

## Standard 1.2 on Governing Body Members' Responsiveness to the Communities Served

### STANDARD 1.2 ON GOVERNING BODY MEMBERS' RESPONSIVENESS TO THE COMMUNITIES SERVED

#### STANDARD

*A provider should have a governing body whose membership and manner of operating are responsive to the low income communities served.*

#### COMMENTARY

##### General considerations

A provider's governing body has a responsibility to be aware of the needs of the communities that the provider serves and to make policy decisions that respond to those needs. This responsibility should be addressed as the governing body carries out its responsibilities to support the effective operation of the provider, including oversight,<sup>1</sup> resource development<sup>2</sup> and serving as a resource for the provider.<sup>3</sup> All members should understand the broad needs of the communities served.<sup>4</sup> To the extent practical, the governing body should have members who are representative of the varied interests of those communities. And, the governing body should operate in a way that fosters effective participation by all its members, so that diverse ideas and interests are considered when policies are adopted.

##### Diversity of viewpoints

The governing body needs a diversity of interests and perspectives among its membership in order to be responsive to the communities the provider serves. Diversity on the governing body protects against domination by a single group, assures that the needs of important subgroups of low income populations are recognized, and promotes thoughtful debate of diverse points of view before policy is set.

The governing body should include a variety of supportive persons who bring important skills, knowledge and outlook to governance of the provider. Its membership should include persons who reflect the race, ethnicity, national origin and gender of the low income community and are drawn from various geographic locations, including major cities and towns as well as rural areas. The governing body should include persons who are or who have been eligible for the provider's

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<sup>1</sup> See ABA Standards for the Provision of Civil Legal Aid (2006), Standard 1.1-1 (on Governing Body Oversight of the Provider).

<sup>2</sup> See ABA Standards for the Provision of Civil Legal Aid (2006), Standard 1.1-6 (on Resource Development).

<sup>3</sup> See ABA Standards for the Provision of Civil Legal Aid (2006), Standard 1.1-5 (on Serving as a Resource to the Provider).

<sup>4</sup> See also, ABA Standards for the Provision of Civil Legal Aid (2006), Standard 1.2-1 (on Individual Members' Commitment to the Provider).

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services. Providers that base eligibility for services on income should include governing body members who are or have been financially eligible.<sup>5</sup>

All providers will find a variety of interests in the communities for which the provider is responsible. Some providers, particularly large ones, serve diverse communities and it may not be possible for the governing body membership to include representatives of all of these varied communities. Others providers may focus on offering assistance in a limited substantive area or to a specific population, but even they are likely to find that there are varied interests and outlooks among the members of the population served. Having diverse representation can enhance the governing body's awareness and understanding of the interests and needs of all segments of the low income population. It can also improve the provider's understanding of how to respond to unique service delivery and legal problems of particular groups.

The membership of the governing body should include attorneys who support the work of the provider and who can bring their professional experience and perspective to inform policies that affect the provider's operation as a law office. The provider should be aware of any ethical rules in its jurisdiction that affect the operation of a legal organization that has both attorney and lay members on its governing body.<sup>6</sup>

The governing body may also benefit from including among its membership persons who support the mission of the organization and come from sources such as law schools, the business community or social service organizations. Having at least one member with experience in management, business planning or corporate finance can significantly benefit the governing body in carrying out its responsibilities. Choices about whom to include on the governing body should be made in the context of the particular needs of the provider and special skills or knowledge that it would be beneficial to have on the governing body. It is particularly important, for instance, to have governing body members who can assist with fiscal oversight<sup>7</sup> and resource development.<sup>8</sup>

Each governing body member's knowledge of the community's interests should inform that person's participation in decision-making. At the same time, it is essential that each member recognize that the primary fiduciary duty of a governing body member is to the provider as an organization rather than to interests of communities of which the member is a representative. The responsibility of each member of the governing body is also to consider the legal needs of the entire low income population, not just the particular community with which they may identify. In addition, all members need to be aware of the legal needs of those communities served by the provider that are not represented on the governing body.<sup>9</sup>

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<sup>5</sup> See ABA Standards for the Provision of Civil Legal Aid (2006), Standard 1.2-2 (on Board Members from the Communities Served by the Provider).

