planning and accountability. Financial planning begins with the adoption of a budget that commits available resources to the provider’s priorities. The organization’s management is responsible for spending resources according to the budget approved by the governing body. Financial accountability also involves the governing body’s responsibility to assure that the organization’s funds are spent for the purposes for which they were granted, are properly accounted for and that there is no fraud or misuse of funds^{xxxix}.

- ***To hire and supervise the chief executive officer;***⁶²

⁵⁸ **ABA Standard 1.1 on Overall Functions and Responsibilities of the Governing Body:** “A provider should have a governing body that establishes its mission, sets and oversees implementation of broad general policies to guide the provider and actively participates in planning for its future.”

⁵⁹ Ibid.

⁶⁰ **Ibid.; Performance Standard One; See also ABA Standard 2.1 on Identifying Legal Needs and Planning to Respond:** “A provider should interact with low-income individuals and groups serving low-income communities to identify compelling legal needs and should implement plans to address those needs most effectively.”

⁶¹ **ABA Standard 1.1-3 on Fiscal Matters:** “The governing body should assure the financial integrity and viability of the provider.”

⁶² **ABA Standard 1.1-4 on Relations with the Chief Executive:** “The governing body has the responsibility to hire the provider’s chief executive and should hold the chief executive accountable for the provider’s operations.”

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The governing body is responsible for hiring the executive director and for assuring that the individual carries out the governing body's policies and leads and manages the organization effectively. Not less than every two years, the governing body should assure that a standards-based review of is conducted of the performance of the legal aid organization's executive director officer or equivalent^{x1}.

- ***To ensure that its policies are being implemented and that the organization is in compliance with statutory and regulatory requirements.***⁶³

The governing body should receive regular reports regarding the legal aid organization's operation to allow it to confirm that its policies are being pursued and that the organization is functioning effectively and that clients are being effectively served. It should regularly review reports on assessment conducted by the organization's management as well as others outside the organization, including funders^{xli}.

Limitations on governing body members' activities. Governing body members should be aware of limitations on their role. The first involves the prohibition against interference with the representation of clients.⁶⁴ A governing body is permitted to set priorities which may limit a legal aid organization's involvement in a broad category of cases, but such limits have to be established before a case is accepted.⁶⁵ Interference by the governing body in the conduct of representation or in the referral of a case to a volunteer attorney is strictly prohibited^{xlii}.

The governing body of a legal aid organization should adopt policies that guard against conflicts of interest and offer guidance to members regarding what to do in the event that a conflict arises. Those policies should assure that no member of the governing body participates in a decision in which the member has a personal, professional, organizational or institutional interest that is in conflict with the interests of the provider or its clients^{66, xliii}.

⁶³ **ABA Standard 1.1-1 on Governing Body Oversight of the Provider:** *"The governing body should regularly review the provider's operations to assure effective operation as well as compliance with its policies and with pertinent legal requirements."*

⁶⁴ **ABA Standard 1.1-2 on Prohibition against Interference in the Representation of Clients:** *"The governing body and its individual members must not interfere directly or indirectly in the representation of any client by a practitioner."*

ABA Pro Bono Standard 1.1-5 on Role in Responsibility of the Governing Body — Non-Interference in Attorney-Client Relationship: **"The governing body and its individual members should not interfere directly or indirectly in the representation of a client by a volunteer attorney."**

⁶⁵ See ABA Committee on Ethics and Professional Responsibility, Formal Op. 334 (1974).

⁶⁶ **ABA Standard 1.2-4 on Governing Body Members' Conflicts of Interest:** *"Governing body members must not knowingly attempt to influence any decisions in which they have a conflict with the provider or its clients."*

ABA Pro Bono Standard 1.1-7 on Role and Responsibility of the Governing Body — Conflicts of Interest: "Governing body members should not attempt to influence any decisions in which they have a conflict of clients served by or through the pro bono program."

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2. GOVERNING BODY MEMBERS ARE KNOWLEDGEABLE ABOUT LEGAL AID SERVICES AND SUPPORTIVE OF THE MISSION OF THE ORGANIZATION

It is important that members of the governing body be individuals who are knowledgeable about legal aid and support the mission of the organization, including its role in the Alliance for Equal Justice. The governing body is key to the legal aid organization being responsive to the needs of the low-income communities served.⁶⁷ It needs to be aware of the needs of the communities served and, therefore, should reflect the diversity of the communities served. It also needs members who bring a variety of skills, knowledge and understanding to governance of the organization, and should strive to include individuals who are or have been eligible for services from the organization^{68, xlv}.

Governing body members should receive training to assure that its members are fully informed regarding their responsibilities to the organization and as participants in the Alliance for Equal Justice. They should receive training regarding the diverse low-income communities served and the services provided to them by the organization. Governing body members should be trained regarding the sources of funding received by the organization, and any restrictions that accompany the funding^{69, xlv}.

3. GOVERNING BODY MEMBERS WHO UNDERSTAND THE IMPORTANCE OF ACTIVE PARTICIPATION BY THE LEGAL AID ORGANIZATION IN THE STATE JUSTICE SYSTEM

A value which is woven throughout all of these **Performance Standards** is active participation in the state justice system and coordination and collaboration with Alliance for Equal Justice partners, including collaborative participation in public and private resource development efforts, consistent with the expectations set forth in Performance Standard Seven. The governing body should be aware of the legal aid organization's role in the Alliance as well as the activities and roles of other Alliance partners. The governing body is called upon to support such endeavors and to participate actively itself when appropriate.

⁶⁷ **ABA Standard 1.2 on Governing Body Members' Responsiveness to the Communities Served:** "A provider should have a governing body whose membership and manner of operating are responsive to the low-income communities served."

⁶⁸ **ABA Standard 1.2-2 on Governing Body Members from the Communities Served by the Provider:** "The governing body should include members who are or have been eligible to receive legal assistance from the provider."

⁶⁹ **ABA Standard 1.2-3 on Training of Members of the Governing Body:** "The provider should assure that all members receive orientation and training necessary for full and effective participation on the governing body."

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4. THE GOVERNING BODY SERVES AS A RESOURCE FOR THE LEGAL AID ORGANIZATION

Members of the governing body are an important resource for the organization. When appropriate, the governing body may speak for the organization and explain its proper role as an advocate for low-income persons and may assist in fundraising⁷⁰ and community relations^{71,xlvi.}

⁷⁰ **ABA Standard 1.1-6 on Resource Development:** “The governing body should assure that the provider engages in resource development and should directly assist in those efforts.”

⁷¹ **ABA Standard 1.1-5 on Serving as a Resource to the Provider:** “*The governing body should serve as a resource for a provider, assist in community relations and, when appropriate, engage in forceful advocacy on behalf of the provider.*”

PERFORMANCE STANDARD SEVEN: RESOURCE DEVELOPMENT

The organization works collaboratively and strategically with the unified statewide Campaign for Equal Justice and the Equal Justice Coalition to increase and leverage private and public financial support for civil legal aid.

Commentary

Civil legal aid is dependent on an intricate mix of private and public funding sources. Alliance members should approach resource development mindful of the importance of not disturbing the harmony of efforts to work cooperatively and collaboratively in preserving and expanding resources available to civil legal aid. History and experience throughout the country and in the State of Washington demonstrate that active coordination of resource development efforts maximizes the statewide legal aid system's capacity to secure, expand and protect private and public civil legal aid funding. In accord with this insight, four core values underlie this Performance Standard:

1. Coordination and cooperation with the Equal Justice Coalition (EJC) in efforts to preserve and expand *public* resources committed to the support of civil legal aid;
2. Participation in and cooperation with the Campaign for Equal Justice in efforts to develop and expand *private* resources to support civil legal aid;
3. Creation and dissemination of consistent messages and communications related to the goals and objectives of the Alliance for Equal Justice;
4. Equitable allocation of private and public resources for civil legal aid delivery consistent with the Access to Justice Board's Hallmarks and State Plan for the Delivery of Civil Legal Aid in Washington.

1. COORDINATION AND COOPERATION IN EFFORTS TO PRESERVE AND EXPAND PUBLIC RESOURCES COMMITTED TO THE SUPPORT OF CIVIL LEGAL AID

Since 1996, the ATJ Board's Equal Justice Coalition has coordinated all Alliance-based efforts relating to federal and state public funding. Recognizing that the Alliance must speak with a common voice on public resource development efforts, the ATJ Board determined that the Equal Justice Coalition (EJC) should serve as the principal voice of the Alliance on matters relating to the core federal and state funding, currently provided through the Legal Services Corporation (LSC) and the Office of Civil Legal Aid (OCLA).

The EJC has a long history of success. First, it successfully defended against proposed cuts in LSC funding, as well as cuts in state funding dedicated to civil legal aid. In recent years, it successfully coordinated efforts to secure the significant increases in statewide funding currently administered by the OCLA to support the civil legal aid system. All

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Alliance members are expected to support efforts of the EJC to preserve and expand these two important resources.⁷²

Over the years, the EJC has also helped Alliance members secure and protect other public funding that is available locally or is targeted on a specific issue or population and not available for general support of civil legal aid. Each member is expected to inform the EJC of any intent to seek or defend any such public funding and to coordinate such efforts with the EJC.⁷³

2. PARTICIPATION IN AND COOPERATION WITH THE CAMPAIGN FOR EQUAL JUSTICE IN EFFORTS TO DEVELOP AND EXPAND PRIVATE RESOURCES TO SUPPORT CIVIL LEGAL AID

After many years of discussion, the ATJ Board adopted the 2004 recommendations of its Resource Development Committee which called for the establishment of a unified, statewide private resource development effort – the Campaign for Equal Justice.⁷⁴ Subsequent state plans have confirmed the importance of a unified, coordinated statewide private resource effort, calling upon all Alliance members to participate actively in and support the Campaign for Equal Justice to develop operating support from within the legal community.⁷⁵

Alliance member organizations should not engage in private resource development activities that compete with those being carried out at the statewide level.

Each Alliance member organization is expected to advise staff at the Campaign for Equal Justice about its private resource development efforts, including planned submissions to philanthropic organizations,⁷⁶ and to consult about potential coordination of such efforts with the Campaign. Such coordination ensures that opportunities are effectively evaluated for consistency with statewide strategies, are grounded in messages that complement the Alliance's overall resource development efforts, and reduce confusion among prospective charitable donors about civil legal aid.

⁷² EJC's assigned role as the "principal voice" of the Alliance, using its name and direct advocacy to protect and expand core funding, is primarily focused on LSC and OCLA funding. Depending on funding needs and opportunities, the Access to Justice Board may determine that it should assume the same responsibility for protecting and expanding other funding sources.

⁷³ It is recognized that some grant submissions will be for funds that are only available locally and in small amounts. Alliance members are not expected to advise and consult the Campaign regarding such applications.

⁷⁴ The Resource Development Committee Report is found at <http://www.wsba.org/atj/documents/200405rdcreporttoatjboardwithattachments.doc>

⁷⁵ See for example, The 2006 State Plan for the Delivery of Civil Legal Aid at 27.

⁷⁶ Alliance members are not expected to advise and consult the Campaign regarding applications for funds that are only available locally and in small amounts.

