

Standards for Pro Bono Programs

American Bar Association

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

February 1996

Standing Committee on Pro Bono and Public Service

Approved by the American Bar Association House of Delegates, February 1996. The American Bar Association recommends appropriate implementation of these Standards by entities providing civil pro bono legal services to persons of limited means.

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FOREWORD

On February 5, 1996, the House of Delegates of the American Bar Association without dissent adopted the ***Standards for Programs Providing Civil Pro Bono Legal Services to Persons of Limited Means*** (Pro Bono Standards). The Pro Bono Standards were the product of four years of work by the Standing Committee on Lawyers' Public Service Responsibility (SCLPSR). We believe that they will be extremely useful in guiding new pro bono programs and in improving and evaluating existing programs so that these programs can effectively and efficiently facilitate the provision of high quality legal services to persons of limited means.

Development of the Pro Bono Standards

To assist it, the Committee formally sought the direct involvement of a number of organizations which have an interest in and knowledge of the operations of pro bono programs. Accordingly, a diverse set of organizations was invited to appoint members to an Advisory Group. The Advisory Group worked directly with the Pro Bono Standards Subcommittee and Reporter, reviewing initial drafts and offering valuable insights from their varied perspectives. The result of their efforts were drafts of proposed standards which were carefully reviewed and revised on several occasions by the full Committee.

The proposed standards were released for public comment in February 1995. They were widely distributed to a large number of organizations including state and local bar associations, pro bono, legal services and IOLTA programs and various ABA entities.

There were four public hearings regarding the draft standards, and interested persons were invited to comment and suggest further revisions. Those hearings were held in conjunction with the following events: the 1995 ABA Pro Bono Conference (April 1995 in Nashville, Tennessee), the 1995 California Pro Bono Conference (May 1995 in Fresno, California), the 1995 Southeast Project Directors' Meeting (July 1995 in St. Petersburg, Florida) and the 1995 ABA Annual Meeting (August 1995 in Chicago, Illinois).

Numerous oral and written comments were received and carefully 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.

Several commentators expressed the view that because of the special circumstances faced by pro bono programs operating in rural communities, portions of the draft standards were not as applicable to rural programs. Changes were made to the Introduction to reflect this concern, and strategies were suggested in specific standards for addressing some of the particular problems faced by rural programs. In addition, the Committee added information on a variety

of alternative methods for delivering pro bono services to assist programs in leveraging their resources to better meet clients' legal needs.

After reviewing all the comments, the Committee adopted its final revisions. The result is a document that will provide guidance to both new and existing pro bono programs on effective and efficient operation while facilitating the provision of high quality legal services by program volunteers.

Acknowledgements

Many people made valuable contributions to the development and adoption of the Pro Bono Standards, and we are indebted to them for their insight and assistance. Special appreciation is due to Victor Geminiani, who served as Chair of SCLPSR's Pro Bono Standards Subcommittee which oversaw the development of the Pro Bono Standards. Even after his term on the Committee ended, Victor continued to provide guidance and assistance in the final stages of the development of the Pro Bono Standards. The other members of the Standards Subcommittee also deserve special thanks. They are: Judith Bernstein-Baker, Judge Judith Billings, Robert Juceam and Debbie Segal.

The members of the Advisory Group gave generously of their time and talents. They are: Paul Carlin, representing the National Association of Bar Executives; Nancy Chandler and Lisa DeLoache Melton, representing the National Association of IOLTA Programs; Emilia DiSanto, representing the Legal Services Corporation; Sharon Goldsmith, representing the Statewide Pro Bono Support Directors; Lillian Johnson and Karen Meyers, representing the Program Advisory Group; Esther Lardent, representing the National Legal Aid and Defender Association; Ellen Mishkin and Steven Scudder, representing the National Association of Pro Bono Coordinators; Robert Remar, representing the American Civil Liberties Union; Richard Teitelman, representing the Management Information Exchange; Ron Wright, representing the National Organization of Client Advocates; and Laurie Zelon, representing the ABA Standing Committee on Legal Aid and Indigent Defendants.

Valuable contributions were made by John Tull, who prior to joining the staff of the Legal Services Corporation, acted as an advisor to the Reporter; Gerry Singen and Carol Babichuk, who each drafted portions of Standard 2.6 (Fiscal Management); and Miriam Matienzo, who provided research assistance to the Reporter.

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

The project was begun while Robert Hirshon was chair of SCLPSR (through August 1993).

The members of the full Committee, both former members and present members, 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 Victor Geminiani and the Reporter, and the Committee was advised throughout by Committee Counsel, Lynn Sterman. It is and has been a diverse, insightful, energetic and hard working Committee. 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 pro bono programs.

Finally, we need to acknowledge that there would be no Pro Bono Standards without the diligent and skillful drafting and redrafting by the Reporter, Beverly Groudine. It is not an easy task to capture the conclusions and nuances expressed by each member of the Committee and, if truth be known, to help the Committee find and express the points where competing considerations reach balance, but the Reporter did that extremely well. In these ways and with her patience and constant good-natured assistance, Bev was essential to the successful completion of this project.

James L. Baillie, Chair
February 1996

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 15 years the growth in the number of programs has been remarkable: in 1980, 80 pro bono programs were identified by the American Bar Association; today, there are more than 900. 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 develop standards that will aid programs in becoming more effective and efficient in marshalling volunteers, meeting clients' needs and facilitating the provision of high quality legal service.

In 1961, the American Bar Association first adopted standards for the operation of civil legal aid programs. The most recent version of those standards, the *Standards for Providers of Civil Legal Services to the Poor* (hereinafter "Civil Standards"), was adopted in 1986. While the Civil Standards were designed to provide guidance to all organizations serving the civil legal needs of the poor, 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 their governing bodies 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 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 and pro se clinics through which clients' legal needs may be addressed. Another approach put forth is developing relationships with entities such as law firms or corporate counsels' offices through which multiple matters are referred at the same time and an individual at the entity is responsible for placement of the matters, with oversight being provided, when possible, through the entity's usual quality assurance mechanisms. 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.

As guidelines only, the Pro Bono Standards 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.

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.

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.

While judicare and contract programs in which private attorneys are paid a reduced fee to provide free legal services to persons of limited means are likely to find a review of the Pro Bono Standards instructive, the unique issues faced by such programs are not addressed in these standards. In addition, the Pro Bono Standards are not intended to be applicable to law school and law firm pro bono programs due to their distinctive missions and operations. The same holds true for some 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.

Even those programs to which the Pro Bono Standards are intended to apply may find that not every standard is helpful to them due to their special characteristics, their method of service delivery or the community in which they operate. For example, those programs that only provide assistance to pro se litigants will find that much of the discussion on case placement, tracking and oversight, and attorneys' fees policies (among other areas) are not relevant to their operation. Likewise, programs that provide legal services only to a particular population, such as children, will need to adapt, for example, the discussion regarding establishment of relationships to fit the unique situations that they face. Furthermore, the extent to which programs can rely upon staff model legal services programs to provide assistance in areas such as training and support, as the Pro Bono Standards recommend, will vary depending upon the size and resources of those staff programs, as well as the type and scope of services that they provide.

There are special conditions under which rural pro bono programs operate due to the characteristics of their communities and legal institutions which must be recognized. Specifically, rural areas usually have a limited number of attorneys who are spread throughout a region, and those regions often lack active, well organized bar associations. While strategies for addressing some of the special problems faced by rural programs are suggested in specific standards, such programs may find that some standards are not relevant to them, and some may not be attainable. Standards that fall within these categories may include those that address the role of the organized bar, the role of a centralized governing body and establishing special panels to address conflicts of interest. All programs, be they specialized as to function, client group or location, should review the Pro Bono Standards with an understanding that they are intended as goals to be achieved and may not fully reflect the reality in which each program operates.

Definitions of Significant Terms Used in the Standards

It is recognized that in the pro bono context, two distinct attorney-client relationships may exist: one between the client and the volunteer, and one between the client and the program. As used throughout the Standards, however, the term "**client**" refers to an individual or group who receives advice, counsel or representation from a program volunteer, whether or not that individual or group also stands in an attorney-client relationship with the program.

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 poor 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 new term has been chosen because it better 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.

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 a specific type of pro bono program - an organization that provides free civil legal services through the use of volunteers to persons of limited means or organizations serving 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.

While there is no attempt to define the terms "case" or "matter," it should be noted that those terms are used interchangeably throughout this document, and they are not limited to legal problems that can only be resolved through litigation.

STANDARDS WITHOUT COMMENTARY

STANDARDS FOR PROGRAM GOVERNANCE

Role and Responsibility of Governing Body

Standard 1.1-1 General Policy Development

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

Standard 1.1-2 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.

Standard 1.1-3 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.

Standard 1.1-4 Fundraising, Recruitment, Recognition and Public Relations

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

Standard 1.1-5 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.

Standard 1.1-6 Non-Interference in Specific Acceptance and Referral Decisions

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

Standard 1.1-7 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.

Membership of the Governing Body

Standard 1.2-1 Representation of the Legal Community

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

Standard 1.2-2 Representation of the Community at Large

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

Standard 1.2-3 Orientation and Training

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

STANDARDS FOR PROGRAM EFFECTIVENESS

Standard 2.1 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.

Standard 2.2 Program Priorities

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

Standard 2.3 Delivery Design

A pro bono program should establish a design for the delivery of legal services which is tailored to local circumstances and which effectively and efficiently meets identified client need.

Standard 2.4 Quality Assurance

A pro bono program should strive to assure that all clients served through the program receive high quality legal services.

Standard 2.5 Results of Services Provided

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

Standard 2.6 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 non-profit organizations.

Standard 2.7 Relations with Other Providers of Legal Services

A pro bono program should strive to cooperate, collaborate and coordinate with other providers of legal services.

Standard 2.8 Relations with the Organized Bar

A pro bono program should strive to develop and maintain an active, cooperative and collaborative relationship with the organized bar.

Standard 2.9 Relations with the Judiciary

A pro bono program should strive to work with the judiciary to develop methods for judges to provide their support and assistance to the program.

Standard 2.10 Relations with Community Organizations

A pro bono program should strive to develop and maintain active and cooperative relations with community organizations and social service agencies that serve clients.

Standard 2.11 Institutional Stature and Credibility

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

Standard 2.12 Periodic Program Evaluation

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

STANDARDS FOR RELATIONS WITH CLIENTS AND VOLUNTEERS

Standard 3.1 Establishment of Relationships

A pro bono program should clearly communicate the nature of the relationship it is establishing with each client and volunteer and delineate each party's rights and responsibilities. A program should aid a client and the volunteer who is representing or otherwise assisting that client in communicating clearly their duties and responsibilities to each other.

Standard 3.2 Conflicts of Interest

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

Standard 3.3 Non-Discrimination and Diversity

A pro bono program should not impermissibly discriminate in the acceptance and placement of cases, in the recruitment of volunteers or in the employment of staff. To the extent practicable, staff hired and volunteers recruited should reflect the diversity of the community being served.

Relations with Clients

Standard 3.4-1 Establishment of an Effective Relationship

A pro bono program should strive to establish a relationship with each client which fosters trust and preserves client dignity. It should assist volunteers in establishing a similar relationship with their clients.

Standard 3.4-2 Client Confidences

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

Standard 3.4-3 Client Access

A pro bono program should adopt policies and procedures which facilitate access to its service by the client community.

Standard 3.4-4 Communication with Clients

A pro bono program and its volunteers should communicate effectively with clients.

Standard 3.4-5 Eligibility Guidelines

A pro bono program should establish written guidelines to determine an applicant's eligibility for service.

Standard 3.4-6 Grievance Procedure

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

Standard 3.4-7 Client Satisfaction

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

Relations with Volunteers

Standard 3.5-1 Recruitment

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

Standard 3.5-2 Utilization

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

Standard 3.5-3 Training and Support

A pro bono program should provide training opportunities and support services to its volunteers.

Standard 3.5-4 Professional Liability Insurance

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

Standard 3.5-5 Costs Policy

A pro bono program should establish and communicate to clients and volunteers a policy and procedure regarding the payment of costs in matters in which filing fees, service fees, discovery, use of expert witnesses and other expenses related to representation are

appropriate.

Standard 3.5-6 Attorneys' Fees Policy

A pro bono program should establish and communicate to clients and volunteers a policy regarding the receipt of attorneys' fees by program volunteers.

Standard 3.5-7 Retention

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

Standard 3.5-8 Recognition

A pro bono program should develop effective methods for the recognition of its volunteers.

STANDARDS FOR FACILITATING EFFECTIVE DELIVERY OF SERVICE

Standard 4.1 Acceptance Policy

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

Standard 4.2 Volunteer Qualifications

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

Standard 4.3 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.

Standard 4.4 Placement System

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

Standard 4.5 Tracking and Oversight

A pro bono program should establish a system for obtaining information regarding the progress of matters placed with volunteers. Based upon the information received, the program should provide the assistance required, subject to any limitations imposed by rules of professional conduct.

Standard 4.6 Record Keeping

A pro bono program should develop internal systems for identifying conflicts and for maintaining, retrieving and evaluating data regarding applicants, clients, volunteers and services provided.

Standard 4.7 Program Personnel

A pro bono program should employ personnel who are competent, sensitive to clients and committed to the provision of high quality legal services.

Standard 4.8 Attorney Supervision of Non-Attorney Staff

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

STANDARDS WITH COMMENTARY

PROGRAM GOVERNANCE

Standard 1.1-1 (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 body¹ 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 board of directors. For those programs that are part of a larger organization, such as a legal services program or a bar association, often the organization's board is unable to devote sufficient time and oversight to the program, due to its many other responsibilities. In such cases, a subcommittee of the organization's board is often responsible for the oversight of the pro bono program. Alternatively, the board of the larger organization may appoint an advisory board for the program. Although an advisory board usually is not given the authority either to make policy or to regulate fiscal matters, the governing board 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.

Those who serve on the governing body should be committed to fulfilling the purposes of the program. In addition, they should be willing to commit adequate time to obtain the necessary understanding of the program's operations to meet their board responsibilities. Because serving as a board member can demand much time and energy, the program may want to consider instituting term limits for its members. Such a system not only creates a finite commitment for board members, but it 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 may want to consider staggering the terms of its board members. A program may also want to consider developing a method for removing board members for failure to consistently and actively participate in program governance, or for other cause.

One of the main functions 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 and a grievance procedure, determining the salary structure for staff and adopting a budget². For those programs that are separately incorporated, usually the governing body has the additional responsibility of hiring the program's director and periodically evaluating his or her performance.

Standard 1.1-2 (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

The governing body should regularly review the program to determine that policy decisions are being properly implemented and that the program is in compliance with all contractual, statutory and regulatory requirements³. 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. To assist the governing body members in understanding those laws, program management should schedule relevant training events⁴.

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 intervention⁵. To properly fulfill this review function, the governing body should regularly obtain and review internal program reports regarding financial matters, number of clients served, disposition of matters handled, recruitment data, budget data, funding changes and major provider undertakings. In addition, it should review both the program evaluations provided by funding sources or other entities and the report of the annual financial examination⁶. The board 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. The board should also ascertain that the program is making its best effort to coordinate with other providers to maximize the delivery of service to clients⁷.

In the commentary to the ABA's Standards for Providers of Civil Legal Services to the Poor, several "warning signs" requiring the attention of the governing body are enumerated, the following of which should be of particular concern to 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 clients⁸. In addition, the governing body should take special note of any substantial decrease in the number of volunteers recruited and any significant turn-over of the governing body's members. If the governing body does discover any problems in the course of its review, it should take proper steps to remedy them.

Standard 1.1-3 (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

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 devote sufficient resources to meeting

program priorities, to furnishing training and support to volunteers and to providing adequate salaries to qualified, experienced staff.⁹ In addition, the governing body must ascertain that the budget is in compliance with the terms and conditions set by its funders.¹⁰

As is pointed out in the commentary to the ABA's Standards for Providers of Civil Legal Services to the Poor, "budget responsibilities involve more than mechanical approval of broad spending categories and perfunctory review to assure that income and expenditures balance."¹¹ 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.¹²

The pro bono manager is often the individual responsible for spending funds based upon the budget established by the governing body.¹³ 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 internal controls to ensure safeguarding of the programs'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.

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 Standards for Providers of Civil Legal Services to the Poor address 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 which permit the body to anticipate potential problems and keep apprised of activities as they are reflected in the expenditure of resources.¹⁴

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 audit. Among other things, it should include a report on existing assets¹⁵ and liabilities of the program, delineating material contingencies (including claims and contracts) and development of 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. However, 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.