<sup>6</sup> See Model Rules of Prof'l Conduct R. 5.4(d)(2) (2003) which prohibits a lawyer from practicing "with or in the form of a professional corporation or association authorized to practice law *for a profit* [emphasis added], if ... a nonlawyer is a corporate director or officer thereof ...."

<sup>7</sup> See ABA Standards for the Provision of Civil Legal Aid (2006), Standard 1.1-3 (on Fiscal Matters).

<sup>8</sup> See ABA Standards for the Provision of Civil Legal Aid (2006), Standard 1.1-6 (on Resource Development).

<sup>9</sup> See ABA Standards for the Provision of Civil Legal Aid (2006), Standard 2.1 (on Identifying Legal Needs and Planning to Respond).

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For practical reasons associated with the size of its governing body, a provider may find it impossible to reflect the full diversity of the communities it serves and to also include all the skills that would be useful to include within the membership. It is important that all members be individuals who are sensitive to the overall needs of low income communities, who are supportive of the provider's mission and who recognize the importance of the provider operating in a culturally competent manner.<sup>10</sup>

It may be impractical for a legal aid provider that is part of a larger organization which exists for a variety of purposes, only one of which is related to legal aid, to achieve the desired level of diversity on its governing body. Many factors may dictate the makeup of the governing body of such a multipurpose organization. The provider should nevertheless strive to find other means to seek input from the communities it serves. It may, for instance, create an advisory committee the makeup of which reflects the community's diversity. The staff of the provider should also work directly with organizations and individuals who represent the diversity of low income communities.<sup>11</sup>

### **Recruitment and selection**

***Identification of governing body members.*** The process for selecting members of the governing body will substantially affect the makeup and operation of that body. Consistent with requirements imposed by funding sources and the practical limitations imposed by its institutional structure, the governing body should seek representation from a broad cross-section of the low income population and from the legal community. The provider should work cooperatively with bar associations and other groups from which members may be drawn to keep them informed of the provider's activities and to encourage the identification of individuals who can serve effectively as governing body members.

***Governing body members from rural areas.*** Providers that serve rural areas should be aggressive in their recruitment of members from those areas and attentive to their ongoing participation in governing body activities. It is particularly important to keep rural members involved in governing body activities because it is often difficult to provide services in rural areas and policy issues arise that affect rural service delivery, including budgeting, priority setting and approval of large capital purchases, such as technology.

The provider should cultivate relations with local community groups serving rural areas for the identification and selection of community and low income members of the governing body. It should similarly maintain positive relations with local bar associations in rural areas that may be the source of appointments of attorney members.

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<sup>10</sup> See ABA Standards for the Provision of Civil Legal Aid (2006): Standard 2.4 (on Cultural Competence); Standard 2.5 (on Staff Diversity).

<sup>11</sup> See ABA Standards for the Provision of Civil Legal Aid (2006), Standard 2.1 (on Identifying Legal Needs and Planning to Respond).

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### **Operation in a manner that fosters effective participation on the governing body by all members**

The role of each governing body member is important, particularly since responsiveness to low income communities calls for engagement of diverse viewpoints. The provider should recognize that recruitment of members does not guarantee their engaged participation on the governing body, and that many aspects of the governing body's operation will affect the degree to which all members become appropriately involved. There are many aspects of the governing body's manner of operating that will affect how fully members participate.

***Remote participation by distant members.*** Providers that cover a very large service area may find that members of the governing body who are from more distant areas are difficult to recruit and even more difficult to keep involved. Often, input from such individuals is particularly important, however, because of special needs of such remote areas. Allowing for participation by telephone, video conference and other remote means can be essential to the ongoing participation of some members. Rotating locations of meetings, if feasible, to different parts of the provider's service area may help significantly in maintaining interest and participation by members from throughout the service area.