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3. CREATION AND DISSEMINATION OF CONSISTENT MESSAGES AND COMMUNICATIONS RELATED TO THE GOALS AND OBJECTIVES OF THE ALLIANCE FOR EQUAL JUSTICE

The 2006 State Plan recognizes that it is critical to develop and implement “a strategic, planned and sustained effort to build and maintain understanding and support for the work and vision of the Alliance.”⁷⁷ Consistent and coordinated messaging is particularly critical to private and public resource development efforts. Alliance member organizations are expected to work proactively with staff at the Legal Foundation of Washington responsible for developing and disseminating consistent messages around the need for civil legal aid and its value, as well as the work of the Alliance for Equal Justice.

4. EQUITABLE ALLOCATION OF PRIVATE AND PUBLIC RESOURCES FOR CIVIL LEGAL AID DELIVERY CONSISTENT WITH THE ACCESS TO JUSTICE BOARD’S HALLMARKS AND STATE PLAN FOR THE DELIVERY OF CIVIL LEGAL AID IN WASHINGTON

Responsibility for underwriting the civil legal aid system falls principally to the statewide funding entities – the Legal Foundation of Washington (LFW) and the Office of Civil Legal Aid (OCLA). Legal aid organizations recognize that these funders, consistent with their statutory and other legal obligations, have a responsibility to allocate legal aid funding to respond to the most pressing needs of low-income persons, to support a full range of legal services and to ensure equitable access to legal aid throughout the state, in conformance with the ATJ Board's Hallmarks and the State Plan for the Delivery of Civil Legal Aid in Washington.

In carrying out these responsibilities, the Legal Foundation of Washington administers and distributes funds that originate from IOLTA accounts, the Campaign for Equal Justice, CR 23(e) (cy pres), the Office of Civil Legal Aid (through a subcontract with the Northwest Justice Project) and other available resources. Robust coordinated statewide private and public resource development efforts described in the commentary to the previous four core values are essential to the Legal Foundation’s capacity to discharge its grant making responsibilities. The Office of Civil Legal Aid distributes funds made available by the State Legislature in accordance with applicable statutory authority.⁷⁸

⁷⁷ State Plan for the Delivery of Civil Legal Aid (2006) at 29.

⁷⁸ RCW 2.53, et. seq.

PERFORMANCE STANDARD EIGHT: EFFECTIVE USE OF VOLUNTEER ATTORNEYS

A legal aid organization that uses volunteer attorneys, adopts and implements policies and procedures that support the provision of high quality legal assistance responsive to the needs of the low-income communities and individuals served. To that end, the legal aid organization successfully recruits and retains volunteers, and offers them a variety of ways to use their skills and abilities to assist clients or to support the organization. The legal aid organization offers access to training when necessary and implements systems to support the volunteer attorneys and to assure appropriate intake, placement and follow-up on cases. The legal aid organization establishes a clear understanding of the respective responsibilities among the organization, the volunteer attorney and the client.

Commentary

Volunteer attorneys who represent low-income persons and support the activities of legal aid organizations are an important resource in the legal aid system in Washington.⁷⁹ Volunteer attorneys provide assistance through a variety of institutional structures. Some legal aid organizations principally use staff attorneys to represent clients and augment their services with volunteer attorneys who engage in a variety of supportive activities, including the direct representation of clients. Others are freestanding pro bono programs that rely principally or exclusively on volunteer attorneys to assist clients. How this **Performance Standard** and **Performance Standards One** through **Seven** apply in practice will be affected by the size and organizational structure of the entity. All such legal aid organizations, however, should strive to meet the requirements of this **Performance Standard**, as well as **Performance Standards One** through **Seven**. It is essential that they function in ways that assure that they are able to protect the confidentiality of information provided by their clients and prospective clients.

There are seven interrelated values reflected in this **Performance Standard**:

1. To support the provision of high-quality legal assistance and other activities by volunteer attorneys that responds to the needs of the low-income communities and persons served;
2. To recruit volunteers successfully on an ongoing basis and to maintain their participation in the program;
3. To offer access to training when necessary and to provide appropriate support to volunteer lawyers assisting clients;
4. To implement internal systems that support the quality and effectiveness of work performed for clients—

⁷⁹ Legal aid organizations also use volunteers who are not attorneys to help support their operation. This standard does not apply directly to the participation of such volunteers, though it may offer guidance regarding their use.

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- Appropriate supervision of non-attorney staff,
 - Intake,
 - Acceptance and placement of cases,
 - Follow-up on cases;
5. To establish a clear understanding of the responsibilities of the legal aid organization, the volunteer attorney and the client, and
 6. To coordinate with Alliance for Equal Justice partners to maximize the capacity to meet these values.

1. FOSTERING HIGH-QUALITY, RESPONSIVE LEGAL ASSISTANCE BY VOLUNTEER ATTORNEYS

A legal aid organization should strive to assure that clients receive high quality legal services from volunteer lawyers who assist them.⁸⁰ The organization seldom has direct control over the quality of the representation provided by volunteer lawyers, but it can take steps to foster the provision of high-quality legal assistance. Direct assistance may range from limited or full representation to just providing legal information, such as in a pro se clinic, where no attorney-client relationship is formed.⁸¹ Many of the values described in the following commentary relate directly to means to promote high-quality representation by its volunteers—training, support, careful placement of cases and follow-up.

At bottom, the qualifications of the volunteer attorneys are the key to assuring quality representation. It is essential that cases be referred to individuals who are competent in the area in which the case arises. Many volunteers will sign up specifically with an eye to

⁸⁰ **ABA Standards for Programs Providing Civil Pro Bono Legal Services to Persons of Limited Means** [hereafter, **ABA Pro Bono Standards**], **Standard 2.4** (Program Effectiveness - Quality Assurance), reads "A pro bono program should strive to assure that all clients served through the program receive high quality legal services."

⁸¹ The assistance provided to persons referred to a volunteer lawyer may be limited to advice on the steps they might take on their own to resolve their problem or to limited intervention such as a phone call. Such Limited representation is permissible under RPC Rule 1.2 on the Scope of Representation and Allocation of Authority between Client and Lawyer, "...if the limitation is reasonable under the circumstances and the client gives informed consent." Such assistance is legal representation with the attendant responsibilities and protections that attach to the formation of an attorney-client relationship. See, *ABA Standards for the Provision of Civil Legal Aid*, Standard 3.4 on Limited Representation, Standard 3.4-1 on Representation Limited to Legal Advice, and Standard 3.4-2 on Representation Limited to Brief Service. See also, Rule CR 4.2 on Process — Limited Representation.

Assistance offered by the volunteer attorney that is limited to the provision of legal information does not establish an attorney-client relationship, if it involves no consideration of the specific facts and circumstances of the individual seeking assistance. See *ABA Standards for the Provision of Civil Legal Aid*, Standard 3.5 on Assistance to Pro Se Litigants and Standard 3.6 on Revision of Legal Information.

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making their area of expertise available to the legal aid organization's clients. Thus, a lawyer whose practice includes family law, consumer law or bankruptcies will be prepared to accept referrals in those areas. Other matters, such as food stamps, Medicaid and public housing, however, may be unfamiliar to many of the lawyers who have volunteered, unless they have previously had a legal aid practice. Legal aid organizations with a cadre of staff attorneys can direct cases which require poverty law expertise to its staff attorneys, referring other matters to its volunteer lawyers in areas where they have expertise. The legal aid organizations in a region, including pro bono programs that do not have staff attorneys should coordinate with each other, so that both staff and voluntary attorney resources are effectively utilized for the low-income communities served.

There are a variety of factors that will affect private lawyers' willingness to volunteer their time to support the work of a legal aid organization on behalf of its clients. To the extent that its resources allow, a legal aid organization should strive to have a variety of opportunities, in addition to direct representation through which volunteer attorneys may assist clients or support the organization.⁸²

2. SUCCESSFUL RECRUITMENT AND RETENTION OF VOLUNTEER ATTORNEYS

The life blood of a legal aid organization that relies on volunteer attorneys are the new volunteers it is able to recruit, as well as the experienced volunteers who stay with the program because of satisfaction with what they are called upon to do.

Recruitment.⁸³ Recruitment is an ongoing process that should be strategically designed and implemented. It should carefully target potential volunteers, including newly admitted lawyers, as well as those who possess needed substantive knowledge and language skills. It is important to recruit persons who have skills, knowledge and experience in priority areas or who are willing to be trained. The broader the range of opportunities that are offered to potential volunteers, the more successful recruitment efforts are likely to be.⁸⁴ Recruitment efforts should call on support from the bar association, prominent bar members and members of the judiciary, whenever possible.⁸⁵ Members of the legal aid organization's governing body should also assist in recruitment efforts.

⁸² See, **ABA Pro Bono Standard 3.5-2 on Relations with Volunteers — Utilization:** "A pro bono program should develop effective strategies for utilizing volunteers to meet clients' legal needs."

⁸³ See, **ABA Pro Bono Standard 3.5-1 on Relations with Volunteers – Recruitment:** "A pro bono program should develop effective strategies for recruiting volunteers."

⁸⁴ See the discussion of using volunteer lawyers effectively at page 4.

⁸⁵ See Code of Judicial Conduct, Canon 4.

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Retention.⁸⁶ It is important that a legal aid organization retain the participation of pro bono attorneys who have been recruited. To do so, the program needs to be run efficiently and effectively. The experience of a volunteer attorney with cases that are referred is likely to affect the lawyer's willingness to take cases in the future. The program, therefore, should make certain that the information given both to the volunteer lawyer and the client is accurate and leads to a smooth transfer of the matter.

Another factor which can affect a volunteer lawyer's willingness to take future cases is the opportunity that is offered to participate in meaningful work on behalf of a client or to support the program. Volunteer opportunities should be offered to pro bono attorneys as soon as possible following their signing on. If there is a long delay between the time a lawyer volunteers and when a case is referred or other assistance is sought by the program, the erroneous impression may be conveyed that the volunteer's assistance is not needed or appreciated.

Recognition of volunteers.⁸⁷ Recruitment and retention of volunteers can be enhanced by the legal aid organization formally and publicly recognizing and honoring their work. Public recognition has the added benefit of publicizing the program and the work that pro bono attorneys can accomplish. There are a variety of ways to recognize the work of volunteer attorneys, including public awards at bar association meetings and other conferences; favorable articles in bar journals and other publications; and individual thank you letters from the program, a prominent attorney or judge.⁸⁸ Expressions of gratitude from a client who has been served should be forwarded to the attorney.

3. ACCESS TO TRAINING AND SUPPORT

A legal aid organization that refers clients to volunteer attorneys should offer training and support commensurate with the needs of its clients, the skills and experience of its volunteer attorneys and the characteristics of the organization.⁸⁹ The type of training and support offered will vary from program to program based on the priorities of the legal aid organization and the resources available to it.

Appropriate training and support can serve a variety of important functions. They can aid in the recruitment and retention of volunteers, particularly inexperienced lawyers who are seeking to increase their exposure to new substantive areas. Training and support may be necessary to induce experienced lawyers to take on unfamiliar issues. Training and support may also be essential for the legal aid organization to be confident of the quality of representation ultimately provided. The more that volunteer attorneys are called upon

⁸⁶ See, **ABA Pro Bono Standard 3.5-7 on Relations with Volunteers — Retention:** "A pro bono program should develop effective methods for retaining its volunteers."

