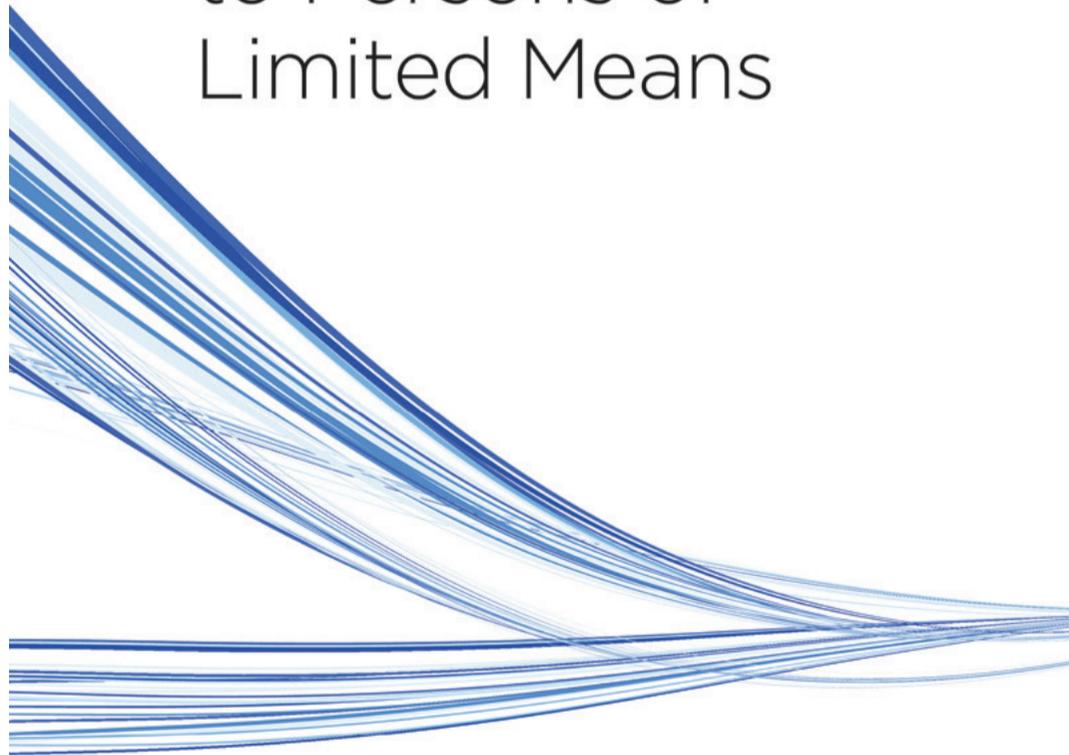


Standards for
Programs Providing
**Civil Pro Bono
Legal Services**
to Persons of
Limited Means



Foreword

At its 2013 Annual Meeting in San Francisco, California the American Bar Association's House of Delegates adopted, without dissent, revisions to the *Standards for Programs Providing Civil Pro Bono Legal Services to Persons of Limited Means* (Pro Bono Standards). The Pro Bono Standards were originally adopted by the House of Delegates in 1996. The current update was commenced in 2011 by the Standing Committee on Pro Bono and Public Service (Pro Bono Committee) to make them more up-to-date and to enhance their usefulness in guiding new pro bono programs and improving and evaluating existing programs. The objective of the Standards is to help pro bono programs effectively and efficiently facilitate the provision of high quality legal services to persons of limited means through the utilization of volunteer attorney resources.

Development of the Original Pro Bono Standards

The original Pro Bono Standards were created over a period of four years, culminating in their passage in 1996. During that period, the Committee formally sought the direct involvement of a number of organizations with an interest in and knowledge of the operations of pro bono programs. An Advisory Group was formed made up of representatives of a diverse set of organizations. The Advisory Group worked directly with the Pro Bono Standards Subcommittee and Reporter by reviewing initial drafts and offering valuable insights from their varied perspectives. The full Committee carefully reviewed and revised the draft Standards and authorized their wide release for public comment in February 1995. Four public hearings were held and significant written comments were received and reviewed by the Committee.

Overwhelmingly, the comments favored the draft standards and offered constructive and useful suggestions. Some commentators suggested additional areas to address or a fuller treatment of topics already covered. Many other commentators suggested specific changes in language. Whenever possible, the draft standards were revised to adopt the suggestions offered to the Committee. After reviewing all the comments, the Committee approved the drafted Standards for submission and consideration by the ABA House of Delegates. They were unanimously adopted by the House of Delegates at the February 1996 ABA Midyear Meeting.

Updating of the Standards

In 2011, the Committee launched the current effort to update the Pro Bono Standards. The Committee formed a Working Group made up of pro bono stakeholders from diverse backgrounds, and retained a consultant to coordinate the process. The Working Group reviewed each of the Pro Bono Standards (including Commentary) to identify areas in need of updating and revision and drafted suggested amendments, additions and deletions. In doing so, the group identified challenging or difficult issues that particularly bore more discussion. The Working Group then embarked on an eight month process of gathering input from other stakeholders nationally on the identified issues as well as on the Pro Bono Standards as a whole. Input sessions were conducted at a number of national and statewide legal services conferences across the country...

The Working Group also conducted a series of eight (8) webinars, in which stakeholders from around the country participated and discussed the various items of controversy. Finally, the Working Group drafted and propounded a 41-question electronic survey, which was

widely disseminated on pro bono, legal services and access to justice related list services and through various online and email forums and websites. The input from all of these outreach efforts was considered and incorporated as appropriate into the draft Standards.

Once the Working Group completed its proposed draft, it submitted that draft for approval to the Committee, which considered the draft and adopted it at its meeting in January, 2013. The revised Pro Bono Standards were then submitted for consideration at the ABA House of Delegates meeting in Chicago in August, 2013, where they were adopted.

Acknowledgments

Many people made valuable contributions to the Pro Bono Committee's efforts to update, revise and expand the scope of the Pro Bono Standards. We are deeply indebted to them for their time, input and guidance.

The members of the Working Group gave generously of their time and talents. Sharon E. Goldsmith chaired the Group, providing crucial leadership, excellent judgment and editorial wisdom where it was needed most. The members of the Group were: Nancy Anderson, Caitlin Carlson, Stephanie Edelstein, Bob Elardo, Dan Glazier, Jim Guest, Alicia Hernandez, Elizabeth Hom, Paul Igasaki, Ginny Martin, Mike Monahan, Steve Nissen, Mary Ryan, Hon. Richard Teitelman, Jennifer van Dulmen, and Julia Wilson.

The contributions of those people who testified at our hearings, participated on webinars, attended workshops and submitted written comments were important. Their insight and suggestions strengthened the final document.

Members of the Working Group spent many hours reviewing drafts between meetings and many more hours in discussion. Those discussions were skillfully guided to focus attention on the main policy issues by Cheryl Zalenski, the Director of the ABA Center for Pro Bono, and the Reporter, Tiela Chalmers, who devoted countless hours to this project. It is not an easy task to capture the conclusions and nuances expressed by each member of the Working Group and those who commented orally or in writing in response to our many outreach efforts. Tiela was able to keep the project on track, find and express the points where competing considerations needed balancing, and was able to bring her own experience and knowledge to bear in drafting and redrafting as the process unfolded. In these ways and with her patience and constant good-natured assistance, Tiela was essential to the successful completion of this project. We hope the final product reflects the real consideration, debate, reconsideration and resolution of the important issues that must be addressed in the operation of strong and effective pro bono programs.

Larry McDevitt, Chair

August 2013

I would like to extend my thanks to those who contributed their time and effort to update, revise and expand the scope of the Pro Bono Standards, including my predecessor as Chair of the Committee, Larry McDevitt. As a result of their time, talent and vision, we are able to publish and offer this important resource as an e-publication of the American Bar Association.

Offering the Standards as an e-publication allows us to include links to sample documents and valuable online resources within the text. Those valuable resources are collected from and contributed by the pro bono community. We owe a debt of gratitude to the people and organizations who supplied materials for inclusion.

With the participation, input and support from across the pro bono and legal services communities, the Standing Committee on Pro Bono and Public Service is proud and pleased to present this e-publication. We hope that those who read and consult it find it of great practical value in furthering the development of pro bono programs and projects.

Mary K. Ryan, Chair

March 2014

STANDARDS FOR PROGRAMS PROVIDING CIVIL PRO BONO LEGAL SERVICES TO PERSONS OF LIMITED MEANS

UPDATED 2013

INTRODUCTION

Organized pro bono programs have existed in this country for over a century and have played a vital role in providing access to justice by assisting members of the private bar in their efforts to furnish free civil legal services directly to persons of limited means. In the past 35 years, the growth in the number of programs has been remarkable: in 1980, 80 formal pro bono programs were identified by the American Bar Association; today, there are more than 1,500. The variety, sophistication and complexity of programs and program structures similarly have grown, and that growth is expected to continue. Given this growth, and the period of change and re-invention in which existing programs are operating and new programs are being established, it seems appropriate to revisit and reinvent the Standards. In particular, the publication of the Standards online with extensive links to resources, models, materials and more -- provides the reader with a vibrant tool to use in enhancing their program efforts.

It is important to ensure that the standards that support pro bono programs in becoming more effective and efficient in marshaling volunteers, meeting clients' needs and facilitating the provision of high quality legal service are current and relevant. The 2013 Pro Bono Standards are offered as a resource for developing best practices and providing the highest quality service possible for volunteer lawyers and the clients they serve.

In 1961, the American Bar Association first adopted standards for the operation of civil legal aid programs. While the Civil Standards were designed to provide guidance to all organizations serving the civil legal needs of low-income persons, it was recognized that some of those standards would not be applicable to pro bono programs due to legal, practical and institutional reasons. Moreover, many issues unique to pro bono programs were not addressed in the Civil Standards. It is the goal of the Pro Bono Standards to furnish current guidance to newly established programs and to provide a basis for improving and evaluating the effectiveness and efficiency of existing programs.

These Standards recognize that to utilize all resources effectively, programs should strive to develop a variety of methods for delivering high quality legal services to clients. These methods may include the most common one of program staff referring individual clients to individual attorneys for representation, or the use of "full-service clinics" at which volunteers conduct in-depth interviews with clients and agree to provide whatever level of assistance is needed. In addition, programs may explore developing supplemental means of utilizing volunteers by

establishing advice clinics, legal hotlines, limited scope opportunities and *pro se* clinics through which clients' legal needs may be addressed. Another approach is developing relationships with entities such as law firms or corporate law departments through which multiple cases are referred at the same time and an individual at the entity is responsible for placement of the cases. While it is recognized that a program's ability to implement a variety of delivery models will depend upon local conditions and resources, the Pro Bono Standards encourage all programs to carefully consider the best way to leverage their resources to effectively and efficiently address clients' legal needs.

The Pro Bono Standards serve solely as guidelines and are not intended to create any mandatory requirements or minimum standards for performance. Thus, failure to comply with a standard should not give rise to a cause of action, nor should it create any inference or presumption that a pro bono program has failed to comply with any legal duty owed to a client, a volunteer or a funding source. Of course, all lawyers (and those working under their supervision) must comply with all applicable rules of professional conduct when providing pro bono service. In the 2013 Edition, we have endeavored to reflect the minimum benchmark for programs in each Standard and indicate the highest level of best practices in the Commentary.

Application of the Standards

The Pro Bono Standards have been crafted specifically for programs and components of programs which provide free civil legal services through the use of volunteers to persons of limited means and the organizations serving them. It is likely, however, that all pro bono programs will obtain guidance from a review of these Standards. It is important to note that these standards are not intended to change or affect the application of ethical rules or rules of professional responsibility.

There are a number of pro bono programs that, in addition to utilizing volunteers to provide free civil legal services to persons of limited means, employ staff to carry out that same function. There are also many programs established primarily as staff model legal services organizations that include a volunteer component. The Pro Bono Standards are meant to apply only to the pro bono component of such programs. They are not intended to provide guidance to those components of programs in which staff lawyers provide representation. In establishing operational guidelines for the staff component, such programs should turn to the Civil Standards.

These Standards should also prove helpful to programs that combine pro bono case placement with *judicare* or with a contract approach in which private attorneys are paid a reduced fee to provide free legal services to persons of limited means. The unique issues faced by such programs, however, are not necessarily addressed in these Standards, which may have additional requirements not discussed here. Programs that are solely *judicare* or contract-based are not the subject of these Standards. In addition, the Pro Bono Standards are not intended to be fully applicable to law school and law firm pro bono programs due to their distinctive missions and operations. Likewise, some Standards will not be applicable to programs that are organized to address certain types of special issues such as civil rights and civil liberties. All such programs may nevertheless obtain guidance from a review of the Standards, which are commended to them for their consideration.

In some instances, a Standard will specify when there is a different Standard for different types of organizations. Otherwise, the Commentary will reflect different suggestions and approaches in implementing each Standard, many of which may depend on the circumstances of a program.

It may be tempting for smaller organizations, particularly those without access to large firms or which serve areas with few attorneys at all, or without an established culture of pro bono, to decide that it is better to help people without bringing services to the level set by these

standards, than to not help people at all. This is a conundrum faced by legal services and pro bono providers across the country, and one that must be resisted. It may be that smaller or rural programs may need to help fewer people in order to adhere to these Standards, or to focus services only in one practice area. People may be left unserved, but low-income communities count on bar associations, legal services offices and pro bono programs for high-quality access to justice, and they deserve that. For all pro bono programs, quality should not be sacrificed for quantity, even in the face of pressing need.

Definitions of Significant Terms Used in the Standards

These Standards include principles applicable to the relationship between the pro bono program and a client once an attorney-client relationship is created. They also, however, include principles relating to persons before such a relationship is established. Moreover, as is discussed in the Commentary to several Standards, there is some difference of opinion and some variation in state law as to when and whether an attorney-client relationship is created. We have used the term “**prospective client**” until it is plain that under any criterion, the prospective client has become a client.

We have also used the term “**case**” to describe a case, matter, project, or other legal task.

We recognize that in some instances the task does not involve or contemplate litigation at all, but rather a transactional, policy or non-judicially determined effort. As a result, the term “case” is technically inaccurate (as would be other terms, like “matter,” which have technical meanings in some contexts). We therefore use the term “case” to encompass all legal projects. We ask the community’s forbearance for our use of this terminology.

The terms “**legal services program**” and “**staff model legal services program**” are used interchangeably and refer to any program, regardless of its funding source, that provides free legal services to the low-income persons primarily through the use of paid staff who directly represent clients.

The term “**persons of limited means**” refers to those who qualify for participation in programs funded by the Legal Services Corporation and those whose incomes and financial resources are slightly above the guidelines utilized by such programs, but nevertheless, cannot afford counsel. It is the same definition used in ABA Model Rule of Professional Conduct 6.1 which sets forth an aspirational standard for pro bono service by lawyers.

A conscious decision has been made to avoid the use of the term “pro bono coordinator” in these Standards. Instead, the term “**pro bono manager**” is used to refer to the individual who has primary responsibility for the day-to-day operation of the program. This term continues to be used in the Standards because it best reflects the wide range of duties involved in successfully operating a program as well as the professionalism required of the individual who holds the position. In the case of a pro bono program that is a part of larger legal services, bar association, social service or other programs, the “pro bono manager” will be the head of the pro bono program. In the case of a freestanding pro bono program, the “pro bono manager” will likely be the Executive Director of the program.

For the purpose of these Standards, the term “**pro bono program**” does not include all organizations that provide pro bono service as defined in Model Rule of Professional Conduct 6.1. Rather, it refers to the specific type of pro bono program described in Rule 6.1(a)—an organization that provides free civil legal services through the use of volunteers to persons of limited means or organizations which serve them.

The terms “**provider of legal services**” and “**legal services provider**” are used interchangeably and refer to an organization founded primarily

to render free or reduced fee civil legal services to persons of limited means or those who cannot otherwise afford counsel. Examples of such providers include pro bono programs, legal services programs, law school clinics and judicare programs.

STANDARDS WITH COMMENTARY

SECTION 1: GOVERNANCE

ROLE AND RESPONSIBILITY OF GOVERNING BODY

Standard 1.1 (Role and Responsibility of Governing Body—General Policy Development)

A pro bono program should establish a governing body which adopts broad general policies.

COMMENTARY

Every pro bono program should establish a governing body to provide it with guidance, oversight and support. The precise form of the governing body will vary, depending upon the structure of the program. For pro bono programs that are separately incorporated, state law generally mandates a governing body. Programs not separately incorporated also benefit from the presence of a governing board. This provision is relevant to pro bono departments of larger organizations, e.g. pro bono projects of Legal Services Corporation grantees, law firms, corporate law departments and government attorney offices. These projects will benefit from the commitment and leadership of a governing body in the same way as will independent pro bono programs.

Those who serve on the governing body should be committed to advancing the goals of the program and supporting its mission. In addition, they should be willing to commit adequate time to obtain the necessary understanding of the program's operations and serve without any conflicts of interest in order to fulfill their governing and oversight responsibilities.

Consult Governing Law Regarding Structural Requirements

Programs should consult applicable law and grant requirements regarding the structure and composition of their board. Legal Services Corporation grantees, for example, are required by the Corporation to include client representatives on their boards. State law also often dictates the legal responsibilities of governing body members.

Federal tax law also imposes requirements on nonprofit organizations. Organizations required by law to file an IRS Form 990 should consider the best practices embedded in that form: funders and potential volunteers have access to those forms and use them to inform their decisions.

Term Limits for Governing Body Members

The program may want to consider instituting term limits for its members. Such a system not only creates a finite commitment for governing body members, but also provides a means for regularly adding new members who can bring fresh perspectives and new energy to the governing body. To avoid a governing body made up of entirely new members, however, a program should consider staggering the terms of its members.

Purpose of a Governing Body

The purpose of the governing body is to set broad general policy for the program. The exact policy role of the governing body will depend upon local judgments as to the appropriate role of the governing body and the pro bono manager. Generally, the governing body has broad decision-making authority on fundamental matters such as determining the delivery design, adopting priorities, establishing eligibility guidelines overseeing a grievance procedure, determining the salary structure for staff, and adopting a budget. In contrast, governing body members generally should not play a role in personnel decisions other than those regarding the Executive Director or pro bono manager, management of particular programs, and other operational matters.

Necessary Policies

Governing boards should also have the following in place:

- Conflict of interest policy
- Whistleblower and internal fraud policy
- Document retention and destruction policy

Provisions intended to increase transparency and promulgate best practices in the for-profit sector have also had a tremendous impact on the nonprofit sector. While the policies listed above are not mandated, they are considered best practices.

One of the principal changes since these Standards were first published in 1996 has been the passage of the federal Sarbanes-Oxley Act (“SOX”). Although SOX is largely applicable to publically traded companies, two criminal provisions apply to nonprofit organizations: a prohibition on retaliation against whistleblowers, and a prohibition on the destruction, alteration or concealment of certain documents or the impediment of investigations.

Moreover, the IRS requires that nonprofits filing Form 990s disclose whether the organization has these items in place, and failure to have such policies could trigger an audit, or flag an organization to funders.

In addition, some states have passed their own parallel legislation regulating governance issues in nonprofits. Programs should determine which federal or state laws govern non-profits in their jurisdiction, and what if any, specific mandates and prohibitions exist.

Standard 1.2 (Role and Responsibility of Governing Body—Oversight and Review)

The governing body should ascertain that the pro bono program is in compliance with any contractual obligations and applicable laws governing the program and should regularly review the program’s operations.

COMMENTARY

Familiarity with Program, Applicable Law, and Developments in Pro Bono

To ascertain that the program is in compliance with applicable laws, the members of the governing body should have a working knowledge of the various statutes and regulations governing the program. Those statutes and regulations include state law governing non-profits, federal tax law, fiscal regulations, and Generally Accepted Accounting Principles (GAAP) standards. To assist the governing body members in

understanding those laws, program management should include this information in new member orientations, schedule relevant training events, and offer additional appropriate resources as necessary.

Governing body members should have a significant familiarity with the organization's projects, and ideally have volunteered with at least one of them prior to their service. The governing body members should also be regularly trained on the program's services and operations.

The governing body should also make certain that it is aware of new developments in pro bono delivery so that it can evaluate the program's ability to recruit and utilize volunteers effectively and efficiently. It can obtain this information by receiving reports from the pro bono manager, by sending one or more members to a national conference like the ABA/NLADA Equal Justice Conference, and/or by participating in listservs and other online resources.

Regular Reports to Governing Body

Although the pro bono manager is responsible for the day-to-day operations of the program, the governing body should regularly review those operations to determine that established policy is being implemented properly, to ascertain that the program's mission and goals are being achieved and to identify problems that may require intervention. To properly fulfill this review function, the governing body should regularly obtain and review internal program reports regarding:

- Financial matters, including actual income and expenses against budget (see Standard 1.3);
- Fund development, including funding changes and efforts in progress (see Standard 1.4);
- Case metrics and recruitment statistics;
- Any grievances made against the program; and
- Any major new program undertakings

In addition, it should review program evaluations provided by funding sources or other entities and the report of the annual financial examination. The governing body should also ascertain that the program is making its best effort to coordinate with other providers to maximize the delivery of service to clients.

Issue Spotting

One of the governing body's primary responsibilities should be monitoring the overall status of the program. In the commentary to the ABA's Standards for the Provision of Civil Legal Aid, several "warning signs" requiring the attention of the governing body are enumerated, the following of which should be of particular concern if identified by pro bono program governing bodies:

- a sharp change in the number of cases handled;
- significant deviations from the approved budget;
- an increase in client grievances;
- an increase in complaints from employees of the provider;
- an increase in complaints from participating volunteers or entities, the private bar or the legal community; and,
- a decrease in participation by the private bar in assisting clients.

In addition, the governing body should take special note of any substantial decrease in the number of volunteers recruited, any significant turnover of the governing body's members, and any diversion of the organization's assets. If the governing body does discover any problems in the course of its review, it should take proper steps to remedy them.

Hiring and Overseeing the Executive Director

Governing body members should serve as support for the Executive Director, providing a sounding board, resources, and ensuring that there are opportunities for professional development. For those programs that are separately incorporated, the governing body usually has the additional responsibility of hiring the program's director, periodically evaluating his or her performance and, in addition to establishing the director's compensation, ensuring that compensation is reasonable (using information about comparable salaries in the field and the geographic area).

Standard 1.3 (Role and Responsibility of Governing Body—Fiscal)

The governing body should assume responsibility for the financial integrity of the pro bono program by adopting a budget, monitoring revenues and expenditures in relation to the approved budget, and providing for an annual independent financial examination.

COMMENTARY

Budgeting as a Planning Tool

As is pointed out in the commentary to the ABA's Civil Standards, "budget responsibilities involve more than mechanical approval of broad spending categories and perfunctory review to assure that income and expenditures balance." Rather, the budget is the mechanism through which the governing body implements major policy decisions regarding the program's direction and operation. Budget planning also provides the governing body with the opportunity to assess future resource needs and to plan for expected changes in available resources.

While the laboring oar of budget preparation may be borne by program staff, the governing body should take an active role in the process. To assist with this, appropriate program staff should: 1) provide annual training on budgeting and reading financial reports; and 2) identify policy and major program issues raised by the budget.

Regular Review of Budget Reports

As part of the board's responsibility to provide continuing oversight to the organization's finances, it should ensure that it receives from program management, and regularly reviews, periodic financial reports. These reports should include:

- Cash flow reports. These reports may be less frequent if the organization has a significant operating reserve and no significant cash flow issues. If, however, the organization has cash flow concerns from time to time, then the governing body should receive and review cash flow reports more regularly, and ensure that cash flow issues are being handled in a responsible and effective manner.
- Actual revenue and expenses against budget. Such reports will enable program management and governing body to discuss any significant divergence from budget, and reasons for that divergence. If necessary, the governing body may need to revise the budget or take other steps to take into account circumstances as they unfold.

Ensuring Resources

A basic responsibility of the governing body is to adopt a sound budget that enables the program to meet its responsibilities to its clients, its volunteers and its funding sources. To fulfill these responsibilities, the governing body should ensure that the organization has sufficient resources to:

- Meet program priorities;
- Furnish training and support to volunteers and staff; and
- Provide adequate salaries and benefits to qualified, experienced staff.

Ensuring Compliance with Grant Terms

The governing body must ascertain that the budget is in compliance with the terms and conditions set by its funders. Grants constitute binding contracts between the program and the funders, and the governing body is legally obligated to ensure that the program is meeting the terms of those contracts.

Oversight and Internal Controls

The pro bono manager is often the individual responsible for spending funds based upon the budget established by the governing body. To enable the manager to perform this responsibility, the governing body should develop written procedures regarding that individual's role in and authorization for purchasing, payroll, cash disbursements, cash receipts, entering into monetary obligations and maintenance of pro bono or contractual services. The governing body should also create reasonable and practical internal controls to ensure safeguarding of the program's assets by, for example, requiring dual signatures (e.g. program manager and governing body member) on all checks or on checks drawn above a certain amount. These controls may vary depending on the size and staffing of the program.

There will be times when deviations from the established budget will occur due to unanticipated costs or unforeseen circumstances. The commentary to the ABA's Civil Standards addresses this issue in the following manner:

The governing body should establish guidelines which give management flexibility to make reasonable adjustments in response to changing circumstances. Management should provide the governing body with periodic full reports of income and expenditures, including a comparison against the budget, which permit the body to anticipate potential problems and keep apprised of activities as they are reflected in the expenditure of resources.

Operating Reserve

The governing body should consider developing and implementing a policy creating an operating reserve for the organization, to serve as a cushion against financial downturn. Such an operating reserve should ideally contain at least three to six months worth of the organization's monthly expense budget, and should not be used except in emergency.

Annual Audit

To assure that the program is in compliance with both sound accounting principles and the terms and conditions set by its funders, the governing body should authorize an annual independent audit. Among other things, it should include a report on existing assets and liabilities,

delineate material contingencies (including claims and contracts) and develop recommendations on internal controls and procedures. For programs that are a component of a larger organization, such as a legal services program or a bar association, that financial review usually will be part of the larger organization's annual audit. There may be some programs such as those with very small budgets, for which conducting a full scale audit would be unduly burdensome. In those situations, a less extensive form of an annual independent financial review may be appropriate.

Many state nonprofit statutes now impose specific requirements on the Board's audit committee. The commentary to the ABA's Civil Standards set forth the following guidelines for the audit process:

The governing body should select its auditors in a manner that reflects the provider's commitment to equal opportunity in hiring and assures the highest level of service from them. The contract should establish the work to be done and its maximum cost and should ensure a timely report, usually within 90 days of the close of the fiscal year.

Once the governing body receives the financial report, it should meet with the examiners to discuss their findings, their recommendations for responding to identified problems and their suggestions for improving and updating the program's accounting system. The governing body should then take steps to remedy the identified problems and carefully consider any recommendations made for changing the current accounting system.

Standard 1.4 (Role and Responsibility of Governing Body—Fundraising, Recruitment, Recognition and Public Relations)

The governing body should support the operation of the pro bono program by assisting in activities such as program advocacy, fundraising, volunteer recruitment, volunteer recognition and public relations.

COMMENTARY

The governing body and its individual members should assume a vital role in a number of activities that are of critical importance to the program. First and foremost, governing body members should be advocates for the program as a key component of the community's overall legal services delivery system. They should value the role of pro bono legal services delivery and support the value the pro bono program provides for clients, the courts and the legal profession. In addition, members of the governing body should be active supporters of the program's fundraising, recruitment, volunteer recognition and public relations efforts. While it is likely that the pro bono manager will be involved in these activities, the governing body has a crucial and distinctive role to play, and the pro bono manager must look to that body for assistance.

Fundraising

Most boards include an expectation that members play an active role in fundraising for the organization. Occasionally an organization may make the decision to have fundraising done primarily by staff, or to participate in a joint fundraising effort with other agencies. Best practices, however, dictate that the governing body plays an active role in soliciting funds from individual donors, supporting program fundraisers and using their contacts in the community to identify alternative funding sources. Attorney and business leaders governing body members should take part in the direct solicitation of funds. In addition, they can use their contacts and influence with institutional funding sources to try to

obtain grants for the program. Attorneys who are members of a law firm should serve as the program's champion within their firm, both for purposes of volunteer recruitment and for fundraising.

Program staff should provide significant support for this effort, including:

- Assistance with identifying donors and conducting donor research;
- Coordinating solicitations;
- Providing training and practice on how to make the ask;
- Providing promotional materials for governing body members' use; and
- Encouraging their efforts.

The governing body chair plays an especially important role in the work of encouraging and prodding members to fundraise, and in inculcating how vital this work is to the sustainability of the organization.

Most boards also ask their members to make personal financial contributions; certainly this is essential if they are to ask others to contribute. In addition, many funders prefer or even require that 100% of a program's governing body donate personally to the organization. It is important to note that the contributions of governing body members need not always be the same. Indeed, if the governing body is diverse, there will by necessity be diversity in the amounts donated. The important element is that each gift be in an amount that is meaningful to the donor.

Recruitment, Recognition and Public Relations

One of the core responsibilities of governing body members is to serve as effective ambassadors on behalf of the organization. The governing body as a whole should have a plan for how the governing body and its individual members will fulfill this responsibility. Individual governing body members should also be engaged in activities that advance the public standing and awareness of the organization.

In some instances, particularly in smaller organizations, governing body members will also volunteer to take on specific roles to publicize the organization and raise awareness about its work. In any instance where a governing body member is serving more as a volunteer to the organization in a specific area of program or operations (communications, for example), the governing body member should be clear with staff about when s/he is working as a governing body member, and when s/he is working as a volunteer.

Many pro bono organizations look to their governing body members to serve as a link to law firms and the legal community and as a bridge for bringing on new volunteers. Governing body members can use their contacts to build and ensure a strong connection between law firms and the organization, and encourage significant volunteer participation. In addition, governing body members can use their significant contacts across the legal community and in the community-at-large to recruit volunteers and promote the organization. Members of the governing body should be called upon to inform bar members and the public of the program's mission, goals and achievements. Important functions such as writing recruitment letters, speaking at recruitment functions, attending networking events, and writing articles about the program are ones that members of the governing body can easily perform.

Governing body members are also important to retention and recognition efforts. They can play a valuable role by speaking at recognition events and by personally presenting the program's awards for outstanding service.

Together, the pro bono manager and governing body members may establish other areas in which the members of the governing body can

support the operation of the program. The examples provided are meant to be illustrative of the wide range of activities in which the governing body can provide valuable assistance to the program.

Whatever roles the governing body plays, it is very important to clearly communicate these roles to current and future members. Expectations about these roles should be discussed explicitly with potential governing body members before they come on the Board, and consistently reviewed throughout a member's service.

Standard 1.5 (Role and Responsibility of 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.