The commentary to the ABA's Standards for Providers of Civil Legal Services to the Poor 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.¹⁶

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.¹⁷ 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 1.1-4 (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 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 including fundraising, recruitment, volunteer recognition and public relations. While it is likely that the pro bono manager will be involved in these activities, given the many demands of directing the day-to-day operations of a program, the manager must look to the governing body for assistance.

Members of the governing body should be called upon to inform bar members and the public of the program's mission, goals and achievements.¹⁸ Important functions such as writing recruitment letters, speaking at recruitment events and writing articles about the program are ones that members of the governing body can easily perform.¹⁹ In addition, they can play a valuable role by speaking at recognition events and by personally presenting the program's awards for outstanding service.²⁰ Fund raising is another area in which members of the governing body can play an active role.²¹ Attorneys and business leaders, for example, who are governing body members can take part in the direct solicitation of funds for the program from their peers. In addition, they can use their contacts and influence with institutional funding sources to try to obtain grants for the program.

Together, the pro bono manager and board members may establish other areas in which the

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

Standard 1.1-5 (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.²² 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.²³

ABA Formal Opinion 334 (1974) addresses the extent to which a governing board 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 poor. 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.²⁴

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.²⁵

Standard 1.1-6 (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 matter, or to refer a matter to a particular volunteer.

COMMENTARY

Decisions about whether to accept a specific matter 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 matter based on controversy, and non-interference with lawyers' independent judgment. The opinions concluded that the governing board 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."²⁶

Ethical obligations require that lawyers maintain client confidences.²⁷ 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.²⁸ The protected information includes not only the underlying facts of the case, but extends to the names, addresses and telephone numbers of potential clients.²⁹ 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.³⁰ 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.³¹ 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.³² If making a 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.³³ 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.³⁴

A board 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 matter to a volunteer or for advice received.³⁵ In such situations, there may be an implied waiver, allowing the governing board to investigate the grievance.³⁶ 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.³⁷

Standard 1.1-7 (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 which 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.³⁸ In other situations where conflicts may arise, such as when a board 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 board 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 board member must be made on a case by case basis. As is pointed out in the ABA's *Standards for Providers of Civil Legal Services to the Poor*:

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.³⁹

Institutional Conflict

A board 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 board 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 Standards for Providers of Civil Legal Services to the Poor 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.⁴⁰

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 *Standards for Providers of Civil Legal Services to the Poor* provides guidance in this area by listing factors that would evidence the lack of an actual conflict in such situations:

- o 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 the poor. Examples of such evidence would be previous experience in legal services work; participation as a private attorney in the representation of provider clients; a professional role consistent with legal services work, such as employment in the consumer fraud division of a county attorney's office; or previous experience on the provider's governing body.[41](#)

Individual Conflict

An attorney member of the board 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.[42](#) The presence of a board 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 board 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 board 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 that "clients and counsel on both sides must feel comfortable that in the particular circumstances neither client will be deprived of independent and uninhibited representation."[43](#)

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, 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 board member's representation of an opposing party. Yet, because the board member may have input on issues such as staff salaries and promotions, it is possible that the appearance of a board member as opposing counsel in a matter 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 board member. A factual determination must be made by the program staff in each case, therefore, where the potential for a conflict exists.

In those cases in which the program staff conclude that their independent judgment has not been affected and so 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 board 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 board 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 matter with another volunteer or find other free counsel for the client. Another alternative is for the attorney board member to choose not to represent the conflicting client or to resign from the governing board.

Standard 1.2-1 (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

By including representatives of various segments of the legal community on its governing body,⁴⁴ 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 critical 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.

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, they can be excellent sources of information on successful ways to recruit, retain and recognize volunteer attorneys, and they 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,⁴⁵ 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.⁴⁶ In the two states in which the issue of judicial service on a pro bono program board has been addressed, one has held that service may be permissible and one has held that it is not.⁴⁷ However, the same state that found that judicial service on a pro bono program board may be permissible, as well as several other states, have held that judicial service on the board of a staff model legal services program is prohibited.⁴⁸ 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.⁴⁹

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 should also be sought, due to the staff's expertise in the area of the delivery of legal services to the poor. 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.⁵⁰

From time to time, there may be issues that are presented to the governing board for consideration that may create an actual conflict of interest or the appearance of a conflict of interest for board members who are legal services staff. For example, strategic decisions regarding a funding proposal may be under discussion by the board at the same time that the legal services organization is preparing a competing proposal. As a result, board members who are 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.

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 board 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 board to provide a vehicle through which it can obtain formal input from additional segments of the legal community.

Standard 1.2-2 (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 value of including members of the client community on the program's governing body is set forth in the commentary to the ABA's *Standards for Providers of Civil Legal Services to the Poor*:

- 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.[51](#)

Including other members of the community at large, such as social workers, bankers and accountants can also provide the board 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.

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.

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.[52](#)

The limited financial resources of clients may make it difficult for them to afford transportation and child care 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.⁵³

Standard 1.2-3 (Membership of the Governing Body - Orientation and Training)

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

COMMENTARY

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.

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; and national and local funding sources for all providers of legal services in the community.⁵⁴ Based upon their experience and expertise, current board 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.

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 board members' time, the program may want to consider including trainings as part of the agenda of regular meetings or board retreats.⁵⁵

PROGRAM EFFECTIVENESS

Standard 2.1 (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

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.⁵⁶ 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.

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. battered spouses, 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 critical. 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.⁵⁷ These other providers interview 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 matters in which clients are appearing most often without representation.

Other organizations that serve the client community are another important source of information regarding clients' legal needs. Interviews with the staff of organizations such as battered women shelters, immigrant aid societies and child welfare advocacy groups can provide valuable insight into the unmet legal needs of clients, 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.⁵⁸ 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 clients 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.⁵⁹

Standard 2.2 (Program Effectiveness - Program Priorities)

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

COMMENTARY

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. battered spouses, 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 advice 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.⁶⁰

While the critical legal needs of clients 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 critical client 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 possess special expertise in these areas of the law. While some private practitioners regularly handle such matters, many others have no familiarity with these areas of law and therefore, must be offered training opportunities before handling such cases if these matters are included within program priorities.

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 matters. Thus, in reaching its decision, it is important that a program not limit its vision as to the types of matters pro bono lawyers can address, while at the same time avoiding duplication of services and realistically assessing its volunteer resources.

When setting its priorities, the program should work cooperatively with other local providers of legal services.⁶¹ 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 client request for services. For example, the program should inquire about the priority areas in which

the providers must turn away 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.

For pro bono programs that are a component of a staff model legal services program, often 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 critical. 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 "dump" cases that staff members of the direct delivery component are unwilling to accept.⁶²

Although a program should focus on the critical legal needs of clients in establishing its priorities, there may be other legal needs that the program decides to address as well. For example, there may be times when private attorneys express a willingness to handle matters in areas that are not of critical need, but in which client need exists, nevertheless. 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 matters within its priorities.

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.⁶³

Standard 2.3 (Program Effectiveness - Delivery Design)

A pro bono program should establish a design for the delivery of legal services which is tailored to local circumstances and which effectively and efficiently meets identified client need.

COMMENTARY

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 critical 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.⁶⁴ 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.⁶⁵

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 are a wide range of types of services a program may deliver through its volunteers including: engaging in individual client representation; engaging in class action or major litigation representation; engaging in legislative or administrative advocacy; providing advice only on legal matters; teaching pro se litigants how to proceed with their cases; working with community groups; 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.⁶⁶

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.⁶⁷ 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.⁶⁸

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 full service clinic at which volunteer attorneys conduct intake interviews, advise those clients whose matters can be disposed of by advice only, or if

that is not possible, agree to represent the client with full service, with or without program follow-up and support. A program may also decide to interview 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.⁶⁹ 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.

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 service 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.

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. The information may be disseminated through meetings, distribution of a brochure, press releases or by taking advantage of public service announcement spots on local radio or television. In addition, when a significant number of persons in the client community speak and understand only a particular language other than English, the program should translate any materials produced or announcements made into that language.

Standard 2.4 (Program Effectiveness - Quality Assurance)

A pro bono program should strive to assure that all clients served through the program receive high quality legal services.

COMMENTARY

The provision of high quality legal services to clients by program volunteers is a goal that all programs should aspire to achieve. 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.⁷⁰

As an initial matter, the program staff should determine that all attorney volunteers are licensed to practice law.⁷¹ The areas of expertise and interest of a volunteer should also be identified and when possible, matters in those areas should be made available to the volunteer for advice or representation. A determination should also be made regarding those areas in which a volunteer needs training prior to handling a matter or staffing a clinic, and such training should be provided.⁷²

For those programs that refer matters to volunteers, the manner in which they are referred can impact upon the quality of service provided by the volunteer. The program will greatly assist the volunteer who aims to provide high quality services to clients by including a clear case summary, copies of relevant documents and any form pleadings or other resource materials available when referring a matter.⁷³ If a program utilizes volunteers to staff full service 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 matters effectively.

After a matter is referred, the program should establish or utilize some means of tracking the progress being made by the volunteer. Through case tracking, the program or its designee is more likely to become aware of problems that exist in a referred matter.⁷⁴ If a problem does surface, steps should be taken to help remedy it. For example, if the problem involves confusion regarding matters of procedural or substantive law, the volunteer can be provided with research assistance or mentoring.⁷⁵

The type and amount of case tracking that is necessary will vary with the complexity of the case and the program's experience with the volunteer. 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 matters 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 matter is opened, closed and the results achieved.⁷⁶

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.⁷⁷

Program staff or volunteers who are knowledgeable in the substantive law should 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.⁷⁸ 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.

Standard 2.5 (Program Effectiveness - Results of Services Provided)

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

COMMENTARY

A program's effectiveness in achieving the objectives of clients can be measured in part by the tangible lasting results obtained through the services provided by its volunteers. Lasting results for clients can be achieved by volunteers utilizing their legal skills to resolve or assist in resolving individual legal problems, to improve laws and practices that affect clients and to increase client self-reliance.⁷⁹ Examples of specific methods of service delivery that a program may utilize in achieving these lasting results include calling upon volunteers to represent clients before tribunals, legislatures or administrative agencies, to provide counsel and advice, to conduct community education seminars, to provide pro se instructions or to refer to other providers, when appropriate.

Pro bono programs aid individual clients in resolving their legal problems by providing those individuals with volunteers to assist them. The types of matters that volunteers address will depend upon the priorities established by the program.⁸⁰ Regardless of the subject matters 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 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.

To determine if client objectives have been achieved, the program should obtain feedback from the client (through client satisfaction questionnaires) and from the volunteer, when appropriate (through case closing forms or other communication appropriate to the model of service delivery utilized).⁸¹ If a program discovers that client objectives are largely not being met, it will need to re-evaluate its method of service delivery and the quality of the services

being delivered by its volunteers, among other factors, to determine ways in which it can more effectively serve clients.

There are times when the 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.⁸² 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. Not all programs are organized or permitted by funding sources to place these types of cases with volunteers; if a program is unable to assist clients with these problems, it should try to refer them to other sources for representation.

It should be noted, however, that many pro bono programs do place matters 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.⁸³ 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.⁸⁴

In addition to addressing clients' legal problems, a program can play a role in assisting clients achieve the important lasting result of increased self-sufficiency. This is the case because the decisions a program makes regarding the types of services it will ask its volunteers to deliver to clients can impact upon the development of increased client self-reliance. For example, by focusing on the issue of community economic development, by providing community legal education, by providing pro se instructions to clients so that they can represent themselves or by advising clients so that they can resolve their problems themselves, the program may assist clients in becoming more self-sufficient. In addition, by providing training sessions and engaging in discussions with volunteers, the program can stress to its volunteers the importance of client self-sufficiency and the role that they can play through the use of their legal skills in helping clients achieve it.

Standard 2.6 (Program Effectiveness - 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 non-profit organizations.

COMMENTARY

Good financial management is an essential element of an effective pro bono program of any

size.⁸⁵ The development and use of accurate budgets help to 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.

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.⁸⁶ Local colleges often offer courses in accounting principles. Excellent accounting software is widely available for maintaining program records and producing reports.

At least annually, the pro bono manager should prepare, or assist in the preparation of, an operating budget for board review and adoption. 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 pro bono program should maintain at least one bank account for the deposit of revenues and the payment of operating expenses, and it should designate those who are authorized to sign checks for this account.⁸⁷ The pro bono manager should develop a system for the preparation of checks at regular intervals to ensure timely payment of expenses.

The program may also wish to establish a reserve or savings account for deposit which 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 the poor, even if not mandated in the state. Each account that is maintained should be reconciled with bank statements on a monthly basis. The pro bono manager should periodically obtain from the board the required bank resolutions and approval for authorized signatures for all bank accounts.

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 payor, 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 which 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.⁸⁸

The pro bono manager should be sufficiently informed to understand 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 which 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 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.⁸⁹

Standard 2.7 (Program Effectiveness - Relations with Other Providers of Legal Services)

A pro bono program should strive to cooperate, collaborate and coordinate with other providers of legal services.

COMMENTARY

In every state, several organizations exist 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 critical 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.⁹⁰

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 that the pro bono program may pose as an apparent competitor for the limited funding available to deliver legal services to the poor. 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.⁹¹ 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 critical 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.⁹² Although the providers may decide to proceed independently in some of these endeavors, it is important that in reaching these decisions 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 the poor, 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.[93](#)

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.

Standard 2.8 (Program Effectiveness - Relations with the Organized Bar)

A pro bono program should strive to develop and maintain an active, cooperative and collaborative relationship with the organized bar.

COMMENTARY

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 seek adoption of revised Model Rule of Professional Conduct 6.1 in their jurisdiction, which urges all lawyers to aspire to render 50 hours of pro bono service annually.[94](#)

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.[95](#)

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 the poor, 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 critical one 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 can appoint bar leaders to its governing body to gain the benefit of their counsel and to keep them informed of program developments on a regular basis.⁹⁶ Staff of the program and governing board members also can attend bar association meetings or relevant bar committee meetings to provide specific information on the program and to seek the bar's input.⁹⁷ 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 so that it will be inclined to assist in the program's development.⁹⁸ In addition, the program should be willing to publicize the assistance and support it receives, thereby enhancing the image of the organized bar.

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.

Standard 2.9 (Program Effectiveness - Relations with the Judiciary)

A pro bono program should strive to work with the judiciary to develop methods for judges to provide their support and assistance to the program.

COMMENTARY

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.⁹⁹

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.¹⁰⁰ Members of the judiciary also can assist in recruiting entities, such as law firms, corporate law departments or government law offices, by making individual presentations to them. 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 helping to increase the pool of potential program volunteers.¹⁰¹

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,¹⁰² to speak at recognition events or to send notes of appreciation to lawyers or law firms that provide outstanding service to pro bono clients.¹⁰³

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.¹⁰⁴

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 decide to hear pro bono cases at the beginning of their daily calendar or they may set aside a particular hour of the day during which time pro bono cases can be presented.

To gain the valuable support and assistance of the judiciary, it is critical that communication with them take place. There are many ways in which that communication can be fostered. A program, through its manager or board members may decide to write, visit or call various

judges to keep them informed about the program and to solicit their input and assistance.¹⁰⁵ 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.¹⁰⁶

Standard 2.10 (Program Effectiveness - Relations with Community Organizations)

A pro bono program should strive to develop and maintain active and cooperative relations with community organizations and social service agencies that serve clients.

COMMENTARY

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.¹⁰⁷

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.¹⁰⁸ 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.¹⁰⁹

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 matter.[110](#)

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.[111](#) 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.

Standard 2.11 (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.[112](#)

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 critical 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.[113](#)

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.[114](#)

A program's institutional status with other providers of legal services is achieved through demonstrating a responsiveness to clients' needs and an ability to provide high quality legal services through program volunteers in an efficient and effective manner. A program's willingness to work cooperatively with these groups to coordinate the delivery of legal services in the service area is also essential to gaining their respect.[115](#)

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. In addition, recognizing the volunteers who participate in the program, as well as any assistance that it receives from the bar and the judiciary, may enhance a program's stature with those key segments of the legal community.[116](#)

Standard 2.12 (Program Effectiveness - Periodic Program Evaluation)

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

COMMENTARY

A program should periodically review its entire operation because the needs of clients can change, systems can become outdated and 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, achieving its goals and objectives as determined by its priorities and other policies, utilizing innovative strategies to leverage its available resources to meet client need and fulfilling the terms set by its funders. The assessment process should foster forward-looking and judicious management of the program which attends to program weaknesses, enforces program strengths and builds upon program successes.[117](#)

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 which enables them to judge the program's operation effectively.¹¹⁸

The evaluation should encompass all the areas which are addressed in these Standards: program governance, program effectiveness, relations with clients and volunteers and methods for facilitating effective delivery of service. However, there are 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.¹¹⁹

A program should make its best efforts to assess the quality of service being provided by volunteers. If a program directly refers matters to individual volunteers, the tracking and oversight system it establishes will certainly aid in evaluating the quality of the services provided.¹²⁰ 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.¹²¹ 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.¹²² A program should also consider requesting that volunteers provide self assessments of the quality and manner of the service they provided.

