

**PROPOSED STRATEGIES FOR USING
PERFORMANCE STANDARDS
 FOR LEGAL AID IN THE STATE OF WASHINGTON
 TO ENHANCE THE QUALITY AND EFFECTIVENESS
 OF LEGAL AID ORGANIZATIONS**

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Introduction

On November 13, 2009 the Washington State Access to Justice Board adopted the *Performance Standards for Legal Aid in the State of Washington* [hereafter, *Performance Standards*] and instructed that they be made available on the Access to Justice website.¹ Initial reactions to the *Performance Standards* have been very positive, but more can be done to publicize their availability and encourage their use by programs and others. This memorandum suggests various way in which 1) the content of the *Performance Standards* might become better known; 2) how they might be used, and 3) how the Access to Justice Board might encourage their implementation.

There are five categories of ways in which the *Performance Standards* might be used:²

- **Educational** — Use for the training or orientation of staff and boards within the legal aid delivery system, as well as education of people outside the system;
- **Evaluative** — Use as the basis for evaluation of program operations, including self evaluation by programs and peer review;
- **Developmental** — Use by programs and others as a guide or checklist in the design of systems within their organizations;
- **Planning** — Use as a guide for strategic planning and related activities; and
- **Defensive** — Use an authoritative guide to explain or defend program activities, when necessary.

The *Performance Standards* are written to provide guidance on a broad spectrum of legal aid organizations' operations:

- *Performance Standard One* expresses broad institutional responsibilities for identifying legal needs of the communities a legal aid organization serves and for planning strategically and collaboratively to respond.

¹ <http://www.wsba.org/atj/documents/performancestandardsforlegalaidinthestateofwashingtonnov2009.pdf>

² Dividing uses for the standards into these five categories is useful for analytical and planning purposes, but in practice many strategies may overlap. Thus, for example, a program may engage in a self-assessment of its success in meeting a *Performance Standard* with the goal of also educating staff or board about expectations under the Standard.

- *Performance Standard Two* expresses the importance of advocates seeking to achieve clients' objectives and accomplish lasting results on their behalf. It also addresses a broad organizational responsibilities, including choosing appropriate delivery mechanisms and supporting a full range of legal assistance to eligible persons.
- *Performance Standards Three and Four* relate to how clients are treated and to the quality of the work produced.
- The specific focus of *Performance Standard Five* is leadership and management.
- *Performance Standard Six* relates to governance.
- *Performance Standard Seven* relates to resource development.
- *Performance Standard Eight* focuses on issues related to the participation of volunteer attorneys in providing assistance to clients

This memorandum primarily analyzes potential uses of the *Performance Standards* from the perspective of educational and self-evaluative functions, but also notes other potential strategies that may be considered by the Access to Justice Board, by programs or by the State funders.

I. Use by legal aid organizations for training and orientation

The *Performance Standards* provide a ready-made tool for training and orientation of both program staff and members of its Board of Directors. They are explicitly written to convey the core values that the Access to Justice Board believes should be reflected in delineated aspects of a legal aid organization's operation. As a result, they provide a succinct statement of those values that can be easily incorporated into training and orientation materials and curricula for both staff and board members. The analysis in the Commentary could be used to generate a discussion of values that a legal aid organization wants to emphasize, such as treating clients with dignity and respect.

The Commentary to each *Performance Standard* also provides links to sections of the Commentary of the *ABA Standards for the Provision of Civil Legal Aid* (2006) which contains more detailed analysis that may also be useful as part of training and orientation materials.

A. Training and orientation of staff

The easiest way to use the *Performance Standards* in orientation of staff, of course, might be to include their full text (or a link to their Web address) in any orientation materials. In truth, however, the value of including the entire 67 page document in an orientation package would likely be limited to alerting the staff member to its existence and its availability as a resource.

To expose new staff members to the substance of the *Performance Standards* that will be beneficial to them will require a more targeted approach. The content of the *Performance Standards*, therefore, could be divided into modules that convey important values, clustered into common areas. For illustrative purposes, the following suggests a way of dividing the content

that would provide manageable sized modules, some or all of which could be used in orientation or training.