COMMENTARY

In representing a client, a lawyer has an ethical duty to exercise independent professional judgment. Any action by the governing body or its members that interfere with the fulfillment of this duty by a volunteer attorney, therefore, is strictly prohibited.

ABA Formal Opinion 334 (1974) addresses the extent to which a governing body of a legal services office may prescribe rules and regulations that limit or restrict the activities of staff attorneys acting on behalf of clients without placing those lawyers in violation of their duty to exercise independent judgment in legal matters. Because the volunteer attorneys of a pro bono program and the staff attorneys of a legal services program serve the same function of providing free legal services to individuals seeking assistance through the program, Formal Opinion 334 is relevant to the governing bodies of pro bono programs.

Formal Opinion 334 permits the activities of the staff attorneys on behalf of their clients to be limited or restricted by the governing body only to the extent necessary to allocate fairly and reasonably the resources of the program and to establish proper priorities in the interest of maximizing available legal services to the low-income persons. Once a case has been assigned to an attorney, however, the governing body cannot interfere with the attorney-client relationship. In addition, neither the governing body nor an advisory committee of its lawyer members can have access to the confidences and secrets of the client because such bodies have not established an attorney-client relationship with the client.

There may be exceptions to this prohibition, such as when a client explicitly consents to the disclosure of confidential information when filing a grievance against the volunteer lawyer. In that situation, the governing body or a duly selected committee may examine the conduct of a case by the volunteer attorney, but the body cannot specifically direct the volunteer to undertake or to refrain from any action in the case.

Standard 1.6 (Role and Responsibility of Governing Body—Non-Interference in Specific Acceptance and Referral Decisions)

The governing body and its individual members should not interfere directly or indirectly with the decision of the pro bono program staff to accept or reject a specific case, or to refer a case to a particular volunteer.

COMMENTARY

Decisions about whether to accept a specific case for referral to a volunteer must be made on a basis consistent with rules of professional conduct. Two formal ethics opinions of the American Bar Association have addressed the question of case-by-case decisions by the governing body

of a legal aid society, Formal Opinion 324 (1970) and Formal Opinion 334 (1974). Those opinions discuss three ethical issues: preservation of client confidences and secrets, the obligation not to decline a case based on controversy, and non-interference with lawyers' independent judgment. The opinions concluded that the governing body of the legal aid societies "should set broad guidelines respecting the categories or kinds of cases that may be undertaken rather than act on a case-by-case, client-by-client basis."

Ethical obligations require that lawyers maintain client confidences. ABA Formal Opinion 90-358 concludes that the duty to maintain client confidences applies to protect information imparted by a potential client seeking to engage a lawyer's services even though no legal services are performed and the representation is declined. The protected information includes not only the underlying facts of the case, but extends to the names, addresses and telephone numbers of potential clients. The staff of a pro bono program is prohibited, therefore, from revealing such information to anyone not entitled to such information under applicable ethical standards. Such standards include not only the attorney client privilege, but also the doctrine of non-disclosure of client secrets and information relating to the representation of a client. This is true even if an attorney-client relationship is never established between the program and the individual seeking assistance. The program must determine, under applicable ethical standards, whether disclosures to the program's governing body would be permissible. If such disclosure would not be permissible, then the only information regarding cases that a governing body should receive is that which is necessary to determine if the program's policies are being carried out, unless a client provides knowing, voluntary consent to the disclosure of confidential information.

If making an informed judgment to accept or reject a case requires access to information that the governing body would not be entitled to receive under applicable ethical standards, then the governing body clearly cannot insert itself into the referral decision.

A pro bono program often establishes an attorney-client relationship with an individual seeking a pro bono representation prior to the placement of the case with a volunteer. This occurs, for example, when the program staff provides legal advice to the client pending the referral decision. In such cases, the governing body is further restricted from interposing itself in the referral decision because it cannot interfere with a lawyer's independent professional judgment on behalf of a client.

A governing body may properly request information regarding the substantive areas of cases referred (i.e. housing, consumer, family law) to ascertain, for example, that the priorities of the programs are being followed. Where communications with the governing body are not protected by the attorney-client privilege, the governing body cannot receive any specific facts regarding those cases without knowing, voluntary client consent.

Another exception may occur when a client files a grievance against program staff for declining to refer the case to a volunteer or for advice received. In such situations, there may be an implied waiver, allowing the governing body to investigate the grievance. Absent an implied waiver, if a privilege applies, the client's consent to the disclosure of the confidential information would be necessary before the grievance could be investigated.

Standard 1.7 (Role and Responsibility of Governing Body—Conflicts of Interest)

Governing body members should not attempt to influence any decisions in which they have a conflict with clients served by or through the pro bono program.

COMMENTARY

Conflicts of interest may arise for governing body members due to either the clients that they represent or the institutions or individuals with which they are associated. In either case, members should not use their position on the governing body to further interests that are in conflict with the interests and objectives of either clients of the program or pro bono clients represented by the program's volunteers. Lawyer members of the governing body are generally prohibited from knowingly participating in a decision or action of the program if the decision could have a material adverse effect on a client served by or through the program whose interests are in conflict with interests of the lawyer or a client of the lawyer. In other situations where conflicts may arise, such as when a governing body member has a financial interest in a matter under consideration, the law of the jurisdiction regarding disclosure and recusal should be reviewed for guidance.

While a program and its governing body should be sensitive to potential conflicts and address actual conflicts, the program should not exclude from the governing body every person identified with an institution or individual with a potential adverse interest to a client of the program or a pro bono client represented by a program volunteer. The determination as to whether an actual conflict exists for an individual governing body member must be made on a case-by-case basis. As is pointed out in the Civil Standards:

A strict rule could exclude persons with skills and experience of benefit to the provider and could inhibit development of an effective relationship between the provider and the private bar. In rural areas particularly, where the pool of potential members is relatively small, it may be impossible to avoid all conflicts. The provider, however, should assure that the presence of members with potential conflicts does not inhibit forceful representation of clients.

The best practice of a volunteer lawyer program is to require each new and continuing governing body member to sign a conflict of interest statement on an annual basis. The conflict of interest statement should disclose any financial relationship between the program and the governing body member, as well as any other potential conflicts including fiduciary responsibilities to other organizations with whom the pro bono program works. All members must be able to adhere to their duty of loyalty to the organization and demonstrate their support. Potential conflicts should be shared with other governing body members on an as-needed basis. Signed conflict of interest statements should be kept on file and be subject to external review by an independent auditor.

Institutional Conflict

A governing body member's representation of or association with an institution can create particular problems with conflicts. This is because a member's decision on issues such as program priorities, allocation of resources and program structure can affect the availability of counsel to act against that institution. For example, by deciding that consumer issues will not be among the program's priorities, a governing body member who represents or is otherwise associated with a car dealership located in the client community can assure that volunteers will not be available through the program to represent clients in lawsuits filed by or against that institution.

The commentary to the ABA's Civil Standards provides other examples of institutional conflicts that may arise in this context:

An institution, by its nature, may have general interests contrary to those of clients. For example, a finance company has economic interests which are served by laws and policies favoring creditors rather than borrowers. An institution may have a specific interest that

conflicts with the interests of clients. For example, a large financial institution seeking to develop an industrial park in the heart of a low-income neighborhood may be fundamentally at odds with the interests of clients in the neighborhood.

An institution, such as a welfare agency or housing authority, which perceives itself as acting on behalf of clients, may nevertheless be a frequent adversary of clients of the program or clients represented by the provider.

The fact that a person is employed by or is otherwise significantly connected with an institution that is in conflict with the clients served by or through the program should not automatically disqualify that person from service on the governing body. Rather, a factual determination should be made as to whether an actual conflict exists. The commentary to the ABA's Civil Standards provides guidance in this area by listing factors that would evidence the lack of an actual conflict in such situations:

- The individual is not regularly involved directly or through a supervisory role in cases against provider clients.
- The individual does not have a policy-making role within the institution.
- The individual is not directly engaged in an activity which itself adversely affects client interests.
- It is clear that the individual will exercise independent judgment in serving as a member of the governing body.
- The individual is committed to the provision of legal services to low-income persons. Examples of such evidence would be previous experience in legal services work; participation as a private attorney in the representation of provider clients; a professional role consistent with legal services work, such as employment in the consumer fraud division of a county attorney's office; or previous experience on the provider's governing body.

An institutional conflict may also arise in the circumstance where the pro bono program is a separate 501(c) 3, but is closely affiliated with, or a subsidiary of, a separate nonprofit. The most common circumstance in which this arises is when a pro bono program is developed within the context of a local bar association (typically a 501(c) 6). Other examples include pro bono programs within a larger social services or legal services organization.

There are many good reasons for such structures. The pro bono program may benefit from the support of the often larger organizational infrastructure of the bar association or other entity, as well as the potential pool of volunteers from the membership association, and its help in fundraising. The bar association may benefit from the enhanced standing in the legal community that often comes with providing pro bono legal services and increasing access to justice. In addition, there are opportunities for both organizations to collaborate on trainings, recruitment and recognition of volunteers. (See Standard 2.5).

For example, the pro bono program may be a separate legal entity, but its budget and overarching policies are determined by the governing body of the bar association. Frequently, there may be overlapping staff or governing body members. There may be a financial relationship of some sort, with the 501(c) 3 purchasing some infrastructure services from the 501(c) 6, and the 501(c) 6 assisting the 501(c) 3 with fund development and recruitment.

In such situations, the boards of each organization must be particularly careful to ensure that the needs of each organization are met, and that the activities of each organization fall within their stated purposes. Overlapping governing body members are appropriate if the overlapping members are a minority of each board, and provided that the governing body carefully observes the independence of each organization.

Overlapping governing body members owe a separate fiduciary duty to each organization and, while doing work as the director of Organization A, must have only the best interests of Organization A in mind. Where there may be a conflict of interest between the two organizations, an overlapping governing body member should not participate in the discussion, nor should that person vote. These rules should be particularly carefully attended to where the two organizations have a fiscal relationship. Policy decisions should also be made with the stated purpose of each organization in mind. Neither governing body should make decisions that adversely impact the stated purpose of the other organization. Where there is a fiscal relationship involving any transfer or payment of funds from a non-501(c) 3 to a 501(c) 3, the organizations must ensure that they observe all applicable tax regulations.

Individual Conflict

An attorney member of the governing body may occasionally represent a client who is an adverse party to either a client of the program or a pro bono client of a program volunteer. The presence of a governing body member in such a case may not create an actual conflict because that member does not have an attorney-client relationship with the individual obtaining pro bono assistance. Nevertheless, the situation may raise ethical concerns.

The issue of whether a staff attorney of a legal services program and a governing body member of that program can represent adverse parties in litigation has been addressed in the American Bar Association's Formal Opinion 345 (1979). Although that opinion does not involve a pro bono program, in analyzing whether a pro bono program's governing body member can represent a client who is an adverse party to either a client of the program or a pro bono client of a program volunteer, the opinion is relevant and provides some guidance.

Opinion 345 holds that the adverse parties can be represented provided that both clients are advised of the circumstance and consent to proceed and provided that there is in fact no impact on the exercise of independent judgment by either attorney. It specifically states, "clients and counsel on both sides must feel comfortable that in the particular circumstances neither client will be deprived of independent and uninhibited representation."

Application to Situation Involving a Client of the Program

In those situations in which an attorney-client relationship is established between the client and the program (see Standard 3.3), it exists most often due to the case oversight, mentoring and support that the program staff provides to the volunteer during the course of his or her representation of a pro bono client. Given this rather attenuated relationship with the client, it may seem unlikely that the independent judgment of the pro bono program staff would be affected due to a member's representation of an opposing party. Yet, because the governing body member may have input on issues such as staff salaries and promotions, it is possible that the appearance of a governing body member as opposing counsel in a case could impede the program staff's independent judgment. For example, the program staff may balk at providing funds from its litigation fund to the pro bono client's attorney, for fear of angering the governing body member. The program staff in each case, therefore, must make a factual determination where the potential for a conflict exists.

In those cases in which the program staff concludes that their independent judgment has not been affected and that they can proceed in their role, the consent of the client should be obtained. If however, the attorney-client relationship should not continue, the program has several alternatives. It may choose to cease providing case oversight, mentoring and support to the volunteer. Alternatively, the program may

locate other counsel to provide those services. Another alternative is for the attorney governing body member to choose not to represent the conflicting client or to resign from the governing board.

Application to Situation Involving a Pro Bono Client of a Program Volunteer

Because a pro bono program's volunteers receive no fee or other economic benefit as a result of the governing body's decisions, it is highly unlikely that their independent judgment would be impeded due to a governing body member's appearance as opposing counsel in a case. Nevertheless, a factual determination must be made in each case in which the potential for a conflict exists. In those cases in which the volunteer concludes that independent judgment has not been affected and so representation can proceed, the consent of the client should be obtained to do so. If that representation should not continue, the program may attempt to place the case with another volunteer or find other free counsel for the client. Another alternative is for the attorney governing body member to choose not to represent the conflicting client or to resign from the governing board.

MEMBERSHIP OF THE GOVERNING BODY

Standard 1.8 (Membership of the Governing Body—Representation of the Legal Community)

The governing body should include members who represent various segments of the legal community.

COMMENTARY

The Importance of Diversity in Governing Body Membership

By including representatives of various segments of the legal community on its governing body, a program can create a sense of ownership in the program by lawyers and judges; it can obtain needed guidance and support; and it can call upon the special talents of the bar and bench to obtain assistance in several key areas including recruitment, recognition, fundraising and training. Although a program may not be able to include representatives of all segments of the legal community on its governing body, it should strive to include as broad a cross section as possible.

Suggested Demographic Groups

Bar leaders, legal services representatives, judges and pro bono attorneys can each provide important perspectives and valuable skills to the governing body. Bar leaders can lend their status and prestige to recruitment campaigns, recognition events and fundraising efforts. In addition, due to their considerable experience with the private bar, bar leaders can be excellent sources of information on successful ways to recruit, retain and recognize volunteer attorneys, and can act as sounding boards for program initiatives.

Judges also can make important contributions to the program through membership on the governing body. They can play important roles in recruitment campaigns and recognition events, as well as provide valuable insights and advice to the program. It must be noted; however, that judicial canons exist that may be interpreted as prohibiting members of the judiciary from serving on governing bodies of legal services providers. In the two states in which the issue of judicial service on a pro bono program governing body has been addressed, one has held

that service may be permissible and one has held that it is not. However, the same state that found that judicial service on a pro bono program governing body may be permissible, as well as several other states, has held that judicial service on the governing body of a staff model legal services program is prohibited. A program, therefore, should research the issue in its jurisdiction before approaching a judge to serve on its governing body. In addition, it should be noted that even when service by members of the judiciary is permissible, they are generally prohibited from providing legal advice or participating in most fundraising activities of the governing body.

Volunteer attorneys are another segment of the legal community that the program should strive to include on the governing body because they can provide an important perspective as participants in the program. Based upon their experience, they can suggest ways in which program operations may be improved to better serve the needs of volunteers. Furthermore, they can provide valuable insights into why attorneys volunteer, how to attract volunteers and how to retain them.

Representation of a local legal services program on the governing body may also be helpful, due to the staff's expertise in the area of the delivery of legal services to low-income persons. Governing body members who are legal services staff members can provide valuable advice and guidance on issues such as needs identification, priority setting, delivery design, case acceptance policies and case oversight. In addition, they can assist with designing training events involving areas of poverty law, and they can be an excellent source for obtaining trainers for these events. Finally, the inclusion of members of the legal services program on the governing body is likely to create in those members a commitment to the success of the program. This commitment can aid in building a constructive relationship between the pro bono program and the local legal services program: one based upon cooperation, coordination and collaboration.

Conflicts of Interest for Legal Aid Staff Governing Body Members

From time to time, there may be issues that are presented to the governing body for consideration that may create an actual conflict of interest or the appearance of a conflict of interest for governing body members who are legal services staff. For example, strategic decisions regarding a funding proposal may be under discussion by the governing body at the same time that the legal services organization is preparing a competing proposal. As a result, staff of legal services programs must be sensitive to issues that raise actual conflicts or the appearance of conflicts and may need to recuse themselves from discussion and decision-making on such matters. They also need to assure the governing body that they can still carry out their fiduciary duties to the organization.

Racial, Gender and Ethnic Diversity

In identifying members of the legal community to serve on the governing body, the program should strive to reflect the diversity of the profession by including, for example, African Americans, Hispanics, Asian Pacific Americans, women and persons with disabilities. To the extent that constituent-specific bar associations exist within the community, the program may want to consider selecting a representative from each of those bar associations to serve on its governing body. In addition, if the program serves a large geographical area, the program should consider having a representative from the legal communities of the various regions served represented on its governing body.

For those programs that are part of a legal services program or a social service agency, often a subcommittee of the governing body of directors of the legal services program or the agency is the governing body of the pro bono program. In such cases, many segments of the legal community may be unrepresented on the governing body. To address this problem, the pro bono program may create an advisory governing

body (or “Junior Board”) to provide a vehicle through which it can obtain formal input and support from additional segments of the legal community, as well as increase its fundraising reach.

Standard 1.9 (Membership of the Governing Body—Representation of the Community-at-Large)

To the extent practicable, the governing body should include members of the community-at-large, with a special emphasis on participation by the client community.

COMMENTARY

The Importance of Including Client Perspectives

The value of including members of the client community on the program’s governing body is set forth in the commentary to the ABA’s Civil Standards:

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

In addition, funders sometimes require or express a strong preference for such inclusion.

The Value of Including Non-Legal Professionals

Including other members of the community at large, such as social workers, bankers and accountants can also provide the governing body with valuable perspectives on issues that it might otherwise not receive. In addition, those members may have expertise and professional contacts that can be useful to the program in activities such as developing fundraising campaigns, writing grant proposals, organizing training events and recruiting non-attorney volunteers.

Demographic Groups to Include

Given the number of client groups and other groups that exist in many communities, it is not contemplated that every such group will be represented on the governing body or advisory group. Nevertheless, in identifying members of the client community and the broader community who will serve on the board, the program should strive to reflect the diversity of those communities, particularly with respect to race, ethnicity, age and gender.

To the extent practicable, members of the client community who serve on the governing body or advisory committee should include persons who are financially eligible for the program’s services, as well as those individuals who may not be eligible for services, but who are recognized as leaders in the client community. If the program services a large geographical area and a widely dispersed client population, the governing body or advisory committee should include members who live in representative locations and understand client needs particular to those areas.

Making Participation Accessible to Clients

The limited financial resources of clients may make it difficult for them to afford transportation and childcare costs associated with attending

meetings of the governing body or advisory committee. To facilitate their attendance, the program should consider providing reimbursement for these and similar expenses.

Alternatives to Client and Other Participation on the Board

A pro bono program that is part of a larger organization, such as a bar association or social service organization may find, however, that it impossible or impractical to include members of the community at large on its governing body. For example, a requirement of membership on the governing body of a bar association may be licensure in the jurisdiction, thereby precluding non-lawyer members. In such situations, the program should strive to attain other means of involving clients and other members of the community at large. It may, for example, create a client advisory committee to provide input on issues such as delivery structure, priorities and other policy matters affecting representation of clients. Likewise, it may establish an advisory committee that could provide input from other members of the community on issues such as fundraising, training or recruitment, depending upon the expertise and skills of those chosen to serve. Alternatively, the governing body may choose to maintain contact with groups that represent various interests within those communities.

Standard 1.10 (Membership of the Governing Body—Orientation and Training)

A pro bono program should strive to assure that all governing body members receive the orientation and training necessary for full and effective participation on the governing body.

COMMENTARY

The Importance of Training

When new members are selected to serve on the governing body, it is likely that each will possess different levels of knowledge regarding the program and the delivery of legal services and pro bono services at the local, state and national level. Because such knowledge is critical to full and effective participation on the governing body, the program should strive to assure that proper orientation and training are provided to all members.

Subjects for Training

Orientation should include information on a wide range of topics including: an historical perspective of legal services and pro bono services nationally and in the local community; the role, structure and function of the governing body and any advisory groups; the program's structure and operations; the identified legal needs of the client community; the program's priorities; the nature of the legal services offered by the program; any limitations or requirements imposed by statutes, regulations, contracts or ethical obligations; conflicts of interest issues; and national and local funding sources for all providers of legal services in the community. Based upon their experience and expertise, current governing body members, program staff, staff of other local providers of legal services and clients may be particular good trainers on these topics, as well as other topics to be covered in ongoing training.

Training should also involve some form of tours of and/or participation in the program's services and activities, so that members have first-hand experience of the services provided.

Ongoing Training

In addition to orientation, the program should provide ongoing training to members of the governing body, as needed. Areas that may be of special interest are: budgeting and accounting oversight; developments in legal services and pro bono delivery; developments in substantive legal issues that affect the program; and other matters that relate to effective governing body operation. Due to the many demands for Governing body members' time, the program may want to consider including trainings as part of the agenda of regular meetings or Governing body retreats.

PROGRAMS THAT ARE PART OF A LARGER ENTITY

Standard 1.11 (Programs That Are Part of a Larger Entity)

Larger organizations (including legal services programs, social service programs and state or local bar associations) should ensure that the pro bono program, or pro bono efforts within the program, is given the oversight resources necessary to accomplish their mission. Such organizations should consider creating an advisory governing body or governing body committee on pro bono to provide recommendations to the organization's governing body regarding the pro bono program.

COMMENTARY

The Importance of Pro Bono

Many legal services programs (and, increasingly, some social service agencies) have pro bono programs contained within them. This can be a particularly strong relationship and beneficial for all concerned. A "parent" organization's pro bono program is often the main face it presents to the legal community and the public. The pro bono program offers the parent organization the opportunity to have a greater impact on the community and to cultivate more advocates for its larger mission. (See Standards 1.7 and 2.5.) The "parent" organization should be cognizant of the value that the pro bono program brings to the larger organization and act in such a way as to recognize and maximize that value. For example, a parent legal services organization should ensure that its pro bono program is given appropriate resources, and that the cases and staff allocated to that program are those appropriate to the pro bono endeavor. It is especially important for parent program leadership to send a clear message to staff, the legal community and the community-at-large that pro bono is valued.

Legal services programs benefit from having a pro bono component not only because volunteers can accept additional and often different cases than the staff attorneys can, but also because pro bono lawyers provide the organization with key contacts in the legal community that will likely produce funding benefits. In addition, some funders (particularly LSC) require a pro bono component. The pro bono program gains from being housed within the legal services organization because it does not need to build a separate intake and screening system, and can benefit both from the legal services program's outreach and its staff attorneys' expertise in relevant areas of law.

In social services programs, the legal/pro bono component provides important wrap-around services to clients. Such legal services can make an important difference in changing the conditions facing the program's clients, as well as providing the connections within the legal community that will likely produce funding benefits. For the legal/pro bono component, there is the opportunity to work closely with social workers to address the client's problems holistically, with a greater opportunity for lasting impact.

In bar associations, the pro bono program offers the bar association a chance to make a positive impact on the community and to attract and retain members by offering a way to fulfill their professional commitment and to work together to serve the community. Firms and individuals will frequently join bar associations because of their pro bono involvement.. The pro bono program benefits from the increased access to diverse sectors of the legal community, as well as the position of greater neutrality that may allow it to interact with the court in a different way than freestanding legal aid or pro bono programs.

The Need for an Advisory Board or Governing Body Committee on Pro Bono

Despite the definite advantages for both the larger organization and the pro bono program, there is sometimes a tendency for the missions and priorities of the pro bono program to get lost in the midst of the missions and priorities of the larger organization. As a consequence, it may be appropriate for the organization to form an advisory governing body or a pro bono committee of the larger board. Each has benefits and detriments, but either can be extremely useful in attending to the pro bono mission.

Although neither an advisory governing body nor a pro bono committee is typically given authority either to make policy or to regulate fiscal matters, the host organization's governing body may request that it comment on such matters as well as assign to it the responsibilities of providing advice to program staff and oversight to program operations. While, in organizations like these, the organization's governing body has ultimate decision-making responsibility, it is crucial for it to solicit and take into consideration the input and recommendations of those whose entire commitment is to the pro bono program and its efforts.

Advisory Board

An advisory board may be made up of volunteers or other pro bono champions who are interested in supporting the mission and priorities of the pro bono program. Its role is generally to focus on the needs of the pro bono program, and to make recommendations regarding those needs to the governing body of the organization. There should be a written Memorandum of Understanding laying out the respective roles of the advisory board and the governing board, and this document should be included in the training provided to members of both. In addition, there should be a written charter for the advisory board, setting forth the framework for that entity's operation (terms, frequency of meetings, etc.)

Sometimes, the advisory board may serve as a type of "Junior Board," made up typically of somewhat less senior members of the legal community. A junior board may serve as a starting point for attorneys interested in serving on the governing body of the larger organization, and who want to build up their community involvement resume.

Pro Bono Committee of the Governing Board

Alternatively, the organization may decide to create a pro bono committee of the larger organization's board, to serve the same role as the advisory board described above. Such a committee would be created by action of the governing board, and would be made up of members of the governing Board. Depending on the organization's bylaws, people who are not members of the governing body may be able to serve *ex officio* on the committee.

Choosing Between an Advisory Board and a Committee

The primary benefit to an advisory board is that it offers the pro bono program champions and fundraisers separate from the governing body

members, who have multiple loyalties. The members of the advisory board can be asked to commit to focus on raising public awareness of, and funds for, the pro bono program alone. In an urban area, the advisory board provides a way for the pro bono program to get a champion from all or most of the larger law firms. Thus, the board offers not only programmatic and fundraising support for the pro bono program, but also assistance in recruitment and retention.

The disadvantage to an advisory board is that it requires that the pro bono program recruit its members. This takes staff time, and may be challenging in some communities. In addition, there may be more staff time involved in administering the advisory board, although not typically more than for a pro bono Committee of the governing board. One other concern about establishing an advisory board is that it may create an “us-them” relationship between the pro bono program and the larger organization. If the program is concerned that this dynamic may come into play, the advisory board may not be the best approach.

One advantage of a pro bono committee of the governing board, then, is that it is part of the board, and therefore less likely to be seen as divisive or competitive. It may also more readily act and interact with the governing board, since its voting members are elected members of that Board.

There are two chief disadvantages to the committee model. First, there is a risk that those members of the governing body who are *not* on the committee, may perceive that they are no longer responsible for the pro bono program. Programs struggling with encouraging their governing body members to see the pro bono program as integral to the organization may find that such a committee serves as an excuse for other governing body members to abdicate responsibility for pro bono initiatives.

The other concern is that, since the members of the committee are already on the governing board, creating such a committee does not bring in more volunteer visionaries, leaders and fundraisers for the pro bono program.

Social Service Agencies

In the case of social services agencies with a pro bono legal program, particular attention must be paid to ethics and conflicts issues. If a legal services project is operating within a larger social services organization, the organizational structure, as well as policies and procedures, must take into account the unique obligations and responsibilities associated with the attorney-client relationship. Special attention should be paid to the attorneys’ duty of loyalty and confidentiality to their clients. It is recommended that the organization work closely with ethics counsel to ensure that legal services are provided in accordance with that state’s applicable ethical rules. It is also recommend that all employees receive training on attorney-client confidentiality, both to protect client information and to educate employees so that they understand the reasoning behind the specific policies and procedures related to the legal services project.

SECTION 2: PROGRAM INFRASTRUCTURE, EFFECTIVENESS AND DELIVERY DESIGN

INFRASTRUCTURE

Standard 2.1 (Infrastructure—Program Personnel)

A pro bono program should employ personnel who are skilled, diverse, culturally competent, and committed to the provision of high quality legal services. Program staff should be sufficient in number to ensure that the program can achieve its mission and can work effectively and efficiently with clients and volunteers.

COMMENTARY

Hiring and retaining qualified and skilled staff that is sensitive to clients and committed to facilitating the provision of high quality legal work by volunteers is key to the success of any pro bono program. A program should carefully and thoughtfully approach staffing decisions and should take steps to retain those staff members who perform their job well.

The Pro Bono Manager

Staff size is likely to vary from program to program and is often dependent upon budgetary considerations. All programs, however, should employ a pro bono manager whose primary responsibility is to promote and sustain pro bono relationships. That individual is usually assigned a wide range of responsibilities which may include: recruitment, retention and recognition of volunteers; public relations; outreach and the fostering of productive relations with the bar, the client community, courts, community groups, and other providers of legal services; development of training programs; development and implementation of intake, placement and quality assurance systems, or other systems, depending upon the delivery model utilized; fundraising; and general administration of the program. Given the nature of these many duties, the program should seek an individual for this position who has a professional attitude, excellent communication abilities and strong administrative, organizational and interpersonal skills. Experience or training in using volunteers effectively (whether in the legal context or elsewhere) is also advantageous. Whether a program selects an attorney or non-attorney will depend largely upon the needs of the program, the total staff composition of the program and the program's budget. If a non-attorney manager is selected, however, it is essential that the manager be provided attorney supervision for any legal advice or other law related activities in which he or she may engage.

Staff Competence

Because the provision of high quality legal services by program volunteers is a goal that all programs should strive to achieve, it is important that the staff charged with implementing policies designed to attain this goal manifest a commitment to volunteerism. Some staff may demonstrate this commitment through their past work experience; others may do so through their involvement in community activities. In addition, there may be some staff members who do not have prior experience demonstrating such a commitment, but who develop it once on the job through their interaction with clients, volunteers and other staff.

The ability to communicate effectively with clients and prospective clients and gain their trust is a quality that all program staff should possess. Accordingly, a program should seek staff that can empathize with clients and bridge differences that may exist in education and background. When a substantial number of persons served by the program speak and understand only a particular language other than English, the program should attempt to recruit bilingual staff, if at all possible. Programs should use current staff or volunteers fluent in the language to test the language proficiency of job candidates.

The ABA Civil Standards provide more detail on working with non-English speaking clients. (See Standards 3.1 and 3.2.)

Staff Diversity

A program should strive to reflect within its staff and volunteer pool the diversity of the community that it serves, as well as the diversity of the wider area. By doing so, a program will enhance its ability to serve clients effectively. Relationships of mutual trust are often developed more readily when clients see their heritage and experience reflected in the persons who serve them. A diverse staff and volunteer pool also heighten the sensitivity of the program to the values, needs and culture of its clients, as well as provide an important statement to clients regarding the program's receptivity to all parts of the community. In addition, a program's efforts to hire and retain a diverse staff have an intrinsic value as a conscious effort to encourage equal treatment of different segments of society.

To attain the goal of a diverse staff, a program may consider, for example, recruiting at minority job fairs and placing job announcements in publications that are aimed at minority or specialized communities. A program may also consider recruiting employees from the eligible client population. The commentary to the ABA's Civil Standards sets forth the strengths and weaknesses of this approach.