A program should be concerned with its ability to recruit, utilize and retain volunteers.¹²³ 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 matters they are handling and the extent of services they are providing. 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 matters that a program is placing with volunteers. A program should also identify the types of matters within its priorities that it is experiencing difficulty in placing with volunteers and those non-priority matters that generate the most requests for assistance.¹²⁴

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.¹²⁵

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.¹²⁶ 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 concern for, awareness of and involvement with issues involving the poor, pro bono programs and other providers of legal service 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.

RELATIONS WITH CLIENTS AND VOLUNTEERS

Standard 3.1 (Relations with Clients and Volunteers - Establishment of Relationships)

A pro bono program should clearly communicate the nature of the relationship it is establishing with each client and volunteer and delineate each party's rights and responsibilities. A program should aid a client and the volunteer who is representing or otherwise assisting that client in communicating clearly their duties and responsibilities to each other.

COMMENTARY

Clearly defining the relationship between the program, the volunteer¹²⁷ and the client¹²⁸ 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.¹²⁹ 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.

Agreement Between Client and Program

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 individual seeking assistance 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."¹³⁰ Therefore, 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 matter.¹³¹

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 of the relationship. These include: obtaining confidential information from the individual seeking assistance; 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.

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).¹³² 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.¹³³ 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. 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 also explain to a client the process for voicing dissatisfaction with the program or with the volunteer to whom the client's matter has been assigned.¹³⁴

The client should be informed that the program will provide information regarding the client's case to the volunteer with whom the matter is placed, but that the program will otherwise protect the confidentiality of that information, consistent with applicable ethical obligations.¹³⁵ The program should also explain to the client any court fees or litigation 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.¹³⁶

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 matter 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. A signed document, however, is by no means the only method for setting forth the agreement. Alternatively, the rights and responsibilities of the client and the program may 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.¹³⁷ 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.¹³⁸

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 matter 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.¹³⁹ 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 matter 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 matters, rather than the program's form retainer. In this instance, the program should review that retainer agreement to ensure that all of the material issues discussed below are included. 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.

The agreement between the client and the volunteer should clearly articulate the scope of the assistance to be provided by the volunteer.¹⁴⁰ 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 burn-out 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.¹⁴¹ The policies adopted by the program regarding court costs and attorneys' fees should also be

clearly articulated in the agreement, when applicable.[142](#)

Clients should be encouraged to initiate contact with their attorney or paralegal and should be informed how to do so. They should recognize the importance of informing the volunteer of changes in circumstances affecting the case and advising the volunteer of their whereabouts so that they may 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.[143](#)

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 should make every effort to provide the translation support services needed in such cases, if they are not otherwise available.[144](#) 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.

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 matter 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 matter upon completion of the referral.[145](#) Whatever the degree of the program's responsibility is to be, it is critical that it be clearly set forth in the agreement between the program and the volunteer.

The program should explain the process by which cases will be placed, the right of the volunteer to refuse a placement and the responsibility of the volunteer to enter into a written retainer with a client in any matter that is accepted. In addition, the types of support and training available through the program should be explained, as well as the costs of representation policy adopted by the program.[146](#) The agreement should also inform the volunteer that the volunteer cannot accept any fees from an eligible client, as well as what the consequences are, if any, of a client becoming financially ineligible for pro bono services during the course of representation. In addition, the agreement should set forth who will retain any court awarded attorneys' fees that may be obtained in a case.[147](#) It should also explain the nature and extent of the malpractice insurance coverage provided by the program for its volunteers.[148](#)

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 should also be set forth in the agreement.¹⁴⁹

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.

The agreement between the volunteer and the program may take several forms. It may be contained in a document signed by both parties, a copy of which should be provided to the volunteer. Alternatively, the program may provide a brochure or send a letter to the volunteer that sets forth the rights and responsibilities of each party.¹⁵⁰ Regardless of the form of the agreement, it is important that the nature of the relationship be clearly defined and communicated to the volunteer.

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 matters 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, as between the program and the entity, for placement, tracking and oversight, and other activities, as well as a clear understanding on the disposition of attorneys fees, payment of litigation-related expenses and other policies.

Standard 3.2 (Relations with Clients and Volunteers - Conflicts of Interest)

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

COMMENTARY

Overview of Ethical Principles

Ethical 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. This means that a lawyer generally may not act as an advocate against a person the lawyer represents in some other matter, even if it is wholly unrelated.¹⁵¹ The principle underlying these ethical concepts is the duty of loyalty that each lawyer owes to a client.¹⁵² 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 their interests.

A lawyer also has an ethical duty to maintain client confidences.¹⁵³ 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.¹⁵⁴

Application of Ethical 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, ethical opinions have been rendered on this issue.¹⁵⁵ 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 ethical 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.¹⁵⁶

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.¹⁵⁷ 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 would-be client. A program may, for example, maintain and regularly update an adversary cross-reference file. Through use of this system, many potential conflicts may be uncovered based simply upon the name and address of the would-be client.¹⁵⁸ If a conflict is discovered in which representation of one client would be directly adverse to another, a strict reading of ethical 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.¹⁵⁹ It is recognized, however, that often a person of limited means who seeks assistance through a pro bono program may have no other place to turn for legal help. Faced with this reality and the concern for meeting the legal needs of the poor, 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.¹⁶⁰ Under this system a panel is formed composed of volunteers who agree to interview clients and possibly represent them only in matters in which the program is unable to do so, due to a conflict of interest.¹⁶¹ The program does only a minimal amount of screening that may include, for example, the individual's name, address and problem type.¹⁶² 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.¹⁶³

Standard 3.3 (Relations with Clients and Volunteers - Non-Discrimination and Diversity)

A pro bono program should not impermissibly discriminate in the acceptance and placement of cases, in the recruitment of volunteers or in the employment of staff. To the extent practicable, staff hired and volunteers recruited should reflect the diversity of the community being served.

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, volunteers or staff. Such action would greatly harm the stature and credibility of the program and must therefore be avoided.¹⁶⁴ 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 anti-discrimination stance.

In addition to avoiding all forms of discrimination, a program should make its best efforts to reflect within its staff and its volunteer pool the diversity of the community which it serves. 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 heightens 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.¹⁶⁵

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 or Hispanic 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, for example, volunteers of a particular race or ethnicity.¹⁶⁶

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.¹⁶⁷ The commentary to the ABA's Standards for Providers of Civil Legal Services to the Poor sets forth the strengths and weaknesses of this approach:

Such employees will be familiar with the environment and culture of the community, and may have increased credibility with clients. Exclusively local recruitment, however, may restrict the range of experience available, particularly among professional staff, and may encourage a parochialism which limits the provider's vision about solving the problems of clients. The provider must therefore balance these considerations, so that each hiring decision enhances its ability to serve clients effectively.¹⁶⁸

Standard 3.4-1 (Relations with Clients - Establishment of an Effective Relationship)

A pro bono program should strive to establish a relationship with each client which fosters trust and preserves client dignity. It should assist volunteers in establishing a similar relationship with their clients.

COMMENTARY

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

[L]ow-income persons may mistrust and fear lawyers as part of a hostile and unfamiliar legal system or as part of a social services bureaucracy from which they are already alienated. They may be intimidated by the "professionals" from whom they seek help. They may misunderstand what constitutes a legal problem or what remedies are available through the legal system. This may keep some clients from seeking legal assistance. For others, it may leave doubts about the representation they receive.¹⁶⁹

These 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 it should provide support and training to volunteers that will aid them in overcoming such barriers as well.¹⁷⁰

Development 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.¹⁷¹ 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 clients and for many pro bono programs, the most extensive interaction with 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.¹⁷² Intake procedures should demonstrate the program's respect for 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. Clients should not be subject to lengthy delays in being interviewed, as is the case with many of the bureaucracies with which they must deal.¹⁷³

Program intake should include a clear explanation of the services offered by the program. In those programs which 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 matter is not accepted, reasons for the decision should be explained clearly and promptly, and applicants desiring a review of that decision should be given information regarding the internal grievance procedure. The program should attempt to refer rejected applicants to other sources of assistance, if they exist. These referrals should be made as quickly as possible to enable rejected applicants to seek other assistance if necessary to protect their legal rights.¹⁷⁴

The program should provide training and orientation to each staff member who has direct contact with clients to reinforce the importance of treating clients with dignity and respect.¹⁷⁵

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 affect that relationship positively. 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.¹⁷⁶ If the program engages in case tracking and oversight, that process provides another means of positively affecting this relationship because through it, the program can inquire about any particular problems that may have developed in the area of relations with clients. If problems are identified, the program can attempt to assist volunteers in finding solutions to them.¹⁷⁷

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: the manner in which they were treated during the intake process, the staff and volunteers with whom they came in contact, the various services that were provided and the results achieved.¹⁷⁸ 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.

Standard 3.4-2 (Relations with Clients - Protection of Client Confidences)

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

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.¹⁷⁹ Staff must be further informed that this duty extends not only to information provided by clients, but also to information imparted by a potential client seeking to engage a lawyer's services even though no legal services are performed and representation is declined.¹⁸⁰ The program should also review the responsibility to maintain client confidences with volunteers. This may be best accomplished through training events or through the provision of printed materials.¹⁸¹

The responsibility to maintain confidentiality begins at intake. All applicants for service must be assured a private interview, regardless of the method of intake (in-person or telephone) that is utilized by the program. The applicant's identity as well as the confidential information supplied in support of the application should be protected from improper disclosure.¹⁸²

The commentary to the ABA Standards for Providers of Civil Legal Services to the Poor 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)). 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.¹⁸³

Standard 3.4-3 (Relations with Clients - Client Access)

A pro bono program should adopt policies and procedures which facilitate access to its service by the client community.

COMMENTARY

By making choices that demonstrate a concern for the convenience of clients and applicants, 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.¹⁸⁴

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.¹⁸⁵ For many pro bono programs, physical access to the program office by applicants 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 client intake interviews.¹⁸⁶

If a program conducts intake or utilizes volunteers to provide service by phone, 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 applicants' ability to reach the program. If it is determined that clients and applicants 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 install voice mail to enable clients and applicants 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. 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.

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.¹⁸⁷ 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.¹⁸⁸ 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.

A program should be sensitive to the needs of the client community when establishing its office hours and the hours of the clinic sites that it may operate. Clients and applicants 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, 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.¹⁸⁹

Programs that refer individual clients to individual volunteers should take into consideration client access issues when making referrals. For example, if a client is physically handicapped, the program must ascertain that the volunteer's office or other site at which service is provided is handicapped 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.¹⁹⁰

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. 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 from its outreach efforts and it must therefore be careful not to create expectations that it cannot meet.¹⁹¹

Standard 3.4-4 (Relations with Clients - Communication with Clients)

A pro bono program and its volunteers should communicate effectively with clients.

COMMENTARY

To form an effective relationship with a client, it is vital that meaningful communication take

place between the client and the program, and the client and the volunteer. 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.

Non-English Speaking Clients

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 other than English, the program should attempt to recruit bilingual staff, to the extent practicable. The program should strive for a similar bilingual capability among its volunteers. Specialized recruitment drives that explain the need and 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.^{[192](#)}

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.^{[193](#)}

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 translation.^{[194](#)}

Clients with Disabilities^{[195](#)}

It is vital that a program and its volunteers have the ability to communicate effectively with clients who are disabled to obtain all the facts, explain available options and results, and be in compliance with federal law.^{[196](#)} 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.

If a 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 has no sight, the program should seek the pro bono services of a braille translator or use audio tapes or telephone conversations to communicate information to the client.

For 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.

The range of cognitive impairments and capacities that 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.^{[197](#)}

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.^{[198](#)}

Standard 3.4-5 (Relations with Clients - Eligibility Guidelines)

A pro bono program should establish written guidelines to determine an applicant's eligibility for service.

COMMENTARY

Most funding sources for pro bono programs set eligibility standards for client service based upon one or more of the following: income or other financial criteria; geography, such as residency within a particular county; status, such as age or gender; or subject matter, such as employment matters or civil rights issues. Consistent with the specific criteria set forth by funders, 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.^{[199](#)}

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.[200](#)

The established eligibility guidelines should be communicated to the program volunteers to avoid confusion regarding the acceptance of some matters 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.[201](#)

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.[202](#)

Eligibility Determinations

The commentary to Standard 2.1 of the ABA Standards for Providers of Civil Legal Services to the Poor 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 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.[203](#)

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 insure that those determinations are being properly made.

Standard 3.4-6 (Relations with Clients - 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 applicants for service 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 procedure²⁰⁴ 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 applicant 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 from seeking other appropriate remedies from attorney disciplinary bodies or from the courts for alleged malpractice.²⁰⁵

Notice

A program should make reasonable and appropriate efforts to inform applicants 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 applicants 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 applicants and clients of the grievance procedure. If a program or volunteers conduct intake or provide advice by telephone, 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 applicants 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 multi-lingual, if appropriate and practicable. In addition, it should be written in language that can be easily understood by clients and applicants. Volunteers should also be fully informed of the nature of the grievance policy and the procedures established.²⁰⁶

Overview of Process

The grievance procedure should afford an opportunity for a full and fair review of complaints by clients and applicants. 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 applicant 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.²⁰⁷ Straight forward matters such as the proper application of established eligibility guidelines may be excluded from this level of the grievance procedure.

Application

Any grievance filed regarding actions by program staff, including, for example, the rejection of a matter for placement or perceived rude conduct exhibited towards a client or applicant, 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 matter, a simple phone call from the pro bono manager 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 matter under review, the pro bono manager will have the right to acquire that information.²⁰⁸ 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.²⁰⁹ 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 pro bono manager cannot order the volunteer to take or refrain from taking any action on a matter.²¹⁰ Given this limitation, the pro bono manager should discuss the complaint with the volunteer to determine if it can be resolved or if the matter should be re-

assigned, unless the client's interests would be impaired by doing so.²¹¹ If it appears reasonably likely, however, that the grievance involves irremediable malpractice, the client should be referred to outside assistance, and the program should make reasonable efforts to aid the client in obtaining such assistance.²¹²

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 board can take. As is the case with the pro bono manager, the board cannot interfere with the independent judgement of the volunteer.²¹³ 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.²¹⁴ This is true whether or not the program stands in an attorney-client relationship with the grievant.²¹⁵ Grievances regarding quality of work should not go before the governing board if, as a result of board review, the client's legal rights would be compromised.²¹⁶

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 matter, or to refrain completely from referring other matters to that individual.²¹⁷

Standard 3.4-7 (Relations with Clients - 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, a method for obtaining client feedback once service has been completed should be developed by the program. For example, a client satisfaction form that clients are asked to fill out and return to the program may be used, or a telephone survey may be developed and administered to those clients who have phones.

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 matters 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 matter; was the volunteer easy to contact; was the client satisfied with the outcome of the matter; was the client satisfied with the quality of work performed; was the client satisfied with the time it took to resolve the matter; and did the client understand why the matter 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.²¹⁸ 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 or postcard 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.²¹⁹ 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 3.5-1 (Relations with Volunteers - 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.

Before recruiting volunteers, a program should determine the type and extent of need that exists among clients and how the program will attempt to meet that need so that meaningful priorities can be set and volunteer opportunities can be established. Potential volunteers can then be informed of this specific client need through the use of facts, statistics and anonymous case descriptions from the community. At the same time, volunteers can be informed of the various opportunities that exist within the program to enable them to help meet that need. When possible, a program should try to develop a broad range of volunteer opportunities and systems for delivering service, because by doing so, it is likely to increase its ability to recruit volunteers to assist clients.²²⁰

Program staff should not view recruitment as their responsibility alone. Instead, they should call upon the organized bar, bar leaders, the judiciary, governing board members and program volunteers to aid in recruitment efforts. The bar leaders and program volunteers can provide valuable assistance by requesting through personal contact that their peers join the program. The bar association can urge members to participate in the program by, for example, 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 board members to discuss the program and its need for volunteers.²²¹ Judges, too, may be able to assist the program 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. 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.²²²

Members of the program's governing body should view recruitment of volunteers as one of their important responsibilities.²²³ Because governing boards members often include bar leaders and other respected members of the bar, they are particularly well suited to act as recruiters.²²⁴ In addition, because peer recruiting can be a very effective means of increasing the number of program volunteers, lawyer or paralegal members of the board can also play an important role in recruitment drives.