- **Module 1 ~ Expectations regarding interactions with clients.** This module could draw on the *Performance Standards* to convey the values that are important for all staff members, including particularly advocates, in their interactions with persons served by the program. There are several sections of the commentary to the *Performance Standards* that directly pertain to appropriate interaction with clients and applicants for service. They are:
 - ✓ *Performance Standard Three*, subheading 1: "Treating persons seeking and receiving services with dignity and respect and fostering trust" (page 13³);
 - ✓ *Performance Standard Three*, subheading 4: "Protecting information provided by prospective clients and clients from unauthorized disclosure" (page 14);
 - ✓ *Performance Standard Four*, subheading 3: "Having the ability to communicate competently with people of different cultural and linguistic backgrounds" (page 20).

- **Module 2 ~ Expectations regarding interactions with the low-income community.** This module could address broader questions related to how the legal aid organization and its advocates interact with low income communities they serve and how they focus on the most compelling issues affecting members of that community. Its attention would be more on an institutional level and would principally be designed to orient new staff and others to the values which underlie how the organization views its responsibility to the communities it serves. Portions of the *Performance Standards* that might be used include:
 - ✓ *Performance Standard One*, "Identifying Legal Needs and Planning Strategically and Collaboratively to Respond" (page 5);
 - ✓ *Performance Standard One*, subheading 1: "Identification of the most compelling needs of the communities served" (page 5);
 - ✓ *Performance Standard One*, subheading 2: "Planning strategically to deliver services that respond to compelling needs" (page 6);
 - ✓ *Performance Standard Two*, subheading 1: "Choice of delivery mechanisms that effectively and efficiently respond to client needs" (page 8);
 - ✓ *Performance Standard Two*, subheading 3: "Working collaboratively to support the availability of a full range of assistance to low-income communities" (page 10);
 - ✓ *Performance Standard Three*, subheading 5: "Operating in a way that facilitates access and overcomes barriers to isolated low-income communities" (page 15);
 - ✓ *Performance Standard Three*, subheading 6: "Operating with an understanding of and sensitivity to the values and cultures of all communities served" (page 16);
 - ✓ *Performance Standard Three*, subheading 7: "Having the capacity to assist low-income persons in their primary language" (page 16);
 - ✓ *Performance Standard Three*, subheading 8: "Accessibility for persons with disabilities" (page 17);

³ This and all subsequent page references enclosed in parentheses give the number of the web page in the version of the *Performance Standards* that appears on the webpage of the ATJ Board. Typing the webpage in the toolbar just above the document on the webpage and pressing "enter" will navigate to the desired page.

- ✓ *Performance Standard Three*, subheading: "Reaching out to all low-income communities" (page 17);
 - ✓ *Performance Standard Three*, subheading 11: "Using information technology in ways that promote access to services into the justice system" (page 18).
- **Module 3 ~ Production of high-quality legal work.** The discussion in the *Performance Standards* that relates to legal practice and the production of high-quality legal work could be extracted and used in conjunction with program materials on a number of internal procedures and practices. In addition to the sections of the Commentary to the *Performance Standards* cited below, for instance, an orientation package could include items such as the organization's policies on case acceptance, supervision of legal work, records retention, and internal practice standards, if any.

Pertinent sections of the Commentary to the *Performance Standards* include:

- ✓ *Performance Standard Two*, subheading 2: "Accomplishing lasting results for individuals and low-income communities" (page 9);
 - ✓ *Performance Standard Four*, subheading 4: "Systems that support the efficient production of high-quality legal work", including "Supervision and mentoring," "Regular review of staff advocates' cases and caseloads," and "Training" (page 21);
 - ✓ *Performance Standard Four*, subheading 5: "Policies that promote the timely, efficient and effective practice of law," including case acceptance, assignment and management of cases and workload, and case files and records (page 22);
 - ✓ *Performance Standard Four*, subheading 6: "Standards for the effective practice of law" (page 22).
- **Module 4 ~ Ethical responsibilities.** Training and orientation on an advocate's ethical responsibilities would no doubt be built around Washington's Rules of Professional conduct. There is, however, discussion in the *Performance Standards* which addresses application of two Rules in the context of legal aid representation and which would be a useful inclusion in training and orientation materials. In addition, a footnote identifies the Rules of Professional Conduct which are particularly significant in legal aid representation. Pertinent parts of the *Performance Standards* are:
 - ✓ *Performance Standard Three*, subheading 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" (page 13);
 - ✓ *Performance Standard Three*, subheading 4: "Protecting information provided by prospective clients and clients from unauthorized disclosure" (page 14);
 - ✓ *Performance Standard Four*, subheading 6: "Standards for the effective practice of law," footnote 48 (page 23).
- **Module 5 ~ Working collaboratively within the Alliance for Equal Justice.** This is a core value in Washington State that a legal aid organization may want to highlight separately in orienting new staff. The value is woven throughout the *Performance Standards*, but there are several sections which could be drawn on along with appropriate sections from the Hallmarks of an Effective Statewide Civil Legal Services System.

- ✓ *Performance Standard One*, subheading 1: "Coordination with Access to Justice partners and stakeholders" (page 5);
- ✓ *Performance Standard Two*, subheading 3: "Working collaboratively to support the availability of a full range of assistance to low-income communities" (page 8).

B. Training and orientation of members of the Board of Directors.

The *Performance Standards* offer three avenues for training and orientation of members of the Boards of Directors of legal aid organizations in the state. The first is as a portion of training or orientation related to the board members' responsibilities as governing body members. The second is to provide guidance regarding the appropriate operation of the legal aid organization for which the Board of Directors is responsible. The third relates to participation by the legal aid organization and its Board in the Alliance for Equal Justice.

- **Module 1 ~ Roles and responsibilities as a member of the Governing Body.** *Performance Standard Six* is devoted exclusively to governance and would be useful in its entirety. Portions of it, however, are explicitly focused on a board member's oversight responsibilities and would be useful in a training devoted to that issue.
 - ✓ *Performance Standard Six*, subheading 1, "The governing body carries out its governance and oversight responsibilities effectively," identifies six specific areas of responsibility (page 28).
 - "To determine the organization's mission and vision, consistent with its role as a member of the Alliance for Equal Justice" (page 29);
 - "To adopt broad general policies for the organization to carry out its mission within the overall framework for the Alliance for Equal Justice" (page 29);
 - "To engage in planning, along with 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 serves" (page 29);
 - "To oversee the financial integrity of the organization" (page 29);
 - "To hire and supervise the chief executive officer" (pages 29-30); and
 - "To ensure that its policies are being implemented and that the organization is in compliance with statutory and regulatory requirements" (page 30).
 - ✓ *Performance Standard Six*, subheading 1 also contains helpful analysis of "Limitations on governing body members' activities" (page 30); and
 - ✓ *Performance Standard Six*, subheading 4: "The governing body serves as a resource for the legal aid organization" (page 32).
- **Module 2 ~ Effective operation of the legal aid organization governed by the Board of Directors.** On their face, the *Performance Standards* all relate to this issue, but certain values may be more important to emphasize in a training or orientation of board members.
 - ✓ *Performance Standard One*, subheading 2: "Planning strategically to deliver services that respond to compelling needs" (page 6);
 - ✓ *Performance Standard One*, subheading 4: "Evaluation of the effectiveness of program efforts and making necessary adjustments" (page 7);