Staff Retention

Once a program has employed its staff, it should make every effort to retain those individuals who have demonstrated the necessary skills, sensitivity and commitment to properly fulfill their duties. Specifically, programs should provide fair compensation, reasonable benefits, satisfactory working conditions and the opportunity for professional development. In addition, staff members should be provided with job descriptions and performance plans so that they are clear about their authority and responsibilities. Staff should also be provided with performance reviews regularly to enable them to gauge how their performance is viewed. Training should be made available to new employees so that they can properly fulfill their job responsibilities, and to veteran employees so that they can have the opportunity to experience professional growth. Conversely, staff that is underperforming should be provided with progressive opportunities to improve at the earliest opportunity. If those staff members do not rise to a high level of performance, their employment should be ended.

Discrimination

Pro bono programs are engaged in providing services that are aimed at assuring access to justice and securing fair and equal treatment of clients and prospective clients. Given these goals, it is important that programs welcome diverse candidates for positions, and ensure that its staff reflects the diversity of the community. To take a different approach would greatly harm the stature and credibility of the program. To provide a clear statement to the community that it will not practice or tolerate discrimination within its organization, a program should adopt a written policy setting forth its antidiscrimination stance.

Standard 2.2 (Infrastructure—Attorney Supervision of Non-Attorney Staff)

A pro bono program should provide for appropriate attorney supervision of its non-attorney staff.

COMMENTARY

Pro bono programs have traditionally relied upon non-attorney staff to fulfill a number of important responsibilities including managing the program, screening prospective clients for eligibility, conducting intake interviews and tracking the progress of cases. The decision to hire non-attorney staff to perform these duties often is a function of the overall needs of the program, cost considerations and the desire to provide career development opportunities for staff members.

It is essential that non-attorney staff receive attorney supervision for those activities that involve making judgments affected by consideration of legal issues. For example, making decisions to refer a case and to whom the case is referred often entail judgments about the legal issues involved. In addition, during the course of an intake interview a prospective client for service may seek advice regarding how to protect his or her legal rights while the program attempts to place the case. A non-attorney staff member should not provide legal advice or make legal judgments in such situations except under the direct supervision and at the direction of an attorney.

Supervision by an attorney is also necessary to provide a basis for preserving the confidentiality of information received by non-attorney staff. Staff responsible for eligibility screening and client intake, for example, regularly interview individuals seeking assistance who expect that the confidential information they convey will not be disclosed by the program. Attorney supervision is critical in these situations because the duty to maintain confidentiality has its primary source in the ethical rules governing the conduct of lawyers; those rules prevent a lawyer from disclosing confidential information except as authorized or required by such rules. When attorney supervision is provided and the non-attorney staff is acting on behalf of the lawyer who supervises his or her work, a program can properly refuse to release confidential information if requested by an outside source, such as a funder or elected official. If that information were subpoenaed, the attorney-client privilege could be asserted in an attempt to prevent its disclosure. However, if there is no attorney supervision, those confidences may not be protected from disclosure.

Methods for Supervising Non-Attorneys

There are a variety of ways in which attorney supervision of non-attorney staff may be provided. A program may decide to employ attorney staff, either as the program manager or as the program's legal supervisor. If a program is affiliated with a legal services program, attorney staff of the legal services program may be assigned the responsibility of providing legal supervision to the non-attorney staff. Programs that are neither affiliated with a legal services provider nor employ attorney staff face a difficult situation.

One possibility is for the program to call upon a volunteer attorney and/or a retired attorney to act as the legal supervisor. It is critical, however, that the volunteer chosen to act as supervisor have the substantive and procedural knowledge necessary to properly provide supervision. Further, the program must be attentive to conflicts issues when relying on an attorney outside the program for supervision.

Another option is for the program to use technology resources to provide for supervision by an attorney in a different location, whether the attorney is part of the same organization or offering supervision services on a pro bono or contract basis.

Standard 2.3 (Infrastructure—Record Keeping)

A pro bono program should develop and maintain internal systems for identifying conflicts and for managing, retrieving and evaluating data regarding prospective clients, clients, volunteers, partner agencies, services provided, and program operations.

COMMENTARY

Importance of Record Keeping

Effective record keeping regarding prospective clients, clients, volunteers and services provided is necessary to determine if conflicts of interest exist between existing or former clients and prospective ones, and where applicable, to facilitate a program's matching of clients with volunteers and proper tracking of cases placed. In addition, by maintaining such data, a program is able to provide information to its governing body so that the governing body can evaluate the program's accomplishments and determine areas in which improvements are needed. Such record keeping is also necessary for programs to provide funding sources with data that demonstrates compliance with terms of its grants, as well as to support its applications for future funding. Because most pro bono programs deal with large numbers of clients, prospective clients and volunteers and also face staff turnover, systems that assure continuity in recording and retaining information, as well as facilitate its retrieval, should be developed.

Computerization of Records

To the extent that it is financially feasible, programs should computerize their record keeping systems. Computerized systems are efficient to operate, provide quick access to data, conserve office storage space and avoid unnecessary paper work. Advances in technology offer many alternatives, many of them inexpensive. Volunteers can help a small program set up a simple Access database to track clients and volunteers, while larger programs will want to invest in a Case Management System (CMS) that can track clients, volunteers, case progress, and other data.

Record Keeping Regarding Clients and Prospective Clients

There is certain basic information that a program should obtain regarding prospective clients for service, which should be easily retrievable through its record keeping system. This information includes identification data such as the individual's name, address, phone number, and alternative number where the person can be reached if the person has no phone. In addition, the program will want to maintain data on the individual's financial situation, including information regarding income, income source, assets and number of dependents. The program also should record information regarding the type of legal problem for which the person is seeking assistance. Other information that is important depending upon the type of case involved and the services provided by the program includes the adverse party, the opposing counsel and the person's primary language. Programs that work with survivors of domestic violence should ask for information relating to safety

of the prospective client, including whether it is safe to call, whether there is another number where a message can be left, and whether the prospective client has a safety plan.

There may be additional data that a program will need to obtain and maintain, depending on the requirements of its funders. For example, statistical information regarding the number of individuals served who are of a given gender, race or age may need to be readily available to the funder under the terms of a grant. The pro bono manager should also consider consulting with the governing body members to determine what additional data they may be interested in reviewing to determine that the program is operating effectively and is meeting the program's mission.

To identify potential conflicts of interest, the program should maintain a database or other record with the names of clients and adverse parties, which is updated regularly and contains sufficient information to identify the adversary fully. A check for conflicts must be made as early in discussions with a potential client as is possible, so as to avoid receiving confidential information from that individual. (See Standard 2.13.)

Record Keeping Regarding Volunteers

There is certain information regarding volunteers that a program should obtain at the time the volunteer registers with the program. That information includes: the volunteer's name and contact information, status (lawyer or non-lawyer), bar admission, practice area(s), volunteer interests, the training or support the volunteer desires and the languages spoken by the volunteer.

There is additional information that the program may gather that can be quite useful in determining the activity level of volunteers, the effectiveness and efficiency of the program, and the need for developing strategies on how to better utilize volunteers that are not participating regularly in the program. This information includes: the date the volunteer joined the program, the total number of hours of service provided by the volunteer, the number of hours of service provided annually by the volunteer, the level of service provided annually by the volunteer, the number of times and reasons why the volunteer has been unavailable to provide service, and any client complaints received regarding the volunteer. To the extent that funders require information on volunteer billable rates, programs may also wish to seek information on billable rates, or other information that would allow a program to arrive at average billable rates within its volunteer pool. In addition, if the program directly places cases with volunteers, that process will be made easier and more efficient if the program records information on the total number of cases handled by a volunteer annually, the last case handled by the volunteer and any training or support received through the program. If the volunteer works in a large firm with a professional pro bono manager, this information is most easily obtained in collaboration with the law firm's pro bono manager rather than from individual volunteers within the firm.

There is likely to be additional information that a program will want to maintain regarding its volunteers, depending upon the specific program's needs and its funding sources' requirements. The pro bono manager and the program governing body should determine together what those informational needs are.

Record Keeping Regarding Services Provided

The amount and type of information that a program will need to maintain regarding services provided will vary depending upon the type and manner in which service is provided. There is, however, certain basic information that most types of programs will want to record. This includes the type of assistance provided to the client, by whom it was provided, the date it was provided and the amount of time the volunteer spent on the case. If the program is one that directly refers cases to individual volunteers, additional information that it will want to

maintain includes the date the case was opened, the date the case was referred, the date the case was closed, the reasons for closing the case, and any correspondences that the program has sent to the client or the volunteer regarding the case.

The type and amount of additional information that referral model programs will need to retain will vary, depending upon the type and nature of the services to be performed. If, for example, the cases referred require only advice or brief services, little more information is needed. To the extent that a case requires more than brief services, however, additional information should be obtained and recorded that indicates contacts that have been made with the volunteer to determine the progress of the case, any advice or assistance the volunteer has requested regarding the particular case and any advice or assistance that has been provided through the program. The program should develop a tickler system to assure that such information is requested from the volunteer in a timely manner.

There may be additional information that a program will want to maintain depending upon the specific nature of the program, the services it provides and the degree to which the program retains responsibility for the conduct of the case. The pro bono manager and the program governing body should jointly decide what those needs are.

The program should have systems in place to obtain case information from volunteers. (See Standard 4.11.)

Standard 2.4 (Infrastructure—Fiscal Management)

A pro bono program should establish and maintain systems and procedures to account for revenues, expenditures and program services in conformity with appropriate accounting principles for nonprofit organizations.

COMMENTARY

Good financial management is an essential element of an effective pro bono program of any size. The development and use of accurate budgets assure maximum benefits to clients from limited resources. Careful oversight of expenses may avoid waste or misappropriation of funds. Regular review of financial performance supports future planning and helps build a positive relationship with funders. Well-kept financial records and clean audits enhance a program's credibility within the bar and the community.

Sources of Information on Fiscal Management

Guidance on effective financial management is available in many forms. Independent auditors, members of the governing body or the advisory committee can often advise the program. A variety of written manuals which describe internal control elements are available. Colleges often offer courses in accounting principles. Excellent accounting software is widely available for maintaining program records and producing reports.

Most states have statutes regarding the governance and fiscal management of nonprofit organizations. Programs should be sure to adhere to the provisions of these laws. Transactional lawyers are often eager to take on a pro bono project like reviewing the program's compliance with such a law. In addition, the IRS Form 990 contains both requirements and best practices. Since the Form 990 is readily available to funders and volunteers online, it is important that the document reflect strong management practices.

Annual Budget

The pro bono manager should prepare, cause to be prepared, an operating budget for governing body review and adoption on an annual basis. This process should involve a number of steps including reviewing the prior year's expenses, determining the activities and the associated

expenses for the program in the upcoming year, and estimating the resources that will be available to accomplish the program's goals. Proposed income and expenses should be sufficiently detailed in line item categories to permit accurate assessment of the financial status of the program at any time during the year. It is often helpful to develop two or three year future projection for revenues and expenses to improve long-term financial planning for the program. The process of budgeting offers an important mechanism for programmatic and infrastructure management and planning.

Account Management

The pro bono program should maintain at least one bank account for the deposit of revenues and the payment of operating expenses and designate those who are authorized to sign checks for this account. The pro bono manager should develop a system for the preparation of checks at regular intervals to ensure timely payment of expenses. In some jurisdictions, state law requires that a trust account be established.

The program may also wish to establish a reserve or savings account for deposit that can generate interest on unexpended revenue until it is transferred into the operating account for payment of expenses. If the program obtains funds from clients for payment of expenses associated with representation, the program should establish a client trust account, which must be kept separate from any other account. If such a trust account is established, the program should participate in any approved program for utilizing interest from client trust funds to generate revenue for legal services to low-income persons, even if not mandated in the state. Such trust funds are subject to regulation, typically by the licensing bar of the state. Programs should take great care to review and adhere to such regulations. Assistance in interpreting the regulations is usually available from the licensing entity. Each account that is maintained should be reconciled with bank statements on a monthly basis. The pro bono manager should periodically obtain from the governing body the required bank resolutions and approval for authorized signatures for all bank accounts.

Generally Accepted Accounting Practices

Programs should endeavor to adhere to the principles of Generally Accepted Accounting Practices (GAAP). The bookkeeping components will include: a general ledger, which records all transactions organized by each financial line item within a fiscal year; a record of all checks written and other cash payments of expenses identified by financial line item; a record of cash receipts, including the date received and the payer, identified by financial line item; a record of payroll transactions, including for each employee the gross salary, taxes withheld, other deductions from the pay check and a net amount; and a general journal that records miscellaneous transactions or adjustments. Each of the records kept should be sufficiently detailed so as to permit a traceable trail from them to the general ledger. Subsidiary ledgers should be kept to record transactions in client trust accounts, accrued employee benefits accounts and personal property assets. The financial system may be maintained on a cash basis, but should be brought to full accrual basis as of the end of the program's fiscal year, prior to completing the annual audit or review.

Reporting: Checks and Balances

The pro bono manager should be sufficiently familiar with the basis of the financial system to determine if established accounting principles and requirements are being followed and to maintain the general ledger and supporting records. The pro bono manager should comply with internal controls established by the program's governing body to ensure that the program's assets are safeguarded. Minimal controls should

include clear authorization procedures for purchases, payroll, cash disbursements and receipts, and the signing of checks. Supporting documents for all expenditures should be maintained. The pro bono manager should be informed of and monitor compliance with all relevant tax requirements. If program assets are significant, inventory records should be maintained and reviewed annually.

The pro bono manager should prepare periodic financial reports for the governing body that provide a comparison by line item of income and expenses for the month and the year to date as compared to the budgeted amount for the total year. The pro bono manager should be able to describe these reports and budget to the program's governing body and project future expenditures and income to assist short and long term planning. An independent audit of the program should occur annually. For a program that is a component of a larger organization, such as a bar association or a legal services program, that financial review may be part of the larger organizations' annual audit. There may be some programs, such as those with very small budgets, which decide not to commit resources to conduct a full-scale audit. In those situations, a less extensive form of an annual independent financial review may be appropriate.

PROGRAM EFFECTIVENESS

Standard 2.5 (Infrastructure—Disaster Preparedness)

A pro bono program should have in place an up-to-date continuity of operations plan that addresses program recovery and service delivery in the event of a disaster.

COMMENTARY

When disaster (whether natural or man-made) strikes, pro bono programs may face the extraordinary challenges of meeting an increased demand for legal assistance from the client community while also dealing with losses to the program, its staff and its local and regional pro bono volunteers and referral agencies. Programs are encouraged to develop continuity of operations plans (COOPs, or Business Continuity Plans) so that they will be prepared in the event of a disaster. Plans should consider such issues as staff safety and communications to and among staff, pro bono volunteers, referral agencies and clients; protection of property including office space, technology, data, critical documents; insurance issues; and serving clients, including on disaster-related issues and in the short and longer term. Planning guidance and other resources are available on www.disasterlegalaid.org.

Following a disaster, volunteers—both local and distant—are often eager to help. Pro bono programs are well advised to put into place in advance a system whereby volunteers can be trained in disaster-related issues and be connected with clients in need. Such a system could, for example, be posted on a website with servers located outside of your area, so that it will not be affected by the disaster. Contingency plans must address interruptions to power supplies and telecommunications. Trainings and training materials on such a site must be periodically updated.

Standard 2.6 (Program Effectiveness—Relations with Others)

A pro bono program should strive to cooperate, collaborate and coordinate with other providers of legal services, the organized bar, the judiciary, law schools and community organizations.

COMMENTARY

Collaboration with Access to Justice Communities

Programs should endeavor to build connections and collaborations on a statewide and local basis as relevant and appropriate to the program's circumstances. Connections and relationships should be established with access to justice and delivery of legal services committees, committees and commissions of state and local courts, bar associations, and other providers of legal services. Members of the program's staff may be able to serve on committees of these organizations but, at the least, should attend meetings or conferences held by these entities as appropriate. In addition, building a connection with local law schools can be very helpful. Frequently, law schools have a pro bono component or requirement, and law students may offer a strong and consistent pool of volunteers provided that they are adequately supervised. In addition, some law schools offer clinical or externship programs that may provide an opportunity for law students to receive credit for working with a pro bono program.

Collaboration with Other Legal Services Providers

In every state, there are multiple organizations that share the same important goal of providing high quality free legal services to persons of limited means. Because the need for such services is far greater than the resources available to meet that need, it is important that the various providers maintain good relations and work together to maximize the effective and efficient delivery of legal services to clients. This is particularly true within each local community, but is also important in the context of the overall legal services delivery system in each state.

The legal services providers may include those that provide service through pro bono attorneys, full-time staff attorneys, contracts with private attorneys, legal components of social service organizations or a combination of all of these various approaches. A pro bono program should strive to develop relations with all appropriate legal services providers that are based upon cooperation, coordination and collaboration. For some programs it may be relatively easy to develop a good working relationship with those providers. For others, it may be quite challenging due to many factors including: the history of relations between those other providers and the private bar; the difference in the perceived mission of the pro bono program and other legal services providers; and the perceived threat of competition for the limited resources to support delivery of legal services to low-income persons. Regardless of the obstacles, the pro bono program should make every effort to foster a relationship with other legal services providers that is based upon cooperation, coordination and collaboration so that the delivery of high quality legal services to clients in the service area is maximized.

There are many areas in which collaborative efforts among the legal services providers should be encouraged. These include the identification of clients' legal needs; the establishment of program priorities; the development of a program delivery design; the co-sponsorship of special service delivery projects and fundraising. By working together in these areas, providers can strive to establish a unified delivery design in the community that will maximize the delivery of service and will address the pressing legal needs of clients.

Specific strategies providers should consider include: engaging in a joint legal needs study; developing a joint priorities statement; collaborating on the development of training events and materials; utilizing interoffice mentoring resources; submitting joint fundraising proposals; engaging in joint fundraising campaigns; agreeing not to vie for each others' established funders; or coordinating fundraising events to minimize direct competition. Although providers may decide to proceed independently in some of these endeavors, it is important that the programs,

through their governing bodies and staff, engage in meaningful dialogue to enable the establishment of a coordinated effort for the delivery of legal services in the service area.

By engaging in cooperative efforts, providers may find that they not only improve the delivery of legal services to low-income persons, but also reap other benefits for their programs. For example, if a staff model program agrees to produce training events for the pro bono program volunteers, the pro bono program will be able to provide its volunteers with trainers who are experts in poverty law practice, thereby taking an important step to ensure the delivery of high quality legal services to pro bono clients. The staff model program, through the training efforts of its staff, will increase its institutional stature and its staff is likely to gain recognition from the private bar for the valuable expertise that they possess, thereby enhancing their professional reputation. Thus, the net result of these collaborations is that both the staff program and the pro bono programs benefit, and the program is able to serve more clients, more effectively.

There are many ways in which cooperative relationships among the legal services providers can be fostered. Regardless of the methods chosen, it is critical that the various providers, through their governing bodies and staff, engage in honest and open dialogue. By doing so they should be able to take steps to overcome any differences that may exist and move closer to achieving their shared goal of providing high quality legal services to clients. In addition, once collaboration is developed, it should be commemorated in a written Memorandum of Understanding (MOU) signed by both organizations. Such a document does not need to be extensive and or complex; its purpose is to clarify the roles and responsibilities of each partner. This may be as simple as who will send referrals to whom and how, or involve a more complex shared intake or joint recruitment or litigation effort. In any case, understandings about roles as well as potential or actual funding are important to spell out. Programs may wish to recruit a pro bono transactional attorney to help with drafting more complex MOUs.

Collaboration with Local Bar Associations

Due to the stature and leadership of bar associations within the legal community, a program should seek the support of the organized bar and should encourage its active involvement in various program activities. In some localities a bar association may have been a driving force in the formation of the program; in others it may have played a minor role. Regardless of the extent of the organized bar's involvement in establishing a program, there is much the bar can do to enhance the development of a program. Its input and assistance, therefore, should be actively sought.

There are many areas in which the program should seek the involvement of bar associations and their leaders. One is in recruitment efforts. Bar leaders can be approached to write letters, make personal contacts, deliver speeches, publish bar journal articles and engage in other activities that call upon bar members to participate in the program. In addition, bar associations can be encouraged to assist the program by passing resolutions that urge members to engage in pro bono activities or accept pro bono cases through the program. Bar associations can also be encouraged to promote the adoption of pro bono policy strategies for expanding pro bono including revised Model Rule of Professional Conduct 6.1, mandatory pro bono reporting rules, and the like.

Recognition of volunteers is another area in which the organized bar and its leaders should be called upon to play an active role in assisting the program. There are many activities that the bar can be encouraged to engage in including hosting an annual recognition event, publicizing the good works of program volunteers in bar publications and presenting annual awards to outstanding volunteers.

The organized bar's aid should also be sought in fundraising efforts. In many cases bar associations are an important source of funding

through the grants they award to the program or through the provision of space, equipment or staff, in-kind. In addition, the organized bar can assist the program by urging members to make financial contributions to the program (either directly or indirectly, for example, through bar dues check-offs) and by sponsoring fundraising events such as sports outings and luncheons that benefit the program. Bar associations can also be called upon to support legislation that is aimed at providing funding to providers of civil legal services to low-income persons, such as through civil court filing fee increases.

There are many other areas in which the organized bar may be able to assist the pro bono program, such as in training of volunteers, in encouraging bar committees to develop pro bono plans and through support for and funding of a legal needs study. A full and complete list of ideas is not provided here but rather, the examples are meant to be illustrative of the wide range of possibilities that exist for bar association involvement in and enhancement of the program.

To gain the organized bar's valuable support and assistance, the program has important responsibilities it must fulfill. A key component is to ensure that regular and ongoing communication takes place between the program and both the bar association and its leaders. There are a variety of ways through which this communication can be fostered. A program may appoint bar leaders to its governing body to gain the benefit of their counsel and to keep them informed of program developments. Staff of the program and governing body members may attend bar association meetings or relevant bar committee meetings to provide specific information on the program and to seek the bar's input. In addition, the staff of the program should consider joining the bar association and becoming involved in a variety of its activities. Program staff can also make a special effort to communicate with the executive director and other staff of the bar association on a regular basis through either formal meetings or informal telephone conversations.

Another important responsibility of the program is to develop or utilize internal systems and procedures, quality assurance methods, and the volunteer training and support mechanisms that will enable the organized bar to take pride in the program and assist in the program's development. In addition, the program should publicize the assistance and support it receives, thereby enhancing the image of the organized bar.

A local bar association is often an excellent partner for a pro bono program seeking to approach the court for new programs or changes in procedure. While the pro bono program may be perceived as partisan, the bar association is generally seen as bipartisan, and therefore the court may well be more open to meeting and partnering with the association.

A partnership with a pro bono program can be very beneficial for the bar association, as well. In addition to the opportunity to ally itself with the good work of the pro bono program, the relationship may offer the chance to increase association membership—perhaps by offering discounted memberships to volunteers and by “cross-selling” participation in one program with current volunteers of the other.

In many communities, only one bar association exists; in others, several bar associations are established that may include a county bar association, a city-wide bar association, specialty bar associations (e.g. immigration bar, bankruptcy bar) and constituent-specific bar associations that serve a targeted group of lawyers such as women, minorities or young lawyers. A program should strive to maintain active and cooperative relations with as many of the bar associations in the community as is practicable. Diversity bar associations can be particularly helpful; their volunteers can help both with language and community access.

Collaboration with the Judiciary

A program should make every effort to foster good relations with members of the judiciary, to advise them of the program's existence, goals

and progress, and to obtain the benefit of their views. The program should cooperate with members of the judiciary whenever possible and seek their help with various activities which will aid the program.

Recruitment of program volunteers is an activity for which judges are especially well suited. A letter signed by a judge urging members of the bar to join the program can be particularly effective in increasing the number of program volunteers. In addition, judges may be willing to make presentations on the need for pro bono program volunteers when speaking at various events including swearing-in ceremonies and bar association annual meetings. Members of the judiciary also can assist in recruiting law firms, corporate law departments or government law offices through presentations. Judges can be approached by the program to write an opinion article for the local newspaper or bar journal detailing the reasons why pro bono activity is vital. Additionally, the program can suggest that the judiciary develop written policies that encourage pro bono activity by court personnel, thereby increasing the pool of potential program volunteers.

Because receiving acknowledgment from members of the judiciary for one's pro bono participation is likely to be a memorable event for a lawyer, recognition of volunteers is another area in which judges may be willing to assist the program. Programs should consider asking judges to present pro bono awards to exceptional volunteers, to speak at recognition events or to send notes of appreciation to lawyers or law firms that provide outstanding service to pro bono clients. (See Standard 4.12.)

The assistance of the judiciary should also be sought in the training of program volunteers. Due to judges' expertise in various areas of substantive and procedural law, they can assist the program by acting as trainers at training events sponsored for pro bono attorneys. In addition, they can serve as writers or editors of training materials designed especially for use by program volunteers.

The program should propose to judges methods for expediting the processing of cases in which program volunteers appear, thereby conserving volunteer time and providing them with recognition for their efforts. For example, judges may hear pro bono cases at the beginning of their daily calendar. This is not only another judicial endorsement of pro bono, but also a selling point for busy attorneys who may fear losing an entire morning appearing on a very brief motion. The court may be willing to set aside a particular hour of the day or week during which time particular types of pro bono cases can be presented. Such an arrangement can allow a program to cover a calendar with a limited number of attorneys.

The judiciary can also play a significant role, on a statewide basis, in creating policies or state rules that support pro bono (as with the "emeritus" or retired/inactive attorneys rules).

It should be recognized that the interpretation of the canons of the Model Code of Judicial Conduct vary from jurisdiction to jurisdiction. As a result, during the course of discussion with a judge regarding the specific activities described in this standard, it may become necessary to research whether there are any ethical opinions in the particular jurisdiction that would prohibit judges from engaging in those activities.

To gain the valuable support and assistance of the judiciary, it is important that the program build strong communication channels with the bench. There are many ways in which that communication can be fostered. A program, through its manager or governing body members may decide to write, visit or call various judges to keep them informed about the program and to solicit their input and assistance. Another more formalized method is to invite members of the judiciary to serve on the program governing body. If a judge accepts the invitation, a program can gain several benefits including keeping judges informed of program developments, obtaining their counsel and creating in those judges a more direct interest in the program's success. Alternatively, a program can reach out to a judge to participate in the organization's strategic planning process.

A program's relationship with the judiciary goes both ways. If a court runs committees on court procedures or issues that involve non-court staff, the program should endeavor to have a representative on these committees. This is an invaluable way to build a strong relationship with the judiciary, and facilitates development of initiatives that increase access to justice.

Collaboration with Other Community Agencies

Because community groups and social service agencies serve members of the client community, they can provide important information and insights to a program regarding clients' problems. That information can be extremely useful in trying to identify and meet clients' critical legal needs. These organizations also can be important referral resources for the program when clients have problems that are of a non-legal nature, such as the immediate need for food, clothing or shelter. The program, therefore, should seek to establish ongoing relations with these organizations and work together with them to better serve clients.

When a program conducts a needs assessment, it should seek input from community groups and social service agencies. Organizations such as community development corporations, battered women's shelters, child advocacy groups, immigrant aid societies, and community centers can provide valuable information regarding the legal needs of clients, based upon their day-to-day contact with members of the community. In addition, these groups can provide information that will be useful in making decisions about the program's delivery design, such as whether or not a community clinic is needed. If the decision is made to establish a clinic at a community site, the program may find that by working cooperatively with the community or social service organizations, it will be able to locate its clinic in the facilities of one of those groups. By doing so, the program will be able to conserve limited resources and provide clients with a convenient and familiar site at which to be interviewed.

Community and social service groups can also aid a program by publicizing the services that the program renders and by helping it gain acceptance in the client community. In some communities, a program may have no difficulty attracting clients; in others, it may be met with suspicion and doubt. To the extent that a problem of this nature is anticipated or encountered by a program, obtaining the support and assistance of community and social service organizations can be extremely helpful in addressing it.

In some cases, a program may be partially funded for specific client representations by a community organization. Where that representation would result in the recovery of legal fees and expenses, disputes will be avoided if the program and its funder have addressed the entitlement to such recovery at the onset of the case.

There are likely to be many other areas in which community and social service groups can be of assistance to the program. Much will depend upon the specific local needs and conditions. The examples provided are meant to be illustrative only of the wide range of possibilities that exist.

To develop active and cooperative relations with community and social service organizations, the program must establish ongoing communications with them. This can be accomplished through informal telephone conversations or through more formal means such as establishing joint task forces or advisory groups, or selecting a person affiliated with a community or social service organization to serve on the program's governing body. Regardless of the method chosen, it is important that the program staff engage in honest communication and active listening so that the organizations are confident that their views will be heard and given careful consideration.

In communities nationwide, there is an increase in holistic delivery models that include legal services. These programs involve legal aid

or pro bono attorneys working in conjunction with other service providers, like medical providers, social workers, counselors, shelter organizations, etc. Offering holistic services allow a team approach to addressing the issues of the client, and making a longer-term difference in the lives of clients. Such a program can be particularly effective in the pro bono context, since pro bono attorneys frequently report feeling overwhelmed by the non-legal problems of their clients. Holistic programs may involve the pro bono program employing a social worker to work with clients and/or volunteers, housing a social worker or other professional employed by another agency, at the legal aid office, or bringing attorneys to a different agency (including a medical clinic). As with services to clients, there is a continuum of ways in which legal services programs can work with other community agencies.

Collaborations with other agencies can often attract funding from sources other than the “usual suspects” in legal services funding. Holistic legal services represent a best practice in the pro bono world, and are well worth considering.

Standard 2.7 (Program Effectiveness—Institutional Stature and Credibility)

A pro bono program should strive to attain institutional stature and credibility to enhance its ability to achieve client objectives.

COMMENTARY

By developing a positive institutional presence in the community in which it operates, a pro bono program enhances its capacity to provide effective service to its clients. Like the good will that attaches to a business name, the program’s reputation belongs to the institution. It persists despite changes in staff and volunteers and provides the backdrop against which all the program’s services are provided.

The institutional stature of a program contributes to the program’s success in several specific ways. It enhances volunteer recruitment and retention efforts, which is essential to a program’s ability to serve clients. It also leads clients to seek the assistance of the program. By developing institutional stature, a program increases its chances of obtaining funding through which it can maintain its level of service, as well as initiate new and innovative projects to increase the number of clients served. In addition, it promotes high morale among program staff and discourages turnover because staff know that they are part of an institution which is held in high regard by clients and the community at large.