***Operation in a culturally competent manner.*** The governing body should not only be sensitive to the responsibility of the provider to operate in a culturally competent manner, but should also be attentive to its own functioning. The governing body should be conscientious about supporting open communication among attorney and community members and among the governing body's diverse elements. The governing body may find it helpful to engage in training to increase its cultural competence and to enhance good communication.<sup>12</sup>

***Maintaining engaged participation by members of the governing body.*** One aspect of effective governance by the governing body is for it to have well-informed members who are committed to the mission of the organization. The governing body needs to strike a balance between longevity and the insight that long experience brings on the one hand and the need for new ideas and fresh outlooks on the other.

There are several means by which a governing body can seek to strike the appropriate balance to assure that all members actively carry out their duties and are fully engaged in governing body activities. Its nominating committee, if it has one, should recommend individuals to serve as members who are committed and enthusiastic about their participation on the governing body. The committee should recruit new members who meet the varied needs of the organization for responsiveness to the community, oversight, resource development and sound policy making. It should recommend replacement of those members who have lost their enthusiasm or no longer participate effectively. If governing body members are designated by outside organizations, the provider should work with the appointing organizations to recruit engaged and committed members.

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<sup>12</sup> See ABA Standards for the Provision of Civil Legal Aid (2006): Standard 2.4 (on Cultural Competence); Standard 1.2-3 (on Training of Members of the Governing Body).

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A governing body may find it useful to identify a pool of potential new members who can succeed those members whose service on the governing body is ending. Potential members, for instance, may serve on committees or advisory groups and learn about the provider's work and operation.

The governing body should have clear policies on attendance at meetings and participation in governing body activities. Because each seat is important to the governing body being able to respond effectively to the communities the provider serves, no position should be left de facto vacant because the individual is disengaged.

Some providers have term limits requiring that members leave the governing body after serving a specified period of time. Term limits have the virtue of guaranteeing that new faces will be brought on the governing body at established intervals. On the other hand, they can result in the retirement of key members of the governing body who have invaluable insight into the operations of the provider and have intimate knowledge of how to respond to the legal needs of low income persons.

There is no one best way to assure that a governing body will maintain the enthusiastic, engaged participation of all its members and will find the right balance between maintaining experience and inviting new ideas. The governing body should adopt policies that are best suited to its circumstance to accomplish the goal of this Standard.

***Governing Body Size.*** Governing bodies generally consist of a relatively small number of persons. The appropriate size of the governing body is a function of the specific needs of the organization. Most governing bodies consist of between 15 and 21 members, although some providers operate with governing bodies as small as 9 and as large as 35 or more. A governing body that is too large runs the risk of losing the involvement of some members who may be content to rely on others to carry out governance responsibilities. Inconsistent participation by members can lead to unpredictable outcomes in issues facing the governing body, particularly if different members attend each meeting. A governing body that is too small may not have enough members to share the burden of governance, including committee work and fundraising. Very small governing bodies also have greater difficulty reflecting the diversity of the provider's low income communities for obvious practical reasons.

***Use of Committees.*** Committee work is an integral part of the governing body's decision-making processes. The agenda of governing body meetings is often too full to permit adequate consideration of the full range of details of complex issues. The governing body should appoint committees, when necessary, to consider issues in depth prior to meetings and to make appropriate recommendations for action by the full governing body. It should also have permanent committees that oversee key aspects of the provider's operation, such as audit and finance,<sup>13</sup> personnel, resource development<sup>14</sup> and planning.<sup>15</sup> Membership on committees should include representatives of the low income community as well as attorney members.

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<sup>13</sup> See ABA Standards for the Provision of Civil Legal Aid (2006), Standard 1.1-3 (on Fiscal Matters).

<sup>14</sup> See ABA Standards for the Provision of Civil Legal Aid (2006), Standard 1.1-6 (on Resource Development).

<sup>15</sup> See ABA Standards for the Provision of Civil Legal Aid (2006), Standard 2.1 (on Identifying Legal Needs and Planning to Respond).