- ✓ *Performance Standard Two*, subheading 1: "Choice of delivery mechanisms that effectively and efficiently respond to client needs" (page 8);
 - ✓ *Performance Standard Two*, subheading 3: "Working collaboratively to support the availability of a full range of assistance to low-income communities" (page 10);
 - ✓ *Performance Standard Five*, subheading 1: "Leadership that helps establish and maintain a shared mission and vision for the organization and helps to achieve institutional relevancy and credibility" (page 25);
 - ✓ *Performance Standard Five*, subheading 3: "Effective administration of the organization" (page 26);
 - ✓ *Performance Standard Five*, subheading 4: "Compliance with grant and contract requirements and other legal responsibilities" (page 27); and
 - ✓ *Performance Standard Six*, subheading 2: "Governing body members are knowledgeable about legal aid services supportive of the mission of the organization" (page 31).
- **Module 3 ~ Responsibilities regarding participation in the Alliance for Equal Justice.**
There are a number of places where the value of working collaboratively in the state justice system and participating in the Alliance for Equal Justice are highlighted. Several of those are particularly pertinent to board members and would be appropriate for a training or orientation module.
 - ✓ *Performance Standard One*, subheading 4: "Coordination with Access to Justice partners and stakeholders" (page 6);
 - ✓ *Performance Standard Two*, subheading 3: "Working collaboratively to support the availability of a full range of assistance for low-income communities" (page 10);
 - ✓ *Performance Standard Six*, subheading 3: "Governing by the members who understand the importance of active participation by the legal aid organization in the state justice system" (page 31);
 - ✓ *Performance Standard Seven*, Resource Development (page 33);
 - ✓ *Performance Standard Seven*, subheading 1: "Coordination and cooperation in efforts to preserve and expand public resources committed to the support of civil legal aid" (page 33);
 - ✓ *Performance Standard Seven*, subheading 2: "Participation and cooperation with the Campaign for Equal Justice in efforts to develop and expand private resources to support civil legal aid" (page 34); and
 - ✓ *Performance Standard Seven*, subheading 4: "Equitable allocation of private and public resources for civil legal aid delivery consistent with the Access to Justice Board's Hallmarks and the State Planned for the Delivery of Civil Legal Aid in Washington" (page 35).

C. Training and orientation of staff, volunteers and board members of organizations using volunteer attorneys.

Performance Standard Eight directly addresses the operation of legal aid organizations that use volunteer attorneys to serve clients and to support the organization's activities. Many aspects of the training and orientation modules described above would be pertinent to organizations even

though they rely principally or exclusively on the participation of volunteer attorneys. The availability of the analysis in *Performance Standard Eight*, however, offers additional possibilities for training or orientation aimed at their special characteristics. Again, the full content of the *Performance Standard* is more than might be realistic to cover in one training or orientation and dividing it into modules would be appropriate.

- **Module 1 ~ Expectations related to the recruitment and support of volunteers.** A number of the issues covered in *Performance Standard Eight* pertain to what the organization should have in place to recruit and support its volunteer attorneys.
 - ✓ *Performance Standard Eight*, subheading 2: “Successful recruitment and retention of volunteer attorneys” (page 38), including separate discussions of recruitment (page 38), retention (page 39) and recognition of volunteers (page 39);
 - ✓ *Performance Standard Eight*, subheading 3: “Access to training and support” (page 39);
 - ✓ *Performance Standard Eight*, the discussion under subheading 4: “Internal systems to support quality” that pertains to “Appropriate placement and follow-up on cases” (pages 43-44); and
 - ✓ *Performance Standard Eight*, subheading 6: “Coordination with Alliance for Equal Justice partners” (page 46).

- **Module 2 ~ Expectations related to the support of high quality legal work by volunteer attorneys.** Special considerations apply to how the value of producing high quality legal work is accomplished in the case of volunteer attorneys. The sections of *Performance Standard Eight* that relate to that issue are:
 - ✓ *Performance Standard Eight*, subheading 1: “Fostering high-quality, responsive legal assistance by volunteer attorneys” (page 37), and
 - ✓ *Performance Standard Eight*, subheading 4: “Internal systems to support quality” (pages 40-44);

- **Module 3 ~ Expectations related to ethical considerations.** *Performance Standard Eight* provides useful analysis of the complex relationships associated with the referral clients to volunteer attorneys and the common use of non-attorneys in the analysis and assignment of cases. Training and orientation of both members of the Board of Directors and, in some cases, the volunteer attorneys may be appropriate.
 - ✓ *Performance Standard Eight*, the discussion under subheading 4: “Internal systems to support quality” that pertains to “Attorney supervision of non-attorney staff, when required” (pages 40-42); and
 - ✓ *Performance Standard Eight*, subheading 5: “Establishing a clear understanding among the client, the volunteer attorney and the legal aid organization” (pages 44-46).