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:

- targeted recruitment of lawyers with special skills (e.g. bankruptcy lawyers; divorce lawyers);
- targeted recruitment of specific types of lawyers (e.g. new admittees, retirees);
- targeted recruitment of non-lawyer volunteers (e.g. paralegals, court reporters, social workers);
- targeted recruitment of attorney-paralegal teams who work together in law firms or other settings; and
- generalized recruitment (e.g. mass mailing, advertisement in legal newspaper or bar journal).

In addition, a program should consider targeted recruitment of lawyers in institutional settings, such as law firms, corporate counsel's offices or government law offices. Recruitment of such lawyers can be leveraged by seeking 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 matters that the program sends to it.[225](#)

Programs located in rural areas often face special problems in recruiting volunteers for many reasons including the limited number of lawyers that practice in their geographical area and the large distances that must be traveled for the provision of service to occur. To help address this problem, 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 matters 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.[226](#)

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. 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.

A program must decide if it will depend upon recruitment letters, personal contact or a combination of both approaches.²²⁷ If resources permit, a program should always choose the combination approach to attract as many volunteers as possible.²²⁸

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, if finances permit, 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 such as training, support and malpractice insurance; and the quality control mechanisms put in place by the program. The program should also consider developing a newsletter, if resources permit. In addition, the program should seek space in the local bar publication and other legal publications through which it can attempt to regularly recruit volunteers.

Recruitment efforts should never be viewed as completed because the need for volunteers to provide pro bono legal services to the poor remains great and new sources of volunteers can often be tapped. Thus, if a program aspires to continue to provide assistance to clients, it should consider recruitment to be an ongoing process and it should periodically review those efforts.²²⁹

Standard 3.5-2 (Relations with Volunteers - Utilization)

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

COMMENTARY

While recruitment of volunteers is critical to the success of a program, if the time and skills of those volunteers are unused or under utilized, 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.²³⁰ 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.

Volunteers should be integrated into the program as soon after they have been recruited as is possible. 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.²³¹ 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. When a program fails to utilize volunteers soon after they have signed-up for service, it is likely that volunteers' enthusiasm will wane, making it more difficult to obtain their participation at a later date. 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.

The assignments made to volunteers should be ones that 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 under utilization 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 matter 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 opportunities for providing service and obtaining training so that if they want to assist clients in different substantive areas than they usually practice, they can do so.

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. 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.²³²

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.²³³ In addition, volunteers may be utilized to act as trainers or mentors for other volunteers, to prepare substantive manuals, to assist with management of volunteers and to 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.²³⁴

Standard 3.5-3 (Relations with Volunteers - Training and Support)

A pro bono program should provide training opportunities and support services to its volunteers.

COMMENTARY

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 matters 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 matters handled by program volunteers, substantive training is likely to be necessary. If the program identifies a specific area of great 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.²³⁵

In addition to offering training in substantive areas, a program which places litigation matters 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), 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.

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.

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 program volunteers attending 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.

Support Services

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.²³⁶ 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 matters 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 matters with volunteers, it can provide a thorough statement of the facts of the case and an accurate assessment of its nature.²³⁷ 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 given substantive areas and requesting that they act in that capacity. The program can also provide office space for interviews, if space is 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. In some cases, volunteers may be willing to pay for the printing costs. In addition, program staff can attempt to 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.

Programs whose volunteers handle matters 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.²³⁸

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 matters in litigation, as is providing reimbursement for other expenses such as postage, transportation and photocopying.²³⁹ 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.

Standard 3.5- 4 (Relations with Volunteers - Professional Liability Insurance)

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

COMMENTARY

A pro bono program should obtain professional liability insurance to protect itself, its clients, its staff and its volunteers.²⁴⁰ Professional liability insurance coverage for the program and its staff is necessary, regardless of the level of responsibility that the program assumes for a matter, 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.

The program should furnish malpractice insurance coverage to program volunteers 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 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 who are newly admitted to practice and government lawyers, often 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.²⁴¹ 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 and its staff.²⁴²

Standard 3.5- 5 (Relations with Volunteers - Costs Policy)

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

COMMENTARY

Certain expenses associated with representation of clients such as filing fees and service fees are often waived by a 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.²⁴³ 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.²⁴⁴ 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 and utilize volunteers such as court reporters and expert witnesses, when possible, or develop funding for these representational expenses.²⁴⁵ 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.²⁴⁶ In addition, a local bar association may be approached to seek or establish other resources to fund such costs. Often, however, there are no alternative sources of funding for these expenses. A program, therefore, should consider budgeting, to the extent it is financially feasible, some funds to cover necessary costs of representation.²⁴⁷

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. This criteria might include some or all of the following elements:

- the likelihood of success in the matter;
- the need to incur costs to pursue the matter successfully;
- the relationship between the cost and the potential benefit to the client;
- the availability of less costly alternatives; and
- the potential for recovering costs.²⁴⁸

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

Any costs policy adopted should be clearly communicated in writing to both volunteers and clients.²⁴⁹ 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.

Standard 3.5- 6 (Relations with Volunteers - Attorneys' Fees Policy)

A pro bono program should establish and communicate to clients and volunteers a policy regarding the receipt of attorneys' fees by program volunteers.

COMMENTARY

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.²⁵⁰ 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.²⁵¹

Volunteers should be encouraged to seek statutory attorneys' fees when the source of those fees is other than the client's award. If such fees are awarded by a tribunal, 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 should communicate it in writing to both the volunteer and the client.²⁵²

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."²⁵³ Such contributions obviously aid a program because they make 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.²⁵⁴ 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.²⁵⁵ However, because the opinions in the states have varied, a program should research the issue in its jurisdiction before setting such an attorneys' fee policy.

Standard 3.5- 7 (Relations with Volunteers - Retention)

A pro bono program should develop effective methods for retaining 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 board of directors; establishing effective quality assurance systems; providing malpractice insurance for volunteers; developing training and support systems for volunteers; and recognizing volunteer efforts.²⁵⁶

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 and expertise, 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.²⁵⁷

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.

Recognition of volunteer efforts by the bar, the bench, the program and the client can provide much satisfaction to volunteers. While it is unlikely to be the prime motivation for individuals continuing to volunteer for a program, recognition can play a part in a volunteer's willingness to take additional cases and/or to continue to participate in other activities that benefit the program. A program should therefore make every effort to recognize the good works of its volunteers.²⁵⁸

Standard 3.5- 8 (Relations with Volunteers - Recognition)

A pro bono program should develop effective methods for the recognition of its volunteers.

COMMENTARY

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.

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; 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.²⁵⁹

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.²⁶⁰ The judiciary may also be called upon to aid in the recognition of volunteers.²⁶¹ 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.

A program should not overlook the fact that clients can provide some of the most meaningful acknowledgment of the value of volunteers' work.²⁶² Often, clients will express gratitude for the services performed by volunteers in client evaluation forms.²⁶³ At other times, clients may convey positive feelings about volunteers in conversations with program staff. Such acknowledgments should always be shared with volunteers who are likely to gain much satisfaction from knowing that clients appreciated their efforts.

FACILITATING EFFECTIVE DELIVERY OF SERVICE

Standard 4.1 (Facilitating Effective Delivery of Service - Acceptance Policy)

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

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 critical that programs allocate their limited resources by establishing program priorities.²⁶⁴ It is equally important that each program which utilizes volunteers to provide more than simple advice develops a policy and procedure for determining which specific matters it will accept, to enable it to ascertain that the matters addressed by program volunteers fall within its established priorities. Furthermore, because the demand for service is so great, it is unlikely that every applicant 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 applicants are likely to receive service.

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 matters are assigned, staff will be able to properly prepare them and provide any support that may be needed by volunteers.²⁶⁵ Implementation of an acceptance policy by such programs can have the added benefit of aiding in the retention of volunteers because by screening matters, a program is more likely to place matters that have legal merit and/or involve clients whose situation will either be improved through the provision of service or who will suffer loss if service is not provided.

In fashioning an acceptance policy, a program should take into consideration the following factors:

- the relationship of the issues presented to established program priorities;
- the legal merit of the matter;
- the impact on the client's life if the matter is accepted or rejected;
- the number of client community members affected by the matter under consideration;
- the existence of sufficient volunteer resources;
 - 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 matter is in litigation.

The acceptance policy should establish a procedure for determining as quickly as possible whether a matter will be accepted for possible service by a volunteer. Applicants should be notified of that decision as soon as possible. Applicants whose matters 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 applicants to take necessary steps to protect their rights.[266](#)

Implementation of the acceptance policy requires thoughtful evaluation of specific matters 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 applicants' circumstances can be developed.[267](#)

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 applicants 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.[268](#)

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 clients.[269](#)

Standard 4.2 (Facilitating Effective Delivery of Service - Volunteer Qualifications)

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

COMMENTARY

A program should attempt to assure that all volunteers are competent to advise and represent clients.[270](#) It should also promote sensitivity to clients, urging that all volunteers treat clients with dignity and respect. While it is often difficult to judge if an individual is competent and sensitive to clients, there is information that a program can obtain that will aid it in making this

determination.[271](#)

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 this criteria as well as periodically review the status of its existing volunteers.[272](#)

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 which lists this information. If such a directory exists, program staff can review it. Alternatively, program staff can contact the licensing body directly.[273](#) 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.

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.

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. A program should make every effort to make assignments to the volunteer that are within his or her given area of practice, unless that volunteer has indicated an unwillingness to handle such matters.[274](#)

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. Equipped with that knowledge, a program should make provision for such training prior to requesting that a volunteer provide service in those subject areas.[275](#) By doing so, the program can be confident that the volunteer has at least been exposed to the necessary information that will enable the volunteer to advise or represent a client competently. In addition, the program should make arrangements for the provision of advice, consultation and other support services to volunteers who handle pro bono matters in areas in which they usually do not practice.[276](#)

It is no doubt difficult to determine a new volunteer's sensitivity to clients, unless program staff has personal knowledge regarding that individual. A program may, however, decide to provide

all new volunteers with training so that the volunteers are sensitized to the special conditions of clients that may affect the attorney-client relationship.²⁷⁷

Once a volunteer accepts a matter, there are several sources from which a program can seek information regarding a volunteer's competency and sensitivity to clients. One is the program's own tracking system through which it is likely to become aware of any potential problems that a volunteer may be encountering.²⁷⁸ 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.²⁷⁹ In some situations, other volunteers or judges may be additional sources of information regarding a volunteer's competency and sensitivity to clients.

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 uncovered involves a lack of sensitivity to clients, the program has several options available to it and 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 matters 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, there are also a range of responses that are possible, which include, but are not limited to: discussing the problem with the volunteer, providing more oversight and training to the volunteer, ceasing to refer matters to the volunteer in the area in question, ceasing to refer any matters to the volunteer, or providing 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.

Standard 4.3 (Facilitating Effective Delivery of Service - Client Intake System)

A pro bono program should establish or utilize an intake system through which knowledgeable staff or volunteers determine eligibility, discover potential conflicts of interest, obtain essential facts, identify legal issues and maintain client confidentiality and client dignity.

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 applicants in the most efficient manner.²⁸⁰ 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.²⁸¹ Because a 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 client's needs and treats 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 applicants: 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. The program must make arrangements, however, to have attorney staff or attorney volunteers available to supervise this 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 regarding it often requires a breadth of legal knowledge which an individual without formal education may not possess.²⁸²

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.²⁸³

How Intake is Conducted

Intake interviews can be conducted by telephone, in person, or through a mixture of the two 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 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 applicants -- often providing the applicant 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.

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 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 matter. 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 matter 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.²⁸⁴ 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 matter in-person. Another possibility is that a program may decide that in certain

situations, such as applicants who only need counsel and advice, a phone interview will suffice, whereas for more complex matters which could involve the referral of the applicant 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 which 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 clients, the 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 firms²⁸⁵ 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.²⁸⁶ 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.

Sensitivity to 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 clients' needs are taken into account and 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 client.²⁸⁷ A program should also consider establishing flexible intake hours to accommodate clients who are employed or who for other reasons find it difficult to be interviewed during normal office hours.²⁸⁸

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 clients.²⁸⁹ Such sites should also have private offices, to ensure the confidentiality of the intake interview.²⁹⁰

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.²⁹¹ They should be prepared to explain the scope of the services offered by the program, the relationship between the applicant, the volunteers and the program, and if applicable, the placement process and the responsibilities of a client if the matter is placed.²⁹² 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 applicant 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 applicants and clients when such referrals are necessary.²⁹³

Standard 4.4 (Facilitating Effective Delivery of Service - Placement System)

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

COMMENTARY

Pro bono programs that place matters with volunteers have a responsibility to ensure that placement is done in a timely and appropriate manner and that volunteers are provided with all relevant information and documents available to the program. The type of matter 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 matters with

volunteers.[294](#)

Placement Decision

The first issue that a program must address is which of the many clients seeking assistance will have their matters 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, the following of which may be of particular concern to the volunteers to whom matters will be referred: the legal merit of the matter referred and the impact on the client's life if the matter is accepted or rejected.[295](#) If the matter 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 matters from the program in the future. If however, the matters referred have no legal merit or the client can receive little benefit, the volunteer may balk at accepting additional matters from the program.

Once a program decides that it will accept a given matter, it must determine with which specific volunteer the matter 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 matters 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.[296](#) 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 a knowledge of volunteers' skills beyond their area of practice, and a knowledge of clients' needs beyond the type of matter that must 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 properly match them.[297](#)

When placing matters, 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 matter must be placed as well as to which volunteer the placement can be made. In addition, the number of open matters 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 matter.[298](#)

Placement Process

Once a program has decided with which volunteer it would like to place a matter, it should contact that volunteer to determine the volunteer's willingness and availability to accept the matter. This contact may occur through a phone call to the volunteer prior to sending the matter. Alternatively, the program may send the matter with a cover letter requesting that the volunteer contact the program within a given time if the volunteer cannot accept the matter. 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 matter has been placed, when in fact the volunteer may well reject it before even agreeing to talk with the client. Therefore, it is vital that the program be certain that the matter has been accepted by the volunteer before the client is notified that the matter has been placed.

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

There may be occasions when a volunteer accepts a matter, 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 matter. 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 matter 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 matter, regardless of the assistance offered by program staff. If that occurs, it is best for the program to accept the returned matter 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 matters are returned, they should be re-evaluated and, if appropriate, the program should attempt to place them with other volunteers.

A program should attempt to place all matters within a reasonable time. What is reasonable will vary depending upon the urgency of the matter, 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 matter 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 matter. In such situations the client should be advised to contact the program if the client receives any correspondence or notices regarding the matter. 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 matter.

From time to time, a program may find that despite its best efforts, it cannot locate a volunteer willing to accept a particular matter. To provide guidance to the individuals charged with the responsibility of placing matters, a program should consider establishing a policy regarding the number of attempts it will make to place a matter before notifying a client that the program will not be able to provide assistance.

Preparation

The program should prepare all matters 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 not 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 should be revealed to the volunteer when the matter is placed.

The placement of a matter should also include a summary in which the known facts of the matter 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 matter 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 *informa 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 matters such as court costs and attorneys' fees.²⁹⁹

Client Notification

Those individuals seeking referral to a program volunteer should be informed of the placement

process at the time of their intake interview.³⁰⁰ If the program is successful in placing the matter, the client should be sent written notification that the matter 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.³⁰¹ In those situations in which the program is unsuccessful in placing a matter, 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.

Standard 4.5 (Facilitating Effective Delivery of Service - Tracking and Oversight)

A pro bono program should establish a system for obtaining information regarding the progress of matters placed with volunteers. Based upon the information received, the program should provide the assistance required, subject to any limitations imposed by rules of professional conduct.

COMMENTARY

The development of a tracking system is valuable to both the program and the client because it provides a method for determining that volunteers are progressing on the matters that have been placed with them and that the program is providing an efficient, effective, high quality service to clients.³⁰² In addition, tracking can provide important information to the program regarding any problems a volunteer is encountering either in working with the client or in handling the matter placed. Tracking is also beneficial because it facilitates the program's ability to maintain accurate records regarding the status of all matters being handled by program volunteers. Such information is useful to program staff because it enables them to determine which volunteers may be available to accept new matters.³⁰³

Tracking can be achieved through telephone contacts, written correspondence or a combination of approaches. In devising a tracking system, a program should aim to obtain the following type of information regarding the matter placed: the volunteer has made an initial contact with the client and has agreed to accept the matter, or if the volunteer has not accepted the matter, 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 matter; the results of the services provided; and the level of the client's satisfaction.

