

## STANDARD 6.2 ON ASSIGNMENT AND MANAGEMENT OF CASES AND WORKLOAD

### STANDARD

*A provider should assign and manage cases and individual workloads for practitioners and other staff to promote high quality representation and legal work.*

### COMMENTARY

#### General considerations

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

Given limited resources, a provider also faces the tension among its ongoing responsibilities to existing clients, the demand for service from new applicants, and the fundamental obligation to address the overall needs of the low income communities it serves. Some programs or their funding sources place an emphasis on the numbers of clients served or the number of cases closed. Others emphasize results, including the number of persons who benefit from the representation or the impact of the legal work on the low income communities as a whole. Each provider needs to develop a policy for legal work management that strikes an appropriate balance between resources allocated to service to individual clients and resources allocated to work designed to have a broader impact on the client communities served by the provider. The appropriate balance is a function of the provider's mission and its obligations to its funding sources, but all full-service providers should achieve a balance that assures the overall needs of the low income communities are met, including the needs both of individual clients and of the low income communities it serves as a whole.<sup>1</sup>

All the work of a provider should be undertaken with the intention of obtaining meaningful results,<sup>2</sup> and the provider's policies should help it guard against the temptation to emphasize the production of case numbers. The provider's policies and systems to allocate practitioners' time and resources should also protect staff from being overwhelmed by the press of ongoing representation and should permit them to undertake work that will have a broader impact on low income communities as a whole.

#### Factors governing assignment of work

*The availability of adequate time to represent the client competently.* Professional ethics recognize the need to assure that practitioners devote adequate time for preparation of a case

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<sup>1</sup> See ABA Standards for the Provision of Civil Legal Aid (2006), Standard 2.1 (on Identifying Legal Needs and Planning to Respond).

<sup>2</sup> See ABA Standards for the Provision of Civil Legal Aid (2006), Standard 2.6 (on Achieving Lasting Results for Low Income Individuals and Communities).

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and for acquiring sufficient knowledge and skill to handle every case with professional competence.<sup>3</sup> Ethical considerations also suggest that practitioners have a responsibility to reject cases unless they are certain they can provide service at least at the minimal level of professional responsibility.<sup>4</sup> In making case assignments, the provider should, therefore, take into consideration the amount of time a practitioner has available and will need in order to handle the case competently.

Not every applicant for services will necessarily receive full-representation from a provider. Many providers offer applicants limited representation in the form of advice or brief service<sup>5</sup> or non-representational assistance.<sup>6</sup> The provider's practitioners and other staff members who provide such limited assistance must nevertheless be able to devote adequate time to the work to assure that the assistance is provided in a competent manner.

*The practitioner's level of experience, training and expertise.* Assignment of cases to staff practitioners and their individual caseloads should reflect the level of their training and experience. Practitioners should be encouraged to work deliberately and carefully, and the number of cases and other legal work assigned to them should allow for thorough preparation at all stages. Each case undertaken by a less experienced practitioner provides an opportunity to expand professional skills, and adequate time for development of good work habits should be factored into the workload. Wherever possible, the provider should make training opportunities available to increase its practitioners' level of practical skills and substantive expertise.<sup>7</sup> As practitioners' skill levels and knowledge increase, they should be able to efficiently handle an increasing number of cases and legal work of greater complexity.

*The status and complexity of pending cases.* In managing case assignments and workload for staff practitioners, the provider should take into consideration the time required to handle each case competently. The provider should evaluate the status and complexity of its practitioners' pending cases to predict time demands of the existing caseload, including cases that are routine in nature and those that are more complex and involve full representation. A case management system and an efficient case planning process will facilitate this evaluation.<sup>8</sup>

In managing their practitioners' workloads, the provider should consider the following factors: the number and types of cases being handled by a practitioner; the number of cases being handled by a practitioner that require a substantial commitment of time, including those in litigation, particularly where there is extensive discovery and or where a trial has been set, cases

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<sup>3</sup> See Model Rules of Prof'l Conduct R. 1.1 and 1.3 (2003).