D. Training and orientation of others in the State Justice System.

While not described here in depth, there are other parts of the civil justice system in Washington that could use the *Performance Standards* for training or orientation of their staff and board. They could be used, for instance, by the Civil Legal Aid Oversight Committee or the Legal

Foundation of Washington’s Board for orientation of new members regarding the operation and expectations of legal aid organizations in the civil justice system.

II. Use by legal aid organizations for self-assessment and values clarification (and possible planning)

Another potential use for the *Performance Standards* by legal aid organizations is to engage in a process which is part self-assessment and part education of staff or board and clarification of the organization's values. As with training and orientation, the process would involve the use of selected portions of the *Performance Standards* that are chosen to address a particular area of concern or interest by the legal aid organization.. The process could be used once or twice related to a specific issue, or as part of a longer-term self-assessment spread over a period of weeks or even months.

Methodology. The proposed method is a simple one. An office or unit of a legal aid organization or the entire organization selects portions of the *Performance Standards* and engages in a structured discussion of the values, the degree to which they reflect those values in their operation and what it would take to reflect them more fully. As an example, an organization might reflect its process for intake against the values stated in *Performance Standard Three*. The discussion could be framed around a few statements from the Commentary to the *Performance Standard* or could address a variety of the values framed in that *Performance Standard*.

A discussion, thus, could be organized around the following sentences from the commentary to subheading 1 of *Performance Standard Three* (“Treating persons seeking and receiving services with dignity and respect and fostering trust”) and the subheading 2 (“Accurately assessing the legal problems of persons seeking assistance and advising them promptly of the level of assistance that they will receive”):

"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.⁴...

⁴ **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. [Link to Commentary to ABA Standard 4.1](#)

"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.⁵"

Staff could then be invited to discuss the following questions:

1. Do we agree with the underlying values expressed in these statements?⁶
2. To what extent do we as an organization reflect those values in how our intake process functions?
3. What are the factors that inhibit our operating in a way which meets this standard and what enhances it?
4. What steps might we take as an organization to overcome the barriers to our fully accomplishing the values and to strengthen the factors which enhance it?

The same discussion could be used to consider a broader range of values reflected in *Performance Standard Three*. In interest of space, the Commentary is not set out fully in this memorandum, but portions of it that are found in the following subheading could be used for a similar discussion to assess key aspects of intake:

- ✓ *Performance Standard Three*, subheading 5: "Operating a way that facilitates access and overcomes barriers to isolated low-income communities" (page 15);
- ✓ *Performance Standard Three*, subheading 6: "Operating with understanding of and sensitivity to the values and cultures of all communities served" (page 16);
- ✓ *Performance Standard Three*, subheading 7: "Having the capacity to assist low-income persons in their primary language" (page 16);
- ✓ *Performance Standard Three*, subheading 8: "Accessibility for persons with disabilities" (page 17);
- ✓ *Performance Standard Three*, subheading: "Reaching out to all low-income communities" (page 17);

There are a variety of issues in the *Performance Standards* that lend themselves to engagement in the process described above. The location of the appropriate text in the *Performance Standards* is not set out here, but various possibilities are suggested:

- How well do we engage with low income communities in order to be aware of and responsive to their most compelling needs?
- Do we interact with clients and applicants for service with appropriate cultural and linguistic competence?

⁵ Link to Commentary to ABA Standard 4.1

⁶ In fact, the ATJ Board has established that the values in the *Performance Standards* apply in all legal aid organizations. The purpose of the first question, however, is more pedagogical; it is to have participants in the discussion recognize and embrace the specific values inherent in the selected text.