The key to achieving institutional stature and credibility is gaining the respect of a variety of groups including clients, community organizations, the organized bar, the judiciary, and other providers of legal services. The program’s stature with the client population and community organizations is developed by being responsive to clients’ legal needs, effectively interacting with clients and furnishing them with volunteers who provide high quality legal services and are successful in their efforts to assist clients. In addition, by instituting procedures through which clients can voice their satisfaction or dissatisfaction with the program and by providing them with a meaningful role on the governing body, a program can develop its credibility as an institution that values clients.

A program’s institutional status with other providers of legal services is achieved through demonstrating responsiveness to clients’ needs, an ability to provide high quality legal services through program volunteers in an efficient and effective manner, and a willingness to act collaboratively.

A program is likely to be held in high regard by the organized bar and the bench if it develops creative and efficient methods for delivering services to clients. In addition, by establishing the internal systems and procedures, the quality control mechanisms

and the volunteer training and support structures that may be necessary to enable program volunteers to provide high quality service to

clients, a program can enhance its institutional stature and credibility. Recognizing the volunteers who participate in the program, as well as assistance from the bar and the judiciary, may enhance a program's stature with those key segments of the legal community.

Communication to the wider community is also crucial to building a strong reputation. Often, programs do wonderful work but neglect to publicize it broadly. There are many creative ways to spread the word: electronically, on air and on paper. Similarly, staff participation in community activities—committees, service days—brings the program a higher visibility.

Standard 2.8 (Program Effectiveness—Identification of Clients' Needs)

A pro bono program should establish a means of identifying the legal needs of persons of limited means who reside within its service area.

COMMENTARY

Importance of Needs Assessment

The identification of the legal problems faced by potential clients is critical to the process of establishing program priorities, for unless legal needs are identified, a program will have no basis upon which to determine the types of legal problems it should address. In addition to those legal needs that may be easily identified as unmet, programs should explore emerging or traditionally unrecognized legal needs of the low income population. By examining a variety of problems experienced by the client community, programs can better develop creative solutions to improving their clients' lives. For example, it is unlikely many clients would identify the lack of affordable housing as a legal problem. However, many lawyers involved in housing development have the skills necessary to positively impact on this specific client need. By comprehensively identifying actual, emerging and traditionally unrecognized legal needs, a program enhances its ability to make rational decisions regarding its operations and facilitates planning for its future.

Methodology

There are several methods that may be used for determining the legal needs of the client community: a program may engage in its own needs assessment; it may rely on a needs assessment conducted by others in the community, such as a local legal services program; or it may choose to combine a careful review of any legal needs assessments conducted in the community previously with its own study. The method chosen may depend upon many factors including the resources of the program, the structure of the program (free-standing or part of a bar association or local legal services program), whether a legal needs assessment has been conducted previously in the community and the age of any pre-existing study.

It is important to note that the breadth of a legal needs assessment may vary as a result of the program's mission: a program that is established to address a particular issue (e.g. community economic development) or the legal needs of a particular population (e.g. domestic violence survivors, the homeless, immigrants, prisoners) may find it unnecessary to engage in as extensive a legal needs analysis as a program that addresses a wide range of issues or serves the general population. Nevertheless, it is important that specialty programs take steps to determine the most significant needs of its targeted population or the most critical issues to be addressed within its area of focus.

For those programs that conduct an independent legal needs study, meaningful communication with a variety of groups and organizations is crucial. One of the most important groups to communicate with is clients. This communication ideally should take place with individuals who qualify for services and with the leaders of client based community organizations. Discussions with leaders of community groups can

provide much insight into the critical issues facing the client community, which will better enable the program to identify emerging and traditionally unrecognized legal needs. While it is recognized that direct communication with actual and potential clients may be difficult to achieve, there are ways to facilitate it. One method is to survey potential clients to elicit relevant information from them on their legal needs. In addition, for those programs that conduct their own client intake, that process will furnish a good source of information on clients' legal needs.

Meaningful communication with other providers of legal services in the service area is essential in determining the legal needs of clients. These other providers interview prospective clients regularly, turning away many who have legal needs that cannot be met due to limited resources. Such programs, therefore, are acutely aware of many areas in which unmet legal need exist for clients. In addition, due to their regular presence before various tribunals, the lawyers and paralegals employed by the staff model legal services program can provide much information regarding the types of cases in which prospective clients are appearing most often without representation.

Other organizations that serve the client community are another important source of information regarding the client community's legal needs. Interviews with the staff of organizations such as domestic violence shelters, immigrant aid societies and child welfare advocacy groups can provide valuable insight into the unmet legal needs of the client community, due to the regular interaction that these organizations have with persons of limited means and their knowledge of the problems faced by the special populations that they serve. In addition, the views of local court personnel, including judges and clerks should be sought because they have first-hand knowledge of the types of cases in which low income people appear most often in court without the assistance of counsel. Legislators and representatives of local governmental entities can also be helpful in assessing the legal needs of client communities because persons of limited means often contact these individuals for assistance with their legal problems. The private bar, too, can provide valuable information regarding unmet legal needs. Their input may be especially helpful in those localities, such as rural communities, in which few legal services or social services programs currently exist.

The identification of critical client need can often be improved by coordinating the collection of information and communicating results among the providers of legal services within an entire region or state. This collaborative effort will assist each program to better identify current, emerging and traditionally unrecognized legal needs of the client community. There are many census and mapping tools available that offer strategies for taking a closer look at client communities and their demographics.

SERVICE DELIVERY SYSTEMS

Standard 2.9 (Service Delivery Systems- Program Priorities)

A pro bono program should establish priorities for the allocation of its resources based upon identified client community need while taking into account the areas of interest and expertise of volunteers, volunteer need for specialized training and support, the priorities of other providers of legal services in its service area, and the potential for meaningful impact for the clients and/or community.

COMMENTARY

Importance of Priority Setting

Typically, a pro bono program cannot provide legal assistance to every person of limited means who desires assistance because most often, program resources are outweighed by the demand for legal services. This is true for all types of programs: those established to assist all

persons of limited means within a service area; those programs established to serve specialty populations (e.g. domestic violence survivors, the homeless); those programs established to address a wide range of issues; those programs established to address a particular issue (e.g. community economic development, immigration); those programs established to provide full case representation; and those programs established to provide legal information, advice, or limited scope representation only. To allocate a program's limited resources, the governing body should engage in comprehensive planning to establish priorities that reflect the legal problems that are most significant to the clients that will be served by the program.

Factors to Consider

Among the most important factors that a program must consider in deciding which areas of critical client need should be included in its priorities are: the level of need that exists for service in each area; the private bar's level of expertise in such areas; the existence of other, specialized resources to meet the need for some of these services; the resources available for training volunteers to handle such cases and the willingness of volunteers to be trained in these cases. Thus, in reaching its decision, it is important that a program not limit its vision as to the types of cases pro bono lawyers can address, while at the same time avoiding duplication of services and realistically assessing its volunteer resources.

The Role of Volunteer Capacity

While the acute legal needs of the client community must be the driving force in establishing priorities, a program should be sensitive to the fact that its service to clients depends in large part upon volunteers' willingness to accept cases. There may be some

identified areas of pressing need, such as family law or bankruptcy, in which many volunteer lawyers possess the knowledge and skills to represent or otherwise assist clients effectively. There may be others, such as Medicaid, food stamps and other public benefits, that involve complex statutory schemes with which one must be knowledgeable to provide effective assistance or representation. In many communities, staff of other providers of legal services possesses special expertise in these areas of the law. While some private practitioners regularly handle such cases, many others have no familiarity with these areas of law, and therefore must be given training opportunities before handling such cases if these cases are included within program priorities.

The Role of Volunteer Interests

In addition to the most dire legal needs of clients, there may be other legal needs that the program decides to address. For example, there may be times when private attorneys express a willingness to handle cases in areas that are not of compelling need, but in which client need exists, nevertheless. Offering these opportunities raises the prospect of engaging volunteers who may then become interested in other forms of pro bono. If the program can meet these needs by identifying pro bono attorneys who will assist clients while not expending large amounts of its resources, it should endeavor to do so. However, if large amounts of staff time in the form of recruitment, training, case screening and oversight would be required to meet low priority needs of clients, the program should reconsider including those cases within its priorities.

Priority Setting with Other Agencies

When setting its priorities, the program should work cooperatively with other local providers of legal services. Due to their experience; those providers have valuable insights into clients' legal problems and can provide a wealth of information that can be useful to the program in determining how to allocate its resources. As a starting point, the program should review the other providers' priorities to determine the types

of legal problems that are being addressed currently in the service area. Such a review may reveal, for example, that certain areas of identified client need in which private attorneys often have expertise, such as consumer law, family law or community economic development, are not included as areas of high priority by the other providers. In addition, the program should engage in dialogues with those providers to learn about the inter-relationship between their established priorities and actual prospective client request for services. For example, the program should inquire about the priority areas in which the providers must turn away prospective clients, the priority areas in which they have the fewest cases and the non-priority areas in which they receive the most requests for service. By obtaining all of this important information, the program will be in a better position to decide in which areas of client need it should focus its resources. It is important that the program not operate in a vacuum and instead work collaboratively with other legal services providers to meet the needs and concerns shared by all.

Priorities for Pro Bono Programs Within Legal Services Organizations

For pro bono programs that are a component of a staff model legal services program, frequently one set of priorities are adopted for both the pro bono and direct delivery components of the program. In such situations, often the staff of the direct delivery component is responsible for interviewing clients, screening cases for merit and deciding which cases it will keep and which it will refer to the pro bono program for placement with volunteers. In these situations, the need for cooperation between the two components of the program is essential. The staff of the pro bono program should keep the direct delivery component's staff updated on its ability to place various types of cases. The staff of the direct delivery program should only place those cases that fall within priorities and are meritorious; the pro bono program should not be viewed as a place to send cases that staff members of the direct delivery component are unwilling to accept because the case or the client is unappealing or troublesome. While pro bono attorneys play a critical role in addressing the justice gap, they are frequently less able to work with difficult clients or on cases that are more complex. Pro bono programs should collaborate with direct delivery staff to ensure that those clients and cases are handled by staff and pro bono attorneys are given cases they will find rewarding. Volunteers who have had a positive experience will return to handle more cases—and often more complex cases—and serve as some of the most effective ambassadors a program can have.

Periodic Evaluation

Once priorities have been established, the program should periodically review them to ascertain that they continue to reflect the significant legal needs of clients and take into account both the areas of expertise and interest of volunteers and the priorities of other local providers of legal services.

Standard 2.10 (Service Delivery Systems—Delivery Design)

A pro bono program should establish a design for the delivery of legal services which effectively and efficiently meets identified client need and is tailored to local circumstances, including existing resources and services and volunteers' ability and willingness to deliver services.

COMMENTARY

Obtaining Input on Delivery Design

A program should establish a delivery design that enables it to operate at the most effective and efficient level possible so that limited resources

are utilized effectively to meet clients' legal needs. It is important that the program work cooperatively with any other providers of legal services when formulating its delivery design. This cooperation is necessary to create a unified delivery design both in the immediate service area and statewide, through which the efforts of the various providers are coordinated to complement each other, thereby maximizing service to clients. It is important too, for the program to seek input on the delivery design decision from clients, community groups, social service agencies, the private bar and court personnel. Each of these sources can provide valuable insights into the best manner in which to provide service, based upon both their interaction with members of the client community and their observations regarding clients' service needs.

Factors to Consider

In establishing its delivery design, the program must first address the fundamental issues of what types of services it will ask program volunteers to deliver, the manner in which services will be delivered and the role the program will play in aiding with that delivery. There is a wide spectrum of services a program may deliver through its volunteers including: providing individual client representation; engaging in class action or major litigation representation; participating in legislative or administrative advocacy; offering limited scope representation on legal cases; teaching *pro se* litigants how to proceed with their cases; working with community groups; giving legal information; and focusing on specific issues such as community economic development. Ideally, a program should try to offer as many types of services to clients as is practicable. By doing so, it is likely that more of the varied needs of clients will be met. In addition, by providing volunteers with a variety of opportunities, it is more likely that a program will be successful in its volunteer recruitment and retention efforts.

It is recognized, however, that many programs will not be able to deliver a wide range of services to clients due to limited resources or restrictions imposed by funding sources. If choices must be made due to limited resources, they will depend upon many factors including: the needs of clients; the type and extent of services rendered by other local providers; the ability and willingness of volunteers to deliver each type of service; and the resources available to provide the necessary support and training to volunteers for each possible type of service being considered. Meeting client need, however, should always be of paramount concern in making delivery design decisions.

For example, if a program decides to establish an advice-only clinic or hotline, there should be another provider in the service area to which clients who are in need of representation or other, more extensive services can be referred. Likewise, if a program establishes a *pro se* clinic, it should engage in follow-up to determine if those attending the clinic have been able to proceed on their own and obtain the result they were seeking.

Programs should also consider the concept of the continuum of service: some litigants can successfully represent themselves and need only some self-help guidance, and others can effectively be assisted on a limited scope basis, thus allowing the program to reserve its full scope resources for those litigants most in need of them.

Potential Approaches

There are a variety of models that a program can consider when determining in what manner services will be delivered and the role the program will play in aiding with that delivery. For example, a program may utilize staff or volunteers to conduct intake interviews, place individual cases with individual volunteers and engage in case tracking and regular follow-up. Alternatively, a program may establish a clinic at which volunteer attorneys conduct intake interviews, advise those clients whose cases can be disposed of by advice only or with some drafting assistance, or if that is not possible, agree to represent the client with limited or full service, with or without program follow-up and support. A

program may also decide to interview prospective clients, accept cases and then place a number of cases at one time with an entity such as a law firm or corporate law department which will have the responsibility to refer those cases to individual employees and utilize its quality assurance system (if it exists and is appropriate for pro bono cases) to provide any necessary case tracking and oversight. In deciding how to deliver services and its role in that process, a program should do its best to leverage all available resources to meet client need while making certain that appropriate quality assurance mechanisms are in place.

Programs should endeavor to think creatively about building delivery systems. The increasing acceptance of limited scope representation means that providers have an almost limitless menu of options. In addition, technology offers new opportunities to provide services at a distance, or with more efficiency than was previously possible. Volunteers from the information technology field may be able to help programs think through various options.

Programs should consider the interests of volunteers in setting subject matter priorities. (See Standard 2.8.) This consideration is all the more important when it comes to delivery design, where the programs will have more flexibility. As part of its ongoing research to design delivery systems, the program should investigate the types of cases for which attorneys might be willing and interested to volunteer. This investigation should include a variety of methods of outreach to the bar: presentations on volunteer options followed by a feedback session, a written or electronic survey, one on one meetings with attorneys active in pro bono work, and meetings with representatives of local bar associations. Other legal services providers may have experience with pro bono attorneys asking for opportunities those providers do not offer. Meetings with local judges can also give a program a good sense of what the court is interested in seeing and what opportunities for partnership might exist. As examples, volunteers often are particularly interested in opportunities that are relatively short term or defined. Law firms may be interested in building—and possibly funding -a “signature project” specifically designed to meet their particular needs and interests

Some volunteers may want to engage in activities that do not call upon them to work directly with clients but that will nevertheless assist the pro bono effort. To tap into and retain such volunteer resources, it is wise for programs to offer opportunities for volunteers such as acting as trainers and mentors, developing substantive manuals, assisting with management of volunteers and working on recruitment or fundraising campaigns.

A program’s decisions regarding the type, manner and extent of services its volunteers will deliver and the role the program will play in aiding with that delivery will impact upon many other delivery design decisions it must make including: the type of volunteers to recruit to deliver the service; the extent of training, support and follow-up that must be offered to those delivering service; the staffing pattern of program personnel; and the type and extent of supervision that program staff should receive.

For example, a program that relies upon volunteer attorneys to conduct full or limited scope clinics will not need to address the issue of legal supervision of non-lawyer staff, whereas a program that relies upon non-lawyer staff to conduct intake interviews must address it. Similarly, if a program decides to refer cases to a private institution such as a law firm or a corporate law department, it may not need to provide for specific case tracking and oversight, if the entity has an existing quality assurance mechanism that can be utilized for pro bono cases. It is important, therefore, that in planning its delivery design, the program recognize both the interrelationship of the various aspects of the delivery design and the impact that each delivery design decision has upon the other.

Disseminating Delivery Design

Once the delivery design has been determined, it should be communicated to the client community, other providers of legal services, social service providers, bar associations, the judiciary and volunteers.

Standard 2.11 (Service Delivery Design- Client Community Access)

A pro bono program should adopt policies and procedures that facilitate access to its service by the client community, including addressing issues of language, disability and cultural differences, and making access to services as easy as possible.

COMMENTARY

By making choices that demonstrate a concern for the convenience of clients and prospective clients, a pro bono program can impact positively upon their ability to seek and obtain assistance. In addition, such choices may have the added benefit of creating a favorable impression regarding the sensitivity of the program to the needs of the client community, thereby enhancing the development of effective relationships with clients. Perhaps most importantly, the potential clients who find their way to a program may or may not represent the demographics that the program is the most interested in serving. Doing greater outreach increases the likelihood that the program be able to target its services as it wishes. A program's choice of approaches to access should reflect the needs and demographics of the target communities. Programs also do not need to pick only one approach; there can be multiple points of entry. In fact, multiple points of entry and a flexible approach to access are preferable, as they maximize the program's accessibility to a diverse pool of clients.

Access Issues Depend On Intake Methods

In deciding how best to facilitate access to service, much will depend upon the method of intake that is employed by the program and the type and method of services that are provided.

In-person Intake

In-person intake generally consumes more time than intake conducted over the phone or online, but it can also be a more effective way to establish trust with the prospective client, and obtain a more in-depth and thorough understanding of the prospective client's presenting legal problem(s). The offices need to comply with federal disability access laws, including ensuring that the physical facilities are accessible, and that prospective clients with visual or hearing disabilities are accommodated.

Telephone or Online Intake

For many pro bono programs, physical access to the program office by prospective clients and clients is not an issue that must be addressed because they or their volunteers either conduct intake or provide service by phone, or at clinic sites, or the program relies upon other organizations to conduct prospective client intake interviews. If a program conducts intake or utilizes volunteers to provide service by phone, electronically, through social media or other mechanisms, or if a program conducting in-person interviews requires that appointments be made in advance by telephone, the program should review and evaluate clients' and prospective clients' ability to reach the program. If it is determined that clients and prospective clients experience difficulty accessing the program or volunteers by phone, the program should make reasonable efforts that are economically feasible to increase access. For example, the program may decide to increase the number of phone

lines or it may use voice mail to enable prospective clients to leave their name and phone number so that their calls can be returned their calls at a later time. Likewise, programs may consider installing toll free numbers or accepting collect calls to increase access by the client community. Other options include access by automatic callback, where the prospective client may leave a number and receive a call back when intake personnel are available. In addition, to serve those who do not have access to telephones or who have difficulty using them, programs should develop procedures for encouraging and addressing requests for service that are made through the mail.

Internet access also offers many possibilities. The prospective client may make an initial application for services online, and program staff can respond electronically. Increasingly, even the population qualified for free legal services has access to the internet. If they do not have access at home, they may well have access through the local public library or other public access points. Programs should work with public and law libraries to ensure that library staff is familiar with the organization's intake portal and can make available basic instructions on access.

Whatever access systems are used, programs should ensure that their intake systems are accessible to those with Limited English Proficiency, with interviews and introductory materials available in languages most common in the community. (See Standard 3.2.)

Organizations that rely on access by telephone should, of course, be sure that this access includes access for those using assistive technologies. (See Standard 3.2.) Programs should consider installing a TTY device, to allow calls from deaf and hearing-impaired litigants. Alternatively, many states offer a service whereby the prospective client uses a TTY, and a centralized agency transmits the communication from the TTY orally by telephone to the pro bono program. Internet access must also be accessible to those with disabilities.

A program that conducts in-person intake interviews at its office must ascertain that it is in compliance with federal and state laws regarding access to its facilities. (See Standard 3.2.) The program also should make every effort to locate its office in an area that is accessible by public transportation and that has free or low cost parking available.

Establishing neighborhood clinic sites, when possible, is a model of service delivery that programs should seriously consider as a means of increasing client access. This may be an especially attractive option to a program that has identified a particularly underserved client community. As is the case with the program's office, any clinic sites established must be in compliance with federal and state laws regarding access and should be accessible to public transportation. It may be better for prospective clients to conduct intake at the site of another agency they frequently visit—a social services agency, for example, or a local school or medical clinic.

Another option is to travel to where prospective clients are using a bus, RV, or other traveling virtual clinic. Some programs offer self-help assistance or intake through such a travelling "office" and thus are able to reach out to more rural and isolated areas.

A program should be sure to provide a safe location for intake, keeping in mind that safety is a particular concern for certain populations, particularly survivors of domestic violence. Programs should have a plan in place to deal with such situations.

Hours

A program should be sensitive to the needs of the client community when establishing its office and/or hotline hours and the hours of the clinic sites that it may operate. Clients and prospective clients who work may not be able to take time off during regular business hours, and caretakers of small children may have few hours during which they can be away from home. Establishing evening or weekend hours, or providing childcare, therefore, should be considered. A program may find that in addition to facilitating greater client access, such hours may also facilitate greater volunteer participation in clinics, given volunteers' busy schedules during regular business hours.

Access to Volunteers' Offices

Programs that refer clients to individual volunteers should take into consideration client access issues when making referrals. For example, if a client has mobility or other impairments, the program must ascertain that the volunteer's office or other site at which service is provided is accessible, or that the volunteer is willing to conduct a home visit, before placing the case. In addition, the program should try to avoid lengthy travel times for clients, when practicable. Likewise, if a volunteer's office or other site at which the volunteer will meet a client is not accessible by public transportation, the program should take that fact into consideration when placing the case.

Publicizing Program Services

A program should take affirmative steps to inform eligible persons of its services in a manner that encourages them to seek assistance. This may include producing a program brochure for distribution at community centers or social service agencies, or taking advantage of public service announcement spots on local radio or television. Other outreach methods may include:

- Online ads (may be donated by some providers)
- Smartphone apps
- Earned media
- Social Networking
- Partnering with local churches, synagogues, schools, etc.

Outreach may be coordinated with other agencies—for example, a local bar association's lawyer referral program may be willing to refer low-income callers to the program, thus allowing the program to piggyback on the bar association's outreach. When a significant number of clients speak and understand only a particular language other than English, the program should translate those materials or announcements into that language. Of course, a program must be prepared to respond to any increased demand for service that may result and be careful not to create expectations that it cannot meet.

Standard 2.12 (Service Delivery Design—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.

COMMENTARY

A program should design an intake system, or use the intake system of another institution, that assures that all necessary information is obtained from prospective clients in the most efficient manner. The facts gathered should enable a program to determine whether it or its volunteers can assist the individual and, when appropriate, to facilitate the receipt of volunteer services. Because a prospective client's first and most extensive contact with the program often occurs during the intake process, it is important that a positive impression of the program be made at that time. A program can aid in creating a favorable impression by establishing or utilizing an intake system that is sensitive to prospective clients' needs and treats prospective clients with dignity and respect.

Design of the intake system involves decisions regarding who will conduct intake, how intake will be conducted and where it will be

conducted. A program must also decide how it will effectively provide training and supervision to intake staff or volunteers to assure that essential facts are obtained and legal issues are identified in a manner that maintains client dignity.

Who Conducts Intake

As a threshold question, the program must determine who will be assigned the responsibility of interviewing prospective clients: attorney staff of the program, non-attorney staff of the program, volunteer attorneys, non-attorney volunteers, staff of a local legal services program or another institution, or some combination thereof. In making this decision, much will depend upon the available staff resources of the program and on the program's design.

Some programs have attorney staff and some do not; some programs have several staff members and others have only a part-time manager. If the staff of the program is quite small, the program may decide that it will depend upon a staff model legal services program to conduct intake, or it may coordinate its intake activities with another institution such as a centralized intake system or social service agency. If, however, the program has a large staff that includes several attorneys, it may decide to use attorney staff to conduct the intake interviews so that they can identify legal issues and provide legal advice, if necessary, at the time of the initial interview.

Non-attorney staff of the program can be trained to conduct intake interviews, and historically, they have played an essential role in carrying out this function. Non-attorney volunteers also can provide useful and effective service during the intake process. Law students and undergraduate students often enjoy the chance to do intake, and learn more about the nature of legal problems in real life. Intake can serve as a first step to interest new volunteers in more in-depth volunteering. The program should make arrangements, however, to have attorney staff or attorney volunteers available to supervise the work of non-attorney staff or volunteers. Legal supervision is necessary because the effective identification of a client's problem and the provision of initial advice often requires a breadth of legal knowledge which an individual without formal education may not possess.

In some situations, the program will decide to utilize volunteer attorneys to conduct intake. For example, if the program operates full service or advice only clinics, it may be most efficient to have the volunteer attorney who will be providing those services also conduct the intake interview. Similarly, if the program operates a legal hotline, it is likely that the same volunteer attorney who advises the client will conduct intake. If the program services a largely rural area, it may depend upon volunteer attorneys who practice in a particular community to carry out local intake interviews. In addition, the program may want to utilize volunteer attorneys to conduct intake when those attorneys are otherwise prohibited from the outside practice of law. Government attorneys, for example, may not be permitted to represent pro bono clients due to statutory or other restrictions. Nevertheless, they may be interested in assisting the program in some other capacity. If these attorneys are assigned the responsibility of conducting intake interviews they can provide valuable assistance while freeing program staff to take part in other activities. If a program is engaged in holistic programming (See Standard 2.5), an initial intake may be performed by staff or volunteers with the partnering agency, and forwarded on to pro bono program's staff or volunteers for review.

How Intake is Conducted

Intake interviews can be conducted by telephone, in person, online, or through a mixture of these methods. In some situations, such as when the program serves a very large geographical area and staff, volunteers or staff of another institution are not available to conduct in-person

interviews, telephone or online intake may be the most practical option available. In many other situations, however, the program has a choice and should carefully review the strengths and weaknesses of each method before reaching a decision.

Conducting intake by telephone is often more convenient for those individuals seeking assistance who have access to a phone because it saves them the time and expense of traveling to an intake site for an interview. This is particularly true in those situations where the program's telephone intake system is also utilized to provide counsel and advice or other brief services to prospective clients -- often providing the prospective client with all the services needed in one phone call. In addition, because the client may be required to travel to a volunteer's office or clinic intake site for a follow-up interview, intake by telephone has the positive effect of eliminating an additional trip to an intake site by the client.

It is also possible to conduct intake online. This can be particularly useful in rural areas, where the program is endeavoring to reach a wide geographic area. The online portal should be designed with an understanding of the limitations or constraints on potential clients.

Client convenience and cost savings must be balanced, however, against the fact that in general, an in-person interview is more likely than a telephone interview or an online intake to facilitate an in-depth discussion of the underlying facts and a review of pertinent documents. This thorough discussion and document review usually enables a better evaluation of the merits of the case. In addition, an in-person interview demands more time and commitment of a potential client than a phone interview. As a result, an individual's willingness to carry through with the legal case presented may be more clearly demonstrated initially if that individual is required to attend an in-person interview rather than simply make a phone call. It must be recognized, however, that an in person interview often will be more time consuming for the staff, volunteers or another institution's representatives who are conducting them and therefore, will prevent those individuals from engaging in other activities that would be of benefit to the program.

In some situations, a program may decide to adopt a mixed approach to the manner in which intake is conducted. For example, a program may do intake by telephone to determine potential conflicts and initial eligibility, and then conduct an in-depth interview regarding the facts of the case in-person. Another possibility is that a program may decide that in certain situations, such as prospective clients who only need counsel and advice, a phone interview will suffice, whereas for more complex cases which could involve the referral of the prospective client to an attorney, an in-person interview will be required. The mixed approach may also be designed so that staff or volunteers

are given the flexibility to determine if an in-person interview is warranted or if enough facts can be obtained through a telephone interview to enable adequate advice to be given or adequate screening to occur. In addition, a mixed approach to intake may be the only available option for a program that favors in-person interviews, but must conduct some intake by phone due to the remote areas in which clients live.

Where Intake is Conducted

If a program conducts in-person interviews, it must decide where those interviews will take place. Usually, pro bono programs have one office that is centrally located in the service area. Because staff are based in that office, along with office equipment and supplies that are needed to efficiently conduct intake, it is likely that intake will occur at that site. Nevertheless, if resources permit, the program may decide to offer intake at a

site located in the client community. Reasons for this decision may include a desire to become more accessible to prospective clients, a lack of available legal services in a particularly underserved community, a commitment to full service clinics or a similar delivery model, an

interest in developing partnerships with institutions such as law firms or social service agencies or the desire to have a greater presence in the client community.

If the program does decide to establish community based intake sites, it should work cooperatively with other local providers of legal services, community and social service agencies and program volunteers whose offices are located in the targeted community. The legal services, social services and community agencies can provide much assistance in locating desirable sites, publicizing the schedule for interviews and encouraging community members to take advantage of the services offered. The program volunteers whose practices are located in the area can be called upon to conduct intake interviews in their offices or to staff any other community based intake sites established.

If the program is working in partnership with a non-legal agency, it may choose to conduct intake at that location, to offer a “one-stop shop” for the prospective clients. Other alternatives include conducting outreach in public locations like public libraries or public schools (at parents’ night).

Sensitivity to Prospective Clients’ Needs

While conducting intake interviews in an efficient and effective manner should be the goal of any intake system, the system cannot be considered a successful one unless prospective clients’ needs are taken into account and prospective client dignity is maintained. For example, the system should be designed to avoid duplicative interviews, whenever possible. In addition, a program should ensure that intake interviews, either directly or through the use of an interpreter, are conducted in a language spoken and understood by the prospective client. In addition to recruiting bilingual attorney volunteers, the program can also recruit volunteer interpreters—often law students and college students are excellent sources. Training should be provided on how to interpret (LINK), and a volunteer’s language fluency should be tested whenever possible. A program should also consider establishing flexible intake hours to accommodate prospective clients who are employed or who for other reasons find it difficult to be interviewed during normal office hours.

A program that offers in-person interviews, in its office or at community based intake sites, must determine that these intake sites are in compliance with all federal and state laws regarding access to facilities, not only to avoid possible liability, but to convey its willingness to provide service to those who are physically challenged. In addition, accessibility to public transportation and the availability of free parking should be important considerations in deciding the location of intake sites, to facilitate access to service by prospective clients. Such sites should also have private offices, to ensure the confidentiality of the intake interview. Programs should note that the Americans with Disabilities Act (ADA) also requires them to have accommodations in place to work with deaf and hearing impaired prospective clients. (See Standard 3.2.)

When conducting an intake interview, staff or volunteers should exhibit patience and concern, eliciting facts regarding income eligibility and the individual’s legal problem in a sensitive and professional manner. They should be prepared to explain the scope of the services offered by the program, the relationship between the prospective client, the volunteers and the program, and if applicable, the placement process and the responsibilities of a client if the case is placed. These relationships and the case placement process may seem complicated and confusing to a potential client, especially if that individual entered the interview with the expectation that he or she would obtain legal counsel at the interview’s end. For that reason, those conducting intake should be patient in explaining this information and should be receptive to any questions the prospective client may have regarding it.