An initial contact should occur between the client and the volunteer promptly. After that initial contact has taken place, a volunteer should decide within a reasonable time whether to accept or reject the matter. What is reasonable will vary, depending upon the urgency of the matter, the volunteer's schedule and the client's situation. For example, in routine matters that do not

have immediate deadlines, it may be appropriate for a program to request that a decision regarding acceptance or rejection of a matter be made within 30 days of the initial placement with the volunteer. To determine if that decision has been made, the program should consider requesting such information of the volunteer within 45 days of the placement. To facilitate the provision of that information, the program may directly contact the volunteer after the placement has been made, or it may consider including a form in the file that is sent to the volunteer when the matter is placed. If a program has not received the information within the time requested, it should again contact the volunteer to attempt to obtain it.

Once the program receives confirmation that a matter 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. In addition, the program should develop a system for regularly obtaining this information from volunteers. 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 matter, the experience level of the volunteer and the program's past experience with the volunteer. In most non-emergency matters, 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 matter, the anticipated closing date of the matter and any assistance that the volunteer would like from the program. The program should develop a system for timely follow-up for those situations in which a volunteer either requests assistance or fails to return the update form.

A program should request that a volunteer notify the program once the matter 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 matter includes when it was closed, why it was closed, what result was achieved for the client, the number of hours devoted to the matter and any comments that the volunteer would like to provide regarding the particular matter 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.

There may be times during the course of tracking that the program discovers that a volunteer is not proceeding properly with the matter or is taking action that appears questionable to the individual who is reviewing the update forms³⁰⁴ Assistance from program staff or their designees may be appropriate and helpful in such situations. A program, however, should only obtain additional information about such matters that may be needed to properly assist the volunteer if doing so does not violate a volunteer attorney's duty to maintain client confidences.³⁰⁵ 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 warn the volunteer that client confidences cannot be revealed unless the client consents to their disclosure. It should be recognized, however, that assistance can often 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.

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.³⁰⁶ 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 critical that the program and the volunteer clearly establish the nature of their relationship at the onset of the case.³⁰⁷

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.

Standard 4.6 (Facilitating Effective Delivery of Service - Record Keeping)

A pro bono program should develop internal systems for identifying conflicts and for maintaining, retrieving and evaluating data regarding applicants, clients, volunteers and services provided.

COMMENTARY

Effective record keeping regarding applicants, 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 matters placed. In addition, by maintaining such data, a program is able to provide information to its governing body so that the board 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 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.³⁰⁸

To the extent that it is financially feasible, programs should computerize their record keeping systems. This is advisable because computerized systems are efficient to operate, provide quick access to data, conserve office storage space and avoid unnecessary paper work.

Record Keeping Regarding Clients and Applicants

There is certain basic information that a program should obtain regarding applicants for service which should be easily retrievable through its record keeping system. This information includes identificational 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 which includes 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 may be of importance, depending upon the type of matter involved and the services provided by the program includes the adverse party, the opposing counsel and the person's primary language.

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 the board may be interested in reviewing to determine that the program is operating effectively and is meeting the program's mission.³⁰⁹

To identify potential conflicts of interest, the program should maintain an adversary cross-reference file which is updated regularly and contains sufficient information to identify the adversary fully.³¹⁰ A check for conflicts is best made as early in discussions with a potential client as is possible, so as to avoid receiving confidential information from that individual. To the extent that programs do computerize their record keeping, the early detection of potential conflicts should be greatly facilitated.

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, address, phone number, status (lawyer or non-lawyer), bar admission, practice area, types of matters volunteer will handle, the role the volunteer is willing to play (case handler, provider of advice, mentor, trainer), 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. In addition, if the program directly places matters with volunteers, that process will be made easier and more efficient if the program records information on the total number of matters handled by a volunteer annually, the last matter handled by the volunteer and any training or support received through the program.

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 board 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 matter. If the program is one that directly refers matters to individual volunteers, additional information that it will want to maintain includes the date the matter was opened, the date the matter was referred, the date the matter was closed, the reasons for closing the matter, and any correspondences that the program has sent to the client or the volunteer regarding the matter.

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 matters referred require only advice or brief services, little more information is needed. To the extent that a matter 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.[311](#)

There may be additional information that a program will want to maintain depending upon the specific nature of the program, the services it volunteers provides and the degree to which the program retains responsibility for the conduct of the case. The pro bono manager and the

program board should jointly decide what those needs are.[312](#)

Standard 4.7 (Facilitating Effective Delivery of Service - Program Personnel)

A pro bono program should employ personnel who are competent, sensitive to clients and committed to the provision of high quality legal services.

COMMENTARY

Hiring and retaining skilled staff who are 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 therefore carefully and thoughtfully approach staffing decisions and should take steps to retain those staff members who perform their job well.

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. 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 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.[313](#) Given the nature of these many duties, the program should seek an individual for this position who has a professional attitude, excellent persuasive abilities and strong administrative, organizational and interpersonal skills. 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.[314](#)

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 it. 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 gain their trust are qualities that all program staff should possess. Accordingly, a program should seek staff who can empathize with clients and bridge differences which may exist in education and background.[315](#) 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, to the extent practicable.

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.

Standard 4.8 (Facilitating Effective Delivery of Service - Attorney Supervision of Non-Attorney Staff)

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

COMMENTARY

Pro bono programs have traditionally relied upon non-attorney staff to fulfill a number of important responsibilities including managing the program, screening applicants 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.³¹⁶ 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 an applicant for service may seek advice regarding how to protect his or her legal rights while the program attempts to place the case.³¹⁷ 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 a lawyer. This is the case because ethical rules require that an attorney supervise the non-lawyer, retain responsibility for any legal work performed by the non-lawyer and not assist a person who is not a member of the bar perform any activity that constitutes the unauthorized practice of law.³¹⁸

Supervision by an attorney is also necessary to provide a basis for preserving the

confidentiality of information received by non-attorney staff.³¹⁹ Staff who are 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.³²⁰ 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.³²¹ However, if there is no attorney supervision, those confidences may not be able to be protected from disclosure.³²²

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 possible way of addressing the problem is for the program to call upon a volunteer attorney to act as the program's 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.

ENDNOTES

¹ Depending upon how and by whom a program is established and operated, its governing body may be the board of governors of a bar association; the board of directors of a legal services program, a community group, social service agency, or religious organization; a committee of any one of these entities; or an independent board of directors.

² Standard 7.1-1 of Standards for Providers of Civil Legal Services to the Poor (American Bar Association 1986), pg. 7.2; See Standard 2.3 (Delivery Design); Standard 2.2 (Program Priorities); Standard 3.4-5 (Client Eligibility); Standard 3.4-6 (Client Grievance Procedure); Standard 2.6 (Fiscal Management).

³ Standard 7.1-1 of Standards for Providers of Civil Legal Services to the Poor (American Bar Association 1986), pg. 7.2. These requirements may place limits not only on the activities of the program, but also on the type

and scope of service which volunteers may engage in on behalf of their pro bono clients. It is the responsibility of the board and staff of the program to be cognizant of such restrictions and to communicate them to clients and volunteers.

⁴See Standard 1.2-3 (Governing Body Orientation and Training).

⁵Standard 7.1-1 of Standards for Providers of Civil Legal Services to the Poor (American Bar Association 1986), pg. 7.2.

⁶Id., pg. 7.3. Members of the governing body, however, may not have access to the confidences and secrets of clients outside the protection of the attorney-client privilege unless a client consents to the disclosure of that information. See Standard 1.1-6 (Non-Interference in the Case Acceptance and Referral Decisions) and Standard 3.4-2 (Protection of Client Confidences).

⁷See Standard 2.7 (Relations with Other Providers of Legal Services).

⁸Standard 7.1-1 of Standards for Providers of Civil Legal Services to the Poor (American Bar Association 1986), pg. 7.3.

⁹See Standard 2.2 (Program Priorities); Standard 3.5-3 (Volunteer Training and Support; and Standard 4.7 (Program Personnel).

¹⁰When adopting a budget, an important issue that the governing body must consider is the purchase of different types of insurance including general comprehensive liability insurance, management errors and omissions insurance and professional liability insurance for staff and volunteers. The purchase of general comprehensive liability insurance should take place because it is needed to protect the program, its employees and its tangible assets from claims which can arise from acts of simple negligence, such as an automobile accident by an employee while on program business. The governing body should also consider purchasing management errors and omissions insurance because it will protect officers and directors against liability arising from certain claims outside the traditional negligence area, such as errors in judgment. A program may find that qualified individuals are reluctant to serve on its board unless this insurance is provided. See Standard 3.5-4 (Professional Liability Insurance) for a discussion on the need for purchasing professional liability insurance

for volunteers and staff. In addition, a program should comply with any requirements existing in its jurisdiction regarding the need to obtain workers' compensation insurance.

¹¹Standard 7.1-3 of Standards for Providers of Civil Legal Services to the Poor (American Bar Association 1986), pg. 7.5.

¹²Id.

¹³For programs that are part of a larger organization such as a legal services program or bar association, however, the executive director of the larger organization often retains this responsibility.

¹⁴Standard 7.1-3 of Standards for Providers of Civil Legal Services to the Poor (American Bar Association 1986), pg. 7.6.

¹⁵If assets include funds received for the benefit of the program by another entity and those funds are not segregated, the audit should describe the terms of the agreement by which the funds are held for the benefit of the program and the circumstances under which the program is entitled to receive the funds from the entity holding the funds.

¹⁶Standard 7.1-3 of Standards for Providers of Civil Legal Services to the Poor (American Bar Association 1986), pg. 7.6.

¹⁷Id.

¹⁸See Standard 1.2-1 (Representation of the Legal Community on the Governing Body).

¹⁹See Standard 3.5-1 (Volunteer Recruitment).

²⁰See Standard 3.5-8 (Volunteer Recognition) and Standard 3.5-7 (Volunteer Retention).

²¹If judges serve on the governing body, they cannot take part in the direct solicitation of funds or most other fundraising activities. See Model Code of Judicial Conduct 1990, Canon 4(C)(3)(b). Whether judges can serve on the

governing bodies of pro bono programs without violating judicial canons remains an open question. See Standard 1.2-1 (Representation of the Legal Community on the Governing Body) for a full discussion of this issue.

²²Model Rules of Professional Conduct, Rule 2.1 and Rule 5.4(c); Model Code of Professional Responsibility, DR- 5-107 (B).

²³Nothing contained in this standard should be interpreted as prohibiting staff members of a pro bono program who are acting as co-counsel in a case with a volunteer attorney from actively taking part in decisions regarding representation of the client. Furthermore, if a staff member of a program is representing a client, the principles set forth in this standard regarding non-interference in the attorney-client relationship by the governing body would be applicable.

²⁴Formal Opinion 334 (1974), pg. 7.

²⁵Standard 7.1-2 of Standards for Providers of Civil Legal Services to the Poor (American Bar Association 1986), pg. 7.4; See Standard 3.4-6 (Client Grievance Procedure).

²⁶Formal Opinion 334, pg. 4.

²⁷Model Rules of Professional Conduct, Rule 1.6; Model Code of Professional Responsibility, DR-4-101.

²⁸Formal Opinion 90-358 (1990), pg. 4.

²⁹Informal Opinion 1287 (1974), pg. 2.

³⁰Under Model Code of Professional Responsibility DR 4-101, the duty of confidentiality applies to "confidences" (information protected by the attorney-client privilege under applicable law) and to "secrets" (other information gained in the professional relationship that the client requested be held inviolate or the disclosure of which would be embarrassing or would be likely to be detrimental to the client). Model Rule Professional Conduct 1.6 redefined the duty of confidentiality as it existed under the Model Code. The Model Rule defines that duty as protecting all information about a client "relating to representation," whether it is communicated by

the client or another source. It should be noted that Formal Opinion 95-393 found that disclosure of confidential client information to a non-lawyer supervisor may in some circumstances be impliedly authorized to carry out the representation.

³¹The scope of the attorney client privilege may be unclear at the referral stage. In addition, as noted in the Standards for Providers of Civil Legal Services to the Poor, "the scope of the prohibition against disclosure (of confidential client information) is unclear...." Standard 1.3 (American Bar Association 1986) pgs. 1.7-1.8. Client confidences should not be shared with the program's governing body where it is not certain that the information would be protected from disclosure.

³²See Formal Opinion 334.

³³See Standard 3.1 (Establishment of Relationships).

³⁴See Standard 1-1.5 (Non-Interference in Attorney-Client Relationship).

³⁵See Standard 3.4-6 (Client Grievance Procedure).

³⁶In such situations, the fact that the board will have access to otherwise confidential information should be disclosed to the client.

³⁷There are certain entities with staff and pro bono components such as civil liberty organizations, dedicated to particular client groups, issues or subject matters in which governing bodies consider whether a particular matter will be accepted or rejected for placement with a pro bono lawyer. Typically, such programs undertake fewer matters than pro bono programs serving persons of limited means, and the matters they undertake are seen as advancing the program's substantive aims in addition to the client's interests. It is not within the scope of this commentary to review the case approval procedures of any such specific programs, but such procedures must comply with relevant ethical considerations.

³⁸Standard 7.2-5 of Standards for Providers of Civil Legal Services to the Poor (American Bar Association 1986), pg. 7.20; See Model Rules of Professional Conduct, Rule 1.7 and Rule 6.3; Model Code of Professional Responsibility DR-5-101(A).

³⁹Standard 7.2-5 of Standards for Providers of Civil Legal Services to the Poor (American Bar Association 1986), pg. 7.20.

⁴⁰Id., pg. 7.21.

⁴¹Id., pp. 7.21 - 7.22.

⁴²For a discussion on determining whether the program stands in an attorney-client relationship with the individual seeking legal assistance, even though the individual is being represented by a pro bono attorney, see Standard 3.1 (Establishment of Relationships).

⁴³Formal Opinion 345, pg. 3.

⁴⁴For those programs that are part of a larger organization, such as a bar association or a social services organization, often the governing body of the larger organization delegates much of the oversight of the program to a subcommittee of the full board or to an advisory group. In such cases, the information contained in this standard is applicable to the subcommittee or advisory group rather than the full board. The same holds true for the information contained in Standards 1.2-2 and 1.2-3 which follow.

⁴⁵See Missouri Commission on Retirement, Removal and Discipline, Opinion 157 (Advisory), April 24, 1991, which found that it is permissible for members of the judiciary to publicly recognize those individuals who have provided exemplary pro bono services.

⁴⁶See Model Code of Judicial Conduct 1990, Canons 4(A)(1) and 4(C)(3) (a).

⁴⁷See State of Washington Ethics Advisory Committee, Opinion 93-16 (June 21, 1993) (service prohibited); Florida Committee on Standards of Conduct Governing Judges, Opinion 86/16 (December 3, 1986) (service may be permitted).

⁴⁸See New York Advisory Committee on Judicial Ethics, Opinion 88-130 (December 8, 1988); Florida Committee on Standards of Conduct Governing Judges, Opinion 86/16 (December 3, 1986); Massachusetts Committee on Judicial Ethics, Opinion 89-2 (March 6, 1989); California

Committee on Judicial Ethics, Opinion 31 (1983).

⁴⁹See Model Code of Judicial Conduct 1990, Canon 4(C)(3)(b).

⁵⁰See Standard 2.7 (Relations with Other Providers of Legal Services).

⁵¹Standard 7.2-1 of Standards for Providers of Civil Legal Services to the Poor (American Bar Association 1986), pg. 7.14. It must be recognized, however, that a serious tension may exist between the desire to achieve a diverse and egalitarian board, and the practical need for board members to be effective fundraisers.

⁵²Standard 7.2-1 of Standards for Providers of Civil Legal Services to the Poor (American Bar Association 1986), pg. 7.14.

⁵³Standard 7.2-2 of Standards for Providers of Civil Legal Services to the Poor (American Bar Association 1986), pg. 7.16.

⁵⁴Standard 7.2-4 of Standards for Providers of Civil Legal Services to the Poor (American Bar Association 1986), pg. 7.19.

⁵⁵Id.

⁵⁶See Standard 2.2 (Program Priorities).

⁵⁷See Standard 2.7 (Relations with Other Providers of Legal Services).

⁵⁸See Standard 2.10 (Relations with Community Organizations).

⁵⁹See Standard 2.7 (Relations with Other Providers of Legal Services).

⁶⁰See Standard 2.1 (Identification of Clients' Needs) and Standard 1.1-1 (Role and Responsibility of Governing Body - General Policy Development).

⁶¹See Standard 2.7 (Relations with Other Providers of Legal Services).

⁶²Many other types of pro bono programs, including those that are part of a

bar association and those that are separately incorporated, also may depend upon a staff model legal services program to interview clients and refer cases to them for placement. In such situations, the need for the type of cooperation outlined above remains critical. See Standard 2.7 (Relations with Other Providers of Legal Services).

⁶³See Standard 2.12 (Periodic Program Evaluation).