⁸⁷ See, **ABA Pro Bono Standard 3.5-8 on Relations with Volunteers — Recognition:** "A pro bono program should develop effective methods for the recognition of its volunteers."

⁸⁸ See Code of Judicial Conduct, Canon 4.

⁸⁹ See, **ABA Pro Bono Standard 3.5-3 on Relations with Volunteers — Training and Support:** "A pro bono program should provide training opportunities and support services to its volunteers."

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to provide services in substantive areas with which they are not familiar, the greater the need for training and support to assist them in providing representation.

Not every legal aid organization has the resources required to provide training and support directly. Programs that do not have resources should seek to make training and support available by cooperative agreements with alliance partners which do have the capability and, if available, through the assistance of other private attorneys who have the needed expertise. They may also offer their volunteers online or printed practice manuals and other training materials developed by other organizations.

4. INTERNAL SYSTEMS TO SUPPORT QUALITY

There are a variety of internal systems and policies to support or foster the provision of high-quality assistance to clients.

- *ATTORNEY SUPERVISION OF NON-ATTORNEY STAFF, WHEN REQUIRED*

Two factors should be considered in determining when and with respect to what activities there needs to be attorney supervision of non-attorney pro bono program staff. The first is grounded in the need to guard against the unauthorized practice of law by non-attorney staff. The second is designed to ensure protection of client information from risk of unauthorized disclosure to third parties.

If the staff member engages in activities that, in the language of GR 24, involve the “application of legal principles and judgment with regard to the circumstances or objectives of another ... person(s) objectives of another entity or person(s) which require[s] the knowledge and skill of a person trained in the law,” then such activities are considered “the practice of law” and must be conducted under the active supervision of an attorney.

The legal aid organization should provide attorney supervision of its non-attorney staff who engage in activities that constitute the practice of law within the meaning of GR 24(1)(a).⁹⁰ This includes, but is not limited to, providing advice relating to the substance of a person’s legal problem and selecting, drafting or completing legal documents or agreements which affect the legal rights of an entity or person.⁹¹

Legal aid organizations that use volunteer attorneys frequently rely on non-attorney staff members to carry out a number of important responsibilities, including accepting referrals from the statewide legal aid hotline (CLEAR), interviewing clients, screening individuals

⁹⁰ GR 24, published at:

http://www.courts.wa.gov/court_rules/?fa=court_rules.display&group=ga&set=GR&ruleid=gagr24

⁹¹ See, **ABA Pro Bono Standard 4.8 on Facilitating Effective Delivery of Service — Attorney Supervision of Non-Attorney Staff:** “A pro bono program should provide for appropriate attorney supervision of its non-attorney staff.”

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for financial eligibility, and assisting clients with the selection and completion of legal forms and documents. Non-attorney staff involved in the client referral process may develop case summaries (or augment those provided by CLEAR) and provide other supportive information to volunteer attorneys who provide both limited and extended volunteer legal aid services.

Whether to refer a case is generally a decision grounded in priorities established by the program's governing body or advisory board; and such a decision does not involve a staff assessment with respect to the merits of a case requiring attorney supervision. However, before making a referral to a volunteer attorney, some non-attorney pro bono coordinators conduct extensive interviews of the clients and, based on such interviews, the coordinator may exercise judgment regarding the merits of the client's position to decide whether a referral should be made. These merit-based (as opposed to priorities-based) decisions may involve legal and quasi-legal judgments for which an attorney should be consulted.

Legal aid program clients expect that their information will be held inviolate and not be disclosed to third parties, especially parties who have interests adverse to theirs. It is this expectation that allows the level of candor necessary for effective review, referral and support of cases referred to volunteer attorneys.

Non-attorney staff members who conduct eligibility screening and client intake (or who receive legal referrals from CLEAR) regularly obtain information, the disclosure of which would be detrimental to the person seeking assistance, particularly if it were disclosed to a person with an adverse interest. Consistent with the expectations of the client who turns to the program seeking legal help (or whose case is referred to the program by CLEAR), legal aid programs involved in the client screening and referral process should establish systems and levels of attorney oversight necessary to ensure that client information is protected from disclosure.

Legal aid organizations dedicated principally to referring cases to volunteer attorneys may not have resources for supervision by an in-house staff attorney. In such circumstances, the organization should seek to obtain the necessary attorney oversight and consultations required by the circumstance. Some options may include: (a) consultation with attorneys from another legal aid organization (after checking for conflicts of interest); (b) establishing an "on-call volunteer attorney of the day or week" to whom the non-attorney staff member may turn for review of activities requiring consultation or review; or (c) establishing a panel of volunteer attorneys who agree to serve in a similar capacity on an "on-call" basis. Programs should choose the approach that works best for them while assuring the proper level of attorney oversight required by GR 24 and the Rules of Professional Conduct.⁹²

⁹² It is not enough that the staff member operates under the direction of the board of directors of the organization, because the board is not deemed to be a part of any attorney-client relationship entered into with the organization, and, therefore, cannot provide supervision of legal work, if that supervision involves access to confidential information. See, ABA committee on Ethics and Professional Responsibility, Formal Opinion 334 (1974).

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Pro bono program staff and board members should also be aware of the rules relating to conflicts of interest, including the special rule adopted by the Washington Supreme Court providing greater latitude to legal aid law firms – including pro bono programs – that screen and refer clients for further representation. For example, while RPC’s 1.7, 1.9 and 1.18 establish strict rules relating to the screening and avoidance of conflicts RPC 6.5 provides that attorneys may avoid the strict application of these rules to the extent that they are providing legal assistance in association with legal aid entities that provide short term, limited legal aid services to low-income clients. This effectively allows private volunteer attorneys to participate in screening, review and referral of cases even though the attorneys or an attorney in their firm may have a conflict that would otherwise result in imputed disqualification under RPC 1.9 or 1.18.⁹³ In addition, it allows staff associated with staffed and volunteer legal aid programs to screen, assess and refer clients with opposing interests to attorneys (including volunteer attorneys) in order for them to provide limited or extended representation, provided that the clients are notified and that effective safeguards are in place to protect the dissemination to either opposing party’s attorney of information pertaining to the other.⁹⁴

CLIENT INTAKE SYSTEM

A legal aid organization that uses volunteer attorneys to serve clients should meet the requirements set forth in **Performance Standard Three on Client Access**.⁹⁵ For some volunteer attorney programs, there are additional considerations. Most intake of applicants for legal assistance from programs that rely principally or exclusively on volunteer attorneys is conducted by the Northwest Justice Project’s Coordinated Legal Education Advice and Referral system (CLEAR), the statewide, centralized intake and referral system. CLEAR reviews income eligibility, conducts an initial legal assessment and screens for case acceptance priorities, before referring applicants to one of the volunteer attorney programs. In addition, some applicants for service may not come through CLEAR and intake may be conducted by a pro bono program’s staff or by a volunteer attorney or paralegal. To the degree possible, persons seeking assistance should not be subjected to multiple interviews that require them to repeat their story unnecessarily at successive steps in the process.

It is also important to make clear to applicants that the referral is being made and the steps which will be taken to find them assistance. Because multiple steps and referrals in the intake process can delay the organization’s reaching a decision regarding whether and

⁹³ RPC 6.5(a)(1), (2).

⁹⁴ RPC 6.5(a)(3). Note that RPC 6.5 requires disclosure of the screening mechanism used to prohibit dissemination of information to opposing parties and others with an interest adverse to the client, but there is no requirement of client consent. *E.g.*, RPC 6.5(a)(3)(ii).

⁹⁵ **ABA Pro Bono Standard 4.3 on Facilitating Effective Delivery of Service - Client Intake System:** "A pro bono program should establish or utilize an intake system through which knowledgeable staff or volunteers determine eligibility, discover potential conflicts of interest, obtain essential facts, identify legal issues and maintain client confidentiality and client dignity."

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applicant's case can be placed and legal assistance provided, it is important to inform the applicant of the process and the likely timeline. The pro bono organization and affiliated legal aid organizations should strive to make the process as efficient as possible.

- APPROPRIATE PLACEMENT AND FOLLOW-UP ON CASES

Case acceptance.⁹⁶ The case acceptance considerations addressed in **Performance Standard Four** apply somewhat differently in the case of pro bono programs. On the one hand, there is generally not an immediate concern about controlling the demands on a single case handler's time, since volunteers generally accept only one or a few cases at one time and a volunteer lawyer who is too busy to accept a new case will generally advise the referring program and decline the representation. The program does, however, have a responsibility to strike a balance between the overall demand for services and the available resources to respond. In some areas where there is a high demand for assistance, there will be a limited number of attorneys able to assist, either because it is a specialized area of poverty law, such as Medicaid or food stamps, or because the demand historically far exceeds available resources, such as child custody and other contested family law matters. It is important that the legal aid organization monitor the relationship between demand and available resources, so that it does not accept more cases for referral than can reasonably be placed, with the result that applicants wait for long periods before being told that their case cannot be successfully referred.⁹⁷

Case placement.⁹⁸ How a case is referred can affect the quality of service received by the client. It may also affect the future willingness of the volunteer to accept new cases. Cases should be placed as quickly as possible so that important deadlines can be met. The client should be informed of the placement and how to contact the attorney. If the program finds that it is unable to place a case, the client should be told as soon as possible, so that individual can take alternative steps in a timely fashion.

The organization should provide the volunteer with all relative information and documentation, including notice of any pending deadlines as well as other important facts

⁹⁶ See, **ABA Pro Bono Standard 4.1 on Facilitating Effective Delivery of Service — Acceptance Policy**: "A pro bono program should establish a policy regarding the acceptance of matters which focuses resources on the identified priorities of the program, considers the maximum number of matters that volunteers can reasonably address and takes into account the resources available to provide volunteers with any necessary preparation and support."

⁹⁷ In some high-volume areas, such as family law, where demand significantly outstrips available resources, a program may place a person seeking services on a waiting list, rather than making them call back successive times to apply for assistance. Such waiting lists are appropriate, if the prospective client is informed about the potential delay, is advised to seek private representation if possible and would not be materially prejudiced by the delay by, for instance, a statute of limitations.

⁹⁸ See, **ABA Pro Bono Standard 4.4 on Facilitating Effective Delivery of Service — Placement System**: "a pro bono program which places matters with volunteers for assistance should establish a system for timely and appropriate approval. When placing matters, a program should provide volunteers with information regarding the nature of the problem and all known pertinent facts and documents."

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about the case and the client. For cases in litigation, the volunteer attorney should be provided with the name of the adverse party, opposing counsel as well as deadlines and court dates, and other factors which may call for immediate action.

Case reporting and follow-up.⁹⁹ The legal aid organization should have a system for following up on cases which have been referred. Follow-up can be important to assure that volunteers are progressing in referred matters and that no unexpected problems have developed with either the volunteer attorney's or the client's follow-through in the case. Follow-up can also help the legal aid organization maintain accurate records regarding the status of referred cases and the potential availability of the volunteer to accept a new matter.

