

## STANDARD 6.4 ON REVIEW OF REPRESENTATION

### STANDARD

*A provider should review representation provided to clients to assure that they receive high quality assistance and to identify areas in which the provider should offer training and support to its practitioners.*

### COMMENTARY

#### General considerations

A provider should review all aspects of the representation that its practitioners provide to its clients. Case review is one of several valuable methods to assure that persons assisted by the provider receive high quality, timely service and to promote continued growth in the professional skills of practitioners. The format of a successful review system will vary among providers, but each should meet the objectives set forth in this Standard and commentary. A more intensive and systematic review system is appropriate for those providers that employ staff practitioners, while the level of review of the work of outside attorneys who take cases on referral will vary in accordance with the respective level of responsibility assumed by the provider and the outside practitioner.<sup>1</sup>

#### Objectives of review

A review system should assure that practitioners provide competent representation, that they identify all pertinent issues and effectively pursue appropriate remedies in accordance with clients' objectives. A review system should also assure that the practitioners pursue the clients' objectives in a timely and expeditious manner, keep clients adequately informed of the progress of their cases and consult them regarding important strategy decisions.<sup>2</sup> It should allow the provider to identify when the quality of work is not up to acceptable standards, to remedy mistakes and to cure delays so that the provider can act appropriately to protect the clients' interests.

Case review and other methods of review of representation can also serve as effective tools to teach new skills and reinforce old ones, and can link formal training efforts with specific needs of individual practitioners. Review can also be a significant source of information to the provider about the effectiveness of its practitioners' legal work and provide insight into the effectiveness of program structure.

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<sup>1</sup> See ABA Standards for the Provision of Civil Legal Aid (2006): Standard 6.3 (on Responsibility for the Conduct of Representation); Standard 2.7 (on Integrating the Resources of the Legal Profession and Involvement of Members of the Bar).

<sup>2</sup> See ABA Standards for the Provision of Civil Legal Aid (2006), Standard 7.2 (on Client Participation in the Conduct of Representation).

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### **Key ingredients of systematic review of representation**

Where a provider is fully responsible for the conduct of representation, a formal and systematic review process is appropriate. To be effective, it should include periodic formal appraisal of the individual practitioner's work, including, among other things, an examination by the reviewer of an appropriate sample of open case files and a conference between the practitioner and the reviewer to discuss the results of the review.

The frequency of review may vary according to the experience of the person whose work is being reviewed. The work of new and inexperienced practitioners should be reviewed more frequently to assure that their clients are competently represented and to foster each practitioner's development as an effective and highly skilled professional.

Providers should generally review complex legal matters in depth to assure that the practitioner has identified all major issues and considered appropriate remedies. Strategies should be periodically reevaluated during the course of the representation to take account of new developments that may arise in the case. For more routine cases, providers should review randomly selected samples to assure that the practitioner is generally proceeding in a competent and timely fashion, with adequate client contact, and to identify any unacceptable patterns of practice.

The scope and direction of review should be controlled by the reviewer. While practitioners should be encouraged to exchange ideas with their supervisors and with peers on a regular basis, especially in challenging cases, and to identify recurring legal issues, practitioners should not be permitted to limit review to a self-selected portion of their work load. A practitioner may not be inclined to share information on those cases that are most in need of attention and the provider has a responsibility to keep abreast of developments in those cases.

Ideally, reviewers should be successful, experienced practitioners with the demonstrated ability to identify legal issues and with the substantive knowledge and procedural skills to plan and implement effective strategies. Even when experienced practitioners are not available to conduct case reviews, it is nevertheless important for providers to have each practitioner's case work reviewed regularly by other members of the provider's staff. All reviewers should be able to give constructive criticism to practitioners whose work is being reviewed.

### **Other methods of review**

In addition to formal case review, a number of other methods of oversight may be helpful in supplementing the formal review process:

- Day-to-day interaction between practitioners and supervisors, by means of formal conferences or informal discussions regarding pending cases and other legal work;
- Assignment of responsibility for complex representation jointly to a senior practitioner and one or more junior practitioners to assure that the work of the least experienced staff is overseen by someone of proven ability;
- Regular office or team meetings to inform supervisors and peers of the status of an individual's cases and other legal work;

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- Frequent written or electronic case management reports to supervisors on the status of the practitioner's open cases, in sufficient detail to signal a need for further inquiry in the event that a case is not proceeding properly;
- Attendance by the reviewer at proceedings, such as hearings and trials, meetings or other settings where the reviewer has an opportunity to observe the practitioner's performance.

### Review of outside attorneys' casework

The degree to which a provider should review the work performed by an outside attorney to whom it has referred a case is a function of the contractual relationship between the attorney and the provider and with the client. Generally, a provider will not review case files of outside attorneys unless such review is provided for under the agreement between the outside attorney and the provider, and the provider has agreed to be responsible for the representation.<sup>3</sup>

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<sup>3</sup> For a full discussion of this issue, *see* Standards for the Provision of Civil Legal Aid (2006): Standard 2.7 (on Integrating the Resources of the Legal Profession and Involvement of Members of the Bar); Standard 6.3 (on Responsibility for the Conduct of Representation).