⁶⁴Standard 6.1 of Standards for Providers of Civil Legal Services to the Poor (American Bar Association, August 1986), pg. 6.8; See Standard 2.7 (Relations with Other Providers of Legal Services). In states that include a large rural area, it is particularly important that statewide planning occur because it may be possible to serve clients in those rural areas through pro bono lawyers who reside in urban areas with the help of technology, local counsel or other means. See Standard 3.5-1 (Volunteer Recruitment) and Standard 3.5-2 (Volunteer Utilization).

⁶⁵See Standard 2.10 (Relations with Community Organizations).

⁶⁶See Standard 3.5-1 (Volunteer Recruitment) and Standard 3.5-7 (Volunteer Retention).

⁶⁷See Standard 2.2 (Program Priorities).

⁶⁸See Standard 2.5 (Results of Services Provided).

⁶⁹If this delivery model is used, the program and the entity should enter into an agreement which clearly delineates each party's responsibilities regarding issues such as placement, tracking, oversight and training. See Standard 3.1 (Establishment of Relationships).

⁷⁰The extent of the program's direct responsibility for the quality of legal work performed by its volunteers depends upon their contractual relationship and the extent to which the program assumes responsibility for the conduct of the case. See Standard 3.1 (Establishment of Relationships).

⁷¹If attorneys practice in a government law office, corporate law department or law firm, the program may only need to ensure that the employer has a process in place for determining that all its attorneys are admitted and in

good standing to practice law.

⁷²See Standard 4.2 (Volunteer Qualifications) and Standard 3.5-3 (Volunteer Training and Support).

⁷³See Standard 4.4 (Referral System).

⁷⁴The nature of the information that program staff can receive from the volunteer through case tracking will depend upon the nature of the relationship established between the client and the program. See Standard 3.1 (Establishment of Relationships) and Standard 3.2 (Conflicts of Interest).

⁷⁵See Standard 4.5 (Tracking and Oversight) and Standard 3.5-3 (Volunteer Training and Support).

⁷⁶There should be a clear understanding and agreement between the law firm or corporate counsel's office and the program regarding whether the program or the entity is responsible for providing tracking and oversight. See Standard 3.1 (Establishment of Relationships).

⁷⁷See Standard 3.5-3 (Volunteer Training and Support). Another means by which a program may become aware of problems in a case is through a grievance filed by a client regarding the manner or quality of service provided by the volunteer. See Standard 3.4-6 (Client Grievance Procedure).

⁷⁸See Standard 2.5 (Results of Services Provided), Standard 4.5 (Tracking and Oversight) and Standard 3.4-7 (Client Satisfaction).

⁷⁹Standard 6.5 of Standards for Providers of Civil Legal Services to the Poor (American Bar Association 1986), pg. 6.22.

⁸⁰See Standard 2.2 (Program Priorities).

⁸¹See Standard 4.5 (Tracking and Oversight) and Standard 3.4-7 (Client Satisfaction). Obtaining information from the volunteer about achieving objectives may not be appropriate when the volunteer is providing pro se instructions or advice only. In such situations, the client will be the best

source of this information and it is vital that such information be obtained.

⁸²Standard 6.5 of Standards for Providers of Civil Legal Services to the Poor (American Bar Association 1986), pg. 6.22.

⁸³Examples of these types of programs include the American Civil Liberties Union, the Lawyers' Committee for Civil Rights Under Law, the Community Economic Law Project and the Washington Legal Foundation.

⁸⁴See Standard 2.3 (Delivery Design).

⁸⁵This standard deals primarily with the responsibilities of the pro bono manager to design and implement an effective fiscal system. The governing body of the pro bono program has the responsibility to adopt required fiscal policies for implementation and to conduct certain oversight functions. See Standard 1.1-3 (Role and Responsibility of Governing Body - Fiscal). Furthermore, it is recognized that some pro bono programs are components of a larger organization, such as a legal services program or a bar association. In such situations, the manager's responsibilities described in this standard may be the responsibility of the executive director or chief financial officer of the larger organization and not the responsibility of the pro bono manager. It may not be necessary or productive for the pro bono component to develop its own financial system, but rather be integrated into the financial system of the larger organization.

⁸⁶See, for example, Legal Services Corporation (LSC Audit and Accounting Guide and LSC's Fundamental Financial Criteria.

⁸⁷Pro bono programs often require two signatures on checks to provide accountability. It is customary that one of these signatures be the pro bono manager, who prepares the checks and provides documentation to the second signatory, who is usually a designated board member.

⁸⁸If a program has a minimum of receivables, accounts payable and accrued expenses, the accrual basis will not differ significantly from the cash basis. In those cases, unless a funder requires accrual basis reconciliation, relevant accounting principles do not require that it be done.

⁸⁹See Standard 1.1-3 (Role and Responsibility of Governing Body - Fiscal) for further information on the audit process.

⁹⁰Cooperative statewide efforts are particularly important in those states that have a large rural population in need of legal services. See Standard 3.5-1 (Volunteer Recruitment) and Standard 3.5-2 (Volunteer Utilization).

⁹¹See Standard 2.1 (Identification of Clients' Needs); Standard 2.2 (Program Priorities); Standard 2.3 (Delivery Design); and Standard 2.6 (Financial Management).

⁹²In developing joint ventures and funding relationships, written agreements should document each program's entitlement to fees and cost received from litigation services where fee shifting statutes may be involved.

⁹³See Standard 3.5-3 (Volunteer Training and Support).

⁹⁴See Standard 3.5-1 (Volunteer Recruitment).

⁹⁵See Standard 3.5-8 (Volunteer Recognition).

⁹⁶See Standard 1.2-1 (Representation of the Legal Community on the Governing Body).

⁹⁷In addition to providing bar leaders with general information about the program, it may be useful to give them data on the types and number of matters handled by the program, the number of lawyers participating in the program and other information that will enable these leaders to understand the role of the program in the delivery of legal services, as well as the programs needs.

⁹⁸See Standard 2.4 (Quality Assurance).

⁹⁹It 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.

¹⁰⁰Local judges can be particularly good sources of information regarding the legal needs of the poor in the community, due to their first hand knowledge of the types of cases in which low income people appear in court most often without the assistance of counsel. See Standard 2.1 (Identification of Clients' Needs).

¹⁰¹See Standard 3.5-1 (Volunteer Recruitment).

¹⁰²See Missouri Commission on Retirement, Removal and Discipline, Opinion 157 (Advisory), April 24, 1991, which found that it is permissible for members of the judiciary to publicly recognize those individuals who have provided exemplary pro bono services.

¹⁰³See Standard 3.5-8 (Volunteer Recognition).

¹⁰⁴See Standard 3.5-3 (Volunteer Training and Support).

¹⁰⁵A program may decide to focus initially on approaching leaders of the judiciary such as the chief justice of the state supreme court or the chief judge of a circuit or county court, due to the important role each plays as chief administrator of a court system or court. If the assistance of the chief justice is sought, it is often most effective for all the programs in a state to seek that assistance jointly.

¹⁰⁶Whether judges can serve on the governing bodies of pro bono programs without violating judicial canons remains an open question in most jurisdictions. See Standard 1.2-1 (Representation of the Legal Community on the Governing Body) for a full discussion of this issue.

¹⁰⁷Due to the number of community and social services organizations that exist in many communities, it may be impossible for the program to pursue ongoing relations with all of them. Instead, the program should target those groups that it believes will most benefit the program and its service to clients.

¹⁰⁸See Standard 2.1 (Identification of Clients' Needs).

¹⁰⁹See Standard 2.3 (Delivery Design) and Standard 4.3 (Client Intake System).

¹¹⁰See Standard 3.5-6 (Attorneys' Fees Policy).

¹¹¹See Standard 1.2-2 (Representation of the Community at Large on the Governing Body).

¹¹²See Standard 6.6 of Standards for Providers of Civil Legal Services to the Poor (American Bar Association, August 1986), pg. 6.25.

¹¹³Id.

¹¹⁴See Standard 2.1 (Identification of Clients' Needs); Standard 2.4 (Quality Assurance); Standard 2.5 (Results of Service Provided); Standard 2.10 (Relations with Community Organizations); Standard 3.4-1 (Establishment of an Effective Relationship); Standard 3.4-6 (Client Grievance Procedure); Standard 3.4-7 (Client Satisfaction) and Standard 1.2-2 (Representation of the Community at Large on the Governing Body).

¹¹⁵See Standard 2.1 (Identification of Clients' Needs); Standard 2.4 (Quality Assurance) and Standard 2.7 (Relations with Other Providers of Legal Services).

¹¹⁶See Standard 2.4 (Quality Assurance) and Standard 3.5-8 (Volunteer Recognition). See also Standard 2.8 (Relations with the Organized Bar) and Standard 2.9 (Relations with the Judiciary).

¹¹⁷See Standard 3.7 of Standards for Providers of Civil Legal Services to the Poor (American Bar Association, August 1986), pg. 3.18.

¹¹⁸Id. Through its record keeping system, a program should be able to supply evaluators with much of the objective data needed, which is identified below. See Standard 4.6 (Record Keeping).

¹¹⁹For a complete discussion of the specific type of information that should be sought from clients, see Standard 3.4-7 (Client Satisfaction). See also Standard 2.3 (Delivery Design).

¹²⁰See Standard 4.5 (Tracking and Oversight). Some programs may depend upon the quality assurance mechanisms in place at an entity, such

as a law firm or corporate counsel's office, to provide case oversight to volunteers who work at such entities. In those cases, the program will need to turn to the other methods discussed in this standard for assessing the quality of the services provided.

¹²¹See Standard 3.7 of Standards for Providers of Civil Legal Services to the Poor (American Bar Association, August 1986), pg. 3.20.

¹²²See Standard 3.4-7 (Client Satisfaction).

¹²³See Standard 3.5-1 (Volunteer Recruitment), Standard 3.5-2 (Volunteer Utilization) and Standard 3.5-7 (Volunteer Retention).

¹²⁴See Standard 2.2 (Program Priorities).

¹²⁵It must be recognized that for statistical purposes there is no universally recognized definition of "a case" or "a client." Therefore, a program would need to develop its own definitions and apply them consistently. Due to the absence of recognized definitions, it frequently is misleading to compare programs based upon their cost-per-case or cost-per-client analyses. Moreover, because such comparisons do not take into account the quality of services provided, there could be little value in making those comparisons.

¹²⁶See Standard 2.6 (Relations with Other Providers of Legal Services) and Standard 2.7 (Relations with the Organized Bar).

¹²⁷Cases may be referred to an attorney volunteer or a non-attorney volunteer. When cases are referred to non-attorneys, it should be assured that proper supervision is provided by an attorney who otherwise supervises that individual's work or by an attorney associated with the program. This supervision is necessary to assure that the client is afforded the protections that flow from the existence of an attorney-client relationship. In addition, in many situations that supervision is required by ethical rules. See Model Rules of Professional Conduct 5.3 and 5.5 and Model Code of Professional Responsibility DR 3-101(A). See also Standard 4.8 (Attorney Supervision of Non-Attorney Staff) for further discussion of this issue.

¹²⁸It is recognized that in the pro bono context, two distinct attorney-client

relationships may exist: one between the client and the volunteer, and one between the client and the program. However, as used throughout the Standards the term "client" refers to an individual or group who receives advice, counsel or representation from a volunteer, whether or not that individual or group also stands in an attorney-client relationship with the program, unless otherwise noted.

¹²⁹Both the program and the volunteer should be sensitive to the fact that some clients have difficulty reading. If this problem is indicated in a particular case, assistance should be provided to the client so that a clear understanding can be achieved.

¹³⁰See Model Rules of Professional Conduct (1992), Scope Section, page 8.

¹³¹The fact that the intake staff and/or program manager is a non-attorney does not negate the possibility that an attorney-client relationship may be formed between the program and the client. This is the case because as long as there is attorney supervision of the work of the non-attorneys, an attorney-client relationship with the program can be formed. For a full discussion of the importance of attorney supervision in all pro bono programs, see Standard 4.8 (Attorney Supervision of Non-Attorney Staff).

¹³²Furthermore, in some jurisdictions an individual's subjective belief that an attorney-client relationship exists has been held to be sufficient to establish the relationship. See In Re Petrie, 154 Ariz. 295, 742 P2nd 796 (1987); Slusser v Billet, 52 Wash. App. 561, 762 P2nd 350 (1988); and Louisiana State Bar Association v. Bosworth, 481 So.2nd 567 (1986).

¹³³In at least one jurisdiction, a state ethics panel has addressed the issue of whether the statewide pro bono program established an attorney-client relationship with individuals seeking assistance. The analysis applied in that decision is not adopted in these Standards. See Maine Commission on Professional Ethics, Opinion 59 (9/4/85).

¹³⁴Standard 1.2 of Standards for Providers of Civil Legal Services to the Poor (American Bar Association 1986), pg. 1.4; and See Standard 3.4-6 (Client Grievance Procedure).

¹³⁵Provided that there is attorney staff of the program or attorney

supervision of non-attorney staff, ethical rules governing the conduct of attorneys would protect any confidential information received. See Model Rules of Professional Conduct, Rule 1.6 and Rule 5.3; Model Code of Professional Responsibility, DR 4-101; Standard 3.3-2 (Protection of Client Confidences). For a full discussion of the importance of attorney supervision in all pro bono programs, see Standard 4.8 (Attorney Supervision of Non-Attorney Staff).

¹³⁶Standard 3.5-6 (Attorneys' Fees Policy).

¹³⁷Acceptance of the appointment or appearance at an attorney's office would be considered the client's acceptance of the terms set forth in the brochure or letter.

¹³⁸See Standard 3.4-4 (Communication with Clients).

¹³⁹A program volunteer may assist members of the community by conducting community education seminars or by providing general instructions on how to proceed pro se in certain matters. In such situations, an attorney-client relationship may never be formed. If that is the case, it is incumbent upon the program and the volunteer to clearly communicate to those attending such sessions that the volunteer is providing general information and is not entering into an attorney-client relationship with those present. It is best if this information is contained in writing and distributed to community members attending the sessions. It must be noted, however, that the nature of the relationship may change if, for example, specific legal advice is provided to one attending the sessions. In such situations, the volunteer will need to re-evaluate the nature of the relationship and enter into a written retainer agreement with the client.

¹⁴⁰Ethical rules clearly permit a lawyer to limit the scope of representation. See Model Rules of Professional Conduct, Rule 1.2.

¹⁴¹See Model Rules of Professional Conduct, Rule 1.2.

¹⁴²Standard 1.2 of Standards for Providers of Civil Legal Services to the Poor (American Bar Association 1986), pg. 1.5; See Model Rules of Professional Conduct, Rule 1.6 and Rule 1.2; Model Code of Professional Responsibility, DR 4-101; See Standard 3.4-2 (Protection of Client Confidences); Standard 3.5-5 (Costs Policy); and Standard 3.5-6

(Attorneys' Fee Policy).

¹⁴³Standard 1.2 of Standards for Providers of Civil Legal Services to the Poor (American Bar Association, August 1986), pg. 1.5.

¹⁴⁴See Standard 3.4-4 (Communication with Clients) and Standard 3.5-3 (Volunteer Training and Support).

¹⁴⁵There may be other, lesser, degrees of responsibility that a program will assume for a referred case, depending upon the experience and needs of volunteers. The program, however, should in every case strive to achieve the quality assurance standards set forth herein. See Standard 2.4 (Quality Assurance); Standard 4.4 (Referral System); Standard 4.5 (Tracking and Oversight); and Standard 3.5-3 (Volunteer Training and Support).

¹⁴⁶See Standard 3.5-3 (Volunteer Training and Support) and Standard 3.5-5 (Costs Policy).

¹⁴⁷ABA Formal Opinion 93-374 states that it is ethically permissible for a lawyer to agree to share such fees with (or turn them over entirely to) a pro bono program despite the prohibition of Model Rule of Professional Conduct 5.4 (a) on sharing fees with a non-lawyer. See Standard 3.5-6 (Attorneys' Fees Policy) for further discussion of this issue.

¹⁴⁸See Standard 3.5-4 (Professional Liability Insurance).

¹⁴⁹See Standard 3.4-6 (Client Grievance Procedure) and Standard 4.2 (Volunteer Qualifications).

¹⁵⁰Acceptance of a referred matter from the program would be considered the volunteer's acceptance of the terms set forth in the brochure or letter.

¹⁵¹See Model Rules of Professional Conduct, Rule 1.7; Model Code of Professional Responsibility DR 5-105.

¹⁵²Id.