Follow-up contacts should start with an inquiry to assure that the client and attorney have established contact, and the case has been accepted. Subsequent contacts with the attorney should be scheduled at reasonable intervals or be timed to coincide with predictable key events in routine cases. When the matter has been resolved, the volunteer attorney should advise the legal aid organization of the outcome and that the case has been closed. The legal aid organization may follow up with clients regarding their satisfaction with the process and the assistance offered, provided the contact does not improperly seek confidential information or interfere with the attorney-client relationship between the volunteer attorney and client.

5. ESTABLISHING A CLEAR UNDERSTANDING AMONG THE VOLUNTEER ATTORNEY, THE CLIENT AND THE LEGAL AID ORGANIZATION

The legal aid organization should make certain that when cases are referred to a volunteer attorney, the rights and responsibilities of the person referred, the volunteer attorney and the legal aid organization are clear.¹⁰⁰ A three party agreement is involved : 1) the legal aid organization and the person seeking assistance; 2) the volunteer attorney and the person referred; and 3) the legal aid organization and the volunteer attorney. To assure that the rights and responsibilities in each of these relationships are clear, the understanding should be in writing.

The legal aid organization and the person seeking assistance. When low-income persons seek help with a legal problem and contact a legal aid organization which then assists them or refers them to a private attorney, the roles and responsibilities of the legal aid organization may be unclear to the individuals seeking help. It is important that the

⁹⁹ See, **ABA Pro Bono Standard 4.5 on Facilitating Effective Delivery of Service — Tracking and Oversight:** "A pro bono program should establish a system for obtaining information regarding the progress of matters placed with volunteers...."

¹⁰⁰ See, **ABA Pro Bono Standard 3.1 on Relations with Clients and Volunteers — Establishment of Relationships:** "A pro bono program should clearly communicate the nature of the relationship it is establishing with each client and volunteer and delineate each party's rights and responsibilities. A program should aid a client and the volunteer who is representing or otherwise assisting that client in communicating clearly their duties and responsibilities to each other."

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individual and the legal aid organization understand the responsibilities of the organization to protect the confidentiality of information provided to it. The organization should function in a way which assures that the information provided is privileged.¹⁰¹

The legal aid organization's ongoing responsibilities for the conduct of the case, if any, should be clear to both the person referred and to the volunteer attorney. The individual should know that the volunteer attorney, not the legal aid organization will be representing them in the matter. A key question is whether the legal aid organization has an attorney-client relationship with the individual referred. Whether an attorney-client relationship has been established with the referring organization and continues is generally a matter of contract among the parties, though an attorney-client relationship in some cases may be inferred from the circumstances.¹⁰² A number of factors are affected by whether the organization is within the attorney-client relationship, including whether the legal aid organization can have access to confidential information, can participate in developing and supporting a strategy for the client, or can intervene directly in the representation should it become necessary.

The volunteer attorney and the person referred. The person referred to a private attorney should understand whether the referral is for purposes of determining if the volunteer attorney will represent the individual, or if the lawyer has already agreed to representation. Individuals referred should be apprised of their responsibilities in contacting the volunteer lawyer and assisting in their representation. The legal aid organization should strongly encourage the volunteer attorney sign a written agreement with the client that sets forth the scope and limits of the representation. The retainer agreement should address who is responsible for filing fees or costs that may be incurred, and who is entitled to any attorney fees which may be recovered. It should be clear to both the client and the volunteer attorney that no fee will be charged to the client for the representation.

The legal aid organization and the volunteer attorney. Both the legal aid organization and the volunteer attorney should be aware of the agreements which each has with client or prospective client. The volunteer attorney should be clear on the role, if any, of the legal aid organization during the conduct of the representation, including the support it offers and its expectations regarding follow-up reports and other documentation.

In addition, to avoid confusion and disagreements as the representation progresses, the legal aid organization should have policies and procedures that govern payment of costs, such as filing fees, service fees, discovery, expert witnesses, the costs for alternative dispute resolution processes and other expenses.¹⁰³ It should also inform the volunteer

¹⁰¹ See the discussion above at page 5 of supervision by an attorney of non-attorney personnel.

¹⁰² An attorney-client relationship may be inferred, for instance, if the referring legal aid organization makes decisions regarding the conduct of the case, such as approving litigation costs.

¹⁰³ See, **ABA Pro Bono Standard 3.5- 5 on Relations with Volunteers — Costs Policy:** "A *pro bono* program should establish and communicate to clients and volunteers a policy and procedure regarding the payment of costs in matters in which filing fees, service fees, discovery, use of expert witnesses and

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about procedures for obtaining in forma pauperis waiver of fees. If the legal aid organization is to pay costs and fees, it should establish procedures for approval, and should assure that it is entitled to have access to confidential information necessary to exercise its approval authority.

The agreement should also set forth the policy regarding attorneys' fees¹⁰⁴ and should be clear that no fee is to be charged to the client or collected from an award to the client. The volunteer attorney should be encouraged to seek statutory attorney fees, if appropriate. It is appropriate for the agreement to encourage the donation of such fees to the legal aid organization.¹⁰⁵

The agreement should also make clear the degree to which the work of the volunteer attorney will be covered by professional liability insurance offered through the legal aid organization. It is recommended that the legal aid organization offer professional liability insurance for its volunteer attorneys. The provision of such coverage not only protects the program from exposure, but also benefits the clients, who may be covered for losses incurred in the event of a serious mistake by a volunteer attorney.¹⁰⁶ The program should inform the volunteer of amount of coverage, the amount of any deductibles and who is responsible for them and whether the coverage is primary or secondary.

6. COORDINATION WITH ALLIANCE FOR EQUAL JUSTICE PARTNERS

Legal aid organizations that rely on volunteer attorneys to serve clients should coordinate their efforts and collaborate with their Alliance for Equal Justice partners.¹⁰⁷ Such coordination is a cornerstone of service delivery in Washington, but it particularly important for pro bono programs to enhance their ability to meet this Performance Standard. Close coordination and collaboration with Alliance for Equal Justice partners in their immediate service area may be essential to meet the values expressed in the Performance Standard in the areas of identifying client needs, setting priorities, training and supporting volunteers, attorney supervision of non-attorney staff and intake.

other expenses related to representation are appropriate."

¹⁰⁴ See, **ABA Pro Bono Standard 3.5- 6 on Relations with Volunteers — Attorneys' Fees Policy:** "A pro bono program should establish and communicate to clients and volunteers a policy regarding the receipt of attorneys' fees by program volunteers."

¹⁰⁵ The comments to Rule 6.1 of the Washington Rules of Professional Conduct encourage lawyers who receive statutory attorney fees in pro bono cases "to contribute an appropriate portion of such fees to organizations or projects that benefit persons of limited means."

¹⁰⁶ See, **ABA Pro Bono Standard 3.5- 4 on Relations with Volunteers — Professional Liability Insurance:** "A pro bono program should obtain professional liability insurance coverage for itself, its staff and its volunteers."

¹⁰⁷ This strong Washington value is reflected in **ABA Pro Bono Standard 2.7 on Program Effectiveness — Relations with Other Providers of Legal Services:** "A pro bono program should strive to cooperate, collaborate and coordinate with other providers of legal services."

END NOTES

ⁱ ABA *Civil Standards*, Standard 2.1 on *Identifying Legal Needs and Planning to Respond*, page 38.

Some providers are organized for a very specific purpose, such as to provide representation in a discrete, predetermined area such as consumer debt or divorce. Others may serve a specifically targeted population, such as the elderly or persons with HIV/AIDS. Providers organized for such focused purposes need to tailor how they maintain awareness of the changing needs of their client population based on the nature of the work..

...If a smaller organization does not have sufficient resources, it should ... seek to be as engaged as possible with the low-income communities it serves. In addition, it should participate in statewide and regional systems and draw on the insights of other organizations.

ⁱⁱ ABA *Standards for the Provision of Civil Legal Aid* (2006), Standard 2.1 on *Identifying Legal Needs and Planning to Respond*, Commentary at pages 37-38.

A more formal assessment of the legal needs of the low-income community conducted periodically by the legal aid provider on its own or in concert with others in the statewide or regional system, may serve to identify issues that might be missed with ongoing interaction with the same set of client and community groups....

When conducting a legal needs study on its own or as part of a collaborative effort with others, it is important that the provider select a design that will reach isolated persons in the client eligible population. Persons without telephones or without published telephone numbers, such as those who rely exclusively on a cell phone, may be missed entirely if the design does not account for them. Similarly, the views of people who are homebound or institutionalized as well as people who exclusively speak and write a language other than English will be lost without special efforts to reach out to them. Legal needs studies should also be designed to take into account the needs of low-wage workers. Data can be gathered from the eligible population by using a variety of methods including interviews, surveys, focus groups of persons from the low-income community including clients and meetings with community groups.

ⁱⁱⁱ Standard 2.1 on *Identifying Legal Needs and Planning to Respond*, Commentary at page 39.

[The provider] needs to allocate its resources to provide assistance that addresses the most compelling, unmet needs of that population....

Planning serves several important purposes. First, it enhances the likelihood that a provider will utilize its resources in ways that are most appropriate to serving its clients. Second, planning that sets clear objectives for a provider's efforts facilitates its evaluation of its efforts on behalf of clients. [See ABA Standards for the Provision of Civil Legal Aid (2006), Standard 2.11 (on Provider Evaluation).] Third, planning offers a solid basis for internal policies that set case acceptance standards, determine internal needs such as training and formally set priorities.

...The approach to planning may vary among legal aid providers, but each provider should be rationally organized and effectively administered to achieve its objectives. To that end, deliberate decisions need to be made about what the provider aspires to accomplish for its low-income population and how it proposes to accomplish it.

Whatever its form, planning should help establish or affirm key aspects of the provider's operation:

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- The provider should have a clear sense of its focus and what it hopes to accomplish overall for its clients. It should take steps to ensure that all staff have a clear, shared sense of the mission and vision of the organization and how it will accomplish that mission.
- The provider should determine the substantive areas in which it will represent its clients. The decision may include broad determinations of the areas in which it will assist clients and may set specific objectives for its legal work in each area. Setting long-term goals and objectives for the provider’s substantive legal work can be a valuable tool for maximizing the effectiveness of that work.
- The provider should determine broad strategic approaches, including the degree to which it will engage in efforts to accomplish systemic change.
- The provider needs to make an intentional choice regarding its overall delivery approach, including what types of assistanceⁱⁱⁱ and what delivery mechanismsⁱⁱⁱ will best serve the needs of its low-income population.
- The provider should plan in the context of its role in the regional or statewide delivery system of which it is a part. To the degree possible, its role and the focus of its legal work should be selected to foster the capacity of the overall delivery system to provide a full range of services to the low-income community.

^{iv} Standard 2.1 on Identifying Legal Needs and Planning to Respond, Commentary at page 38.

In addition to being aware of the legal needs facing its client communities, each provider should be aware of the resources available to respond to those needs. The provider should participate in statewide and regional systems for responding to client needs so that it can tailor its response to the needs in the context of other resources that might be available to respond.

^v Standard 2.1 on Identifying Legal Needs and Planning to Respond, Commentary at page 40.

Effective planning has an evaluation element built into it. It is important that a provider’s efforts to identify the legal needs of the low-income community it serves and to engage in planning to meet those needs be regularly assessed by it to determine if its efforts have been successful and if its objectives have been met.

