

Standard 2.1 on Identifying Legal Needs and Planning to Respond

STANDARD 2.1 ON IDENTIFYING LEGAL NEEDS AND PLANNING TO RESPOND

STANDARD

A provider should interact with low income individuals and groups serving low income communities to identify compelling legal needs and should implement plans to address those needs most effectively.

COMMENTARY

General considerations

A provider should be aware of the most compelling legal needs of the low income persons that it serves. That awareness enhances a provider's capacity to make sound choices regarding its operation, supports necessary planning, and facilitates the establishment of appropriate provider priorities. A legal aid provider typically has severely limited resources to address the competing demands and overwhelming needs of its client eligible population. It, therefore, needs to allocate its resources to provide assistance that addresses the most compelling, unmet needs of that population. To do so requires having the means to identify the most significant legal problems and to understand how they impact low income individuals as well as the low income population as a whole. It also requires the provider to be aware of other resources available to respond, including those available from the statewide and regional system in which it operates.¹

Provider communication with the low income population.

Effective communication with the low income population a legal aid provider serves is an essential ingredient of the provider's being aware of the legal needs of that population. Day-to-day communication with applicants and clients through intake and other in-person interactions can provide valuable insight into the most pressing needs of the low income population. A provider should have a means to spot patterns among legal problems that are presented at intake, and to detect significant changes that may herald the emergence of new legal issues.

A provider whose contacts with low income persons are limited to the office setting will not be fully aware of or understand the full range of legal needs and objectives of low income persons it serves. Issues that are presented at intake are often a reflection of the kinds of cases the provider already accepts. Low income persons' perceptions of the types of issues the provider handles may limit the nature of the problems for which they seek assistance. Furthermore, many people do not recognize that a problem they face presents legal issues and so may not bring it to the attention of the provider.

To gain deeper insight into the legal problems of the low income community, therefore, a provider should interact with client groups and with groups that serve the low income community and are familiar with its needs. Ongoing communication with such groups helps the

¹ See ABA Standards for the Provision of Civil Legal Aid (2006), Standard 2.3 (on Participation in Statewide and Regional Systems).

Standard 2.1 on Identifying Legal Needs and Planning to Respond

provider to recognize the constantly changing circumstances and legal needs of the low income population it serves in order to adjust its representation efforts to better serve its constituents. Such interaction can take place when a provider represents client groups and works with them in collaborative projects. Meeting with the members as well as the leaders and spokespersons of the groups helps deepen the provider's insights into the low income communities it serves.

Practitioners may also maintain informal contact with client groups and their leaders outside the context of legal representation. Participation on boards and advisory committees as well as attendance at meetings and other community activities are potentially rich sources of information and insight into the needs of the low income community. Working with social service agencies as well as community-based and faith-based organizations that serve low income persons can also give providers valuable insight into the range of issues and the concomitant legal problems that members of the low income community face.

The provider should strive to assure that its contacts are not limited to one segment of its clientele. Open relations with a number of client and community groups can expose the provider to a wide spectrum of problems confronting low income persons and avoid dominance by a single issue group.

It is important for a provider to reach out to the cultural and linguistic groups that make up the low income population. It should be aware of the many sub-groups that may exist in its service area and should be attentive to the arrival of new populations made up of new immigrant groups, or other new categories of client-eligible persons.²

A provider that serves both urban and rural areas should take steps to be aware of issues affecting low income communities throughout its service area, including the more remote areas. Some issues will be unique to persons living outside cities and others will impact very differently on the rural poor or the urban poor. Rural communities also typically have fewer resources available to help respond to recurring legal problems and to alleviate their impact.

Other pertinent information. In addition to interacting with groups of low income persons, a provider should use other means to stay aware of developments in its service area that might affect low income people. News reports of economic, social and political events may portend the development of legal problems or of new opportunities for the low income population. Participation in bar and judicial activities may offer insight into developments in the administration of the courts and changes in local legal practice that might have an impact on low income persons, particularly low income pro se litigants.

Formal legal needs assessments. A more formal assessment of the legal needs of the low income community conducted periodically by the legal aid provider on its own or in concert with others in the statewide or regional system, may serve to identify issues that might be missed with ongoing interaction with the same set of client and community groups. More formal assessments can also establish a baseline regarding the relative importance attached by individuals in the low income community to recurring legal problems. Such assessments should be designed to obtain the views of persons eligible for legal aid and of people or agencies that work with or know the

² See ABA Standards for the Provision of Civil Legal Aid (2006), Standard 2.4 (on Cultural Competence).