¹⁵³See Model Rules of Professional Conduct, Rule 1.6; Model Code of

Professional Responsibility, DR 4-101; Standard 3.3-2 (Protection of Client Confidences). It must be noted that even if representation of a prospective client is declined, the duty of confidentiality still attaches. See ABA Formal Opinion 90-358 (1990).

¹⁵⁴See Model Rules of Professional Conduct, Rule 1.9.

¹⁵⁵See Philadelphia Bar Association, Professional Guidance Committee, Opinion 80-41; Maine Commission on Professional Ethics, Opinion #59 (9/4/85); Virginia State Bar Association, Standing Committee on Legal Ethics, Opinion 808 (6/25/86); and The Florida Bar, Professional Ethics Committee, Advisory Opinion 92-1. It should be noted that these opinions are based upon the specific facts presented regarding the manner in which the program in question operates.

¹⁵⁶See Philadelphia Bar Association, Professional Guidance Committee, Opinion 80-41, pgs. 1-2.

¹⁵⁷The manner in which a program operates and the services it provides will affect not only the content of its conflicts policy, but whether such a policy is even necessary. For example, a program or one of its components may be established to provide information to members of the community so that they can proceed pro se in certain matters. Whether such a program needs to establish a system for addressing conflicts of interest will depend upon the nature of the services provided. If, for example, only general information is given to a group and confidential information is not shared, a determination regarding conflicts may not be necessary. Each program should therefore analyze its operation and the nature of the services it provides to decide if it even needs to establish a system for determining conflicts of interest.

¹⁵⁸In addition, 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.

¹⁵⁹It must be noted, however, that obtaining consent from both parties in the pro bono setting often is not a viable alternative. For example, in the context of a divorce case, merely informing one party that the other party has consulted the program regarding a divorce could compromise the safety of the spouse.

¹⁶⁰ See New York State Bar Association, Committee on Professional Ethics, Opinion 643 (2/16/93). A program should research the issue in its state to determine if an opinion on the subject has been rendered.

¹⁶¹ A program may also consider assigning all conflicts case to one law firm or other legal employer, if such entities exist in the service area and possess the skills and resources to independently assist clients.

¹⁶² Obtaining any financial information from a client prior to running a conflicts check may be problematic, especially in divorce cases in which the assets of each party is an important and confidential fact. Although it is currently the practice of many pro bono and legal services programs to do financial screening before conducting a search for conflicts, as more and more programs become computerized, it should become much easier to run a conflicts check prior to obtaining that financial information.

¹⁶³ The concept of establishing a conflicts panel is based in part upon the private practice model of creating an "ethical screen" (often referred to as a "Chinese Wall") within a law firm to attempt to deal with conflicts of interest between clients of the firm. Under this system, members of the firm who work for clients with adverse interests are segregated and maintain separate filing systems, utilize separate support staff and take other steps to create "a firm within a firm." This approach has been accepted by some courts and rejected by others. See Westinghouse v. Kerr-McGee Corp., 580 F.2d 1311, 1321 (7th Cir. 1981) (rejected); Fund of Funds v Arthur Anderson & Co., 435 F. Supp. 84, 96 (S.D. NY), rev'd in part and aff'd in part 567 F.2d 225, 229 (2nd Cir. 1977) (rejected); Gould Inc., v. Mitsui Mining and Smelting Co., 738 F. Supp. 1121 (N.D. Ohio, 1990) (accepted); NFC Inc., v. General Nutrition, Inc., 562 F. Supp. 332 (D. Mass. 1983) (accepted).

¹⁶⁴ See Standard 2.11 (Institutional Statute and Credibility).

¹⁶⁵ See Standard 1.8 of Standards for Providers of Civil Legal Services to the Poor (American Bar Association, August 1986), pg. 1.19.

¹⁶⁶ See Standard 3.5-1 (Volunteer Recruitment).

¹⁶⁷ This strategy is unlikely to be feasible for programs that employ only one staff person.

¹⁶⁸See Standard 1.8 of Standards for Providers of Civil Legal Services to the Poor (American Bar Association, August 1986), pp. 1.19 - 1.20.

¹⁶⁹Standard 1.1 of Standards for Providers of Civil Legal Services to the Poor (American Bar Association 1986), pg. 1.2.

¹⁷⁰See Standard 3.5-3 (Volunteer Training and Support).

¹⁷¹See Standard 2.3 (Delivery Design).

¹⁷²It is recognized that some programs do not conduct their own intake but rely upon other providers of legal services or other entities to interview clients. In such cases, program staff should ascertain that the intake procedures utilized by those providers or other entities conform with the principles set forth in this standard.

¹⁷³Standard 1.1 of Standards for Providers of Civil Legal Services to the Poor (American Bar Association 1986), pg. 1.2; See Standard 3.4-2 (Protection of Client Confidences); and Standard 4.3 (Client Intake System).

¹⁷⁴Standard 1.1 of Standards for Providers of Civil Legal Services to the Poor (American Bar Association 1986), pg. 1.3; See Standard 4.3 (Client Intake System); Standard 4.4 (Placement System) and Standard 3.4-6 (Client Grievance Procedure).

¹⁷⁵Standard 1.1 of Standards for Providers of Civil Legal Services to the Poor (American Bar Association 1986), pg. 1.3 and See Standard 4.2 (Client Intake System).

¹⁷⁶See Standard 3.5-3 (Volunteer Training and Support).

¹⁷⁷See Standard 4.5 (Tracking and Oversight) It must be noted, however, that the program should not obtain any confidential information from the volunteer unless the program stands in an attorney-client relationship with the client.

¹⁷⁸See Standard 3.4-7 (Client Satisfaction).

¹⁷⁹Model Rules of Professional Conduct, Rule 1.6; Model Code of Professional Responsibility, DR-4-101. If there is attorney supervision of non-attorney staff or volunteers, ethical rules regarding confidentiality governing attorneys would apply to any non-attorney that is conducting the intake interviews. See Model Rule of Professional Conduct, Rule 5.3; Model Code of Professional Responsibility DR-4-101(d). For a full discussion of the importance of attorney supervision in all pro bono programs, see Standard 4.8 (Attorney Supervision of Non-Attorney Staff).

It should be noted that Model Rule 1.6 redefined the duty of confidentiality as it existed under the Model Code. The Model Rule defines that duty as protecting all information about a client "relating to representation," whether it is communicated by the client or another source. Under Model Code DR 4-101, the duty applies to "confidences" (information protected by the attorney-client privilege under applicable law) and to "secrets" (other information gained in the professional relationship that the client requested be held inviolate or the disclosure of which would be embarrassing or would be likely to be detrimental to the client).

¹⁸⁰ABA Formal Opinion 90-358 (1990), pg. 4.

¹⁸¹See Standard 3.5-3 (Volunteer Training and Support).

¹⁸²Standard 1.3 of Standards for Providers of Civil Legal Services to the Poor (American Bar Association 1986), pg. 1.7

¹⁸³Id., pg. 1.7-1.8. See also Standard 2.3 of Standards for the Monitoring and Evaluation of Providers of Legal Services to the Poor (American Bar Association 1991), pgs. 62-64.

¹⁸⁴Standard 1.6 of Standards for Providers of Civil Legal Services to the Poor (American Bar Association 1986), pg. 1.13.

¹⁸⁵See Standard 2.3 (Delivery Design) and Standard 4.3 (Client Intake System).

¹⁸⁶If intake is conducted by another service provider, the program should be reasonably satisfied that the provider's intake system is accessible to the client community.

¹⁸⁷ See, for example, the Americans with Disabilities Act, 42 U.S.C. '12101, et. seq.

¹⁸⁸ See Standard 4.3 (Client Intake System).

¹⁸⁹ To the extent that a program relies upon other service providers or volunteers to conduct intake interviews or otherwise serve clients in their offices, the program should urge those individuals or entities to be equally sensitive to clients' needs when establishing hours for intake.

¹⁹⁰ If a program relies upon staff at an entity such as a law firm or corporate counsel's office to assign client matters to individual volunteers, program staff should be sure to inform that staff person of any particular access issues that may exist for a given client.

¹⁹¹ Standard 1.6 of Standards for Providers of Civil Legal Services to the Poor (American Bar Association 1986), pg. 1.16.

¹⁹² See Standard 3.5-1 (Volunteer Recruitment).

¹⁹³ Id.

¹⁹⁴ Standard 1.7 of Standards for Providers of Civil Legal Services to the Poor (American Bar Association 1986), pg. 1.18.

¹⁹⁵ The source of many of the ideas set forth in this section is Evergreen Legal Services Program Policy Memorandum No. 28 (October 23, 1993).

¹⁹⁶ See the Americans with Disabilities Act, 42 U.S.C. '12101, et. seq. In addition, there may be other federal, state and local laws that create similar obligations.

¹⁹⁷ It should be noted that when a client's ability to make adequately considered decisions in connection with representation is impaired due to mental disability, ethical considerations require that a lawyer maintain a normal attorney-client relationship with the client, as far as is reasonably possible. A lawyer may seek the appointment of a guardian or take other protective action with respect to such a client only when the lawyer

reasonably believes that the client cannot adequately act in his or her own interest. See Model Rule of Professional Conduct 1.14.

¹⁹⁸If a program relies upon staff at an entity such as a law firm or corporate counsel's office to assign client matters to individual volunteers, program staff should be sure to inform that staff person of the particular communications needs of any given client.

¹⁹⁹Standard 2.1 of Standards for Providers of Civil Legal Services to the Poor (American Bar Association 1986), pg. 2.2. It should be noted that eligibility guidelines serve as initial criteria to determine which applicants should be given a full intake interview, while acceptance standards provide guidelines for determining which matters are accepted for service. For a full discussion of acceptance standards, see Standard 4.1 (Acceptance Policy).

²⁰⁰Standard 2.1 of Standards for Providers of Civil Legal Services to the Poor (American Bar Association 1986), pg. 2.2.

²⁰¹If a program relies upon staff at an entity such as a law firm or corporate counsel's office to assign client matters to individual volunteers, all information regarding eligibility guidelines and changes in those guidelines should be communicated to that staff person for dissemination to the individual volunteers.

²⁰²Standard 2.1 of Standards for Providers of Civil Legal Services to the Poor (American Bar Association 1986), pg. 2.2, and See Standard 2.12 (Periodic Program Evaluation).

²⁰³Standard 2.1 of Standards for Providers of Civil Legal Services to the Poor (American Bar Association 1986), pgs. 2.2 - 2.3.

²⁰⁴The types of matters that may be addressed by the grievance procedure include complaints regarding: denial of service, manner of treatment by program staff or volunteers, manner in which a matter was handled and quality of service received. A program may decide that certain specific matters such as claims of sexual harassment or racial discrimination are best addressed by other forums and may therefore exclude them from the grievance procedure.

²⁰⁵Standard 7.1-5 of Standards for Providers of Civil Legal Services to the

Poor (American Bar Association, August 1986), pg. 7.10.

²⁰⁶Id. and see Standard 3.1 (Establishment of Relationships).

²⁰⁷Because clients will be the grievants, it is particularly important that client members of the governing body be included on the grievance committee.

²⁰⁸If a pro bono manager does not possess the substantive knowledge that would be required to properly conduct such a review, then someone with such knowledge should be delegated responsibility for conducting the review.

²⁰⁹Model Rules of Professional Conduct, Rule 1.6; Model Code of Professional Responsibility, DR-4-101. Experience suggests that when filing a grievance of this nature, a client usually agrees to disclose confidential information to enable thorough review of the matter presented.

²¹⁰Model Rules of Professional Conduct, Rule 2.1 and Rule 5.4(c); Model Code of Professional Responsibility, DR-5-107(B).

²¹¹As a practical matter, it is more likely that the manager and volunteer will be able to work together to resolve the problem if the manager had been engaged in an ongoing relationship with the volunteer through the provision of support and oversight, than if no previous interaction had occurred.

²¹²A program should review the terms of its liability insurance policy, however, so as to avoid taking any action that would be inconsistent with the obligations set forth in that policy.

²¹³Model Rules of Professional Conduct, Rule 2.1 and Rule 5.4(c); Model Code of Professional Responsibility, DR-5-107(B).

²¹⁴See ABA Formal Opinion 334 (1974) and Standard 1.1-5 (Non-Interference in Attorney-Client Relationship).

²¹⁵Id.

²¹⁶Standard 7.1-5 of Standards for Providers of Civil Legal Services to the Poor (American Bar Association, August 1986), pg. 7.11.

²¹⁷See Standard 4.2 (Volunteer Qualifications) and Standard 3.5-3 (Volunteer Training and Support). A program also should review Model Rule of Professional Conduct 8.3 (Reporting Professional Misconduct) and the interpretation of that rule in its jurisdiction to determine if based upon the specific facts uncovered through the grievance procedure, the program has any obligations pursuant to that rule. In addition, a program should review its malpractice insurance policy to learn if that agreement requires any program action based upon the facts uncovered.

²¹⁸See Standard 3.4-4 (Communication with Clients).

²¹⁹See Standard 3.5-3 (Volunteer Training and Support).

²²⁰See Standard 2.3 (Delivery Design) and Standard 3.5-2 (Volunteer Utilization) for discussion of the range of opportunities and delivery models that a program may consider developing.

²²¹See Standard 2.8 (Relations with the Organized Bar).

²²²See Standard 2.9 (Relations with the Judiciary).

²²³See Standard 1.1-4 (Role and Responsibility of the Governing Body - Fundraising, Recruitment, Recognition and Public Relations).

²²⁴See Standard 1.2-1 (Representation of the Legal Community on the Governing Body).

²²⁵See Standard 3.5-2 (Volunteer Utilization).

²²⁶See Standard 3.5-2 (Volunteer Utilization).

²²⁷When writing or talking to potential volunteers, it is important to recognize that the use of the word "case" may send the wrong message regarding the types of issues addressed by the program. For many lawyers in private practice, the term "case" refers to matters in litigation, while for

programs, that term usually refers to something much broader. To attract non-litigators, the program may need to explain its meaning of the term, or use a different term such as "matter" or "legal problem" to make it clear that many issues raised by clients do not involve litigation.

²²⁸It is interesting to note that in Maryland a survey of attorney volunteers found that group strongly recommended personal contact over virtually any other type of recruitment technique as being likely to influence others to serve as pro bono attorneys. John A. Tull and Associates, Furthering the Pro Bono Commitment in Maryland: An Assessment of the State's Volunteer Legal Services Delivery System, at 89-90 (1992).

²²⁹See Standard 2.12 (Periodic Program Evaluation).

²³⁰While utilizing volunteers effectively is important, addressing the critical legal needs of clients should be the primary consideration in establishing program priorities. See Standard 2.2 (Program Priorities).

²³¹See Standard 4.6 (Record Keeping).

²³²If any of these strategies are utilized, the program should enter into a formal agreement with the law firm or corporate counsel's office that clearly delineates each party's responsibility for case placement, oversight, training and other aspects of operation for which the program would otherwise take responsibility. See Standard 3.1 (Establishment of Relationships).

²³³If these delivery models are implemented by the program, it is important that follow-up occur to ascertain that clients needs are truly being met through the limited services provided. Client satisfaction questionnaires or discussions with volunteers who participate in these methods of delivery will assist the program in evaluating if they are effective in meeting clients' needs. See Standard 2.3 (Delivery Design), Standard 2.5 (Results of Services Provided), Standard 2.12 (Periodic Program Evaluation) and Standard 3.4-7 (Client Satisfaction).

²³⁴Programs located in rural areas often face the threshold problem of finding enough volunteers to utilize. To begin to address this problem, such programs may consider working cooperatively with other programs, the state bar and the judiciary in an effort to recruit urban lawyers as program volunteers. See Standard 3.5-1 (Volunteer Recruitment) for a fuller

discussion of this strategy. In addition, by using statewide advice hotlines and other statewide delivery systems, urban lawyers may be utilized to assist clients in rural areas. Of course, if a hotline is employed, it will need to be evaluated to determine if it is an effective means for meeting clients' needs. See note 233 above.

²³⁵It was concluded from the survey of pro bono lawyers in Maryland that training was most effective when used to: recruit a small group of lawyers to work on a special project or with specialized populations; increase quality in areas in which private attorneys are unlikely to have other resources to teach them; and introduce attorneys to important aspects of serving targeted populations. John A. Tull and Associates, Furthering the Pro Bono Commitment in Maryland, supra note 218, at 107-108.

²³⁶This may be particularly true if an entity such as a law firm or corporation has made an institutional commitment to the program. See Standard 3.1 (Establishment of Relationships).

²³⁷In Maryland, it was concluded that this was one of the most important support services to provide to volunteer attorneys. J. Tull and Associates, Furthering the Pro Bono Commitment in Maryland, supra note 218, at 101-102; See Standard 4.4 (Placement System).