Standard 2.11 on Provider Evaluation, Commentary at pages 91-99.

A legal aid provider should regularly review its operations to determine if it is functioning efficiently and effectively, is producing high quality legal work and is accomplishing its objectives on behalf of low-income persons. The overall goal of its assessments should be to support forward-looking and judicious management which attends to the organization’s weaknesses and reinforces its strengths. . . .

The provider has a primary responsibility for the ongoing evaluation of itself and should conduct its own assessments consistent with this Standard and commentary. . . .

Evaluations conducted by a funder can be an important source of information for a provider and it should cooperate in such evaluations and take advantage of the insights derived from them.

There are several potential purposes which evaluations can serve:

• To improve providers operation...	• To inform planning and budgeting...
• To test the success of innovative delivery techniques...	• To determine if its delivery approaches are exceeding...
• To inform training plans...	• To demonstrate accountability...

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• To obtain an increase funding...	• To help build a constituency...
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The Commentary goes on to discuss various potential focuses for self-assessment: [Commentary at page 93]

A provider should regularly conduct internal evaluations as a management tool....

A provider should regularly assess whether its staff, particularly its practitioners have the necessary skills and substantive knowledge. It should assess the effectiveness of its delivery approaches involving full representation, limited representation, assistance to pro se litigants, and community legal education.

Other facets of its operation should also be assessed by the provider, including intake, its effort to integrate the resources of the legal profession and to involve members of the bar, its cultural competence, its capacity to serve persons with limited English proficiency, its relations with clients, its accessibility to potential clients, its internal systems and procedures, and its methods for quality assurance.

vi Standard 2.2 on Delivery Structure, Commentary at Page 41

A legal aid provider should establish an overall delivery structure and choose the delivery mechanisms that utilize limited resources effectively to respond to the most compelling, unmet legal problems facing members of the population it serves. The provider's approach to delivery should be appropriate to the particular circumstances in which it operates and should balance four goals:

- To be effective in responding to the most compelling, unmet legal needs of the low-income population it serves;
- To assure the delivery of high quality assistance;
- To utilize its resources efficiently; and
- To facilitate access for members of its client communities to assistance appropriate to their legal needs.

...

[Commentary at Page 42]

There are a number of delivery mechanisms that a provider can utilize to serve its constituents. The provider should be familiar with new delivery techniques and should determine if they are appropriate to meet the needs of the low-income population it serves. Delivery techniques evolve with changes in the practice of law, with the adoption of new advocacy strategies, with the advent of new technologies and with successful experiments in reaching out to and serving low-income clients. Each provider should stay abreast of such changes and should take advantage of new delivery approaches that may increase its capacity to serve its clients effectively and efficiently.

There are many examples of such changes and more will no doubt evolve over time. A few examples illustrate the point:

- High volume, legal advice offered by telephone, sometimes referred to as hotlines, evolved rapidly when information technology make it possible to establish and supervise such systems more easily.
- Some providers with large, sparsely populated rural areas use video conferencing as a way to reach out to persons in isolated hard to reach places.
- Technology has increased the capacity of providers to support complex advocacy in isolated offices.
- Websites and kiosks impart legal information to members of low-income communities and

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provide useful guidance in areas of the law that lend themselves to such assistance.

- Various strategies aimed at community economic development have developed in the face of increasing need for members of client communities to find and keep employment.

The four goals of 1) effectiveness responding to legal needs, 2) high quality, 3) efficiency and 4) access are important for a provider to keep in mind when deciding how to fold new delivery techniques into its overall delivery approach. On the one hand, many of the approaches economically provide access to assistance for large numbers of client eligible persons. On the other hand, some legal problems cannot be effectively resolved without costlier form of representation....

All approaches need to be measured against the standard of whether they effectively respond to compelling, unmet legal needs of low-income persons. Efficiency should be measured in terms of cost-effective use of resources to accomplish a meaningful result. Providers, therefore, should not choose an approach based only on the number of persons able to be served—which can be a temptation if a provider feels pressure, real or imagined, to show funders and others results in terms of quantity of cases closed.

^{vii} ABA Standard 2.6 on *Achieving Lasting Results for Low-income Individuals and Communities*, Commentary at Page 66.

The effectiveness of a provider can be measured by the tangible, lasting results of its efforts on behalf of its clients and the low-income communities it serves. Each provider should strive to accomplish meaningful results in all of the legal assistance activities it undertakes. Lasting results can be achieved in several ways: by favorably resolving individual legal problems; by teaching low-income persons how to address the legal problems that they face; by improving laws and practices that affect low-income persons; and by assisting members of the low-income community to become economically self-sufficient.

[Commentary at Page 69]

Some legal aid providers concentrate their efforts on broad challenges to legal problems confronting many clients. Such efforts can be the most cost-efficient way to utilize the limited resources available to meet the legal needs of low-income persons. Repetitive representation of individuals to obtain a limited remedy that does not ultimately resolve a recurring legal problem can be costly and time-consuming. Representation that addresses the basic cause of such legal problems may, on the other hand, ultimately expend fewer resources with more lasting benefits for large numbers of low-income persons.

[Commentary at Page 68]

Systemic advocacy involves many potential strategies, some of which are relatively low cost and others of which may be costly and long-term: non-representational strategies..., systemic impact in individual cases..., informal intervention..., working with coalitions... media advocacy..., affirmative litigation ... and legislative and administrative advocacy.

^{viii} ABA Standard 2.6 on *Achieving Lasting Results for Low-income Individuals and Communities*, Commentary at Page 69.

... [S]ome systemic representation requires a substantial commitment of resources. A decision to undertake costly systemic advocacy 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.

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...Not all providers are organized ...to undertake complex—and potentially costly—representation that involves broad constitutional challenges, or to engage in administrative and legislative advocacy. Even for those that are able to, resource limitations will preclude undertaking every major case which is presented.

A provider that does not engage in costlier forms of systemic advocacy should, nonetheless, 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. The provider should participate in regional and statewide systems to help assure that all types of representation are available and to be aware of the appropriate place to refer clients it is unable to assist.

^{ix} ABA Standard 2.2 on Delivery Structure, Commentary at Page 41.

Decisions about each provider's delivery structure should be made in the context of the local, regional and statewide systems of which the provider is a part. The provider should work with other providers to establish a unified delivery structure in which participating organizations complement and support each other's efforts to respond fully to the legal needs of the low-income population.

ABA Standard 2.3 on Participation in Statewide and Regional Systems, Commentary at Page 49.

Legal aid providers are part of a system of legal services, social services and other organizations concerned with the legal needs of low-income people. Each provider should actively work in concert with pertinent organizations in the system to be better able to meet the needs of low-income persons with civil legal problems and to provide relatively uniform access for all persons who seek legal assistance.
[Commentary at Page 50]

All legal aid providers should actively participate in their statewide system, and where appropriate, in their regional system. A number of purposes may be served by such participation:

- The efficiency and effectiveness of the system can be enhanced in many instances by joint planning to coordinate approaches to delivery issues and common substantive problems and to avoid duplication.
- Some providers are better situated than others to provide particular services to low-income persons in need of legal assistance. Some providers, for instance, may not be able to offer assistance in certain substantive areas or to certain populations because of resource limitations or restrictions on their funding. Joint planning and coordination of services should take place to assure that a full range of services is available.
- In any system for the delivery of legal services, it will be easier for some to gain access to the system than others. Cooperation among providers is important for the system to be able to offer relatively uniform access to all persons in need of legal assistance.
- Resources available to respond to the legal needs of low-income persons are generally insufficient to meet the need. Participation in the larger delivery system should identify strategies to expand available resources, particularly resources that can be used to engage in representation that is restricted by other funding sources and to deploy those resources rationally throughout the system.

...It is incumbent on legal aid providers to work in concert so that maximum use is made of the resources that are available. There are a number of ways in which providers working together can make the most of available resources:

- Coordination in the use of delivery mechanisms to assure their efficient use....
- Coordination and collaboration to facilitate the effective use of technology, including joint

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approaches when appropriate....

- Assignment to one organization among participants in a statewide delivery system the primary responsibility for conducting legislative and administrative advocacy with state level entities, including the legislature....
- Pooling of resources by participants in a larger system so as to centralize development of materials and approaches for community legal education....
- Development of a joint capacity to provide support for advocates and others essential to the system. The statewide system should facilitate practitioners getting training in pertinent substantive areas and learning appropriate skills to serve their clients....
- Working together to realize economies of scale in connection with administrative needs, such as bulk purchasing, pooling employee benefits and sharing space.

^x ABA Standard 2.3 on Participation in Statewide and Regional Systems, Commentary at Page 52.

One goal of a delivery system should be to offer a full range of services to low-income persons in need of legal assistance. By coordinating how resources are deployed legal aid providers in a system should seek to increase the reach of the resources that are available so a full range of services can be offered. ...

[Commentary at Page 52-53.]

All appropriate forms of representation. A full range of services includes all appropriate forms of assistance, in all substantive areas necessary to respond to the compelling needs of the low-income population. The forms of representation include:

- Legal advice and referral;
- Assistance to pro se litigants;
- Representation in the judicial system and in administrative adjudicatory processes using all forms of representation appropriate for the individual, group or class being represented;
- Representation before state and local legislative, administrative and other governmental or private bodies that make law or policies affecting the legal rights and responsibilities of low-income persons;
- Brief legal services;
- Representation in negotiation;
- Community economic development;
- Assistance to clients using mediation and other alternate dispute resolution mechanisms;
- Transactional assistance;
- Community legal education, including providing legal information to low-income groups and individuals.

^{xi} ABA Standard 4.1 on the Provider's Intake System, Commentary at Page 148.

The first contact a person seeking services has with a provider is likely to be through its intake system. It is important that the system foster confidence - among those whom the provider agrees to help as well as those it turns away - that the organization is professional and capable and that it is considerate of persons seeking and utilizing its services. The logistical challenges associated with intake systems can be significant. They typically process large numbers of applicants and need to identify accurately the nature of each applicant's legal problem and make a prompt decision regarding who will

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be helped and the type of assistance that will be offered. A provider needs to design its intake system to accomplish these tasks in a way that does not inadvertently convey a lack of respect for applicants' time or sensitivities. ...

For those who will be accepted as clients, the initial experience with the provider may well set the tone for the subsequent representation. Because effective legal representation calls for a relationship of mutual trust and candor between the client and the practitioner, it is particularly important that the client's experience in intake inspires confidence in the provider and the practitioner. All aspects of a provider's intake system should be respectful of applicants' time and resources and should facilitate prompt decision-making regarding the applicants' legal needs and what the provider commits to do on their behalf.

[Commentary at Page 149]

Different types of intake process—telephonic, walk-in, or on-line—will impact differently on different persons in need of help. For many isolated persons, telephone intake may be the only viable option to seek help. For others, face to face contact may be very important, and for some cultures may be essential. Others may work hours that make any contact during normal business hours extremely difficult. A provider should strive, therefore, to offer multiple avenues for persons to seek assistance, or should actively participate in a delivery system that provides such opportunities.

^{xii} ABA Standard 4.1 on the Provider's Intake System, Commentary at Page 150.