<sup>4</sup> The Comment to Model Rules of Prof'l Conduct R. 1.3 (2003) specifically states: "A lawyer's workload must be controlled so that each matter can be handled competently." See also, ABA Comm. on Ethics and Prof'l Responsibility, Informal Op. 1359 (1976).

<sup>5</sup> See ABA Standards for the Provision of Civil Legal Aid (2006): Standard 3.4 (on Limited Representation); Standard 3.4-1 (on Representation Limited to Legal Advice); Standard 3.4-2 (on Representation Limited to Brief Service).

<sup>6</sup> See ABA Standards for the Provision of Civil Legal Aid (2006), Standard 3.6 (on Provision of Legal Information).

<sup>7</sup> See ABA Standards for the Provision of Civil Legal Aid (2006), Standard 6.5 (on Training).

<sup>8</sup> See ABA Standards for the Provision of Civil Legal Aid (2006), Standard 7.7 (on Case Planning).

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on appeals and other complex cases on behalf of clients; and the predicted dates for completion of each major step in more complex cases.

Review of practitioners' workloads will identify their future time commitments and capacity to accept new assignments. It should also enable supervisors to identify patterns that require adjustments in case assignments and to evaluate the progress on open cases.

***Non-representational legal work and other responsibilities.*** Some practitioners have responsibility for training, administrative and supervisory duties. Others have responsibility for the provider's non-representational work, including such activities as running clinics to provide legal information, providing community legal education and participating in special projects of benefit to low income communities. In addition, some practitioners work on collaborative projects and planning with others in the state and regional delivery systems of which the provider is a part.<sup>9</sup> All such activities may require substantial time commitments that should be taken into account when assignments are made to assure that practitioners have adequate time for such essential activities in addition to their case work.

***The provider's capacity for support.*** The nature and amount of legal work a practitioner can handle effectively is affected by the support that is available both through provider resources and through outside sources of assistance. Where possible, providers should have on staff substantive law specialists and litigation directors who can co-counsel and provide other assistance to improve the productivity of individual practitioners.

The provider should encourage its practitioners to participate in e-mail lists and task forces that can provide substantive support and to take full advantage of research and support resources that are available through the internet. The provider should also consider the availability of research and co-counseling assistance from outside the provider, through outside attorneys, the organized bar, state and national support centers and other public interest organizations that can provide support in substantive legal areas.

***Other relevant factors that affect the performance of legal work.*** Other factors related to the environment in which the provider and its practitioners operate will influence the amount of time required to represent each client. Factors such as time required for travel, court practices and docket congestion may increase the time needed to conduct a case. Rural and urban practices have different logistical problems. Each provider should consider the impact of its particular environment in managing workloads.

The provider should also give appropriate consideration to such logistical factors in the design of a delivery system.<sup>10</sup> Effective utilization of technology can help make efficient use of a practitioner's time.<sup>11</sup> In some instances referring cases to outside attorneys in areas that are difficult to serve because of distance can alleviate such problems, increasing the amount of staff practitioner time that is available for legal work.

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<sup>9</sup> See ABA Standards for the Provision of Civil Legal Aid (2006), Standard 2.3 (on Participation in Statewide and Regional Systems).

<sup>10</sup> See ABA Standards for the Provision of Civil Legal Aid (2006), Standard 2.2 (on Delivery Structure).

<sup>11</sup> See ABA Standards for the Provision of Civil Legal Aid (2006), Standard 2.10 (on Effective Use of Technology).

## **Standard 6.2 on Assignment and Management of Cases and Workload**

### **Workload management for non-practitioner staff**

In addition to attorney and paralegal practitioners who represent clients, providers employ a variety of other staff whose workload is influenced by client need and whose time is devoted to working with applicants for service, clients and members of the client communities. These staff members may include intake workers, hotline personnel, outreach workers, community educators, social workers and others. Providers should ensure that the workload of these staff members is assigned on the basis of appropriate criteria including their available time, level of experience, training and expertise, the complexity of their assigned tasks and time needed to complete administrative and other program responsibilities.