To facilitate thorough intake interviews that maintain client dignity, the program should provide training in the following areas to staff

and volunteers who are responsible for conducting the interviews: income eligibility determinations, substantive law issues and interview techniques. In addition, training or written materials on legal and social services resources available in the community should be provided to aid intake personnel in making useful referrals for prospective clients and clients when such referrals are necessary.

Standard 2.13 (Service Delivery Systems—Eligibility Guidelines)

A pro bono program should establish written guidelines to determine a prospective client's eligibility for service.

COMMENTARY

Most funding sources for pro bono programs set eligibility criteria for client service based upon one or more of the following: income or other financial criteria; geography, (e.g. residency within a particular county); status (e.g. persons with AIDS); type of case (e.g. administrative hearing, appeal or impact case); or subject matter, (e.g. employment cases or civil rights issues). Consistent with the specific criteria set forth by funders and in consultation with staff, the governing body should establish a written policy regarding eligibility for service. If a given eligibility factor is one that may change while a client is receiving service (i.e. financial status, residency in a particular area), the governing body should address how that change will affect continuing eligibility for the receipt of pro bono services. Input from the client community should be sought in developing the eligibility guidelines, whenever practicable.

In setting financial eligibility, a program should take into consideration local economic conditions and the resources of the program. The guidelines established should cover a variety of objective financial criteria including current income, prospective income, liquid assets, debts and work related expenses.

The established eligibility guidelines should be communicated to the program volunteers to avoid confusion regarding the acceptance of some cases by the program and the rejection of others. In addition, volunteers should be informed of any policies developed regarding changes in client eligibility while service is being delivered. This can be accomplished, for example, by sending a copy of the guidelines and policy statements to each volunteer when the volunteer's first case is assigned, or by distributing them at volunteer training events.

Periodic Evaluation of Guidelines

The governing body should reevaluate the eligibility guidelines periodically. This may be particularly important when there are changes in either provider funding sources or in the economic conditions of the community.

Eligibility Determinations

The commentary to Standard 2.1 of the ABA Civil Standards provides the following guidance on determining client eligibility:

The provider should obtain sufficient information during the intake interview to permit fair and thoughtful application of established eligibility guidelines. Data should be obtained in a manner that protects confidentiality, demonstrates respect for the prospective client, and encourages trust in the provider. Information should be recorded in sufficient detail to document compliance with the guidelines and to provide a record for review in the event that the decision regarding eligibility is challenged.

In some situations, a program may delegate the responsibility for determining eligibility to other providers of legal services or social services agencies. In such cases, it remains the responsibility of the program's governing body to establish eligibility criteria and procedures for

determining eligibility consistent with this standard. The governing body should communicate with any such entities so that it can be reasonably satisfied that they are in compliance with the established criteria and procedures. A program may also utilize volunteers to determine eligibility. In such situations, it should provide adequate training to such volunteers and should periodically review their eligibility determinations to reasonably ensure that those determinations are being properly made.

Standard 2.14 (Service Delivery Systems—Conflicts of Interest)

A pro bono program should establish policies and procedures to identify and address conflicts of interest for program and client, client and volunteer, and program and volunteer.

COMMENTARY

Overview of Ethics Principles

Generally, the same ethics principles and obligations apply equally to attorneys in paying cases as well as attorneys in pro bono cases. The only exception to this is the rule contained in Model Rule 6.5 (“Nonprofit And Court-Annexed Limited Legal Services Programs.”), which has been adopted in many states and governs conflicts in limited scope representation. Ethics obligations prohibit a lawyer from undertaking a representation of one client that is directly adverse to another client, unless the clients consent and the lawyer believes that he or she is able to represent each client without adversely affecting the other. A lawyer generally may not act as an advocate against a person the lawyer represents in some other case, even if it is wholly unrelated. The principle underlying these ethical concepts is the duty of loyalty that each lawyer owes to a client. Loyalty is essential, for when individuals are faced with significant issues in their lives and seek legal counsel, they must have confidence that their lawyer will focus exclusively on the client’s interests.

A lawyer also has a professional duty to maintain client confidences. This obligation could be compromised, either purposefully or inadvertently, if a lawyer represents adverse parties. In addition, a lawyer may not use the confidences of a former client to that former client’s disadvantage when representing another client.

Application of Ethics Principles to Pro Bono Programs

Pro bono programs often face questions regarding conflicts of interest when parties who have interests adverse to one another each seeks pro bono representation by program volunteers. In some jurisdictions, ethics opinions have been rendered on this issue. A program should, therefore, first research the issue in its jurisdiction. If no opinion has been rendered, the program should recognize that determining whether an actual conflict of interest exists is always a question of judgment and depends on the particular facts presented regarding a program’s operation. While the ethics principles discussed above can provide guidance to programs, they were developed with a traditional legal practice in mind and do not specifically address the unique structure of pro bono programs and the unusual nature of the relationships established between clients, program staff and volunteers.

A definitive list of factors that would either permit or prohibit a program from referring parties with adverse interests in the same case cannot be provided. There are some situations, however, in which both sides of a case should not be referred to program volunteers. For example, if a program provides direct legal advice to clients or to the program volunteers representing referred clients, both sides should not be referred. If, however, it is clear that the direction of a case is entirely in the control of the volunteer, no strategizing takes place between

the program staff and the volunteer, and care is taken to protect client confidences from disclosure to an adverse party's volunteer, referring parties with adverse interests is more likely to be permissible.

Programs should develop a conflicts of interest policy which takes into account the manner in which the program operates and the availability of free legal assistance from other sources in balancing the need to avoid conflicts of interest with the desire to maximize access. While no policy can anticipate every situation that may arise, the policy can establish guidelines regarding how the program should address conflicts.

Development of Program Procedures

The process for determining if conflicts of interest exist in particular situations should involve procedures that are employed at the earliest practicable point in discussions with a prospective client. A program should maintain conflicts information in a case management program, database or even an excel spreadsheet. Through use of this system, many potential conflicts may be uncovered based simply upon the name and address of the prospective client. For those programs that regularly place cases with particular law firms, it is advisable to have a system in place for checking potential conflicts of the firm prior to making a referral. Programs should work with firms to ensure that the firm performs its conflicts checks promptly.

The mere fact that a client has consulted with the pro bono organization may be confidential. As a result, if a conflict is discovered, the program should only tell the second party to call that the program cannot represent that party (and not explain why). Divulging the existence of a conflict could reveal confidential client information.

If a conflict is discovered in which representation of one client would be directly adverse to another, a strict reading of ethics rules would dictate that the program refrain from referring out both sides of a case, unless consent is obtained from both parties and program staff believe that representation of one party will not adversely affect the relationship with the other party. It is recognized, however, that often a person of limited means may have no other place to turn for legal help. Faced with this reality and the concern for meeting the legal needs of low-income persons, a program may want to consider establishing means for assisting these individuals while honoring its ethical obligation to avoid conflicts of interest.

One possible approach is simply to refer the individual to other providers of legal services, if they exist in the service area. Another possibility is for the program to establish a "conflicts panel," an approach that has been sanctioned in at least one jurisdiction. Under this system a panel is formed composed of volunteers who agree to interview clients and possibly represent them only in cases in which the program is unable to do so, due to a conflict of interest. The program does only a minimal amount of screening that may include, for example, the individual's name, address and problem type. The program does not provide any advice to the individual seeking assistance, nor does it provide advice, case supervision or any other back-up to the conflicts panel volunteers.

The drawback to establishing a conflicts panel is that the program loses the ability to employ its normal quality control mechanisms. Nevertheless, by establishing a conflicts panel, a program is able to assist persons of limited means who otherwise may be unlikely to obtain needed counsel.

In some states, the program may designate some program staff as responsible for conflicts cases, and create an ethical wall between them and the rest of the staff. Other states, however, explicitly prohibit such an approach.

“Business” or “Positional” Conflicts

Business conflicts, such as are sometimes cited in foreclosure, bankruptcy or employment cases, are often not conflicts per se but rather business concerns. Firms often feel that if they take such cases on behalf of pro bono clients, that banks or large corporate employers may thereafter be reluctant to hire the firm. Programs can try calling attention to the business reasons in favor of taking on the pro bono cases, for example, the training value of taking an employment case on the “other” side. Sometimes, however, the situation presents a true conflict, or puts the volunteer in a bad position, for example, when internal pressures may interfere with a volunteer’s zealous representation of the client.

“Issue” Conflicts

Occasionally, pro bono attorneys or their firms may find that an issue conflict has arisen. In this situation, the attorney or law firm has taken a position (usually on appeal) advocating for a particular interpretation of the law. Then, the attorney or firm is asked to take a pro bono case that requires advocating just the opposite. While this is not a technical conflict under the Rules of Professional Conduct, it can put the attorney or firm in an untenable position with respect to the court and the bench. In consequence, programs should avoid placing cases with attorneys or firms with an issue conflict in that particular case.

Concerted Efforts By Third Parties to Create a Conflict

Programs should be cognizant of the practice in some communities of one party contacting the legal services/pro bono program and going through intake, knowing the party will ultimately not be eligible for services, in order to intentionally conflict out the program from helping the opposing party. If the program identifies this pattern of conduct in its community, it should work with other community providers to find ways to respond, including doing income screening and verification before collecting any other information from the prospective client.

Standard 2.15 (Service Delivery Systems—Acceptance Policy)

A pro bono program should establish a policy regarding the acceptance of cases that focuses resources on the identified priorities of the program, considers the maximum number of cases that volunteers can reasonably address and takes into account the resources available to provide volunteers with any necessary preparation and support.

COMMENTARY

The need for legal services by the eligible client community is far greater than the resources available to meet that need. For that reason, it is essential that programs allocate their limited resources by establishing program priorities. It is equally important that each program which utilizes volunteers develops a policy and procedure for determining which specific cases it will accept, to enable it to ascertain that the cases addressed by program volunteers fall within its established priorities. Furthermore, because the demand for service is so great, it is unlikely that every prospective client with a problem that falls within program priorities will be able to be served. A program should therefore have an acceptance policy in place so that rational decisions can be made regarding which prospective clients are likely to receive service, and the type of service they receive. In light of new rules permitting limited scope or “unbundled” representation in most states, the program can also consider the continuum of service in designing an acceptance policy, allocating certain types of cases to a limited scope approach.

The first issue that a program must address is which of the many prospective clients seeking assistance will have their cases placed with

program volunteers. To make this decision in a rational manner, a program should establish an acceptance policy. This policy should consider many factors, perhaps the most important of which are: the legal merit of the case, and the impact on the prospective client's life if the case is accepted or rejected. In addition to maximizing the organization's impact on its community, this is also crucial for building strong relationships with volunteers. If the case has legal merit, a volunteer can apply his or her legal skills and often obtain a favorable result for the client, which is likely to provide satisfaction for the volunteer. Similarly, if the volunteer's assistance can provide some benefit to the client, the volunteer is likely to obtain a sense of satisfaction in attempting to help the client. In either situation, it is likely that the volunteer will be willing to accept cases from the program in the future. If however, the cases referred have no legal merit or the client can receive little benefit, the volunteer may balk at accepting additional cases from the program.

In fashioning an acceptance policy, a program should consider the following factors:

- The relationship of the issues presented to established program priorities;
- The legal merit of the case;
- The impact on the prospective client's life if the case is accepted or rejected;
- The number of client community members affected by the case under consideration;
- The existence of sufficient volunteer resources;
- The ability to serve clients at different points along the continuum of service;
- When applicable, the existence of sufficient staff resources to facilitate effective assistance by volunteers;
- Other legal resources available in the community to assist the client in resolving the problem; and
- Other factors that may make it difficult to provide service, such as the posture of the case, if the case is in litigation.

There are other important criteria for case acceptance, however. The program should also make a determination about whether it believes the prospective client will be able to effectively work with a volunteer: show up for appointments, be responsive when the volunteer reaches out, and not have unaddressed mental health or other challenges that would significantly impede the attorney-client relationship.

The program may also choose to accept cases where the merit is not particularly strong, but the prospective client is significantly vulnerable. A single parent with four small children in the home may be appropriate for placement even if his case is somewhat weak, if the program determines that the prospective client will benefit from the support and protection afforded by representation, and the volunteer will find the prospective client sympathetic.

These considerations will still apply if the program is placing the case on a limited scope basis, outside of the context of a one-shot clinical interaction. When placing a client only for representation at a particular child custody hearing, and not for the entire case, for example, the program should still consider the issues of merit, impact, vulnerability and ability to work with a volunteer. In a clinic or "one-off" situation, however, where there may be less screening and more supervision by program staff, the program may wish to be less selective.

For those programs that rely upon staff to make assignments to volunteers and provide them with support, an acceptance policy is also necessary to control the demands on available staff time so that when cases are assigned, staff will be able to properly prepare them and provide any support that may be needed by volunteers. Implementation of an acceptance policy by such programs can aid in the retention of

volunteers, as a program is more likely to place cases that have legal merit and/or involve prospective clients whose situation will either be improved through the provision of service or who will suffer loss if service is not provided.

The acceptance policy should establish a procedure for determining as quickly as possible whether a case will be accepted for possible service by a volunteer. Prospective clients should be notified of that decision as soon as possible. Prospective clients whose cases are not accepted should be referred to other sources for assistance, if available. Such referrals should be made in a timely manner to permit rejected prospective clients to take necessary steps to protect their rights.

Implementation of the acceptance policy requires thoughtful evaluation of specific cases to determine if acceptance is appropriate. A program may use its staff, staff of a local legal services program, or volunteers to conduct intake through which it will obtain the information that is required for acceptance decisions to be made. Regardless of who conducts intake, it is essential that those individuals be thoroughly skilled in interviewing clients and have sufficient legal knowledge or sufficient legal supervision so that a complete picture of the prospective clients' circumstances can be developed.

In some instances, a person other than staff of the program may be responsible for making the acceptance decision. This may occur, for example, if a law firm makes an institutional commitment to staff a full service clinic at which prospective clients are interviewed, decisions are made regarding which clients will be served and service is provided by employees of the firm. In such situations, the program should take reasonable measures to ascertain that such individuals understand and are able to apply the established acceptance policy.

A program should re-evaluate its acceptance policy regularly, taking into consideration changes in: its priorities, its staffing, its volunteer pool, its delivery design and the availability of other resources in the community to provide legal assistance to prospective clients.

OUTCOMES AND EVALUATION

Standard 2.16 (Outcomes and Evaluation—Effecting Impact)

A pro bono program should strive to achieve meaningful and lasting results responsive to clients' needs and objectives by utilizing volunteers to resolve or assist in resolving clients' individual legal problems, facilitate client self-sufficiency and empowerment, and improve laws and practices affecting low-income and disadvantaged clients.

COMMENTARY

One important goal of legal services generally, and pro bono specifically, is to increase meaningful access to the legal system. In addition, a core goal of pro bono programs is to make a significant and lasting impact on the lives of clients and client communities. Programs can achieve these goals through brief advice, *pro se* assistance, full-scale individual representation, impact litigation, transactional work and/or policy advocacy. The delivery models may exclusively focus on deploying volunteers or utilize a mix of staff and volunteer attorneys. Pro bono programs aid individual clients in resolving their legal problems by providing those individuals with volunteers to assist them. The types of cases that volunteers work on will depend upon the priorities established by the program. In all of these situations, however, programs should examine the impact of their work, and design and refine their service delivery models to maximize that impact.

In addition to addressing clients' legal problems, a program can assist clients achieve the lasting result of increased self-sufficiency. The

decisions a program makes regarding the types of services volunteers render can impact the development of increased client self-reliance. For example, by focusing on community economic development, offering specific public legal education, or giving *pro se* instructions to clients so that they can represent themselves, the program may assist clients in becoming more self-sufficient. In addition, programs can offer training sessions and engage in discussions with volunteers that stress the importance of client self-sufficiency and the role the volunteers can play in helping clients achieve it.

At times, resolution of a legal problem presented by an individual client may require litigation that raises either statutory or constitutional issues; administrative representation that seeks a change in agency rules, regulations and practices of general applicability; or legislative representation that seeks statutory change. Likewise, there are times when a community group or social service agency may identify a problem in the client community such as the availability of affordable housing that would require complex litigation, transactional legal work or legislative or administrative lobbying to solve. When a program is unable to place these types of cases with volunteers, due to priorities, restrictions from funding sources, or other reasons, it should try to refer them to other sources for representation.

It should be noted, however, that many pro bono programs do place cases that are aimed at broad challenges to legal problems confronting clients and the client community or that focus on specific issues such as community economic development to meet clients' objectives. Some programs are organized specifically for such purposes. Other programs, in an attempt both to meet client needs and objectives and to offer a variety of challenging opportunities to volunteers, are increasingly including these types of cases within their delivery design. Pro bono programs are in a unique position to identify consistent patterns—egregious landlords, for example—especially working in consultation with other legal aid groups. This offers the program the opportunity to build a bridge between individual case representation and creating more systemic change. Programs should develop methods for identifying repeat offenders or trends. If the program does not have the resources to take on a larger impact case arising from their discoveries, it can partner with another legal aid program able to take on the case.

Regardless of the subject matter or method of assistance involved, the program staff should stress to all volunteers the importance of clearly identifying the objectives sought by the client. If it is determined that the clients' objectives are ones requiring services that are beyond the scope of those provided by the program (e.g. advice clinic or advice hotline and client needs more extensive services), the program should, whenever possible, provide such clients with appropriate referrals to other providers that are organized to furnish the type of services needed.

Standard 2.17 (Outcomes and Evaluation—Outcome measurement)

Programs should develop and utilize strategies for assessing whether they have achieved the objectives set forth in Standard 2.16.

COMMENTARY

Importance of Measuring Outcomes

Measuring the impact the work a program does is of paramount importance for several reasons. Most importantly, it enables the program to determine whether it is effective and how it might improve the services it provides to clients. Rather than relying on perception or anecdotal evidence, gathering data and understanding outcomes offers the program a chance to see concretely which of the program's service delivery models and focuses are having the greatest impact. This information can then be used to inform the program's decisions and planning going forward.

In addition, outcome measurement can also be vital in cultivating a robust funding stream. Increasingly, both private and government institutional funders require that grantees provide specific outcome information to assure them of a strong return on investment (ROI).

Finally, concrete outcome information helps a program communicate to the public the work it does and the importance of that work. This explanation is vital to a program's ongoing stature in the community and fiscal health. Such explanations can also be crucial on a statewide basis. Many states have coordinated efforts to quantify the financial value to a state of funding legal services programs. Such studies have enabled statewide coalitions to demonstrate that legal services brings millions of dollars into the state annually—and as a result, persuade state legislatures to preserve or increase funding for legal services.

Definitions: Outputs and Outcomes

Outcomes are sometimes spoken of in contrast with “outputs.” By “outputs,” we generally mean units of service:

- Number of cases where brief advice was provided
- Number of cases where litigation took place, and whether it resulted in a court judgment or a settlement
- Number of litigants seen at a clinic.

In focusing on outcomes rather than outputs, programs look at the effect their work has on the client. The term “outcomes” can mean different things. It sometimes refers to direct outcomes of cases:

- Did the client obtain the sought-after restraining order?
- Did the court order that the tenant should be permitted to stay in her home?
- What were the monetary damages received by the employee?

Other times, the term is used to describe a more long-range impact of services on the client:

- Were there further incidents of domestic violence?
- Did the children's school performance improve after the domestic violence incidents ended?
- Was the tenant still in her home?
- Did the employee's income remain stable or increase?

Both types of outcome measurement—immediate case outcome and longer-term client impact—are extremely valuable. Immediate case outcome data will tell a program whether the service delivery model, litigation strategy, or other elements of representation are successful, or whether they should be examined and revised. Longer-term client impact data informs a program about the impact on the client, family and community, and whether the overall strategy, priorities and focus of the program are making a lasting difference in client communities. In addition, both types of data can be crucial in demonstrating the economic impact of legal services on the community, and making the case for funding.

The Role of Client Objectives in Evaluating Outcome Data

A program may have a general concept of a good case outcome for a client. In some instances, however, the program and the client may have

differing—although valid—objectives. Case outcome data should be weighed against these respective objectives. Conversely, the client may have unrealistic expectations or objectives. In such cases, those objectives should be included in the analysis, but probably given less weight.

To determine if client objectives have been achieved, the program should obtain feedback from the client (through client satisfaction questionnaires) and the volunteer, when appropriate (through case closing forms or other communication appropriate to the model of service delivery utilized). Other sources of feedback include court statistics, interviews with court personnel, and studies of community demographics. If a program discovers that client objectives are largely not being met, it will need to re-evaluate its method of service delivery, the quality of the services being delivered by its volunteers, and how it is communicating the nature of the services it is offering to clients among other factors, to determine ways in which it can more effectively serve clients and/or manage expectations.

Methodology

Obtaining case outcome data

Case Management Software (CMS) can be used fairly readily to collect the results of individual cases. Many programs develop a checklist of possible case outcomes which is built into the CMS. For cases handled by staff advocates, the program makes recording the specific case outcomes part of the advocate's responsibility in closing the case. For pro bono cases, the outcomes list may be provided to the volunteer at the outset or at the close of a case, and then entered into the CMS by the program. Alternatively, it is possible to build an online portal where volunteers can input the outcomes information themselves. (See Standard 4.11.) An email reminder to the volunteer to report the outcome can include the link to this portal.

Case outcome information can theoretically be obtained from the client, but this data is significantly less reliable, and therefore not optimal.

Obtaining Longer Term Client Impact Data

Finding out how clients are doing three or six months after they received service from the program requires considerably more effort.

Telephone Follow-Up:

The most direct way to obtain information about how the client is doing is to contact the client. In order to do this, the program should make every effort to obtain many possible contact points from the client at the outset—telephone numbers of relatives, email addresses, and so forth, to increase the chances of locating the client later. Programs should also obtain permission to use electronic means of contact with the client such as text messaging or private messaging services. The program will need to develop a script to be used when clients are being interviewed. In order to obtain reliable data, each client should be asked the same questions. Programs may use staff for such calls or may find that volunteers (particularly undergraduate or law students) are interested and willing to conduct these surveys. Programs may also wish to consider paying clients in exchange for providing feedback (whether in a focus group or on an individual basis). Offering a grocery card can be an effective means of securing the client's cooperation in staying in touch with the program.

Surveying the Client by Mail

While significantly less labor-intensive, using a mail survey to collect information is also much less effective. Clients move frequently, and are also often reluctant to take the time to fill out a written survey. There are some strategies, however, to increase return rates on such surveys.

Simplifying Data Collection

In order to obtain useful and effective data, a program does not necessarily need to collect data constantly. It may elect to do as much client surveying as it can every six (6) months. Alternatively, it may choose to do intensive client follow up for one or two months out of the year. Local colleges and universities will frequently have professors and graduate students eager to assist in the design of data collection, and the analysis of that data.

Standard 2.18 (Outcome and Evaluation—Periodic Program Evaluation)

A pro bono program should periodically evaluate its operational effectiveness and implement appropriate improvements as needed.

COMMENTARY

A program should periodically review its entire operation because the needs of clients and the needs and interests of volunteers can change, systems can become outdated, and effectively planning for the future necessitates examining past performance. During its periodic review, a program should determine if it is: providing high quality legal services to clients in an efficient and effective manner, satisfactorily meeting volunteer needs and accommodating volunteer interests to the extent possible, utilizing innovative strategies to leverage its available resources to meet client needs, and fulfilling the terms set by its funders. The assessment process should foster forward-looking and judicious management of the program, attending to program weaknesses, enforcing program strengths and building upon program successes.¹¹⁷

Methodology

Some of the methodology for obtaining outcome information is outlined in Standard 2.16. In addition, there are a variety of methods available for evaluating the program's operation. These range from internal reporting systems that provide the governing body with information on program activities, to formal review by funding sources, peer review teams or other independent outside evaluators. While all programs should engage in some internal review, an evaluation by outside sources is likely to be more thorough and objective. A program should therefore seriously consider obtaining such an evaluation. Regardless of the method of assessment employed by the program, the evaluators should be supplied with information that enables them to judge the program's operation effectively.

Subjects to Assess

The evaluation should encompass all the areas that are addressed in these Standards. There are, however, certain issues regarding a program's operation that should be given special emphasis in the assessment process. One is the satisfaction of clients with the quality and results of the services provided to them. Client satisfaction measurements can be used to evaluate program staff's and volunteers' interactions with clients, as well as the effectiveness of the program's delivery design in meeting clients' needs.

A program should make its best efforts to assess the quality of service being provided by volunteers. If a program directly refers cases to individual volunteers, the tracking and oversight system it establishes will certainly aid in evaluating the quality of the services provided. In addition, there are several outside sources that a program can turn to for information. Members of the legal community may be particularly helpful in this area because through the observations of judges and lawyers, the program may be able to learn about the strengths and weaknesses of volunteers' practice of law. Staff of community organizations at which intake sites are established or those who otherwise have the

opportunity to observe program volunteers as they work with members of the community may be another valuable source of information. Of course, clients' views are critical and their opinions should be sought regarding whether their objectives were met, they were pleased with the service received, and they would recommend their volunteer attorney or paralegal to others seeking legal assistance. A program should also consider requesting that volunteers provide self-assessments of the quality and manner of the service they provided. In addition, of course, the program should endeavor to assess more objective measures of client impact.

Other measures of program impact can be obtained from the court, where a program may be able to measure a reduction in the number of court appearances per case, for example, or a decrease in the number of papers rejected as inadequate or incomplete. These measures will help the program make its case to the courts for partnership in addressing client needs.

A program should be concerned with its ability to recruit, utilize and retain volunteers. That evaluation process, however, must go beyond simply reviewing the number of volunteers who have agreed to take part in the program; it should also determine whether those volunteers are regularly participating in the program, the number of hours they are contributing, the number of cases they are handling and the extent of services they are providing—and the reasons behind these answers. This information is vital because without volunteers who are actively involved in providing service to clients, a program cannot consider itself a success. A program should also evaluate the manner in which it is currently utilizing volunteers and determine if there are other models of service delivery that may more effectively and efficiently leverage its volunteer resources to meet client needs. A program should also seek the views of its volunteers regarding their overall satisfaction with the program and any suggestions that they may have for improving it.

Determining if a program is achieving the goal of meeting its identified priorities should be an important element of any program review. Information that is useful in making this determination includes the types and number of cases that a program is placing with volunteers. A program should also identify the types of cases within its priorities for which it is experiencing difficulty in placing with volunteers and those non-priority cases that generate the most requests for assistance.

A program should consider whether the funds allocated to it are being used effectively and efficiently in view of the program's goals. While there is no universally accepted or used method of reviewing, calculating or evaluating the cost effectiveness and efficiency of programs, each program should decide on the types of quantitative information appropriate to that program and should assemble and present it consistently and on a regular basis over time (normally either monthly or quarterly, and annually). Such information will help the governing body obtain an overview of the program, understand the fundamental economics of the program and identify changes in the program over time.

The types of quantitative information that a program may consider gathering and analyzing are: the number of clients served or cases completed; the extent of the services provide (perhaps expressed in hours of volunteer service); the type and complexity of the services; the results obtained for the client and the client community; the number of volunteers participating in the program; and the aggregate and average amount of volunteer time provided annually. This information could lead a program to a cost-per-case or cost-per-client measure, but whether such a measure is meaningful for a particular program must be considered in light of the qualitative evaluation of the services provided and the program's costs of providing tracking, oversight, training and support which are necessary to facilitate the provision of high quality legal services by volunteers.

A program's relations with the organized bar and other providers of legal services should be of particular concern in the evaluation process because developing coordinated and cooperative relations with both groups is an essential ingredient to a program's success. To gauge

the nature of the relationships developed, those evaluating the program should attempt to hold frank discussions with representatives of each organization, exploring with them the ways in which positive relations have been fostered, any problems that exist and the ways in which relations may be improved.

The development of a successful pro bono program can lead to many intangible benefits for the client community and the legal services community. These benefits include a heightened level of awareness of and involvement with issues related to low-income persons and legal services programs by the organized bar and individual private attorneys. In evaluating its effectiveness, a program should consider how successful it has been in obtaining these important benefits for itself, other providers and the client community.

Strategic Planning

One of the principal tools for systematically considering the program's impact and how to increase that impact is to engage in periodic strategic planning. Strategic planning can have many different configurations, and can be a short or long-term process. The process should involve consideration of the program's "theory of change": the "if we do X, we believe it will lead to Y." If, for example, the program is providing full scope representation in family law cases, it might determine that it wishes to help clients and their families build safer and more stable lives. It might conclude that resolving domestic violence, custody and support issues leads to greater safety and stability. It might then go on to examine the outcomes in the cases it has handled (see Standards 2.15 and 2.16) and determine whether its particular approach to case assessment, placement and handling is producing the desired results. If it is not, the program should examine what changes are necessary and how to implement those changes.

Sometimes the evaluation process leads to discouraging information about the program and its impact. While this is an uncomfortable moment for programs, it is better to learn this information than to be oblivious. Programs can be adjusted to be more effective, and the long-term health of the program is certain to be stronger.

SECTION 3: RELATIONS WITH CLIENTS

THE INITIAL CONTACT

Standard 3.1 (The Initial Contact—Establishment of an Effective Relationship)

A pro bono program should strive to establish a relationship with each client and prospective client which fosters trust and preserves client dignity.

COMMENTARY

Developing a relationship of trust and candor with clients and prospective clients is critical for the provision of effective service by the volunteer and/or program and for the implementation of meaningful volunteer support and quality control by the program. The commentary to the ABA's Civil Standards provides the following analysis of the barriers that may exist to establishing such a relationship, noting that many prospective clients:

....may mistrust and fear lawyers as part of a hostile and unfamiliar legal system or as part of a social services bureaucracy from which they are already alienated. They may be intimidated by the "professionals" from whom they seek help. They may misunderstand what constitutes a legal problem or what remedies are available through the legal system. This may keep some clients from seeking legal assistance. For others, it may leave doubts about the representation they receive.

These barriers may be related to the client or prospective client's low-income background, or to other demographic factors. The barriers exist whether the service provided is legal representation, counsel and advice or some other form of service. The pro bono program should seek to overcome these barriers in its relationships with clients and prospective clients, and it should provide support and training to volunteers that will aid them in overcoming such barriers as well.