- Do we provide appropriate and necessary support to volunteer attorneys and function in a way that fosters their providing high quality representation?
- Do our systems for the supervision and support of legal work foster high quality representation and contribute to the professional growth of employees?
- Do we use technology effectively to support our production of legal work and to reach clients and others effectively?
- Do we coordinate and collaborate with our Alliance for Equal Justice partners to assure that a full range of service is offered and that we use available resources as efficiently and effectively as possible?
- Does our Board of Directors carry out its responsibilities effectively?

III. Use by legal aid organizations in self-assessment and peer reviews

During the past several years there has been discussion of creating a capacity for engaging in peer reviews or consultations for some or all of the legal aid organizations in the state in processes that would be jointly organized by the funder and the organization being reviewed. The *Performance Standards* themselves cite the value of such jointly sponsored peer reviews (page 7). Considerably more analysis is required regarding what would be necessary to create such a capacity than is appropriate in this memorandum. It is useful, however, to consider how the *Performance Standards* could be used as the basis for peer reviews or consultations.

The *Performance Standards* would be very useful as standards for a peer review or consultation. The language of each *Performance Standard* is written in a way which makes it particularly appropriate for such use. Indeed, each declaration in the *Performance Standards* can be turned into a question which becomes an appropriate evaluation inquiry. Thus, for example, *Performance Standard One* can be transformed into the following set of assessment questions:

- Does the legal aid organization interact effectively with low-income communities it serves so as to be aware of their most compelling legal problems?
- Does it, in consultation with its Alliance for Equal Justice partners and stakeholders, make deliberate choices about how to respond to those needs?
- Does it periodically assess the effectiveness of its efforts to respond to the needs of the communities it serves and adjust its approaches, as necessary?

By way of another example, *Performance Standard Three* lends itself to the following formulation of questions appropriate for a peer review or consultation:

- Do the legal aid organization's systems for intake and case acceptance reflect a commitment to treating all persons seeking and utilizing its services with dignity and respect?
- Does the organization accurately identify the legal needs of prospective clients and promptly respond to requests for assistance.

- Does the organization promote access for all eligible populations including those that are isolated by geography, culture, language, disability and other factors that limit access? Does the organization coordinate with Alliance for Equal Justice partners and stakeholders to promote improved access to the civil justice system?
- Does the organization have policies and procedures to identify and address conflicts of interest
- Does the organization appropriately protect the confidentiality of clients' and prospective clients' information.

Each of the *Performance Standards* can easily be converted into an evaluation question appropriate for use in a peer review. Furthermore, the greater detail which is set forth in the Commentary to each Standard can be used for more finely focused inquiry into areas that concern in the peer review. Thus, for example, the language in Subheading 5 of *Performance Standard Five* reads:

“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.”⁷

The quoted paragraph lends itself to the following areas of inquiry:

- Does the legal aid organization have a clear management structure with clearly assigned authority and responsibility?
- Are managers trained?
- Is management diverse?
- Does the organization have affected administrative procedures?
- Does the organization effectively use technology to support internal operations as well as clients?
- Does the organization periodically assess the effectiveness of its internal administrative operations and make appropriate adjustments, if necessary?

⁷ Link to Commentary to LSC Performance Criteria, Performance Area 4, Criterion 3.

IV. Other potential uses for the *Performance Standards*

The above analysis has focused principally on the educational and evaluated potential for the *Performance Standards*. It should be noted, however, that there are other uses of which legal aid organizations, their funders and others may make use. Some are listed here without analysis.

By legal aid organizations collectively and individually

- √ To assess and guide development of new delivery techniques
- √ To respond to criticisms of advocacy that seeks to accomplish systemic change
- √ To help design and assess systems related to quality assurance, including the supervision, case acceptance and assignment, caseload management and case files and records.
- √ To engage in strategic planning
- √ To clarify relations with community organizations and other partners
- √ To assess whether there are gaps in service or capacity
- √ To provide guidance to organizations appointing members of the Board of Directors