Intake procedures should be designed to act quickly on applications for service. The process should gather pertinent facts regarding the applicant's legal problem so that the provider can make a prompt decision regarding whether to accept the matter for representation or another form of assistance. ...The provider should communicate clearly with each applicant regarding what services, if any, it will offer. If the provider offers assistance short of legal representation, it should clearly inform the individual that it is not entering into an attorney-client relationship.

^{xiii} **ABA Standard 4.5 on Access to Services, Commentary at Page 162.**

A legal aid provider has a responsibility to operate in ways that facilitate access to its services for all members of the low-income population it serves. Many aspects of its operation affect the accessibility of its services: the provider's over-all delivery strategy, including areas of specialization and practice concentration; office location; utilization of technology; intake hours; design of facilities; outreach; and the involvement of contract and volunteer attorneys.

A provider also needs to be attentive to the access needs of specific populations for which there are particular barriers to seeking and to utilizing services that are offered. Some persons encounter geographic barriers, particularly in sparsely populated rural areas or in urban and rural areas that lack public transportation. Others, such as persons with disabilities, the institutionalized and the elderly, encounter physical and other barriers. Migrant farm-workers housed in farm labor camps may not be able to reach or easily communicate with legal aid providers and legal aid providers may not easily access labor camps. Other low-income employed persons may not be able to leave employment to seek or follow up on service. Some low-income persons may come from cultures that frown on seeking the assistance of a lawyer, or seeking any free services, while others may be impeded by limited proficiency in English.

Commentary at Pages 164-165

Intake and office hours should be established to accommodate the needs of the low-income communities served by the provider. Clients who are employed may not be able

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to take time off during regular business hours. Caretakers of small children or persons with a disability 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 and to the degree possible, the provider should offer intake and access to services outside of normal working hours and at lunch time.

^{xiv} **ABA Standard 4.5 on Access to Services**, Commentary at Pages 162-163.

Technology can have a significant impact on the access issues. Technologically based systems for intake,^{xiv} to offer legal information^{xiv} and other assistance can significantly increase the capacity of a provider to serve large numbers of low-income persons. They can also directly overcome barriers to access that some encounter. Telephone intake, for example, can significantly increase access for isolated rural populations, as well as homebound and the elderly. It may be the only reasonable alternative for a person who cannot take time off from work to physically go to an office.

The provider needs to be sensitive to the fact that restricting intake to the telephone may create impediments for some and that telephone intake systems are not equally accessible to all. Some low-income persons may have only limited access to a phone. Some rural people have a deeply ingrained preference for face to face contact and may balk at initial contact by telephone. Some persons have difficulty with complex, answering systems with branching options and will not persevere to get the help they need. Persons who do not speak English are likely to be weeded out of a telephone system that does not immediately offer interaction in their language.

^{xv} **ABA Standard 2.4 on Cultural Competence**, Commentary at Page 56.

To be culturally competent in legal aid means having the capacity to provide effective legal assistance that is grounded in an awareness of and sensitivity to the diverse cultures in the provider's service area. A cultural group is identified by shared beliefs, values, customs and behaviors that define what it is. Cultural competence is particularly important with racially, ethnically and culturally distinct communities, and with persons who primarily use a language other than English. Cultural competence is also important with persons with disabilities for whom there are barriers to communication that might impede the formation of a relationship of trust necessary for effective representation, and with others who share distinct characteristics that call for heightened awareness and sensitivity.

The shared beliefs, values and customs that define a cultural group often have a subtle, but deeply significant impact on communication with the provider, on how the attorney-client relationship is formed and on the conduct of the representation.

Cultural competence ... means having the capacity to interact effectively and to understand how the cultural mores and the circumstance of persons from diverse communities affect their interaction with the provider and its practitioners and govern their reaction to their legal problems and to the process for resolving them.

A legal aid provider should demonstrate cultural competence in its operations and should have a culturally competent and a diverse staff so that all groups of clients will be welcomed and well represented. Offering culturally competent legal services implicates how representation is conducted. It also involves how the provider operates, including how it hires and trains its staff. Finally, it calls for the provider periodically to assess the utilization of its services by the distinctive communities in its service area and the effectiveness of the services provided to persons from those communities. ...

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A provider should function in ways that convey its openness to the cultural diversity in its service area and its competence responding to that diversity. To the degree possible, its staff should reflect the diversity of the population that it serves. The provider should have delivery strategies that respond to cultural factors that impede some populations from seeking and effectively utilizing the services offered. It should have a staff that is well trained in the skills and insight necessary to serve its diverse populations.

^{xvi} ABA Standard 2.4 on Cultural Competence, Commentary at Page 59.

For practical reasons, providers serving very diverse populations with many sub-groups will not be able to hire staff from all such groups. ...

Training is a vital element of a provider's efforts to function in a culturally competent fashion and to have staff who are able to serve a diverse low-income population effectively. ... Board of Directors should also receive appropriate training in important features of a culturally competent organization....

Given its limited resources, a provider's efforts to assure cultural competence among its staff should first focus on training about cultural awareness and the basic skills to be more culturally competent....

Culture-specific training efforts should be prioritized according to the size of a particular cultural community, or group of communities. Programs that serve a large range of cultures should assess the size and legal needs of particular cultural communities within the low-income population in order to prioritize the training and services it offers.

^{xvii} ABA Standard 4.6 on Communication in the Primary languages of Persons Served, Commentary at Page 167.

A legal aid provider has a responsibility to communicate in the language of persons seeking and using its services. A provider should have the capacity to communicate with all clients who are not proficient in English, either through bilingual staff or qualified interpreters. It should offer legal information and other forms of non-representational services in the predominant languages of the low-income communities it serves. Its processes for intake should be accessible to persons from all the language groups in its service area.

Commentary at Page 169

The provider should be accessible at intake to all persons regardless of their primary language....

In planning its service delivery methods, a legal aid provider should identify the points of contact where language barriers may exist for persons seeking and receiving services and should develop strategies, plans and protocols to respond.

^{xviii} ABA Standard 4.6 on Communication in the Primary languages of Persons Served, Commentary at Page 167.

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Commentary at Page 169

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^{xix} **ABA Standard 4.5 on Access to Services, Commentary at Page 165.**

A provider should be highly sensitive to the need to eliminate barriers that limit access for persons with disabilities. A provider should at a minimum comply with federal and state legal requirements regarding access to its services by persons with disabilities....

The provider should recognize that many legal problems arise for individuals with a disability as a direct result of their condition or status. Lack of easy access to public and private institutions frequently exacerbates those problems. Failure by a provider to address its own access barriers may leave important legal issues unattended as the provider becomes another part of the problem persons with disabilities confront.

^{xx} **ABA Standard 2.4 on Cultural Competence, Commentary at Page 60.**

Access and outreach. The provider should strive to make its services accessible to all the populations that it serves. Providers should take steps to address cultural isolation that may limit utilization of its services by some populations in its service area and should undertake sustained outreach to culturally isolated or culturally independent communities in its service area.

Providers should also strive to provide legal information and community legal education through media that are accessible to diverse communities, including persons with disabilities and persons who speak a language other than English.... Technology needs to be accessible to persons who have disabilities.

ABA Standard 4.5 on Access to Services, Commentary at Page 165.

Outreach and Publicity. Legal aid 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 aid and the steps an individual should take to obtain them.

Effective outreach to the elderly, the physically handicapped and the institutionalized requires more than information....

Outreach should be tailored to address special access barriers encountered by some because of their culture or unique circumstances. The provider should reach out to community organizations in isolated cultural and linguistic groups to facilitate establishing a presence in those communities. Specialized delivery strategies should be directed to groups of clients such as migrant farm workers and Native Americans.

^{xxi} **Introduction to the ABA Standards, Commentary at Page iv.**

Access to justice. A core mission of a legal aid provider is to facilitate access to the legal systems for resolving civil legal problems and to help low-income persons with legal problems obtain fair and lasting results. The Standards recognize that there are a number of ways in which this responsibility might be carried out. First, is in the direct assistance to individuals to advocate on their behalf or to assist them to do so themselves. The second is in the choice of delivery methods that efficiently use resources to facilitate

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access for large numbers of people in ways that respond effectively to their legal needs. The third is to work with other providers, the courts, the organized bar and other community organizations to increase the overall responsiveness of the system to the need for effective access to justice.

^{xxii} ABA Standard 4.5 on Access to Services, Commentary at Pages 163-164.

Technology can have a significant impact on the access issues. Technologically based systems for intake, to offer legal information and other assistance can significantly increase the capacity of a provider to serve large numbers of low-income persons. They can also directly overcome barriers to access that some encounter. ...

As technology continues to develop, it is likely that use of on-line access to services will increase. Such techniques can make services available to large numbers of persons, but they also create their own access questions. Some low-income persons will not have access to a computer, or will not have the skills necessary to use one for on-line, self help service. Web-based assistance should be available in the frequently used written languages of the low-income person served by the provider.

^{xxiii} *ABA Standards for the Provision of Civil Legal Aid* (2006), Standard 2.4 on Cultural Competence, *Commentary* at page 57-58.

Cultural competence ...means having the capacity to interact effectively and to understand how the cultural mores and the circumstance of persons from diverse communities affect their interaction with the provider and its practitioners and govern their reaction to their legal problems and to the process for resolving them.

A lack of cultural competence may result in miscommunication and misunderstanding between a provider and client, undermining the attorney-client relationship and defeating the client's objective."

Generally, effective representation depends on a practitioner's capacity to form a trusting relationship with the client and to understand the intended meaning of the client's words, behavior and expressions....

"It is also important that the practitioner be aware of how cultural values can affect a client's reaction to conflict....

"The difference between collective and individualistic cultures can also affect who the client feels should be involved in decisions about a legal problem...

"A practitioner's ability to present clients' cases to adversaries, agency personnel, hearing officers and judges is enhanced when a practitioner is knowledgeable about and attentive to possible cross-cultural misunderstandings."

ABA Standards for the Provision of Civil Legal Aid (2006), ABA Standard 4.6 on Communication in the Primary Languages of Persons Served, *Commentary* at page 168-9.

A provider needs to assure that its practitioners have the tools necessary to represent their clients, including being able to communicate effectively with those who are not proficient in English. Clear communication between the practitioner and client is at the core of effective practice. ...A practitioner who—because of a language barrier—cannot understand fully what the client is saying and asking may not be able to determine the full circumstances of the case. There is an equal risk that the client will not fully understand the practitioner's advice or explanation.

In order for its practitioners to meet their professional responsibilities to provide competent representation to the client, therefore, the practitioner either needs to

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communicate in the client's language directly or through a competent interpreter. This responsibility attaches both to persons who speak a language other than English and to persons who rely on American Sign Language (ASL) to communicate.

...To ensure accuracy of the interpretation and that no breach of confidentiality occurs, the provider should procure its own interpreter and avoid using interpreters brought by the person being interviewed.

...

In court and in administrative hearings, a provider representing a client who is not proficient in English or is hearing impaired should assure a competent interpreter is provided by the court or administrative agency....