Development and Maintenance of an Effective Relationship Between the Client and the Program

An important place to begin the process of establishing an effective relationship between clients and the program is in the program's delivery design. How the program is set up, the scope of its services, its ability to address clients' needs and the degree to which it is tailored to local circumstances can all play an important role in helping to demystify the law, lawyers and the legal system. In addition, consideration of the client and program relationship in the program's design can help eliminate bureaucratic, cumbersome procedures that are intimidating to clients and prospective clients. This is particularly true with the intake, case placement and other direct client service components of programs.

The intake process marks the first point of contact with prospective clients and for many pro bono programs, the most extensive interaction with prospective clients is likely to occur then. As a result, it is vital that intake be designed to foster client trust and to preserve client dignity. Intake procedures should demonstrate the program's respect for prospective clients and should assure the confidentiality of any client information received. If a program conducts in-person interviews, the waiting room should create a professional environment that puts clients at ease. Prospective clients should not be subject to lengthy delays in being interviewed, as can be the case with many of the bureaucracies with which they must deal.

Program intake should include a clear explanation of the services offered by the program. In those programs that refer clients to attorneys, the case placement process should be explained to each prospective client and the case placement decision should be made in a timely manner. If a case is not accepted, reasons for the decision should be explained clearly and promptly, and prospective clients desiring a review of that decision should be given information regarding the internal grievance procedure. The program should attempt to refer rejected prospective clients to other sources of assistance, if they exist. If no resources exist, however, the program should endeavor to explain this to the prospective client, rather than to offer a referral the program knows will not be effective. These referrals should be made as quickly as possible to enable rejected prospective clients to seek other assistance if necessary to protect their legal rights.

Where the program has expertise in the area of law involved, but must refer the prospective client elsewhere for help, the program's attorney should make sure that the prospective client is aware of any pending deadlines relating to the case. For those cases being referred elsewhere, where the program does not have expertise in the area of law, or where analyzing the applicable deadlines would require obtaining more facts, the program should explain clearly to the prospective client that there may be deadlines affecting the case, but that the program is not and cannot advise the prospective client on the deadlines. In such cases, the prospective client should be urged to contact an attorney or alternative agency as soon as possible. In referring a case to another agency, the program should endeavor (if at all possible) to make an appointment for the prospective client, rather than simply giving the prospective client a phone number to call. This will greatly increase the chances that the prospective client will follow through.

If any attorney-client relationship is created with the client, however limited in time or scope, it should be memorialized in a writing signed by client and attorney. (See Standard 3.3.)

The program should provide training and orientation to each staff member who has direct contact with clients and prospective clients to reinforce the importance of treating clients with dignity and respect.

Standard 3.2 (The Initial Contact—Communication with Clients)

A pro bono program and its volunteers should communicate effectively with clients and prospective clients, addressing issues of language, education, literacy, disability and safety.

COMMENTARY

To form an effective relationship with a client or prospective client, it is vital that meaningful communication take place between the client and the program, the client and the volunteer, and the volunteer and the program. Clients may be confused and intimidated by the maze of

legal terms and procedures that they are confronting, frequently for the first time. Both program staff and volunteers should, therefore, make every effort to communicate with clients in non-technical language that can be clearly understood.

Language Access

A program should communicate with clients in a language spoken and understood by the client, either directly or through the use of an interpreter, to obtain all the facts and to explain available options and results. When a significant number of clients speak and understand only a particular language, the program should attempt to recruit staff that speaks that language, to the extent practicable. (See Standard 2.1.) The program should strive for a similar bilingual capability among its volunteers. Specialized recruitment drives that explain the need and that focus, for example, on minority bar associations such as a local Hispanic or Asian Pacific bar association may be a successful means of attracting bilingual attorney or paralegal volunteers.

A program may find that it is unable to attract bilingual staff or bilingual attorney or paralegal volunteers. In that situation, the program should make every effort to recruit bilingual volunteers who are willing to act as interpreters for either the program or the volunteer. The program may consider a recruitment drive targeted at local court interpreters. In addition, local community organizations or social service agencies that serve a particular ethnic or cultural population may be useful contacts for recruiting bilingual volunteers. Law students and college students interested in a career in law can also be excellent interpreting volunteers. The program should create or locate training for volunteer interpreters, however, to ensure that they understand issues of confidentiality, respect, and the need to interpret exactly what is said (and not add their own thoughts or advice). There are also resources available for telephonic interpretation that, while not inexpensive, can be necessary in making legal services accessible to monolingual non-English speakers. Where a volunteer is associated with a larger law firm, that firm may be willing to provide either a paid professional interpreter, or a staff member of the law firm willing to serve as a volunteer interpreter. In the latter situation, the program may wish to offer the staff member a brief orientation to interpretation.

Whenever possible, a program and its volunteers should rely on staff members or volunteer interpreters rather than a friend or relative of the client to provide interpreting services. This is advisable for several reasons. If the interpreter is clearly an agent of the lawyer, as would be the case with staff or volunteers, the confidentiality of the information is protected under ethical rules. It is less clear, however, if confidentiality is protected when the interpreter is a friend or relative. In addition, although the client may feel more comfortable with a friend or relative, that individual may be too closely involved with the circumstances of the case to provide neutral interpretation.

Clients with Disabilities

It is vital that a program and its volunteers have the ability to communicate effectively with clients and prospective clients who are disabled to obtain all of the facts, explain available options and results, and be in compliance with federal law. Unlike providing language assistance, which is certainly a best practice, providing interpretation or other reasonable accommodation for those who are disabled (for example, deaf clients) is mandated by federal law. Similarly, websites and other online portals must also be accessible. The program needs to develop methods for overcoming any communication barriers that may exist when individuals who are visually impaired, hearing impaired, speech impaired or cognitively impaired seek assistance from the program. In addition, the program has the responsibility to assist volunteers in overcoming those barriers. Programs should note that the law requires only “reasonable accommodations.” For example, in a smaller program

a reasonable accommodation may involve only taking the time to exchange written notes with a deaf client, if a sign language interpreter cannot reasonable be obtained.

If a client or prospective client is visually impaired, the primary barrier faced is reading written correspondences or important documents. In some situations, using large type print, which is easily produced with current technology, can be a solution. If a client or prospective client has no sight, the program should seek the pro bono services of a Braille translator or use audio tapes or in-person or telephone conversations to communicate information to the client. If the program uses the internet to interact with clients and prospective clients, it must ensure that the site is accessible.

For clients and prospective clients who are hearing impaired, there are also many methods for fostering communication. Some programs that are affiliated with a larger organization, such as a staff model legal services program or a bar association, may have access to a Telecommunication Device for the Deaf (TDD), or a full service or advice clinic may be housed by an organization or community group that has such access. Alternatively, the use of a sign language interpreter, lip reading, or writing notes should be considered. Some of these same methods are also likely to be effective with individuals who are speech impaired. Many states have resources available to facilitate telephone communication for people who are deaf or hearing-impaired.

The range of cognitive impairments and capacities that clients and prospective clients may have, and the effect of those impairments on communication, can vary greatly. In addition, the degree of cognitive impairment may fluctuate. Effective communication in such cases often requires extra patience, careful interviewing and the repetition of advice or instructions.

Clients and prospective clients with mental health issues may require special approaches to interviewing. A quieter environment or one with fewer people may feel safer to some. The program should take into consideration, however, the safety of staff—ensuring that there are up-to-date safety procedures in place, that staff is trained on those procedures and that they are tested periodically.

When matching clients with disabilities with volunteers, the program should consider the special skills of its volunteers. For example, some volunteers may have knowledge of sign language, while others may be able to translate into Braille. In addition, certain volunteers may be particularly patient and understanding, and therefore, good matches for clients with cognitive disabilities. In any event, the program has a responsibility to provide as much assistance to its volunteers as is feasible to foster effective communication between the volunteer and any disabled client it refers.

Clients with Literacy Challenges

If a client or prospective client appears to be uncomfortable with reading and writing, it will be important to read to the client, slowly, all written materials that you need the client or prospective client to sign. The client or prospective client may sign with an “X,” but it will be particularly important to explain written agreements thoroughly. It is appropriate to add a sentence to a retainer agreement stating that the advocate has read the document to the client.

Education Issues

Many clients and prospective clients have not had high levels of education. Their ability to read and understand may be impacted by this limitation. It is a good practice to have all written materials for clients and prospective clients—including retainer agreements, client agreements, terms of service, and directions—prepared at a fifth grade reading level.

Client Safety Issues

Programs should be sure to ask clients and prospective clients who provide a phone number, whether it is safe to leave a message for the client and prospective clients on that line. This is of particular concern in domestic violence and other family law cases, where the opposing party may well have access to the client or prospective client's telephone and/or messages. This may also be true for materials sent by mail. Programs should be sure to ask the client or prospective client about this, and obtain alternate contact numbers (a friend or relative, for example, who can get a message to the client).

ESTABLISHING THE RELATIONSHIP

Standard 3.3 (Establishing the Relationship—Creation and Scope of Relationships)

A pro bono program should clearly communicate the nature and scope 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.

COMMENTARY

The program should make an institutional determination as to whether it is creating an attorney-client relationship with its clients, and implement policies consistent with that determination. Then the program should ensure that the nature of the relationship is clearly spelled out.

One of the first issues that a program should address in this agreement is the nature of the relationship established between itself and the client. Specifically, the program must determine whether it stands in an attorney-client relationship with the prospective client and then communicate that fact in the agreement. There is no set of rules that can be applied in making this determination because ultimately, whether an attorney-client relationship exists in any situation can depend on the circumstances and may be a question of fact. As a general rule, the determination is in the eye of the beholder. In other words, the question is whether the individual believes an attorney-client relationship has been established, and whether there is a reasonable basis for that belief.

In making its determination, the program should examine the specific facts and circumstances regarding the nature and extent of the anticipated interaction between the client and the program staff prior to and following the placement of the case, as well as the nature and extent of the program's anticipated interaction with the volunteer during the pendency of the case.

While a definitive list of factors to consider in deciding if an attorney-client relationship exists between the program and the individual seeking the assistance of a pro bono attorney cannot be provided, there are certain actions on the part of the program that may indicate the existence or absence of the relationship. These include: obtaining confidential information from the prospective client; providing any legal advice to the individual prior to or after the referral is made; advising or discussing strategy with the pro bono attorney or paralegal regarding the conduct of the case; supervising the volunteer's work on the case or monitoring that work with some capacity to make inquiries; or continuing to obtain confidential information from the individual referred or from the individual's pro bono attorney or paralegal once the case is referred.

Clearly defining the relationship between the program, the volunteer and the client is essential to avoid confusion and misunderstanding

as to the duties and responsibilities of each party. A written agreement between the client and the volunteer, the client and the program, and the program and the volunteer is an effective means of providing a clear statement of the scope of the relationship and the obligations and expectations of each party. (There may also be a three-party co-counseling agreement between the client, the program and the volunteer.) Although the form and content of each agreement will vary depending upon the nature of the relationship and the type and extent of services to be rendered, all programs should take steps to ensure that the relationships among the parties are clearly set forth. All such agreements should be in writing. But if a writing is impractical (for example, when the communication takes place on a telephone hotline), the program should obtain an affirmative acknowledgement of the agreement, which the program may consider archiving through a recording. All materials for clients and prospective clients, including particularly written agreements between the client and the program, should be written at no higher than a fifth grade reading level, using plain language.

Agreement Between Client and Program

It must be noted that even though a program may inform an individual that it is not entering into an attorney-client relationship with that individual, it may nevertheless create that relationship through its actions (e.g. providing legal advice to the individual; supervising the work of the individual's pro bono attorney or paralegal). The program must thus do its best to evaluate honestly whether the attorney-client relationship is created and clearly communicate that fact in the agreement. In addition, there may be times when the nature of the relationship changes during the course of a case due to, for example, increased contact with the client. In such situations, the program will need to re-evaluate the nature of that relationship and amend its agreement with the client, if the facts warrant.

The agreement between the client and the program should also explain the process by which an individual will be referred to a volunteer for representation or advice. It should additionally reflect clearly the scope of the representation that will or may be provided—for example, trial only. In addition, the program should inform the client of the relationship between itself and the volunteer who will assist the client and explain the extent to which the program is responsible for the quality of the advice provided or work performed. The program should similarly explain to a client the process for voicing dissatisfaction with the program or with the volunteer to whom the client's case has been assigned.

The client should be informed that the program will provide information regarding the client's case to the volunteer with whom the case is placed, but that the program will otherwise protect the confidentiality of that information, consistent with applicable ethical obligations. The program should also explain to the client any court fees or litigation or transaction costs for which the client may be responsible. In addition, it should be made clear to clients who will retain attorneys' fees, the program or the volunteer, in the event that they are obtained from an adversary. Finally, the agreement should make clear which expenses, if any, will be paid by the volunteer or the firm, and if expenses are fronted, what the payment terms are.

Clients should be informed of their responsibilities which most often include providing accurate information regarding their financial status and being responsible for keeping all appointments with the volunteer. In addition, it should be explained to the client that the volunteer has agreed to represent or advise the client only with regard to the case placed with the volunteer. Often, a program establishes a policy that if other legal problems develop, the client has the responsibility to contact the program to seek new or additional assistance. That policy, or any other one developed by the program to address the issue, should be related to the client.

The agreement between the client and the program may take several forms. It may be contained in a document signed by both parties,

or in a document signed by all three parties: the client, the program and the pro bono volunteer, a copy of which should be provided to the client. The rights and responsibilities of the client and the program may also appear in a program brochure that is handed out to the client at an intake interview or is mailed with information regarding the client's clinic appointment date or referral to a volunteer. Likewise, that information can be set forth in a letter mailed to the client by the program. If the program is entering into an attorney-client relationship with the prospective client, however, the writing should be signed by both parties; a brochure or letter is insufficient. If the program has an in-person meeting with the client, and is entering into an attorney-client relationship with the client, then there should be a written document between the parties. Rules on this question, and precise requirements, may vary from state to state. Regardless of the form of the agreement, it is important that the nature of the relationship be clearly defined and communicated to the client. That communication should be written in clear and understandable language. If necessary, it should be translated, either in writing or orally through the use of a translator, into a language understood by the client.

In some programs, intake may be delegated to another entity or may be the responsibility of the volunteer (e.g., in the case of a volunteer staffed and administered full-service clinic). In these instances, if the program elects to provide oversight and receive information about the client and the case handled, the program's access to such information and its role may be reflected in a follow-up letter or in the agreement between the volunteer and the client, authorizing the program to obtain confidential information.

Agreement Between Client and Volunteer

Every volunteer who is representing or advising a client placed through the program should enter into a written retainer agreement with the client. The program can take steps to assure that this occurs by providing the volunteer with a form retainer agreement at the time of referral that is written in clear and understandable language. To maximize its utility, the retainer should be designed in a manner that enables it to be adapted by the volunteer to fit the specific circumstances of the case referred. Some attorneys and some legal entities, such as law firms, may prefer to use their customary retainer agreement or the retainer agreement they have specifically designed for pro bono cases, rather than the program's form retainer. In this instance, the program may wish to review that retainer agreement before it is given to the client, to ensure that all of the material issues discussed below are included. Each program will need to determine whether this type of oversight is desired and workable depending on the firm, its relationship to the program and its sense of autonomy over the case. If they are not, and the attorney elects not to amend that retainer for cases received through the program, the program should supplement its agreement with the client to include a discussion of those areas or otherwise ensure that all important topics are addressed. Ideally, the program will work with the firm to put the retainer agreement into plain language; some firms, however, will not be willing to make changes to their agreements. In this case, the program may need to work with the client to explain the provisions of the law firm's retainer agreement.

The agreement between the client and the volunteer should clearly articulate the scope of the assistance to be provided by the volunteer. Ways in which that scope may be limited by a pro bono lawyer include specifying the type of assistance to be provided (e.g. advice only; trial level advocacy) and/or specifying the subject matter. Providing this information at the beginning of the attorney-client relationship should aid in establishing realistic expectations on the part of the client and in avoiding frustration and burnout on the part of the volunteer.

The agreement should set forth the volunteer's ethical responsibility to protect the confidentiality of the information provided by the client. In cases involving representation, both the client and the volunteer should understand the client's right to determine the objectives of

representation and to participate in key decisions regarding the conduct of the case. Just as in the situation of a paying client, the retainer should reflect that fact that the client is the ultimate decision-maker about the handling of the case, except in situations where the client's desired strategy is prohibited by law or is unethical. There is sometimes some tension in pro bono cases on this issue, as (unlike for paying clients) there may not be a financial incentive for the client to minimize protracted litigation. The agreement offers a chance to educate the client about what to expect from the lawyer, and to lay the groundwork for lawyer and client working together as a team.

The policies adopted by the program regarding court costs and attorneys' fees should also be clearly articulated in the agreement, when applicable. The agreement should also spell out the grounds under which the attorney may terminate the representation, cost policies, and so forth. Many law firm retainer agreements now contain binding arbitration provisions. For at least some of these firms, this provision is required by their insurance carriers. If the firm is not willing or able to remove this provision for pro bono cases, programs may be able to negotiate a change to the agreement to provide that any such arbitration be conducted where the client is (as opposed to the main office of the firm).

The volunteer and the client should be directed how to communicate with each other. It is important to impress upon the client the importance of informing the volunteer of changes in circumstances affecting the case and advising the volunteer of their whereabouts so that the client can be contacted easily. Clients should understand their responsibility to keep appointments with the volunteer and to assist the volunteer in preparing a case by, for example: locating witnesses, documents or physical evidence; cooperating with discovery requests; and keeping records.

The retainer agreement entered into between the volunteer and the client should be in writing. If necessary, it should also be translated, either in writing or orally through the use of a translator, into a language understood by the client. The program or volunteer should make every effort to provide the translation support services needed in such cases, if they are not otherwise available. The program should emphasize to the volunteer

the importance of providing a copy of the retainer to the client in order to facilitate a clear understanding by the client of his or her rights and responsibilities during the course of representation.

Standard 3.4 (Establishing the Relationship—Protection of Client Confidences)

Consistent with ethical and legal responsibilities, a pro bono program should preserve information regarding clients and prospective clients from any disclosure not authorized by the client or prospective client.

COMMENTARY

A fundamental principle of the attorney-client relationship is that client confidences will be maintained, thereby enabling full and frank communication between the lawyer and the client. The program must make certain, therefore, that all staff understand their ethical obligation to protect client confidences. Staff must be further informed that this duty extends not only to information provided by clients, but also to information imparted by a prospective client seeking to engage a lawyer's services even though no legal services are performed and representation is declined. The program should also review the responsibility to maintain client confidences with volunteers, since the same rules govern pro bono cases as apply to paying cases. This may be best accomplished through training events or through the provision of printed

materials. This process is particularly important with non-attorney volunteers. It is advisable to have any volunteer who comes in to assist in the program's office sign a confidentiality agreement.

The responsibility to maintain confidentiality begins at intake. All prospective clients for service must be provided a confidential environment regardless of the method of intake (in-person, telephonically, electronically, through social media or other means) that is utilized by the program. This mandate can present particular challenges in the pro bono and legal services context, where intake often takes place at clinics and in other crowded areas. Programs should do their best in such circumstances to ensure that people cannot readily be overheard. The prospective client's identity as well as the confidential information supplied in support of the application should be protected from improper disclosure. Even if there is no attorney-client relationship, the program is still obligated to keep the information confidential—even if the program does not take the case.

The commentary to the ABA Civil Standards recognizes and warns against the following risks of unauthorized disclosure that are applicable to all providers of legal services:

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

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

There may be a tension between the legitimate interest of funding sources to account for the proper expenditure of funds, and the need for providers to protect the confidences and secrets of their clients. The American Bar Association has specifically ruled in Informal Opinion 1394 (1977) that a legal services provider cannot ethically give a funding source access to confidential information in the absence of willing and informed consent by the client. The scope of the prohibition against disclosure is unclear, however, and the ABA opinions provide only partial guidance. Informal opinions have found, for example, that protected information includes the identity, address and telephone number of legal services clients (Informal Opinion 1287 (1974)), and information contained in client trust fund records (Informal Opinion 1443 (1979)). The specific application of these restrictions to LSC-funded programs has been litigated in recent years. Essentially, these cases establish that if information is “merely confidential” but not protected by the attorney-client privilege, then the funder may obtain the information with the “force of law” (contained in the LSC appropriations act). The burden is therefore on the program to demonstrate that the information is protected by the attorney-client privilege, and therefore cannot be compelled even by “force of law.” Outside of the LSC context, providers often use a unique numeric identifier in place of the client's name, in order to be able to provide other information about the case to funders. Ultimately, the scope of the protection is a matter of state law, which should be examined to determine what, if any information may be disclosed to a funding source without client consent. Both practitioners and the provider should be familiar with the ethical considerations involved, and should only disclose information to a third party, including a funding source, consistent with ethical prescriptions and applicable law.

Standard 3.5 (Establishing the Relationship—Non-Discrimination and Diversity)

A pro bono program should not impermissibly discriminate in the acceptance and placement of cases.

COMMENTARY

Pro bono programs are engaged in providing services that are aimed at assuring access to justice and securing fair and equal treatment of clients. Given these goals, it would be inappropriate for a program to engage in any form of discrimination in its dealings with clients and prospective clients. In addition to potentially being illegal, such action would greatly harm the stature and credibility of the program and must therefore be avoided. To provide a clear statement to the community that it will not practice or tolerate discrimination within its organization, a program should adopt a written policy setting forth its antidiscrimination stance.

Many programs require as one case acceptance criteria that the prospective client be able to cooperate with an attorney. In some instances, this may mean declining to provide services to a prospective client with a severe mental disability that significantly affects his or her ability to cooperate with a volunteer attorney. To the extent that a program is familiar with their volunteers and their sensibilities and places cases accordingly, it will foster better lawyer-client relationships and reduce frustration. Programs should be particularly cautious in such situations, however, to ensure that the criteria it is applying are a genuine and reasonable measure to ensure the success of the relationship, and are not discriminatory. Some volunteer attorneys have particular ability and interest in working with clients with such disabilities, and sometimes such cases can be directed to those volunteers. Programs may also be able to provide support and training to volunteers, to expand the pool of prospective clients with whom they are willing and able to work. (See Standard 4.3.)

FOLLOW UP

Standard 3.6 (Follow Up—Client Satisfaction)

A pro bono program should obtain information from clients regarding their satisfaction with the program and its volunteers.

COMMENTARY

A goal of any pro bono program should be the satisfaction of the clients it serves. To determine whether clients are satisfied with both the program and their volunteer, the program should develop a method for obtaining client feedback once service has been completed. For example, the program may use a client satisfaction form that clients are asked to fill out and return to the program, or it may develop and administer a telephone survey to those clients who have phones. For cases that take several years to run their course, periodic, ongoing and open communication with the client regarding their satisfaction with the program, volunteer and services provided might be more effective than a survey at the end of the case.

Methodology

To gauge client satisfaction with various aspects of the program and its personnel, there is a wide range of information that can be gathered from the client including: was the client treated with courtesy and respect; was an explanation of the process for obtaining service provided to the client; were the client's questions regarding the program and its operation satisfactorily answered; was assistance available for the client if any problems arose with the volunteer; would the client use the program again; if the client would not use the program again, the reasons for that decision; and how can the program be improved to better serve clients.

The questions that will provide useful information regarding clients' views of the volunteers who provided assistance to them will vary

depending upon the nature of the program. For example, if the program is designed to utilize volunteers to provide advice only, some of the types of questions that may be posed include: did the volunteer treat the client with courtesy; did the volunteer answer the client's questions; was the client comfortable talking the volunteer; was the client satisfied with the advice received; was the client able to obtain his or her objective based upon the advice received; and would the client want the same volunteer if he or she had another legal problem. If cases are placed with volunteers for counsel or representation, examples of additional information that the program would want to obtain include: did the volunteer keep the client informed of developments in the case; was the volunteer easy to contact; was the client satisfied with the outcome of the case; was the client satisfied with the quality of work performed; was the client satisfied with the time it took to resolve the case; and did the client understand why the case turned out as it did. In addition, clients should be given the opportunity to provide any other specific comments that they may have.

A program must be sensitive to frame its questions to clients in non-technical, clearly understandable language. In addition, questions should be drafted in a language understood by the client, to the extent practicable. A program should also be aware that it will need to balance its desire to receive much information from clients regarding their satisfaction with the program against the real possibility that clients will be overwhelmed by a lengthy list of questions and therefore, fail to provide any response.

If written questionnaires are utilized, the program should consider supplying a self-addressed, stamped envelope to clients to facilitate return of the requested information.

To the extent that clients' responses indicate that problems exist with program operations, program staff or particular volunteers, steps should be taken to remedy the problems identified. For example, if a volunteer is viewed as particularly discourteous or difficult to communicate with, the pro bono manager or the pro bono manager's designee may want to discuss this concern with the volunteer or suggest that the volunteer attend client sensitivity training, if it is available. As noted in Standard 4.3, in some situations the program may decide not to refer further clients to the volunteer. In those instances in which a staff member or a volunteer is identified by a client as particularly skillful or helpful, that positive feedback should be shared with the individual.

Standard 3.7 (Follow up—Grievance Procedure)

A pro bono program should establish a policy and procedure to address complaints regarding the denial, quality and manner of service.

COMMENTARY

From time to time, programs will encounter clients or prospective clients who are displeased with the manner in which they were treated by program staff or by the program's decision not to provide them with assistance. In addition, there may be clients who are dissatisfied with the manner or quality of service performed by a volunteer. A program's governing body should establish policies and procedures for handling such complaints.

A program should develop an internal grievance procedure so that the program will have the opportunity to correct errors without intervention by outside entities. Such a procedure can also provide a forum for an aggrieved client or prospective client who may not have any other means to complain about improper or inadequate service by the program or the volunteer. The existence of the grievance procedure,

however, should not be used to deter clients or prospective clients from seeking other appropriate remedies from attorney disciplinary bodies or from the courts for alleged malpractice.

Notice

A program should make reasonable and appropriate efforts to inform prospective clients and clients of the existence of the grievance procedure. What is reasonable and appropriate will vary depending upon the resources of the program, the volume of its

prospective clients and the manner in which it provides services. For example, if a program or volunteers conduct in-person intake interviews or provide service at clinic sites, notice can be provided by prominently displaying signs or providing handouts at all sites that advise prospective clients and clients of the grievance procedure. If a program or volunteers conduct intake or provide advice by telephone or through online or electronic means such as online intake or online advice services, however, other methods of notification will be necessary and notification may not be possible in every instance. Information regarding the grievance procedure should be provided on the telephone if an individual who is not provided assistance indicates a desire for review of that decision or if he or she indicates displeasure with some other aspect of the program.

If a program customarily provides written notification to prospective clients regarding the decision to provide service, information regarding the grievance procedure should be enclosed with that notification. Any written material, including posted signs or letters, should be multilingual, if appropriate and practicable. In addition, it should be written in language that can be easily understood by clients and prospective clients. Volunteers should also be fully informed of the nature of the grievance policy and the procedures established.

Overview of Process

The grievance procedure should afford an opportunity for a full and fair review of complaints by clients and prospective clients. It is logical for review to begin with the pro bono manager who should handle each complaint promptly and should actively attempt to resolve as many complaints as possible. Individuals who are dissatisfied with the actions of the pro bono manager should be advised of what other recourse they may have.

For those programs that are components of larger organizations such as bar associations or staff model legal services programs, it is likely that the executive director of that organization or a designee will be called upon to review the decision of the pro bono manager, if such review is requested. For those programs that do not fall into this category, as well as in those cases in which a client or prospective client desires review of the executive director's decision, the next level of the grievance procedure is likely to be review by a committee of the governing body. It is advisable for this committee to be composed of attorneys and members of the community at large in the same proportion as they are included on the governing body. Programs may wish to exclude from this level of the grievance procedure straight-forward matters such as the proper application of established eligibility guidelines.

Application

Any grievance filed regarding actions by program staff, including, for example, the rejection of a case for placement or perceived rude conduct exhibited towards a client or prospective client, are issues that may be easily addressed through the grievance procedure. Some grievances filed regarding the manner or quality of service rendered by a volunteer may also be easily resolved through the grievance procedure. For

example, if the client's complaint involves the failure of the volunteer to return phone calls or the failure to keep the client informed about the status of the case, a simple phone call from program staff to the volunteer may suffice to resolve the problem. If the grievance involves more serious questions of quality of work or potential or actual malpractice, more difficult problems are posed.

To review such a grievance effectively, the pro bono manager most often will need access to confidential information. If the program stands in an attorney-client relationship with the client regarding the case under review, the pro bono manager will have the right to acquire that information. If, however, there is no attorney-client relationship between the program and the client, ethical constraints would prohibit the volunteer from disclosing client confidences, unless the grievant-client provided consent to the disclosure of that information for the purpose of investigating the grievance. Even with this confidential information, there are limits to what action that manager can take.

Ethical considerations require that the volunteer exercise independent professional judgment and therefore, the program staff cannot direct the volunteer to take or refrain from taking any action on a case. Given this limitation, the pro bono manager should discuss the complaint with the volunteer to determine if it can be resolved or if the case should be re-assigned, unless the client's interests would be impaired by doing so. If it appears reasonably likely, however, that the grievance involves irremediable malpractice, the client should be referred to outside assistance.

If a grievance concerns the conduct of a lawyer and reaches the level of review by a committee of the governing body, there are clear ethical constraints on the action that the governing body can take. As is the case with the pro bono manager, the governing body cannot interfere with the independent judgment of the volunteer. In addition, the governing body is normally prohibited from access to confidential client information which it would likely need to effectively review the grievance, unless the grievant consents to the disclosure of that information for the limited purpose of investigating the grievance. This is true whether or not the program stands in an attorney-client relationship with the grievant. Grievances regarding quality of work should not go before the governing body if, as a result of governing body review, the client's legal rights would be compromised.

If through the grievance procedure the program learns of conduct by a volunteer that raises questions regarding the volunteer's competency or the volunteer's ability to work with clients, steps should be taken by the pro bono manager to either provide the volunteer with training prior to the assignment of another case, or to refrain completely from referring other cases to that individual. If the conduct is egregious, the program should consider who else should be notified. The program may consider notifying the pro bono coordinator or contact at the volunteer's firm or organization. Such a notification would build on the program's relationship with the firm or organization, and may be expected by some pro bono coordinators; if it becomes known, however, that the program will notify volunteers' supervisors, this may discourage volunteering.

If the conduct is egregious, the program may feel it appropriate to notify the appropriate regulatory authorities. Before doing so, the program should weigh the desire to protect the public and other low-income people who might come into contact with the errant volunteer against the possible deterrent effect on volunteering by others; the severity of the misconduct will play a role in the decision-making. The program should always take the action that will best ensure the quality of its services and its reputation in the legal community.

SECTION 4: RELATIONS WITH VOLUNTEERS

THE INITIAL INTERACTION

Standard 4.1 (The Initial Interaction—Recruitment)

A pro bono program should develop effective strategies for recruiting volunteers.