²³⁸See Standard 3.5-1 (Volunteer Recruitment) and Standard 3.4-4 (Communications with Clients).

²³⁹See Standard 3.5-5 (Costs Policy).

²⁴⁰There is other insurance coverage that a program should consider obtaining such as general comprehensive liability insurance and management errors and omissions insurance. In addition, a program should comply with any requirements in its jurisdiction regarding the need to obtain workers' compensation insurance. See Standard 1.1-3 (Role and Responsibility of the Governing Body - Fiscal Management), note 10, for further discussion of the issue.

²⁴¹Executive Order of the New York Attorney General Establishing Guidelines for Pro Bono Publico Activities By Attorneys (May 17, 1994), pg. 2; and Policies on Pro Bono Service, Special Projects, Community Service and Law-Related Education of the Connecticut Attorney's General Office

(October 1990), pg. 7.

²⁴²See Standard 3.1 (Establishment of Relationships).

²⁴³See Standard 3.5-3 (Volunteer Training and Support).

²⁴⁴A program should make every effort to developing strategies for obtaining waivers of filing and service fees for all of its clients. For example, legislation may be pursued that would provide for an automatic waiver of fees for all persons who are represented by program volunteers or staff.

²⁴⁵See Standard 3.5-1 (Volunteer Recruitment) and Standard 3.5-3 (Volunteer Training and Support).

²⁴⁶See Model Rule of Professional Conduct 1.8(e)(2) which permits a lawyer representing an indigent client to pay the client's court costs and expenses of litigation.

²⁴⁷ABA Informal Opinion 1361 (1976) finds nothing unethical in a legal services office's conduct of advancing litigation costs and in assuming the ultimate responsibility for such costs if there is no recovery of costs in the litigation.

²⁴⁸See Standard 2.5 of Standards for Providers of Civil Legal Services to the Poor (American Bar Association 1986), pgs. 2.14 - 2.15.

²⁴⁹See Standard 3.1 (Establishment of Relationships).

²⁵⁰While it is recognized that low fee panels exist through which persons of limited means are charged minimal fees for legal services performed, that delivery model does not fall within the scope of these Standards. See Introduction, pg. iii.

²⁵¹See Standard 3.1 (Establishment of Relationships). A program should also develop a policy regarding the consequences, if any, of a client becoming financially ineligible for service during the course of representation. That policy should also be clearly communicated to clients and volunteers at the onset of representation.

²⁵²See Standard 3.1 (Establishment of Relationships).

²⁵³Commentary to Model Rule of Professional Conduct 6.1 (Voluntary Pro Bono Publico Service), as revised in 1993.

²⁵⁴See Model Rule of Professional Conduct 5.4(a) and Model Code of Professional Responsibility DR 3-102(A). Examples of state opinions include: ACLU v. Miller, 803 SW 2d 592 (1991) (holding that contractual obligation of staff attorney to return fees recovered in litigation conducted while an ACLU employee was fee splitting agreement and therefore was unenforceable); Maine Committee on Professional Ethics, Opinion 69 (3/17/86) (stating that a pro bono attorney's agreement to turn over a specified percentage of the fees to the ACLU affiliate was a violation of the fee-sharing rule); Bar Association of Greater Cleveland, Professional Ethics Committee, Opinion 141 (6/21/79) (opining that staff attorneys and pro bono attorneys could ethically agree to remit to the organization all statutory fees awarded); and Letter from Patricia Allen, Ethics Counsel, The Florida Bar, to Larry Spalding, Past President, ACLU of Florida, (1/19/89) (reporting that the Florida Bar's Professional Ethics Committee voted with one dissent on January 11, 1989, that the ACLU's policies regarding fees awarded to cooperating and staff attorneys do not involve fee-splitting). It should be further noted that the right of staff model legal services programs to obtain statutory attorneys' fees based upon the legal work performed by their staff attorneys is well established. See Blum v Stenson, 465 U.S. 886 (1984). However, it is possible that due to restrictions imposed by funding sources, staff model and pro bono programs may not be permitted to seek or accept those fees.

²⁵⁵ABA Formal Opinion 93-374.

²⁵⁶See Standard 4.7 (Program Personnel); Standard 1-1.1 (Role and Responsibility of the Governing Body - General Policy Development); Standard 2.4 (Quality Assurance); Standard 4.5 (Tracking and Oversight); Standard 3.5-4 (Professional Liability Insurance); Standard 3.5-3 (Volunteer Training and Support); and Standard 3.5-8 (Volunteer Recognition).

²⁵⁷See Standard 2.3 (Delivery Design) and Standard 3.5-2 (Volunteer Utilization) for further discussion of effective utilization of volunteers, the variety of service delivery options that programs can consider and the importance of focusing on meeting clients' needs in any delivery model utilized.

²⁵⁸See Standard 3.5-8 (Volunteer Recognition).

²⁵⁹It is interesting to note that a survey of pro bono attorneys in Maryland revealed that of the methods listed above, a personal thank-you note from the program was the most important form of recognition provided. John A. Tull and Associates, Furthering the Pro Bono Commitment in Maryland, supra note 218, at 102-104 (1992).

²⁶⁰See Standard 2.8 (Relations with the Organized Bar).

²⁶¹See Missouri Commission on Retirement, Removal and Discipline, Opinion 157 (Advisory), April 24, 1991, which found that it is permissible for members of the judiciary to publicly recognize those individuals who have provided exemplary pro bono services. It should be recognized, however, 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 activities described below 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. See also Standard 2.9 (Relations with the Judiciary).

²⁶²The survey of Maryland pro bono attorneys found that the most important source of recognition was clients. John A. Tull and Associates, Furthering the Pro Bono Commitment in Maryland, supra note 218, at 103, note 202 (1992).

²⁶³See Standard 3.4-7 (Client Satisfaction).

²⁶⁴See Standard 2.2 (Program Priorities).

²⁶⁵See Standard 4.4 (Placement System), Standard 4.5 (Tracking and Oversight) and Standard 3.5-3 (Volunteer Training and Support).

²⁶⁶See Standard 2.2 of Standards for Providers of Civil Legal Services to the Poor (American Bar Association, August 1986), pg.2.4.

²⁶⁷Id., pg.2.5 and Standard 4.3 (Client Intake System).

²⁶⁸See Standard 3.1 (Establishment of Relationships) for a discussion of the various matters that the law firm and program should reach an understanding about if this model is utilized.

²⁶⁹See Standard 2.12 (Periodic Program Evaluation).

²⁷⁰Model Rule of Professional Conduct 1.1 requires that a lawyer provide competent representation to a client. That rule states that competent representation "requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation." See also Model Code of Professional Responsibility DR 6-1-1 (A)(1) and (2).

²⁷¹If an entity such as a law firm or a corporate counsel's office has made an institutional commitment to the program, the program may be able to delegate determinations regarding competency and sensitivity, in full or in part, to that entity. The methods described below for the program to utilize in making these determinations can instead be employed by the entity, where applicable. It is essential, however, that the program and the entity reach an agreement regarding who will be responsible for carrying out these functions. See Standard 3.1 (Establishment of Relationships).

²⁷²This action is necessary to protect clients and to shield the program from potential claims of negligent referrals.

²⁷³A program may also be able to arrange to receive notices of disciplinary action directly from the licensing body to discover when a volunteer attorney is no longer in good standing.

²⁷⁴See Standard 4.4 (Placement System). Because regular practice in an area does not ensure competency, a program should also adopt appropriate tracking and oversight practices. See Standard 4.5 (Tracking and Oversight).

²⁷⁵See Standard 3.5-3 (Volunteer Training and Support).

²⁷⁶Id.

²⁷⁷Id.

²⁷⁸See Standard 4.5 (Tracking and Oversight).

²⁷⁹See Standard 3.4-7 (Client Satisfaction).

²⁸⁰Not every pro bono program conducts its own intake, but rather has an arrangement with another institution such as a legal services program or a centralized intake system serving a number of pro bono and legal services providers. In these situations, the pro bono program should ascertain that intake is conducted in a manner consistent with this standard to maximize the efficiency and effectiveness of using an external process.

²⁸¹Prior to obtaining facts regarding an applicant's problem, a program should determine if assisting the applicant would create a conflict of interest. For a full discussion of the issue, see Standard 3.2 (Conflicts of Interest).

²⁸²Standard 6.3 of Standards for Providers of Civil Legal Services to the Poor (American Bar Association, August 1986), pg. 6.16; See Model Rules of Professional Conduct 5.5 and 5.3; Model Code of Professional Responsibility DR 3-101 (A); Standard 4.8 (Attorney Supervision of Non-Attorney Staff).

²⁸³A program must be careful, however, to avoid scheduling intake interviews for government attorney volunteers in areas of law that may create conflicts of interest for those volunteers.

²⁸⁴Demonstrating this commitment may be of particular interest to those programs that refer matters to volunteers for extensive assistance.

²⁸⁵A law firm may make an institutional commitment to staff a clinic located in the client community. See Standard 3.5-2 (Volunteer Utilization).

²⁸⁶See Standard 2.7 (Relations with Other Providers of Legal Services) and Standard 2.10 (Relations with Community Organizations).

²⁸⁷See Standard 3.4-4 (Communication with Clients).

²⁸⁸See Standard 3.4-3 (Client Access).

²⁸⁹Id.

²⁹⁰See Standard 3.4-2 (Protection of Client Confidences) for a full discussion on the duty to protect client and applicant confidences.

²⁹¹For guidance on the type of information to elicit from clients regarding eligibility, see Standard 3.4-5 (Client Eligibility Guidelines).

²⁹²See Standard 3.1 (Establishment of Relationships).

²⁹³See Standard 3.5-3 (Volunteer Training and Support).

²⁹⁴An organization such as a law firm or corporate counsel's office may make an institutional commitment to accept a number of matters at one time, or staff a clinic and handle any matters that are presented by clients. In those situations, the program and the institution should enter into a formal agreement that clearly delineates each party's responsibilities for acceptance, placement, oversight, training and other aspects of operation for which the program would otherwise be responsible. See Standard 3.1 (Establishment of Relationships). If the institution agrees to take responsibility for placement, the program should nevertheless receive some information regarding specific placements including when the matter was placed, with whom and if the volunteer has agreed to assist the client.

²⁹⁵Other factors that program will want to consider in establishing its acceptance policy relate to issues such as program priorities and staff, volunteer and program resources. See Standard 4.1 (Acceptance Policy).

²⁹⁶A program should be aware of this and other information regarding volunteers by requesting it of them when they join the program. Such information should be easily accessible to staff through the program's record keeping system. See Standard 4.6 (Record Keeping).

²⁹⁷See Standard 3.4-4 (Communication with Clients). It is recognized that program staff cannot obtain information regarding a volunteer's patience and understanding from a registration form. Based upon interaction with volunteers and information provided by prior clients, however, it is possible to gain this knowledge.

²⁹⁸Information regarding the number of matters handled and the amount of work being performed by the volunteer should be readily available to program staff through the program's record keeping system.

²⁹⁹See Standard 3.1 (Establishment of Relationships).

³⁰⁰See Standard 4.3 (Client Intake System).

³⁰¹See Standard 3.1 (Establishment of Relationships).

³⁰²This standard does not address oversight of programs that do not place matters with volunteers such as advice hotlines or clinics.

³⁰³An entity such as a law firm or corporate counsel's office may make an institutional commitment to accept a number of matters at one time, or staff a clinic and handle any matters that are presented by clients. In such situations, a program may be able to delegate the responsibility for tracking and oversight to the entity. If that occurs, the program and the institution should enter into a formal agreement that clearly delineates each party's responsibilities, including the program's duty to ascertain that tracking and oversight are being accomplished, even if the entity takes on that responsibility. See Standard 3.1 (Establishment of Relationships).

³⁰⁴It is important that the updates be reviewed by someone who is knowledgeable in the substantive area of the matter referred so that problems can be identified.

³⁰⁵See Model Rules of Professional Conduct, Rule 1.6; Model Code of Professional Responsibility, DR-4-101. If the program stands in an attorney-client relationship with a client whose case is the subject of review, the volunteer would be able to reveal confidential information to the program staff or its designees. See Standard 3.1 (Establishment of Relationships) for a discussion of factors to consider in determining if the program and the client stand in an attorney-client relationship.

³⁰⁶See Model Rules of Professional Conduct, Rule 2.1 and Rule 5.4(c); Model Code of Professional Responsibility, DR-5-107(B).

³⁰⁷See Standard 3.1 (Establishment of Relationships). If a program does

not stand in a supervisory relationship with a volunteer, but does stand in an attorney-client relationship with the client, the program may notify the client of the differing of opinion that exists regarding the conduct of the case. In such situations, the client may decide to dismiss the volunteer as his or her attorney. If that occurs, the program should either take over representation if it is equipped to do so, or make arrangements to provide a new volunteer attorney for the client.

³⁰⁸If a program relies upon an entity such as a law firm or corporate counsel's office to staff a full service clinic and/or to place and track matters with employees of that entity, it is likely that the entity will maintain the complete records on each client, volunteer and the matters handled or services provided, rather than staff of the program. In such instances, the program should determine what specific information it will need to obtain from the entity for the purposes of its funders, its board and its ability to evaluate its effectiveness and efficiency. In addition, it is critical that the program and the entity have a clear understanding regarding each party's rights and responsibilities including what information will be recorded, by whom and who will have access to that information. See Standard 3.1 (Establishment of Relationships).

³⁰⁹Neither the governing body nor funders may have access to confidential information regarding a client or applicant, however, unless the individual explicitly consents to the disclosure of that information. See ABA Formal Opinion 334 (1974), ABA Informal Opinion 1394 (1977), and ABA Formal Opinion 90-358 (1990). For a discussion of what may constitute confidential client information, See Standard 1.1-6 (Non-Interference in Case Acceptance and Referral Decisions) and Standard 3.4-2 (Protection of Client Confidences).

³¹⁰A program may also consider maintaining data in a manner that will enable it to identify issues conflicts.

³¹¹See Standard 4.5 (Tracking and Oversight).

³¹²A program should review local rules and statutory provisions that may exist in its jurisdiction regarding the maintenance and disposition of clients' records.

³¹³It should be recognized, however, that the pro bono manager cannot fulfill all of these duties alone and this is particularly true for those programs

that have only one staff member; rather the governing body should provide assistance with many of them. In addition, the pro bono manager may seek help from program volunteers, the organized bar and other providers of legal services with matters such as developing training programs and conducting intake interviews. See Standard 1.1-4 (Governing Body Function and Responsibility -Fundraising, Recruitment, Recognition and Public Relations); Standard 2.7 (Relations with Other Providers of Legal Services); Standard 2.8 (Relations with the Organized Bar); Standard 3.5-3 (Volunteer Training and Support); and Standard 4.3 (Client Intake System).

³¹⁴See Standard 4.8 (Attorney Supervision of Non-Attorney Staff).

³¹⁵See Standard 3.1 of Standards for Providers of Civil Legal Services to the Poor (American Bar Association, August 1986), pg. 3.2.

³¹⁶Attorney supervision of non-attorney volunteers is also essential for the same reasons articulated in this standard. For further discussion of the issue as it relates to non-attorney volunteers, see Standard 3.1 (Establishment of Relationships), note 127.

³¹⁷Non-attorney staff must clearly inform any clients interviewed that they are not attorneys.

³¹⁸See Model Rules of Professional Conduct 5.3 and 5.5 and Model Code of Professional Responsibility DR 3-101(A). Because the definition of the practice of law varies from jurisdiction to jurisdiction, a program should carefully research this issue to determine in what other particular circumstances lawyer supervision is required, and it should take steps to assure that such supervision is furnished to non-lawyer staff of the program. It should also be noted that some administrative agencies (e.g. the Social Security Administration, the Immigration and Naturalization Service) permit non-lawyers to represent clients at administrative proceedings. Advice provided and judgments made by non-lawyers without lawyer supervision in such situations is, therefore, permissible.

³¹⁹For a discussion of the type of information that can be considered confidential, see Standard 3.3-2 (Protection of Client Confidences).

³²⁰See the Model Rules of Professional Conduct Rule 1.6 and Model Code of Professional Responsibility, Canon 4.

³²¹If a lawyer receives a subpoena or court order to produce client files, records or communications, the lawyer has an obligation to seek to limit response on whatever legitimate grounds are available. A lawyer is, however, required to comply with the final orders of a court or other tribunal of competent jurisdiction requiring the lawyer to give information about the client. See Model Rules of Professional Conduct Rule 1.6 and ABA Formal Opinion 94-385 (1994).

³²²Even if non-lawyers are permitted to practice before an administrative agency without lawyer supervision (see note 318 above), these same concerns regarding the ability to maintain confidentiality attach.

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