[169] A provider should make its non-representational assistance available in the principal languages used by persons in the low-income communities it serves. Written and on-line legal information should be translated into the predominant languages used by low-income persons in the service area. To the degree possible, the provider should have the capacity to hold community legal education sessions and pro se clinics in the principal languages of the communities served.

The provider should be cognizant of the degree to which the lack of capacity in English will be a factor in the course of self-representation and should instruct the person receiving the pro se support in how to obtain the participation of a competent interpreter.

^{xxiv} **Standard 6.3 on Responsibility for the Conduct of Representation, *Commentary at page 199.***

The responsibility and authority for supervision of representation are grounded in the ethical and legal responsibility the provider assumes for each accepted case....

In 2002, the Model Rules of Professional Conduct were amended to clarify that lawyers who possess 'comparable management authority' to law firm partners are required to 'make reasonable efforts' to ensure that the provider has measures in effect to give reasonable assurance that all practitioners conform to the rules of Professional Conduct. The fact that primary responsibility for cases rests with the provider does not absolve the individual practitioner from the duty to represent clients 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 provider is not improper interference with the independent judgment of individual practitioners, but is mandated by ethical considerations."

Supervision of less experienced practitioners is necessary to assure that clients' interests are not jeopardized by inexperience and to facilitate development of proficient practitioners.

^{xxv} **ABA Standard 6.6 on Providing Adequate Resources for Research and Investigation, *Commentary at Page 208-9.***

To provide high quality representation of clients, practitioners should have access to adequate tools for effective legal research.... Providers should budget sufficient funds to assure that their practitioners have access to those tools that they require to assure high quality legal work and should encourage their practitioners to make full use of free resources that are available on-line.

The provider should maintain updated in-house pleading and brief banks with easily retrievable research products so that the cumulative knowledge gained through successive representation of clients with similar issues is available to the provider's current

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practitioners. ...Providers should also participate in national, regional and statewide brief banks that permit many providers to share their research products and to give practitioners easy access to up-to-date research, information and knowledge pertinent to assisting low-income persons with their legal problems....

A provider should encourage its practitioners to participate in internet-based discussion groups, e-mail lists and other similar tools that provide up-to-date information on poverty law issues....

All of these tools require providers to have access to technology that is up to date and to assure that provider's practitioners and other staff are fully trained to make full use of the technological tools that are available....

^{xxvi} **Standard 6.4 on Review of Representation, p. 201.**

A review system should assure that practitioners provide competent representation, that they identify all pertinent issues and effectively pursue appropriate remedies in accordance with clients' objectives. A review system should also assure that the practitioners pursue the clients' objectives in a timely and expeditious manner, keep clients adequately informed of the progress of their cases and consult them 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 so that the provider can act appropriately to protect the clients' interests.

^{xxvii} **ABA Standard 6.5 on Training, Commentary at page 204-5**

Training is an essential vehicle for ensuring the effective operation of a legal aid provider and its provision of high quality, effective assistance that responds to the needs of low-income communities. ... Training should address the full range of substantive practices and skills that all personnel need to carry out their job duties efficiently and effectively.... It is also important that staff not directly involved in assisting clients be skilled and effective at their job function....

A provider should allocate sufficient resources for training to assure that inexperienced individuals become proficient and that more experienced personnel increase their level of competence. A provider should develop and implement entry level and ongoing training activities within the program or assure access to outside training that is timely, relevant and responsive to ongoing professional development needs of all personnel....

"Training should be tailored to the priorities set by the provider, the delivery methods used and its method of operating and should impart the knowledge, skills and values pertinent to each. The provider's professional development agenda should include a broad range of training offered directly by it as well as by state, regional and national entities that make training opportunities and support available. It should also take advantage of learning opportunities that are available to practitioners and others through their participation on task forces and other substantive networks....

[Page 207] A provider should budget sufficient resources for it to develop and implement internal training and to make outside training opportunities available as appropriate.

^{xxviii} **ABA Standard is 5.2 on Policy for Acceptance of Applicants for Service, Commentary at page 178-9.**

In order to allocate its resources rationally, the provider should establish a policy and procedures for determining whom it will serve. The policy should focus resources on the identified priorities of the provider, consider the maximum amount of legal work the

provider can reasonably handle and allocate available resources to assure high quality representation and assistance....

The provider's case acceptance policy should meet the following objectives:

To allocate resources to the legal problems identified as priorities in the provider's planning process;

To control demands on the provider's resources and its practitioners' available time so that the assistance that is provided to persons served is of high quality....

In determining the level of service that will be offered for various types of legal problems, the provider should consider a variety of factors, including the following:

- The degree of importance accorded the issue in the provider's priorities;
- The potential benefit to the low-income community in general, if the issue is successfully pursued with full representation;
- The potential consequences to individuals with that type of legal problem if only limited representation or non-representational assistance is offered;
- The availability of non-representational services from the provider or elsewhere that might help individual applicants resolve that type of problem;
- The existence of collaborative relationships with other organizations, such as domestic violence shelters, that work with the provider to support individuals with the type of legal problem;
- The availability of new sources of funds to support the provider in addressing the legal problem....

^{xxix} **Standard 6.2 on Assignment and Management of Cases and Workload, Commentary at page 195.**

To assure high quality representation and legal work, the provider should assign cases and other legal work to those individuals who are best able to handle them. In controlling workloads and assigning cases, the provider should consider, among other things, the individual's available time, experience and substantive expertise. The provider should manage open caseloads and other legal work assigned to individual staff practitioners to assure that both the provider and the practitioner meet their ethical responsibilities to clients....

All the work of a provider should be undertaken with the intention of obtaining meaningful results, and the provider's policies should help it guard against the temptation to emphasize the production of case numbers.

^{xxx} **Standard 5.4 on Case Files, Commentary at page 187.**

Electronic or hard-copy case files should organize critical elements of a case in a logical and coherent fashion. Each should contain the following essential information:

- An indication of the options available to and selected by the client, and a statement of the client's objective;
- 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;
- For clients with limited English proficiency, an indication of their primary language, interpreters and translators used and copies of translated materials;
- Copies of all written correspondence, pleadings, legal memoranda, legal research and other documents representing work done on the case, organized systematically for ready reference;
- For electronic correspondence, either a hardcopy or an electronic version of such communications;

- Consistent with the complexity of the case, a specific plan with a clear delineation of tasks and a timetable with deadlines for completion of each task;
- A record of time spent on the case adequate to support any request for attorneys' fees, if appropriate, and to meet the provider's management needs as well as any requirements imposed by the provider's funding sources;
- For closed cases, a closing memorandum that summarizes the work done for the client and the results achieved.

^{xxx}**Standard 7.10 on Alternative Dispute Resolution.**

The practitioner should proficiently and zealously represent clients in alternative dispute resolution processes when they would serve the client's interests or when they are required by law.

Standard 7.11 on Litigation.

The practitioner should proficiently and zealously engage in litigation when it is determined to be the most effective means to resolve the client's problem.

Standard 7.11-1 on Litigation Strategy.

The practitioner should develop a clear, long range strategy for pursuing or defending the client's interest in the litigation and should continually update the strategy in light of new developments in the case and in the governing law.

Standard 7.11-2 on Pleadings.

The practitioner should draft pleadings to preserve and advance the client's claims or defenses in accordance with the requirements of court rules and applicable law.

Standard 7.11-3 on Motion Practice.

The practitioner should file appropriate motions as part of the litigation strategy.

Standard 7.11-4 on Discovery

The practitioner should use both formal and informal discovery when appropriate to obtain necessary information in a timely manner and useful format.

Standard 7.11-5 on Trial Practice

The practitioner should present a client's case at trial in a manner that is appropriate to the rules, procedures and practices of the court, exhibits full understanding of the facts and the law in the case and reflects thorough preparation.

Standard 7.11-6 On Enforcement of Orders

The practitioner should take reasonable and necessary steps to assure that the client receives the benefit conferred by a favorable judgment, settlement or order that is obtained on the client's behalf.

Standard 7.11-7 on Appeals

The practitioner should counsel the client on whether to pursue or defend an appeal and recommend to the provider whether to represent the client on appeal. Timely notice should be given to the client if the provider decides not to provide representation on an appeal. Appellate advocacy that is undertaken should be conducted proficiently and zealously.

Standard 7.12 on Administrative Hearings

The practitioner should proficiently and zealously present a client's case in adjudicatory administrative hearings.

Standard 7.13 on legislative and administrative advocacy by practitioners

When advocating before legislative and administrative bodies, a practitioner should proficiently and zealously present the interests of clients and low-income communities.

Standard 7.14 on Practitioner’s Responsibilities in Limited Representation

A practitioner may limit the scope of representation provided to a client if the limitation is reasonable under the circumstances and the client knowingly consents.

Standard 7.15 on Transactional Representation

The practitioner should proficiently and zealously represent clients in transactional matters to accomplish their objectives.

Standard 7.16 on Representation of Groups and Organizations

The practitioner should proficiently and zealously represent groups and organizations to respond to the legal needs of the communities served by the provider.

^{xxxii} **Standard 2.12 on Institutional Stature and Credibility, Commentary on Page 96.**

Effective representation of clients is enhanced if the provider establishes a positive institutional presence in the communities 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 personnel and provides the backdrop against which all its practitioners practice.

In order to achieve institutional stature and credibility, the provider should operate in ways that command respect both in the low-income community and among public leaders and others who make decisions that may affect low-income persons....

[Commentary at Pages 97-98]

Many aspects of a provider's operation over time affect its reputation and its ability to command respect in the low-income community. Its intake system needs to be accessible and responsive, and it needs to deal with all the low-income communities it serves in a culturally competent manner.^{xxxii} Its offices and other facilities should project an appearance that conveys competence and professionalism to clients and others. 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.

^{xxxiii} *LSC Performance Criteria, Performance Area 4, Criterion 3.*

Overall management and administration. The program is well managed and administered including: an effective management structure; processes and systems to ensure compliance with all funder requirements and state and federal law; a capacity to address problems quickly and effectively; effective utilization of technology; effective administrative procedures; competent personnel; allocation of appropriate resources to management functions; and periodic evaluations of administrative operations."

The indicators of meeting this criterion are also helpful:

- The program devotes appropriate resources to management.
- The program has a management structure that effectively uses middle managers.
- The program has experienced, capable, and diverse management and administrative staff.
- The program provides effective training, supervision, and evaluation of management and administrative staff.
- The program undertakes periodic evaluation of management operations.

^{xxxiv} **Standard 1.1-3 on Fiscal Matters, Commentary on page 7-8**

- The governing body should assure that the provider achieves its budget goals and that its funds are spent and accounted for in a way that fully meets the provider's responsibility to its clients, its funding sources and the public. The governing body should rely on a senior manager to help assure that the provider effectively meets its responsibilities for budgeting, financial planning and accountability. ...
- The governing body's fiscal responsibilities begin with the adoption of a budget that commits available resources to the provider's priorities... The governing body should approach the budget as the mechanism through which it implements major policy decisions on the provider's direction and operation. Budget planning also provides the opportunity to monitor the provider's receipt of projected income, assess future resource needs and plan for expected changes in available resources.

...The provider's management is responsible for spending resources according to the budget approved by the governing body.... Management should provide the governing body with periodic reports on the provider's fiscal situation to permit the governing body to monitor the provider's receipt of revenue and expenditure of funds and anticipate and correct potential resource problems....