COMMENTARY

Recruitment of volunteers is crucial to the very existence of a pro bono program, for without volunteers clients cannot be served. The program must thus carefully plan its recruitment efforts to maximize the efficiency of such efforts and to increase the probability that they will be successful.

Volunteer recruitment should be based upon and informed by the volunteer opportunities the program has created—which, in turn, should be informed by client need. When possible, a program should try to develop a broad range of volunteer opportunities and systems for delivering service, in order to increase its ability to recruit volunteers.

Client needs are varied, and so are the expertise and interests of the private bar. Some lawyers may be willing to volunteer, but have no interest in volunteering in the subject areas that the program has decided are priorities. This may in turn affect the program's priorities (See Standard 2.8.) In addition, potential volunteers are looking for a range of opportunities from full case representation to providing limited advice and counsel.

Who Does the Recruiting

The most effective way to conduct recruitment is to ensure that it is primarily assigned to a single person (or a person within each of the program's geographic regions). (See Standard 2.1.) The ability to recruit, train and support volunteers requires different skills than those required to handle cases or conduct intake. The person or persons holding this role should have the ability to create and nurture a pro bono culture, and an understanding of local pro bono and legal culture. It is important that the staff assigned to volunteer recruitment is given training in this area.

Program staff should not view recruitment as their responsibility alone. Instead, they should call upon the organized bar, bar leaders, the judiciary, governing body members, other organization staff, law firm pro bono counsel and program volunteers to aid in recruitment efforts. The bar leaders and program volunteers can provide valuable assistance by personally requesting that their peers join the program or by leveraging resources that will encourage participation. A bar association, for example, can urge members to participate in the program by

offering free or discounted CLE trainings to volunteers, discounting memberships, offering awards and public recognition, passing pro bono aspirational resolutions, providing publicity for the program in its journals and newsletters and including recruitment materials in mailings to its members. In addition, the bar association can provide a forum at various bar functions and meetings for program staff and governing body members to discuss the program and its need for volunteers.

Judges, too, may be able to assist the program with recruitment in important ways. For example, a letter signed by a judge, urging members of the bar to join the program, can be particularly effective in increasing the number of program volunteers. Members of the judiciary may be willing to write an article for the local newspaper or bar journal on the need for pro bono volunteers, or invite volunteers to a lunch. In addition, judges may be asked to make presentations on the need for pro bono program volunteers when speaking at various events including swearing-in ceremonies and bar association annual meetings.

Building relationships with pro bono stakeholders, such as pro bono committees of local or state bar associations, and pro bono counsel for larger law firms is also crucial to an effective recruiting plan. They can provide unique access to volunteers.

Members of the program's governing body should view recruitment of volunteers as one of their important responsibilities. Because program governing body members often include bar leaders and other respected members of the bar, they are particularly well suited to act as recruiters. In addition, because peer recruiting can be a very effective means of increasing the number of program volunteers, lawyer or paralegal members of the governing body can also play an important role in recruitment drives. Governing body members will be much more effective overall if they volunteer with the program themselves.

Whom to Recruit

Programs should design their recruitment campaigns based on their programmatic approach to utilizing attorneys and case priorities for clients. In addition to recruiting from the private bar, a program should consider targeted recruitment of lawyers with special skills (e.g. bankruptcy lawyers; divorce lawyers); specific types of lawyers (e.g. new admittees, retirees); non-lawyer volunteers (e.g. paralegals, court reporters, social workers); attorney-paralegal teams who work together in law firms or other settings; and lawyers in institutional settings, such as law firms, corporate counsel offices or government law departments. One approach to recruitment of such lawyers is to seek an institutional commitment to provide pro bono assistance. For example, such an institution may be asked to take responsibility for "staffing" a neighborhood clinic and assisting all clients who are seen at the site, or to commit to accepting a certain number or type of cases annually from the program.

Corporations are coming to the forefront of the world of pro bono. Many corporate legal departments have long-standing pro bono programs and policies through which these corporations and their in-house lawyers have given back to their respective communities through the free legal representation of low-income individuals and community-based or nonprofit organizations. Additionally, in-house legal department of corporations often have the ability to bring law firms in on projects with them. In the example of taking on staffing a clinic, the law firm and corporate legal department might work together, face to face.

In addition to lawyers, the program should consider recruiting law students, paralegals, legal secretaries, undergraduates, retired persons, professional interpreters, and others who might be interested in working with the program or its volunteers. These individuals have much to offer toward the provision of quality client services and, more particularly, can provide the pro bono attorney with important support services to enhance their volunteer experience.

Methodology

Aside from deciding whom to approach for assistance in recruitment efforts, the program must also decide the methods it will use to recruit volunteers. The specific elements of a program's recruitment plan will ultimately depend upon local needs, resources and conditions. Nevertheless, in developing its plan the program should consider several different options including:

- Recruitment letters and/or emails, from the program, the local bar association, or the Court
- Personal contact
- Website postings
- YouTube videos
- Social media (Facebook, Twitter, etc.)
- Articles by volunteers or others in local legal press
- CLE presentations
- Judicial outreach, etc.

If resources permit, a program should always choose a combined approach to attract as many attorneys as necessary for the program to efficiently and effectively achieve its goals.

Publicizing the program and its good works is an important recruitment tool that should not be overlooked. To this end, the program should consider developing a recruitment brochure or fact sheet that includes information such as: the need for volunteers; the various ways in which individuals can volunteer; the benefits available to volunteers (e.g. training, support and malpractice insurance); and the quality control mechanisms put in place by the program. The program should also consider developing a newsletter (paper or electronic) and seeking space in the local bar publication and other legal publications through which it can regularly recruit volunteers.

The program should have a web page that accurately reflects volunteer opportunities, and gives potential volunteers the information they need to persuade them that volunteering with the program would be beneficial to clients, helpful to the program, and good for the volunteer. The program should assess which methods to use based upon the target audience as well as the resources available.

Recruitment in Rural Areas

Programs located in rural areas often face distinct problems in recruiting volunteers. In the absence of local bar associations, programs might look to local business associations of which lawyers might be members, like The Benevolent and Protective Order of the Elks & Rotary International. Where there are a limited number of lawyers that practice in the geographical area and large distances that must be traveled for the provision of service to occur, it may be useful for rural programs to begin to view lawyers who practice and reside in more populated regions of the state as potential volunteers for their programs. By working with the judiciary and state and larger local bar associations, coordinating with other programs located in the state and developing the use of technology, rural programs may be able to attract lawyers from outside their region to assist rural clients. For example, a law firm in an urban area may be persuaded to make an institutional commitment to handle a certain number of cases from the rural program at one time with the aid of local counsel who would be available to make court appearances. Of course, the utility of this strategy will be dependent upon local and statewide conditions and resources.

The Case for Pro Bono

In deciding the appeal to use in recruiting volunteers, much will depend upon the audience that is being addressed. In some situations, pointing out the desperate need that exists for services and the role that lawyers can play in meeting that need is effective. In others, discussing lawyers' ethical responsibility to provide pro bono service may be useful.

Many lawyers are persuaded to volunteer due to the experience they will gain and the training they will receive; this can be an especially effective approach to new admittees or new associates in large law firms. Experiences to be gained include client interviewing and counseling, court appearances, handling a case from start to finish, negotiation, etc. Programs should consider consulting local law firms to determine what skills they are eager to have their younger associates develop, and how you might help meet that need. If the program is in an area with large firms, program staff should consider talking to their professional development team. Many large firms now have moved to a "core competencies" approach, and it can be very effective to spell out for those firms how pro bono work develops those competencies.

Some lawyers can be reached through pointing out the personal satisfaction that can be obtained from engaging in pro bono work. Others are impressed by the image enhancement that can occur for them and the profession through pro bono activities. Recruiters for the program should thus carefully consider the audience that they are addressing and do their best to tailor their approach to appeal to those individuals.

For those programs operating in areas with large national firms, firms are often very motivated to increase their pro bono work in order to raise their rank on the American Lawyer Magazine's "A List." Another benefit is that large firms that are actively engaged with a pro bono program are much more likely to donate funds to that program.

Law firms may also be motivated by the positive effect that their pro bono work can have on their efforts to recruit top candidates to join their law firm. Law firms and individual lawyers may also be motivated by the chance to win awards or receive other types of public recognition. (See Standard 4.12.)

In some states, volunteers may receive CLE credit for pro bono work. In those states, this can be an extremely effective recruitment tool.

The need for volunteers to provide pro bono legal services to the low-income persons is constant, and new sources of volunteers can often be tapped. All programs should consider recruitment to be an ongoing process and should periodically review their recruitment efforts.

A key element of pro bono recruitment is creating and nurturing a pro bono culture in the local legal community, the judiciary, and among legal aid providers. Developing and sustaining a community-wide pro bono culture requires coordinating and partnering with other pro bono agencies. Programs may consider strategies such as launching a pro bono drive or campaign, with local business participation and incentives, in order to jump-start a culture shift. A supportive local culture will have a dramatic impact on recruitment and retention of volunteers.

Standard 4.2 (The Initial Interaction—Non-Discrimination and Diversity)

A pro bono program should implement a policy of non-discrimination in the acceptance and placement of cases or in the recruitment of volunteers. Programs should accommodate client and volunteer disabilities as required under the ADA and other applicable statutes in the jurisdiction. To the extent practicable, staff hired and volunteers recruited should be diverse, including reflecting the diversity of the community being served.

COMMENTARY

Pro bono programs are engaged in providing services aimed at assuring access to justice and securing fair and equal treatment of clients. Given these goals, it would be inappropriate for a program to engage in any form of discrimination in its dealings with volunteers. Such action would greatly harm the stature and credibility of the program and must therefore be avoided. To provide a clear statement to the community that it will not practice or tolerate discrimination within its organization, a program should adopt a written antidiscrimination policy.

Building a Diverse Volunteer Pool

A program should make its best efforts to reflect within its volunteer pool the diversity of the community it serves, as well as the diversity of the wider area. Doing so enhances the program's ability to serve clients effectively. Relationships of mutual trust are often developed more readily when clients see their heritage and experience reflected in the persons who serve them. A diverse volunteer pool also heightens the sensitivity of the program to the values, needs and culture of its clients, and provides an important statement to clients regarding the program's receptivity to all parts of the community. In addition, a program's efforts to hire and retain a diverse volunteer pool have an intrinsic value as a conscious effort to encourage equal treatment of different segments of society.

To attain the goal of a diverse volunteer pool, a program should consider working with constituent-specific bar associations that exist within the community. For example, there may be bar associations for African-American, Hispanic or lesbian, gay, bisexual, and transgender lawyers with which a program may jointly sponsor a neighborhood clinic or other project. If constituent specific bar associations do not exist, a program may consider launching a specialized recruitment drive aimed at attracting volunteers of a particular race or ethnicity.

Standard 4.3 (The Initial Interaction—Volunteer Qualifications)

A pro bono program should ensure that representation and advice are provided by volunteers who are competent and sensitive to clients.

COMMENTARY

A program should ensure that all volunteers are competent to advise and represent clients. It should also promote sensitivity to clients, urging that all volunteers treat clients with dignity and respect. Programs can obtain information that will aid it in making this determination from various sources.

Eligibility to Practice Law

As a starting point, all attorney volunteers who will be advising or representing a client as the client's attorney must be licensed and in good standing to practice law in the jurisdiction. A program should take steps to determine that all new volunteers meet these criteria as well as periodically review the status of its existing volunteers. Note that there are a variety of ways that attorneys may be eligible to practice: in addition to standard bar admission, many states have a program allowing retired or inactive attorneys to handle pro bono cases under the supervision of a qualified legal services provider. In some cases, admission in another state is adequate, or the attorney may be able to appear *pro hac vice*. In disaster relief situations, states may allow attorneys licensed in other states to serve clients pro bono.

There are several methods that may be employed to determine that attorney volunteers are in good standing to practice law. For example, in many states an annual directory is published by the body responsible for licensing lawyers that lists this information, which staff can review.

Alternatively, program staff can contact the licensing body directly. Another possible means for determining that new volunteers are licensed is to request a photo copy of each volunteer's bar registration card when the volunteer enrolls in the program.

If through its inquiry a program learns that a volunteer is not licensed in the jurisdiction, or has been suspended or disbarred from the practice of law, the volunteer should not be permitted to advise or represent any clients. In these circumstances the program should seek legal advice on whether it has a responsibility to report the prospective volunteer to any regulatory agency.

Sometimes volunteers with a history of discipline, but who have been reinstated, have a particular interest in volunteering as a way to show rehabilitation. Programs will need to investigate the underlying facts of the discipline, and what has changed since the incident(s), before making a determination on a case-by-case about whether to allow these attorneys to volunteer. Some programs may feel more comfortable with a blanket rule prohibiting such volunteers from receiving pro bono cases. Others may prefer to accept these volunteers, but to restrict them to a clinic or other environment in which the volunteer can be closely supervised and does not have independent responsibility for a client and case. A program must make a careful assessment of its exposure in each situation and proceed accordingly.

Substantive Expertise

For those programs that utilize volunteers to provide more in-depth advice or representation, a determination should be made regarding the subject areas in which an attorney or paralegal volunteer regularly practices. Such information can be obtained through a registration form that all volunteers are requested to complete upon joining the program.

When obtaining information regarding a volunteer's current areas of practice, the program should also determine any other areas in which a volunteer would be willing to assist clients if provided with the necessary training and support. The program should make provision for substantive training prior to requesting that a volunteer provide service in those subject areas. In addition, the program should make arrangements for the provision of advice, consultation and other support services to volunteers who handle pro bono cases in areas in which they do not usually practice. The program may offer continuing legal education (CLE) credit for its trainings, offering another incentive both to be trained, and to volunteer. Training may be developed by volunteer or staff experts, or the program may partner with another organization to provide trainings.

For programs that operate advice clinics or legal hotlines in which clients with a wide range of legal problems will receive immediate assistance, it is important for the program to make provision for training and mentoring and develop manuals that will be available as references for volunteers. By providing these tools, a program can do much to assist volunteers in providing competent service.

Cultural Competence

It is inherently challenging to determine a new volunteer's cultural competence unless program staff has personal knowledge regarding that individual. A program may, however, provide all new volunteers with training or materials to sensitize volunteers to the unique conditions of clients that may affect the attorney-client relationship. In particular, volunteers and their staff are frequently unfamiliar with the circumstances of people living in poverty, or lack perspective about the circumstances of those dealing with domestic violence, addiction or mental health issues. Training on these issues should be either included in substantive law training or given in a separate training, ideally an experiential one to enhance learning and empathy.

Monitoring Competence and Sensitivity of Current Volunteers

Once a volunteer accepts a case, the program should regularly monitor the volunteer's competency and sensitivity to clients. The program's own tracking system should flag potential problems that a volunteer may be encountering. In addition, the program should seek feedback from clients after service has been provided to determine their satisfaction with both the quality and manner of the service received. (See Standard 3.6.) In some situations, other volunteers or judges may be additional sources of information regarding a volunteer's competency and sensitivity to clients. Members of the judiciary should be encouraged to call program staff if they experience problems with volunteers.

Addressing Problems

If a program, through its own efforts or those of others, becomes aware of facts that lead it to question a volunteer's competency or sensitivity, it should take steps to safeguard the current client when possible, as well as all future clients.

If the problem involves a lack of sensitivity to clients, the program has several options available; the one chosen will depend upon the nature and extent of the insensitivity exhibited. For example, the program may discuss the problem with the volunteer, suggest that the volunteer attend client sensitivity training, cease to refer cases to that individual or provide the volunteer with formal notice that he or she is no longer considered a program volunteer. If the problem involves questions as to a volunteer's competency, the program might discuss the problem with the volunteer, provide more oversight and training to the volunteer, cease referring cases to the volunteer in the area in question, cease to refer any cases to the volunteer, or provide the volunteer with formal notice that he or she is no longer considered a program volunteer.

If a program does decide to formally remove a volunteer from its panel, it should consider developing a mechanism through which the individual facing removal would be given an opportunity to be heard prior to such action being taken. The program should weigh the positive aspects of notice and an opportunity to be heard (a sense of transparency and fairness) with the stress, conflict and possible public relations issues that may accompany such an approach.

Programs are strongly advised to develop a policy on dealing with problematic volunteers at the outset to forestall making policy decisions in the midst of a crisis.

BUILDING A STRONG RELATIONSHIP WITH VOLUNTEERS

Standard 4.4 (Building a Strong Relationship with Volunteers—Establishment of Relationships)

A pro bono program should clearly communicate the nature and scope 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.

COMMENTARY

Fostering the Development of an Effective Relationship Between the Client and the Volunteer

Although the program's ability to control the nature of the relationship between the volunteer and the client is limited, there are steps it can take to ensure it is a positive one. For example, the program may provide client sensitivity training to volunteers and volunteers' office staff.

Such training should focus on the special circumstances of clients that can affect the relationship formed between a client and a volunteer. In addition, it should stress the importance of preserving client dignity by both the volunteer and his or her staff. (See Standard 4.2.)

Similarly, clients may not be familiar with how to work with volunteers. Including the responsibilities of the client in the retainer agreement alerts the client to the need to return phone calls and show up on time for appointments and court dates. In addition, the program should remain available to address any setbacks in the relationship between the client and the volunteer, including working with both to increase understanding of the other's position.

The case tracking and oversight process provides another means of positively affecting the relationship. Through it, the program can periodically inquire about any of the volunteer's relationships with clients. If problems are identified, the program should attempt to assist volunteers in finding solutions. Programs may wish to consider hiring social workers to assist the program and volunteers with issues facing the client that may impair the relationship and increase the effectiveness of the legal assistance, if resources permit.

Client satisfaction forms can provide valuable information on the relationship formed between volunteers, clients and the program. For example, clients can be asked about their satisfaction with: their intake process experience, the staff and volunteers with whom they came in contact, the services provided and the results achieved. This information can be very useful in identifying those volunteers who are particularly skilled in establishing effective relationships with clients, as well as those who could benefit from further training. It can also assist the program in making appropriate changes in its operations and delivery design.

Attorney-Client Relationship Between the Client and the Program

There are a number of factors that affect when and whether an attorney-client relationship is established between a client interviewed for purposes of placement with a volunteer attorney, and the program performing the interview and placement. Programs should consult their State's ethics rules and thoughtfully apply those rules to the program's particular approach. For more discussion on this issue, see the Commentary to Standard 3.3.

Agreement Between Volunteer and Program

One of the most important issues that must be resolved between the program and the volunteer when a volunteer agrees to handle a case is the degree of responsibility that the program will assume for a case. For example, in some instances the program and the volunteer may stand equally in the professional relationship created with the client. In other instances, the program staff may engage in substantial preparation of the case, which may include, for example, an extensive intake interview, legal research, investigation and preliminary counsel and advice to the client, but will relinquish further direct responsibility for the case upon completion of the referral. Whatever the degree of the program's responsibility is to be, it is essential that the parameters are clearly set forth in a written agreement between the program and the volunteer. This agreement may be a general agreement that the program and the volunteer sign at the outset of their relationship, or contained in a co-counseling agreement or in a Memorandum of Understanding prepared at the time of placement of each case.

Elements of an Agreement between Volunteer and Program

There should be a written document that sets out for the volunteer the fundamentals of the relationship between the volunteer and the program, ideally signed by the volunteer. It can also be in the form of a handbook, brochure or letter sent to the volunteer. This latter approach

on its own, however, is not appropriate if the program has and continues to have an attorney-client relationship with the client throughout the representation, and therefore a co-counseling relationship of one kind or another with the volunteer. Topics covered in the agreement, handbook, brochure or letter should include:

- The process by which cases will be placed,
- The right (if any) of the volunteer to refuse a placement
- The responsibility of the volunteer to enter into a written retainer with a client in any case that is accepted
- The types of support and training available through the program
- The program's policies on costs and attorneys' fees
- What the volunteer should do if the client becomes financially ineligible for services during the course of representation
- The volunteer's obligation to track hours and outcomes and report them to the program (and why this is important.)

The program should encourage the volunteer to regularly communicate with the program regarding the case, and it should provide information to the volunteer regarding the process by which the volunteer can express dissatisfaction with any aspect of the program. In addition, the client grievance procedure should be explained to the volunteer. If the program has established a process for either removing a volunteer from the program's roster or for withdrawing its sponsorship from a case, that process may also be set forth in the agreement.

Many programs establish a certain number of cases that a volunteer is expected to accept or a certain number of hours that a volunteer is expected to serve per year. Any such expectations should be set forth in the agreement between the program and the volunteer. If the program has any other expectations of volunteers, such as keeping the program informed of the status of a case, they too should be fully explained.

Regardless of the form of the agreement, it is important that the nature of the relationship be clearly defined and communicated to the volunteer.

Elements of an Agreement Between Program and Volunteer Where there is an Attorney-Client Relationship

Where the program has concluded that it has an attorney-client relationship with the litigant placed with the volunteer, and that that relationship continues on after the placement, the program and the volunteer should execute a written agreement (at the outset of volunteering, or at the outset of each case).

This document should explain clearly the understanding between the parties to it about the handling of the case, including:

- Will the volunteer have full control of the case, or does the program wish to be consulted on certain decisions?
- What mentoring or other support will the program provide the volunteer?
- Under what circumstances would it be acceptable for the volunteer to give the case back to the program, or to withdraw?
- If the volunteer is unable to complete the case, does the case revert to the program for representation?

In some delivery models, the program will establish an institutional relationship with another legal entity, such as a corporate counsel's office or law firm, rather than with individual attorneys employed by that entity. For example, the program may enter into an agreement by which a law firm accepts ten new cases each month or under which an in-house legal department staffs a full-service legal clinic twice a month. In

this arrangement, the program should have a clear, written agreement with the legal entity regarding all aspects of the relationship, including the level of commitment, clear assignment of responsibility between the program and the entity for placement, tracking, oversight and other activities, as well as a clear understanding on the disposition of attorneys fees, payment of litigation-related expenses and other policies.

Neither program staff nor their designees can seek to control a volunteer's representation of a client or interfere with the volunteer lawyer's ethical responsibility to exercise independent professional judgment. This limitation applies even if the program stands in an attorney-client relationship with the client. Only if the program staff stands in a supervisory position over the volunteer would staff be able to direct the volunteer's actions. It is therefore vital that the program and the volunteer clearly establish the nature of their relationship at the onset of the case.

Standard 4.5 (Building a Strong Relationship with Volunteers—Costs and Attorneys Fees Policy)

A pro bono program should establish and communicate to clients and volunteers a policy and procedure regarding the payment of costs in cases in which filing fees, service fees, discovery, use of expert witnesses and other expenses related to representation are appropriate, as well as a policy regarding the receipt of attorneys' fees by program volunteers.

COMMENTARY

Costs

Certain expenses associated with representation of clients such as filing fees and service fees are often waived by the court due to a client's limited income. A program should inform volunteers of the procedures for obtaining these waivers and provide them with any necessary forms and instructions. If a client is not eligible for a waiver, filing and service fees can be quite costly, as can other necessary costs of representation such as court reporter fees and expert witness fees. In addition, incidental costs arising from duplicating materials, telephone calls and transportation needs often are incurred when a volunteer represents a client. Because pro bono clients can rarely pay such expenses, a program should make its best efforts to enlist free and discounted services such as court reporters and expert witnesses, when possible, or develop funding for these representational expenses. In some situations, the attorney or law firm representing the pro bono client should be encouraged to meet any costs that are incurred in a case. In addition, the program may approach the local bar association to fund such costs. Often, however, there are no alternative sources of funding for these expenses. A program, therefore, should consider budgeting funds to cover necessary costs of representation (i.e., a litigation fund).

Because it is likely that any funds budgeted for these expenses will necessarily be limited, a program will often need to make hard choices regarding which volunteers who request reimbursements of costs will receive them. A program, therefore, should establish clear criteria to consider for the distribution of such funds. These criteria might include some or all of the following elements:

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

The policy regarding costs may also include an agreement with the client that if the program or the volunteer advances costs and the client receives an award, the advanced costs will be recoverable from that award.

Any cost policy adopted should be clearly communicated in writing to both volunteers and clients. In addition, volunteers should be urged to maintain complete records of all costs incurred and to seek and enforce orders awarding them such costs, whenever reasonable and possible.

Attorneys' Fees

Pro bono programs are organized for the purpose of providing high quality legal services at no cost to persons of limited means. For that reason, a volunteer should not charge any fee to an eligible client for services performed. In addition, a volunteer should not seek statutory attorneys' fees if the source of those fees is the client's award, as is the case, for example, in social security disability cases. It is vital that both clients and volunteers understand these policies from the onset of representation. The program, therefore, should clearly communicate them in writing to both clients and volunteers.

Volunteers should be encouraged to seek statutory or contractual attorneys' fees when the source of those fees is other than the client's award. Programs should explain to volunteers that seeking such fees avoids the situation where the wrongdoer receives a windfall because the victim obtained pro bono counsel. If a tribunal awards such fees, questions often arise as to whether the attorney is expected to turn over all or part of the award to the program, or if the attorney may retain the entire fee award. To avoid any confusion or misunderstanding when these situations arise, a program should establish a clear policy on this issue and communicate it in writing to both the volunteer and the client in advance or at the outset if possible. If additional organizations are involved in the case along with the volunteer, it is even more important to talk through this issue at the outset.

The program should take steps to inform relevant judges and/or their law clerks so that they know attorneys may be awarded fees even if they are providing pro bono legal services.

ABA Model Rule of Professional Conduct 6.1 sets forth a standard for pro bono service that permits attorneys to retain statutory attorneys' fees in cases originally accepted as pro bono, but encourages the volunteer "to contribute an appropriate portion of the fees to organizations or projects that benefit persons of limited means." Such contributions aid a program by making more funds available to assist additional clients. During times of declining resources, programs should actively encourage their volunteers to donate all or part of such awards to the program.

Whether an attorney may sign an agreement to turn over part or all of court-awarded attorneys fees to a public interest organization without violating the ethical rule prohibiting fee sharing with non-attorneys has been addressed in several jurisdictions. An ABA Formal Opinion has stated that such agreements between a program and either a volunteer attorney or a staff attorney do not violate ethical rules. However, because the opinions in different jurisdictions have varied, a program should research the issue before setting such a policy.

Ethics issues also may arise where the attorneys' fees are being negotiated as part of a global, lump settlement. Just as with paying clients, volunteer attorneys may not trade something that would otherwise be the client's in order to protect or expand an attorneys' fees award.

Volunteers and programs should be aware that detailed tracking of hours and expenses is required in order to recover attorneys' fees. Programs should work with volunteers and staff attorneys to ensure that appropriate record keeping systems are in effect.

Programs may elect to use the possibility of statutory attorneys' fees, or even related damages cases, as an incentive to increase recruitment of volunteer attorneys. Programs may decide that if fees are in fact obtained, that the case is no longer counted as pro bono; others assume

that if the prospect of fees was minimal at the outset, and the volunteer took the case primarily as a pro bono contribution, that it remains a pro bono case regardless. Still other programs are uncomfortable with using this strategy for recruiting volunteers, since invoking the prospect of fees makes the interaction less about volunteering, and more about lawyer referral. Whichever of these approaches a program chooses, it is advisable for the program to consciously choose one approach and articulate it, so that all stakeholders are aware of the program's position.

If the program elects to allow or encourage volunteers to take on a damages case that is related to the pro bono case, the ground rules for the second case should be made clear with both the volunteer and the client. Points to clarify include: whether the program will be involved in the second case; whether the related case must be taken on pro bono, as well; whether the program's insurance will cover the case; whether the program's staff attorneys will provide support; and whether the program be involved in the negotiations between client and attorney regarding the fee arrangement for the case. It is crucial that programs are clear on these issues at the outset.

Standard 4.6 (Building a Strong Relationship with Volunteers—Professional Liability Insurance)

A pro bono program should obtain professional liability insurance coverage for itself, its staff and its volunteers.

COMMENTARY

Coverage for Program Staff

A pro bono program should obtain professional liability insurance to protect itself, its clients, its staff and its volunteers. Professional liability insurance coverage for the program and its staff is necessary, regardless of the level of responsibility that the program assumes for a case, because if malpractice is alleged, the program and/or its staff may be named as parties. If a program or its staff is held liable and does not have coverage, the financial consequences could be dire. However, even if no liability is found the program and/or its staff would likely bear substantial legal expenses in defending a suit if they lack liability insurance coverage.

Coverage for Volunteers

The program should furnish malpractice insurance coverage to program volunteers and adjunct activity such as work by social workers, paralegals and forensic accountants for several important reasons. A significant one is that it provides protection to pro bono clients. While there are many quality assurance mechanisms that a program can and should establish, ultimately, it cannot completely shield clients from professional errors by program volunteers. By providing professional liability insurance coverage to its volunteers, however, the program can protect clients from financial loss that may result from a volunteer's malpractice.

Furnishing malpractice insurance coverage to volunteers can also help overcome a barrier to attorney participation in the program. Many potential volunteers, particularly those newly admitted to practice, government lawyers and corporate counsel, are not covered by separate malpractice insurance. In New York and Connecticut, for example, the pro bono policies of the attorney general's office specify that an employee's malpractice insurance coverage does not extend to pro bono work. In addition, many new admittees are particularly concerned with issues of professional liability due to their lack of experience in practicing law. Given these factors, a program is likely to attract lawyers who might not otherwise provide pro bono service by extending liability insurance coverage to them.

The cost of malpractice insurance may be of concern to programs, but it is an expense that they should make every effort to bear. For those programs that are affiliated with a staff model legal services program that carries its own malpractice insurance, coverage for the pro bono

program and its volunteers can be obtained at relatively low cost, by simply adding such coverage onto the legal services program's existing policy. For those programs that are not so affiliated, reasonably priced insurance can be purchased through independent insurance brokers.

A program should inform volunteers of the scope and coverage of malpractice insurance that it is providing for them. The type of information that should be given to volunteers includes the amount of such coverage, the amount of the deductibles, who will be responsible for paying the deductibles and whether that coverage is primary or secondary. The program should also have a clear understanding of the scope and coverage of the malpractice insurance it has obtained for itself, its staff and its volunteers.

Standard 4.7 (Building a Strong Relationship with Volunteers—Quality Assurance)

A pro bono program should strive to assure that all clients served through the program receive high quality legal services. Programs should either refer cases to attorneys experienced in the subject matter or provide volunteers the necessary training, mentoring and supervision. If experienced volunteers are not available to take the cases, the program should have in-house expertise in the area, develop expertise before engaging volunteers, or deploy knowledgeable volunteer trainers and mentors.

COMMENTARY

As an initial matter, the program staff should determine that all attorney volunteers are licensed to practice law. (See Standard 4.2.) The areas of expertise and interest of a volunteer should also be identified and, when possible, cases in those areas should be made available to the volunteer for advice or representation. (See Standard 4.2.) A determination should also be made regarding those areas in which a volunteer needs training prior to handling a case or staffing a clinic, and such training should be provided. (See Standard 4.8.) There are some limited circumstances which require that the attorney take on the case immediately and learn the applicable law, and in those cases programs may entrust the case to a reliable volunteer to develop the expertise and handle the particular case.

The program's approach to placement should facilitate high quality representation by providing the volunteer with all relevant information and documents. (See Standard 4.10.)

If a program utilizes volunteers to staff full or limited scope clinics or places cases at one time through a central coordinator, the program should ensure that sufficient support is in place to enable the volunteers to handle the cases effectively. (See Standard 4.10.)

Quality assurance also requires case tracking, to ensure that, the program or its designee is more likely to become aware of problems that exist in a referred case. If a problem does surface, steps should be taken to help remedy it. (See Standard 4.11.)

Standard 4.8 (Building a Strong Relationship with Volunteers—Training and Support)

A pro bono program should offer training, mentoring and supervision to its volunteers.

COMMENTARY

The provision of high quality legal services to clients should be a principal goal for programs. While it is recognized that often a program ultimately does not have control over the quality of work produced by a volunteer, there are many steps it can take to foster the provision of high quality assistance and representation by program volunteers.

The provision of volunteer training and support can furnish many benefits to a program and the clients who are served by it. For example,

it can aid in the recruitment and retention of certain types of volunteers, such as new admittees, who are eager to develop their knowledge in various substantive and procedural areas. In addition, the types of cases that program volunteers are willing to accept can be expanded by offering training and support services in areas that volunteers may not usually handle in their private practices, but would be willing to address if provided with the proper tools. Training and support can also act as an effective quality assurance mechanism by helping volunteers perfect the knowledge and skills that are necessary to advise, counsel, represent or otherwise assist pro bono clients.

It is recognized that the type and extent of training and support offered will vary from program to program and will depend upon the needs of volunteers and the program's priorities, scope of services, structure, size and resources. Nevertheless, all programs should attempt to make some form of these services available to volunteers, either through its own resources or by utilizing the resources of others.

Training

A pro bono program must assess the training needs of its current volunteers and anticipate the training needs of potential volunteers to determine the substantive areas in which training may be necessary. Many experienced lawyers who volunteer for the program may not be in need of any substantive training because they provide services in their areas of expertise. In addition, volunteers may be associated with law firms or other institutions that provide internal training on relevant substantive issues. However, to the extent that the program targets new admittees or other lawyers with little experience in the types of service rendered or cases handled by program volunteers, substantive training is likely to be necessary. If the program identifies a specific area of tremendous need, such as domestic violence, but too few volunteers, the program will want to offer training opportunities in that area to attract more volunteers. The same is true for those programs that serve a targeted population such as the homeless, immigrants, prisoners or persons with AIDS, due to the specialized legal problems that such clients face.

In addition to offering training in substantive areas, a program which places litigation cases with volunteers should consider providing training in practice before the local tribunals and in the use of alternative dispute resolution techniques where such alternatives exist. This is especially important if a program relies upon new admittees or corporate or other specialized attorneys who may not be familiar with practice rules in a particular forum. In addition, if a program serves a specialized population (e.g. the homeless, immigrants, etc.), its volunteers can gain much from learning about the social and psychological problems faced by clients. The program should also explore offering training in non-legal issues related to serving low-income clients, generally. Such training may be especially helpful for those volunteers who have little exposure to persons of limited means in their daily lives and who, therefore, could benefit from learning about the special conditions of clients that can affect the attorney-client relationship.

The ideal training scenario is a live or recorded presentation for volunteers. The program may develop the training specifically for its volunteers. Alternatively, the program may make use of trainings available through other programs or through statewide or national resources. Some smaller programs may not be able to offer their own trainings or locate trainings by others that cover the applicable law. In such cases, the program may elect to offer training in the form of training manuals, sample pleadings and other resources that volunteers can use to educate themselves in the relevant area of law. Programs may, in lieu of training, connect new volunteers with volunteer mentors who educate the new volunteer as they provide oversight and advice. When possible, however, the program should offer presentations that help the program to ensure the volunteer has been educated on the topic and knows about the resources available to him or her throughout the case.

When planning training events, programs should seek trainers who are experts in the field and aware of the latest developments in the

law, can teach effective representation and can communicate their knowledge well. Trainers may include local judges, bar committee chairs, program staff, legal services staff, support center staff, or current volunteers. In addition, the training should be scheduled at a time that is convenient for volunteers, such as evenings or weekends. The program should consider videotaping the training events so that volunteers who cannot attend the program may nevertheless benefit from it. Once videotaped, the session can readily be posted on a website for easy access and viewing at the volunteer's convenience.

In many states, minimum continuing legal education (CLE) requirements have been instituted. If a program is located in such a state, it should take proper steps to enable volunteers to earn CLE credits for attending pro bono training events. By doing so, a program should be able to enhance the marketability of the training. Pro bono programs that directly provide training must be willing to commit sufficient time and resources to make those events successful. This is the case because the planning and design of the training, as well as the development of training materials are usually quite time consuming. For that reason, programs should consider looking to other sources to provide training. For example, a legal services program or a law firm may agree to permit program volunteers to attend their internal training events. In addition, the program may enter into an agreement with the local bar association or continuing legal education entity that enables program volunteers to attend bar or CLE sponsored training events at no cost or at a reduced fee.

Live trainings offer the most effective learning experience. Live programs should be presented at times most convenient for the volunteers. Programs may wish to use technology to facilitate frequent provision of the training in an efficient manner, allow repeat access by volunteers, and permit access at the volunteers' convenience. For all of these reasons, making trainings available online, in audio or video format, is a best practice. Websites like probono.net permit programs to post their trainings online and these trainings can be password protected.

Another option is to work with other organizations to create training or make use of local, statewide or national trainings already available. For example, California providers have worked with commercial content provider PLI to put together a basic family law training. This training is available free of charge to pro bono volunteers at any program in the state. Entities like PLI allow both a live training, with webinar capacity, and recording for later viewing.

Support

It is important for programs to offer written or electronic materials for volunteers to use in the course of their representation. Manuals, sample pleadings, and other materials may be prepared by the program, or can be prepared in collaboration with other agencies. Preparing these materials in collaboration with other agencies is preferable, as it reduces the duplication of efforts and frees up time to assist more clients.

Programs should consider providing materials and support online. Sharing manuals, sample forms and other materials electronically not only saves money and paper, it also is the more familiar method of receiving information to many younger attorneys. Online forums like probono.net offer the opportunity to share materials with volunteers, other organizations, and others, as desired. Materials may be placed behind a password in order to ensure that *pro se* litigants and opposing counsel do not have access to them. Programs working with large firms can also provide materials to the firms to post on the firm's intranet. Making access to training and reference materials easy lowers barriers to volunteers and encourages informed and competent volunteering.

Programs should also provide training to volunteers on the need to track hours and outcomes. Volunteers should have advance notice that the program will be asking them for this information, and also need to understand the importance of this information to the program.

Support Services and Mentoring

In some situations, it may be appropriate to supplement or replace training with an intensive mentoring process. For example, some programs may utilize a co-counseling model in which the staff attorneys work closely with the volunteer, and therefore provide ongoing training as the case progresses.

There are a variety of options for providing mentoring and support to volunteers. The most common examples include providing materials and offering expert support on an as-needed basis, and ensuring active and regular contact from a staff attorney or experienced volunteer, either as co-counsel or a mentor.

The necessity of supplying training, mentoring and support apply whether the legal assistance is *pro se* assistance, limited scope clinics or representation, or full scope representation.

As is the case with training, the amount and type of support services that a program can offer its volunteers will depend upon its size, scope of services, structure, and resources, as well as the needs of volunteers. Many volunteers will rely upon the support networks that they have developed in their private practices and so will not turn to the program for such assistance. Other volunteers, particularly new admittees, will depend upon the program for such services. In addition, to the extent that volunteers are serving specialized populations or handling cases in substantive areas or forums in which they do not usually practice, support from the program will often be necessary.

There are some support services that a program can offer with very little expenditure of its financial resources. For example, if the program is one that interviews clients and then places cases with volunteers, it can provide a thorough statement of the facts of the case and an accurate assessment of its nature. In addition, the program can organize mentoring and co-counseling for volunteers by contacting local legal services program staff or private bar members with expertise in specific substantive areas and inviting them to participate as mentors or co-counsel. The program can also provide office space for interviews, if available.

There are other types of support that may call for the expenditure of greater resources, but that should nevertheless be considered by the program. For example, providing specialized manuals on various substantive areas can be very useful to volunteers, especially those who have not practiced in a given area of law. Such manuals may also be particularly useful if the program utilizes volunteers in advice clinics or legal hotlines, where immediate advice is often provided. It is recognized, however, that developing such manuals can be very time consuming and costly. A program, therefore, may want to look to other sources for assistance. For instance, law firms may be willing to cover the printing costs, or print manuals in-house. In some cases, volunteers may be willing to pay for the printing costs. In addition, program staff may recruit private bar members, legal services staff or judges to prepare different manual portions, or rely upon manuals previously developed by others, thereby reducing the program resources that must be expended to produce the handbooks. When feasible, manuals can be placed on flash-drives or posted online as well for greater accessibility and minimal cost.

Programs that involve volunteers in a clinic setting should provide support at the clinic itself in the form of a staff attorney or volunteer expert on site or by telephone and/or paper or electronic resources to help them solve problems and answer questions.

Programs whose volunteers handle cases requiring litigation may find that support services such as obtaining approval of *in forma pauperis* petitions, filing court documents, conducting research and typing pleadings are ones that attorney volunteers find particularly useful. Providing such services, however, can be particularly burdensome to program staff. The program, therefore, may want to consider recruiting law students, paralegals and secretaries who can be utilized to furnish these services to pro bono lawyers. Similarly, by recruiting volunteer

interpreters, psychologists, court reporters and investigators, the program can offer important support to pro bono lawyers whose clients are likely to benefit from the provision of such services.

Providing a fund to cover litigation costs such as depositions, expert witnesses or special process servers is valuable support to offer to volunteers who handle cases in litigation, as is providing reimbursement for other expenses such as postage, transportation and photocopying. It is recognized, however, that many programs do not have the financial resources to furnish this assistance. Nevertheless, those programs that are able to contemplate offering these services should seriously consider doing so because of the benefits they provide to clients and volunteers.

Increasingly, volunteer attorneys need, or are very interested in, mentoring in their pro bono cases. Mentoring can take the form of a staff attorney offering regular oversight and assistance to the volunteer over the course of the case, matching private attorneys with expertise in the legal field in question with the less-experienced volunteers or a regularly scheduled “brown bag” or some such forum, in which volunteers can come and ask a volunteer expert or a staff attorney about their cases. Mentoring offers an additional volunteer opportunity for experienced attorneys, who may not wish to take on an entire case but are happy to answer questions. The chance to work with an experienced lawyer can be attractive to young lawyers. Solo attorneys often would like mentoring but do not have a ready opportunity for it, while larger firm lawyers do not always receive the kind of mentoring they would like.

In addition, if the volunteer works in a law firm or corporate counsel’s office, the program should determine whether that entity has quality assurance mechanisms in place that can be utilized for pro bono cases and personnel with substantive expertise in the cases being handled who can evaluate the quality of the service being furnished and provide assistance, when needed. If such personnel and mechanisms exist, the program may decide to rely upon them, using only a summary follow-up of its own to keep track of when the case is opened, closed and the results achieved.

Programs should also strive to ensure volunteers are aware of and comfortable with calling the program for assistance should they encounter a problem of any kind. Even if the program staff is not able to solve the problem, they may be able to connect the volunteer with other resources that can. This assistance can help the volunteer to feel more connected to the program, help to achieve better results for the client, and potentially help avoid future client grievances.

The provision of on-going training and support is an important means of aiding volunteers in providing high quality services to clients. The types and methods of training will vary depending upon local needs, resources and conditions, but all programs should either conduct training events or make them available to program volunteers, as needed. Likewise, volunteer support can take many forms, from providing substantive research and mentoring to locating free secretarial assistance, and will vary depending upon local needs, resources and conditions. Regardless of its form, however, a program should make some support and back up available to assist volunteers in providing high quality services to clients.

Program staff or volunteers who are knowledgeable in the substantive law should offer ongoing support and mentoring to volunteers throughout the case, and be prepared to address any issues that arise promptly. (See Standard 4.8.) These same staff or volunteers should also carefully review all case closing forms prepared by volunteers and any evaluation forms completed by clients because these documents can be important sources of information regarding the quality of service received. If specific problems are identified by clients, or if staff or their designees spot troubling information in their review of the closing forms, it is incumbent upon them to raise these matters with the volunteers, so as to remedy any problem that may exist in a current case and to avoid repetition of the problem in future cases. If staff or

volunteers are having trouble obtaining information concerning the status or resolution of a particular case, they may need to consult court files, which may be available online.

VOLUNTEER DEPLOYMENT

Standard 4.9 (Volunteer Deployment—Utilization)

A pro bono program should develop effective strategies for utilizing volunteers to meet clients' legal needs.

COMMENTARY

While recruitment of volunteers is important to the success of a program, if the time and skills of those volunteers are unused or underutilized, the stature, credibility and effectiveness of the program are greatly diminished. For that reason, it is vital that programs develop effective strategies for utilizing volunteers to meet the needs of clients. Such strategies should ensure that every volunteer is utilized as soon after being identified as possible, should make effective use of each volunteer in relation to the volunteer's resources, level of skill and expertise and should maximize each volunteer's commitment of time and resources.

Immediate Integration

Volunteers should be integrated into the program as soon after they have been recruited as is possible. Doing so will help with retention. Volunteers who are motivated will lose their enthusiasm or interest if they are not contacted soon after volunteering. In addition, giving a volunteer a case close to the time of the training enables the volunteer to remember and use the materials provided in training. To aid in this process, the program's record keeping system should be designed in a manner that will enable new volunteers to be clearly identified. Volunteers should be provided with any needed training and given assignments as quickly as possible so that they are sent a clear message that their services are needed. In addition, failure to utilize new volunteers can have a negative impact on a program's credibility. If a program stresses in its recruitment efforts the large unmet need for services that exists but fails to use those who volunteer, it will appear that the program has greatly exaggerated that need. Even if the program cannot place a case immediately, it should endeavor to communicate with the volunteers how important their service is and when they can expect to be given a case or engaged in some way.

Effective Assignments

The assignments made to volunteers should make the best use of their skills and expertise. Programs should make assignments to volunteers in areas in which the volunteers have substantive expertise or in which the program or other resources have trained them. The program should also take care to avoid underutilization of its volunteers. For example, a volunteer with years of litigation experience might better serve a client with a contested custody case, rather than one with an uncontested divorce. Similarly, a business lawyer is likely to be more effective assisting a community group incorporate rather than handling a case in a substantive area in which the lawyer does not practice. It is important to recognize, however, that individuals volunteer for a wide range of reasons including a desire to assist those who are in need of service and a desire to have a diversion from their daily practices. It is therefore necessary for the program to communicate effectively and often with volunteers, informing them of the various volunteer opportunities and trainings provided. Programs should communicate to volunteers

the full array of training and support available, so that if volunteers want to assist clients in different substantive areas than those in which they usually practice, they can do so.

A limited scope project can also be very effective at utilizing the energy of volunteers within a short time frame that enables the program to attract more volunteers. (See Standard 2.9.)

Using Non-Attorney Volunteers

As noted above, non-attorney volunteers (including law students, paralegals, undergraduate students, and others) can be effective and valuable members of the pro bono team. Programs should ensure, however, that these volunteers have attorney supervision throughout their contact with clients and prospective clients. Such volunteers may sometimes come close to offering legal advice, which they may only do at the direction of, and with the oversight of, an attorney.

Taking Advantage of Volunteer Resources

A program should also do its best to utilize the resources that a volunteer may be able to make available to the program. For example, a volunteer who is employed by a law firm or corporate counsel's office may be able to rely upon existing oversight systems in place at that entity, thereby relieving the program of the need to expend its resources on this activity. For firms without pro bono counsel, such entities may also be willing to assign an employee the responsibility of making assignments so that the program can make multiple referrals at one time and send them to that individual for placement with co-workers. In addition, such entities may be willing to sponsor a full service clinic at which their employees are responsible for intake and provide advice, counsel or representation, as needed. While it is recognized that in many communities it will not be possible to implement these strategies, when they can be implemented they are an effective means of utilizing volunteer resources while conserving the resources of the program. A program should also try to provide a number of volunteer opportunities so that if volunteers tire of providing one type of service, such as full case representation, other options exist. Some of these options may include participating in advice hotlines, *pro se* clinics and community education seminars. In addition, volunteers may be utilized to act as trainers or mentors for other volunteers, prepare substantive manuals, assist with management of volunteers and work on recruitment or fundraising campaigns. By providing such a range of options, a program can maximize the use of its volunteers to better meet the needs of clients.

Standard 4.10 (Volunteer Deployment—Placement System)

A pro bono program which places cases with volunteers for assistance should establish a system for timely and appropriate referral. When placing cases, a program should provide volunteers with information regarding the nature of the problem and all available pertinent facts and documents.

COMMENTARY

Pro bono programs that place cases with volunteers have a responsibility to ensure that placement is done in a timely and appropriate manner and volunteers are provided with all available information and documents. The type of case and the way in which it is placed with a volunteer can greatly affect the quality of service received by a client and the willingness of the volunteer to participate in the program in the future. For those reasons, it is vital that a program develop an effective system for placing cases with volunteers.

Placement Decision

Once a program decides that it will accept a given case, it must determine with which specific volunteer the case will be placed. In reaching that decision, a program should make every effort to match the client and volunteer, based upon the volunteer's identified skills and the client's identified needs. Specifically, a program should attempt to place cases with volunteers in the substantive areas in which they regularly practice, in which they have received training or in which they have otherwise developed expertise. This type of substantive area matching is necessary to facilitate the provision of effective and high quality assistance to clients.

Effective matching of clients and volunteers requires knowing the volunteer's competencies beyond their area of practice, and a knowledge of the client's needs beyond the scope of the case to be placed. For example, some clients may not be able to speak or understand the English language and certain volunteers may be bilingual; other clients may have limited cognitive skills that require placement with a particularly patient and understanding volunteer. It is therefore vital that a program obtain this type of information regarding clients and volunteers and use it to make proper and effective matches.

When placing cases, the program should take into account any court dates or other deadlines that exist for clients. Such information will influence the urgency with which a case must be placed as well as to which volunteer the placement can be made. In addition, the number of open cases that a volunteer currently has with a program will affect the volunteer's willingness and ability to take on additional ones. For that reason, such information should be reviewed by program staff before a determination is made regarding which volunteer will be requested to accept a particular case.

Placement Process

Once a program has decided with which volunteer it would like to place a case, it should contact that volunteer to determine the volunteer's willingness and availability to accept the case. This contact may occur through email or a phone call to the volunteer prior to sending the case. Alternatively, the program may send the case with a cover letter requesting that the volunteer contact the program within a given time if the volunteer cannot accept the case. However a program decides to handle this issue, it is important that the placement system include safeguards for checking for any potential conflicts of interest, presenting the facts to the volunteer and answering any questions that the volunteer may have regarding the case, the client or the adverse party. In addition, the program must be careful not to create the false impression in a client that the client's case has been placed, if in fact the program typically offers the volunteer the opportunity to reject it. Therefore, it is vital that the program be certain that the volunteer has accepted the case before the client is notified that the case has been placed.

There may be occasions when a volunteer accepts a case, but after reviewing the file or meeting with the client, decides to return it to the program. This may occur because the volunteer discovers facts or spots issues that the program staff failed to uncover which affect the legal merit of the case. It is also possible that a volunteer's schedule may change, making it difficult for the volunteer to assist the client, or the volunteer may experience difficulty making contact with the client. A program's response to volunteers in such situations may vary, depending on the circumstances.

In some instances, program staff may be able to facilitate communication between the volunteer and the client, which may result in the volunteer's willingness to continue assisting the client. Similarly, program staff may be able to persuade the volunteer that a case has more legal merit than the volunteer originally recognized. In other situations, a volunteer may clearly articulate an unwillingness to assist a client

in a given case, regardless of the assistance offered by program staff. If that occurs, it is best for the program to accept the returned case willingly so that it may retain the individual as a program volunteer and, more importantly, so that the client will receive effective and high quality legal services. When cases are returned, they should be reevaluated and, if appropriate, the program should attempt to place them with other volunteers.

Timing of Placement

A program should attempt to place all cases within a reasonable time. What is reasonable will vary depending upon the urgency of the case, the issues involved and the difficulty encountered in placing it. A program, however, should make every effort to inform the client of the status of the placement within two weeks of the client interview in non-emergency situations. If a case has not been placed or not been rejected for placement within that time, the client should be given some indication as to how long the program anticipates it will take to place the case. In such situations the client should be advised to contact the program if the client receives any correspondence or notices regarding the case. The client should also be given any instructions that are necessary to protect the client's legal rights while the program is attempting to refer the case.

From time to time, a program may find that despite its best efforts, it cannot locate a volunteer willing to accept a particular case. To provide guidance to the individuals charged with the responsibility of placing cases, a program should consider establishing a policy regarding the number of attempts it will make to place a case before notifying a client that the program will not be able to provide assistance. It is critical that the program be cognizant of the client's rights, and take steps to ensure that the client's rights are not impaired by the time it took the program to attempt to place the case.

Information to Be Provided to Volunteer

When placing a case with a volunteer, the program should provide the volunteer with as accurate information as it has regarding the case and the client, including any particular problems that have been identified. Doing so enables a volunteer to properly evaluate the case, leads to the development of a trusting relationship between the program and the volunteer, and reduces the likelihood that the volunteer will return the case to the program.

The program should prepare all cases in a way that will facilitate the most effective provision of assistance to clients. Specifically, the referral should provide essential client facts such as the name, address, phone number, or in the alternative, a number where the client can be reached if the client has no phone, the client's income, primary language and any special needs of the client. If the program believes that the client may be difficult to work with or may have limited cognitive skills, that information should be revealed to the volunteer when the case is placed.

The placement of a case should also include a summary in which the known facts of the case are accurately provided by the program. In addition, where litigation will be involved, the name of the adverse party, opposing counsel and any deadlines, court dates or other relevant information regarding the need to take specific action within a specific time should be provided. The placement system should also ensure that any documents relevant to the case that the client has provided, such as pleadings, notices or contracts, are provided to the volunteer. A client retainer form and any other documents the program may have that would be useful to the volunteer such as form pleadings, regulations, substantive law memos, information on *in forma pauperis* proceedings or blank court forms should be included. If the program has not

previously done so, it should provide to the volunteer at the time of placement information regarding the program's policies and procedures on cases such as court costs and attorneys' fees.

Client Notification

Those individuals seeking referral to a program volunteer should be informed of the placement process at the time of their intake interview. If the program is successful in placing the case, the client should be sent written notification that the case has been placed. The letter should inform the client of the volunteer's name, address and telephone number. In addition, the client should be informed as to whether the volunteer will make initial contact, or if it is the client's responsibility to do so. Any other responsibilities that the client may have that the client has not already been informed of should also be explained in the letter. In those situations in which the program is unsuccessful in placing a case, the individual seeking assistance should be so informed as soon as possible. The program should provide such individuals with referrals to other sources of assistance, if they exist.

ONGOING RELATIONSHIPS

Standard 4.11 (Ongoing Relationships—Tracking)

A pro bono program should establish a system for obtaining information regarding the progress and disposition of cases placed with volunteers. The program should provide any assistance needed by the volunteer, subject to any limitations imposed by rules of professional conduct.

COMMENTARY

Tracking

Once the program receives confirmation that a case has been accepted, it should take steps to determine that the volunteer is making progress towards resolving the client's problem. A program should encourage its volunteers to contact the program at any time so that the progress of the case can be reported, questions can be answered and training and support needs can be met. A tracking system will provide important information to the program regarding any problems a volunteer is encountering either in working with the client or in handling the case placed. Tracking is also beneficial because it facilitates the maintenance of accurate records regarding the status of all cases being handled by program volunteers, enabling staff to determine which volunteers may be available to accept new cases. Finally, tracking systems provide a method for determining that volunteers are progressing on the cases that have been placed with them and that the program is providing an efficient, effective, high quality service to clients.

Tracking can be accomplished through telephone contacts, email or written correspondence, online or a combination of approaches. In devising a tracking system, a program should aim to obtain the following type of information regarding the case placed: the volunteer has made an initial contact with the client and has agreed to accept the case, or if the volunteer has not accepted the case, the reason for that decision; the volunteer is taking appropriate action to resolve the client's problem; the volunteer's need for assistance; the anticipated time of completion of the case; the results of the services provided; and the level of the client's satisfaction. The program may call the volunteer for the information or it may find it useful to develop update forms that are sent to volunteers at regular intervals. Those intervals may vary, depending upon the nature of the case, the experience level of the volunteer and the program's past experience with the volunteer. In most

non-emergency cases, however, it is likely that a program will want to obtain updates every three to six months. The information requested of volunteers may include the action taken to date, the action needed to complete the case, the anticipated closing date of the case and any assistance that the volunteer would like from the program. The program should develop a system for timely follow-up in those situations in which a volunteer either requests assistance or fails to return the update form. Programs may also provide an online database that the volunteer can update at his or her convenience. Information about the case can also sometimes be gathered by referring to court records online.

A program should request that a volunteer notify the program once the case is closed. The program may send a closure form to a volunteer when the file is initially sent or it may send a form or call the volunteer at a later date, based upon review of the update forms or based upon other contact with the volunteer. The type of information that a program may want to obtain regarding closure of a case includes when it was closed, why it was closed, what result was achieved for the client, the number of hours devoted to the case and any comments that the volunteer would like to provide regarding the particular case placed, the client or the volunteer's experience with the program. In addition, the program should request and secure a copy of the court decision or other document, if any, ending the representation.

Offering Assistance

Volunteers should be offered a variety of ways to reach out to the program for assistance in order to maximize the volunteer's comfort and ease with doing so. There may be times during the course of tracking that the program discovers that a volunteer is not proceeding properly with the case or is taking action that appears questionable. Assistance from program staff or their designees may be appropriate and helpful in such situations. A program, however, should only seek additional information about such matters to properly assist the volunteer if doing so does not violate a volunteer attorney's duty to maintain client confidences. Program staff may need to explain to a volunteer the problem identified from review of the tracking form and the need to further discuss the matter with the volunteer, but caution that client confidences cannot be revealed unless the client consents to their disclosure.

It should be recognized, however, that assistance may be able to be provided without the need for additional client information. For example, a volunteer may need guidance on a procedural issue such as how and where to file a particular document, or the volunteer may need to be informed about when a particular statute of limitation runs.

In addition to problems regarding substantive and procedural issues that may be uncovered as a result of tracking, program staff may also learn of difficulties that the volunteer is encountering in his or her relationship with the client. For example, a volunteer may report problems in maintaining communication with a client or in obtaining needed documents from a client. In such situations, program staff should consider contacting the client or taking other steps necessary to attempt to resolve the difficulties identified. Programs should be aware, however, that the volunteer must obtain informed consent from the client before s/he may reveal information about the representation. This is a very broad standard, and even the most general information about the client or the case could require consent.

Standard 4.12 (Ongoing Relationships—Retention and Recognition)

A pro bono program should develop effective methods for retaining and recognizing its volunteers.

COMMENTARY

Retaining volunteers who serve clients well and are sensitive to clients' needs should be a goal of all pro bono programs. Although this goal is not always easy to achieve, there are steps that a program can take to increase the likelihood that volunteers will remain with the program.

One of the key elements to successfully retaining volunteers is having a good program in place that is sensitive to the needs of volunteers. Characteristics of such programs include: having skilled and enthusiastic staff; having a dedicated governing board; establishing effective quality assurance systems; providing malpractice insurance for volunteers; offering, mentoring and support systems for volunteers; maintaining effective and open communication between staff and volunteers (including in problematic situations); and recognizing volunteer efforts.

An individual's initial experience with a program is likely to affect that individual's willingness to remain as a program volunteer. For that reason, it is important that volunteers be integrated into the program soon after they have been recruited. In addition, it is vital that volunteers be utilized by the program in ways that make the best and most efficient use of their skills, interests, expertise, and availability, while providing them with a variety of opportunities through which they can meet clients' critical needs. Examples of these types of volunteer opportunities that a program may want to consider include conducting intake or providing advice, *pro se* instruction, community legal education or full representation.

Acknowledgment of the contribution made by program volunteers can provide much satisfaction to volunteers and can be a factor in their decision to remain actively involved in pro bono work. Recognition of current volunteers' efforts also can aid in the recruitment of new volunteers who learn of the program through recognition events. In addition, if one member of a law firm is recognized for his or her contribution, that firm may become more supportive of pro bono work by its members due to the positive publicity received. A program, too, can obtain positive publicity from some methods of volunteer recognition. For these reasons, a program should develop some means by which the contributions of its volunteers are acknowledged.

Recognition Strategies

There are a wide variety of ways in which the efforts of volunteers can be recognized. Examples of methods that have proven successful include: personalized thank-you notes or calls from the program; positive publicity in the bar newsletter, program annual report or other publication; recognition events such as pro bono luncheons or receptions; pro bono recognition awards by the program or by other entities, such as state or local bar associations, community or government agencies; and mementos of appreciation. Some methods will require greater expenditures of financial and staff resources than others. A program must therefore decide and periodically re-evaluate what is reasonable for it to undertake. Regardless of the method chosen, however, every program should engage in some form of volunteer recognition.

When planning for the recognition of its volunteers, the program should call upon various sources to aid in the effort. One source that should be approached is the local bar association, which may provide publicity in its newsletter or journal regarding volunteers' pro bono activities, host an annual recognition event or present annual awards to outstanding volunteers. The judiciary may also be called upon to aid in the recognition of volunteers. For example, judges may be willing to present a recognition award, speak at a recognition event or sign a letter thanking volunteers for their pro bono work. Other entities, such as local government, civic and community organizations and the local press, can also be approached by the program to assist in recognition efforts. Finally, law firms are often effective partners in working

to promote the good work of their attorneys. Internal awards programs and highlighting pro cases in regular newsletters or law firm annual reports are common strategies used by firms.

A program should not overlook the fact that clients can provide some of the most meaningful acknowledgment of the value of volunteers' work. Often, clients will express gratitude for the services performed by volunteers in client evaluation forms. At other times, clients may convey positive feelings about volunteers in conversations with program staff or in letters to the program's governing board. Such acknowledgments should always be shared with volunteers who are likely to gain much satisfaction from knowing that clients appreciated their efforts.

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