Oversight of the provider's finances carries the responsibility to assure that the provider's funds are spent for the purposes for which they were granted, are properly accounted for and that there is no fraud or misuse of funds. The governing body should act proactively to assure that the financial integrity of the provider is protected. It should adopt policies that require adequate internal controls to assure the reliability and integrity of financial and operating information. It should also assure that the provider is in compliance with federal and state laws governing whistleblower protection and the destruction of documents. It should assure that management takes appropriate action to correct any shortcomings identified in its fiscal accounting by an audit or other financial review.

^{xxxv} **ABA Standard 6.1 on Characteristics of Staff, Commentary on page 193.**

Providers should take steps to facilitate high quality work by its staff practitioners by offering training in professional skills and substantive law and assuring that staff members have meaningful opportunities for professional development. It should supervise its staff members to foster their professional growth and assure effective assistance to clients. The provider should strive to retain staff by providing fair compensation, benefits and satisfactory working conditions. A provider's capacity to attract and retain high quality staff will be enhanced by the degree to which it is engaged with the low-income communities it serves, accomplishes meaningful results for them and has institutional stature and credibility.

See also, Standard 1.1-3 on Fiscal Matters, Commentary on page 7-8

In order to encourage continued service to clients by experienced practitioners and to discourage high staff turnover, sufficient resources should be budgeted to assure that the provider offers adequate salaries and benefits to its staff.

^{xxxvi} **ABA Standard 2.10 on Effective Use of Technology, commentary on page 85.**

A legal aid provider should utilize technology to operate efficiently and to respond to the legal needs of the low-income communities it serves... Technology also plays an

increasingly central role in how the legal system operates as more courts and administrative agencies rely on computer and web-based methods of operating.

The tools for effective practice and for responding to the legal needs of low-income communities ... are grounded more and more in modern technology. Each provider has a responsibility to plan effectively how it will use technology in providing assistance to low-income persons in its service area and in supporting its internal operations, including the production and management of legal work and the training and support of its staff.... A provider should examine all aspects of its operation for opportunities to increase the quality and range of its service through technology....

[Commentary at page 88]

Budgeting adequate resources for technology. A provider should budget to meet its technology needs as part of the annual budgeting process. Funds should also be allocated for planned major expenditures to implement significant new technology initiatives. The budget should provide for purchase, maintenance and support of technologies used in the delivery of services to low-income persons. It should provide adequate funds for internal technology needs, including: 1) regular upgrade and replacement of equipment and software, 2) personnel necessary to maintain networks and equipment, and 3) training and support of staff in the use of technology. Technology investments should be planned on a multi-year basis and should include reserve funds to allow for flexibility in taking advantage of new developments.

^{xxxvii} **ABA Standard 1.1 on Overall Functions and Responsibilities of the Governing Body, Commentary at page 3.**

Mission. The governing body should determine the organization's mission and purpose. It is the governing body's responsibility to create and periodically review a statement of mission and purpose that articulates the provider's goals, ascertains the means that it will utilize to accomplish those goals, and identify the primary constituents to be served. The governing body should clearly articulate the provider's mission, accomplishments and goals in order to help garner support for the provider from the public.

^{xxxviii} **ABA Standard 1.1 on Overall Functions and Responsibilities of the Governing Body, Commentary at page 3.**

Set policy for the provider. Consistent with the provider's mission and purpose, the governing body has the responsibility to set broad general policies for the organization's operation. These policies include, in the first instance, the provider's articles of incorporation and bylaws. The governing body should adopt such other broad policies that make up the general set of rules under which the provider operates and clarify the roles, responsibilities and duties of the governing body and the provider's staff. These policies establish the standards against which to measure the actions of members of the governing body and the provider's staff and help safeguard the provider's general well-being.

The precise policy role of the governing body will depend upon local judgment about the appropriate division of authority and responsibility between the governing body and the provider's 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, establishing a salary structure for staff, and overseeing the implementation of these policies. In addition, the governing body may be required to establish policies, such as setting eligibility guidelines, to comply with requirements of a funding source.

^{xxxix} **ABA Standard 1.1-3 on Fiscal Matters, Commentary at page 7-8.**

The governing body should assure that the provider achieves its budget goals and that its funds are spent and accounted for in a way that fully meets the provider's responsibility to its clients, its funding sources and the public. The governing body should rely on a senior manager to help assure that the provider effectively meets its responsibilities for budgeting, financial planning and accountability.

Budgeting and financial planning. The governing body's fiscal responsibilities begin with the adoption of a budget that commits available resources to the provider's priorities. ...The governing body should approach the budget as the mechanism through which it implements major policy decisions on the provider's direction and operation....

The provider's management is responsible for spending resources according to the budget approved by the governing body.

Management should provide the governing body with periodic reports on the provider's fiscal situation to permit the governing body to monitor the provider's receipt of revenue and expenditure of funds and anticipate and correct potential resource problems."

Financial accountability. Oversight of the provider's finances carries the responsibility to assure that the provider's funds are spent for the purposes for which they were granted, are properly accounted for and that there is no fraud or misuse of funds. The governing body should act proactively to assure that the financial integrity of the provider is protected. It should adopt policies that require adequate internal controls to assure the reliability and integrity of financial and operating information. It should also assure that the provider is in compliance with federal and state laws governing whistleblower protection and the destruction of documents. It should assure that management takes appropriate action to correct any shortcomings identified in its fiscal accounting by an audit or other financial review.

^{xl} **ABA Standard 1.1-4 on Relations with the Chief Executive. Commentary at Page 12**

The governing body should exercise continuing oversight of the chief executive's work, through ongoing review of program operations and periodic evaluations of the chief executive's performance.

^{xli} **ABA Standard 1.1-1 on Governing Body Oversight of the Provider, Commentary at Page 4.**

The governing body should review the provider's operations to assure that the provider is functioning effectively, that its policies are being implemented and that the provider is in compliance with statutory and regulatory requirements. Once the governing body has established broad general policies, it is the chief executive's responsibility to carry them out and manage the provider's day-to-day operations, but the governing body should have a means to assure that established policy is being implemented properly and to identify problems that may require intervention.

^{xlii} **ABA Standard 1.1-2 on Prohibition against Interference in the Representation of Clients, Commentary at Page 6.**

It is improper for the governing body or its members to interfere with the attorney-client relationship. A governing body is permitted to set priorities which may limit a provider's involvement in broadly identified categories of cases, but such limits must be established before a case is accepted. Once representation in a particular case has been undertaken, interference by the governing body is strictly prohibited. The governing body or an advisory committee of its lawyer members cannot have access to the confidences and secrets of the provider's clients, as such bodies stand outside the attorney-client relationship established with the practitioner, and the

members of the governing body do not have an attorney-client relationship with the provider's clients. Moreover, lawyers employed, paid or recommended by the provider cannot ethically allow the provider's governing body or its members to direct or regulate the lawyer's professional judgment in providing representation. [See ABA Comm. On Ethics and Prof'l Responsibility, Formal Op. 334 (1974).]

^{xliii} **ABA Standard 1.2-4 on Governing Body Members' Conflicts of Interest, Commentary at Page 29.**

No member of the governing body should participate in a decision in which the member has a personal, professional, organizational or institutional interest that is in conflict with the interests of the provider or its clients. The governing body has a responsibility to adopt appropriate policies that protect against conflicts of interest and provide appropriate guidance to its members regarding their responsibilities in the event that a conflict arises.

A potential conflict of interest may arise in a variety of ways:

- When a governing body member has a personal or pecuniary interest in a matter that is under consideration by the provider;
- When a member is employed by or associated with an organization that has a competing or adverse interest with that of the provider;
- When a member has a personal or institutional interest that is in conflict with interests of the low-income communities served by the provider;
- When a member represents a client whose interests are adverse to the interests of a client of the provider, although the clients are not direct adversaries in a particular case; or
- When a member represents a client who is a direct adversary of a client of the provider in a specific case....

^{xliv} **ABA Standard 1.2 on Governing Body Members' Responsiveness to the Communities Served, Commentary at Page 19.**

A provider's governing body has a responsibility to be aware of the needs of the communities that the provider serves and to make policy decisions that respond to those needs....

The governing body needs a diversity of interests and perspectives among its membership in order to be responsive to the communities the provider serves....

The governing body should include a variety of supportive persons who bring important skills, knowledge and outlook to governance of the provider. Its membership should include persons who reflect the race, ethnicity, national origin and gender of the low-income community and are drawn from various geographic locations, including major cities and towns as well as rural areas. The governing body should include persons who are or who have been eligible for the provider's services.

Standard 1.2-1 on Individual Members' Commitment to the Provider, Commentary at Page 24.

The governing body needs to make prudent decisions that are responsive to the needs of low-income communities for effective legal assistance. This calls for its members to support the mission of the provider and to commit adequate time and resources to carry out their responsibilities....

Standard 1.2-2 on Board Members from the Communities Served by the Provider, Commentary at Page 26.

The governing body will have better insights into the legal needs of the communities it serves if its membership includes persons who have directly experienced those needs. ...

The governing body should be aware of potential barriers to full participation by representatives of the low-income community and should take steps to help overcome those barriers. Board members who have experienced poverty and are from a low-income community that the provider is serving will have insights and knowledge that professional members of the governing body may lack. Some low-income representatives, however, may feel intimidated by attorneys on the governing body and may be unfamiliar with legal terminology and the operation of the legal system that are germane to decisions that the governing body needs to make. It is important, therefore, that the provider act to overcome any impediments to full communication among board members.

^{xlv} **Standard 1.2-3 on Training of Members of the Governing Body, Commentary on Page 28.**

New members should receive orientation that includes information on:

- An historical perspective of legal aid nationally and in the local community;
- The provider's structure, general operations and special programs;
- National and local sources of funding for legal aid;
- The nature of the legal services offered by the provider;
- Important characteristics of the low-income communities served by the provider;
- Any limitations or requirements imposed on the provider's operations by statutes, regulations, funders, contracts, and ethical obligations;
- The role, structure and functioning of the governing body and its committees as well as any client or other advisory groups.

In addition, the provider should offer training to its governing body members as needed. Such training should help provide skills and substantive knowledge necessary for effective participation on the governing body. Appropriate topics for training may include: legal requirements governing the operation of the provider, budgeting and accounting oversight; fundraising and resource development; developments in legal services delivery and pertinent substantive legal issues; communication and meeting skills; cultural competence, to increase the governing body's familiarity with issues facing the provider in serving diverse low-income communities and to support effective communication with the low-income community; the content of these Standards; and other subjects that relate to effective governing body operation.

^{xlvi} **Standard 1.1-5 on Serving as a Resource to the Provider, Commentary on Page 13.**

Governing body members 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 that can be used to train the provider's staff.
- Members with special expertise in the law relating to the operation of non-profit organizations can provide legal advice and assistance to the provider.
- Members with particular knowledge of low-income communities can help design and establish the provider's service delivery system.
- Members can engage in legislative or administrative advocacy on behalf of the provider.
- Members can assist in the provision of legal assistance by accepting pro bono referrals of cases, acting as co-counsel in cases with the provider or representing low-income communities through legislative or administrative advocacy."