Standard 2.1 on Identifying Legal Needs and Planning to Respond

situations of low income persons including social service agencies, community organizations, community leaders and the judiciary.

When conducting a legal needs study on its own or as part of a collaborative effort with others, it is important that the provider select a design that will reach isolated persons in the client eligible population. Persons without telephones or without published telephone numbers, such as those who rely exclusively on a cell phone, may be missed entirely if the design does not account for them. Similarly, the views of people who are homebound or institutionalized as well as people who exclusively speak and write a language other than English will be lost without special efforts to reach out to them. Legal needs studies should also be designed to take into account the needs of low-wage workers. Data can be gathered from the eligible population by using a variety of methods including interviews, surveys, focus groups of persons from the low income community including clients and meetings with community groups.

Application of the Standard

Different legal aid providers will have differing needs and capacities to communicate with potential clients through avenues other than intake. Some providers operate primarily or exclusively to represent the poor, while others undertake such work as one of a number of diverse activities. Some providers have a large central staff with full time employees, while others operate with a small workforce of staff attorneys or volunteers or partially compensated private lawyers who devote only a small portion of their time to legal aid work.

Some providers are organized for a very specific purpose, such as to provide representation in a discrete, predetermined area such as consumer debt or divorce. Others may serve a specifically targeted population, such as the elderly or persons with HIV/AIDS. Providers organized for such focused purposes need to tailor how they maintain awareness of the changing needs of their client population based on the nature of the work.

Some providers may serve as an adjunct to a larger organization whose work they seek to supplement. A bar sponsored pro bono program, for instance, may work exclusively with a larger, full service organization and may rely on it for maintaining awareness of the changing needs of client communities and determining the focus of its work.

To the extent that a provider has a central staff engaged in the direct delivery of services, and operates as the primary provider of legal services to the poor in its service area, it should establish a variety of means for communicating with clients to meet the objectives of the Standard. If a smaller organization does not have sufficient resources, it should, nonetheless, seek to be as engaged as possible with the low income communities it serves. In addition, it should participate in statewide and regional systems and draw on the insights of other organizations that have a greater capacity to engage with clients and client groups outside of the office.

The availability of other resources to serve clients. In addition to being aware of the legal needs facing its client communities, each provider should be aware of the resources available to respond to those needs. The provider should participate in statewide and regional systems for responding to client needs so that it can tailor its response to the needs in the context of other

Standard 2.1 on Identifying Legal Needs and Planning to Respond

resources that might be available to respond. It should also support development and deployment of resources in the system to assure the availability of a full range of services, responsive to the most pressing needs of low income persons in its service area. It should make its choices both about the substantive focus of its legal work and the delivery mechanisms it employs in order to complement and take advantage of other resources that are available to the same population.³

Comprehensive planning to meet identified legal needs

The provider's knowledge of the most pressing legal problems facing its low income population is crucial to planning how best to meet those needs. Effective planning serves several important purposes. First, it enhances the likelihood that a provider will utilize its resources in ways that are most appropriate to serving its clients. Second, planning that sets clear objectives for a provider's efforts facilitates its evaluation of its efforts on behalf of clients.⁴ Third, planning offers a solid basis for internal policies that set case acceptance standards, determine internal needs such as training and formally set priorities.⁵

The approach to planning may vary among legal aid providers, but each provider should be rationally organized and effectively administered to achieve its objectives. To that end, deliberate decisions need to be made about what the provider aspires to accomplish for its low income population and how it proposes to accomplish it.

There are a variety of ways that a provider may go about planning how best to serve its low income population and no one way is always best. At times, a formal process is appropriate, and, at others, planning may happen implicitly in the course of ongoing management decisions about the provider's operation.

Formal planning processes may involve face-to-face discussion among potential clients, the governing body, staff and outside attorneys engaged in delivering services. Key interests of the community should be represented, if possible, with regard to culture, language, race, gender, age, disability, national origin, religion and geographic location. Particular efforts should be made to obtain representation of the interests of individuals who are physically unable to participate in a planning process, such as the institutionalized, the homebound, children and low-wage workers. It is useful to obtain input from other organizations that serve the poor, such as public defender offices, employment services, churches and other faith-based organizations and social service agencies.

³ See ABA Standards for the Provision of Civil Legal Aid (2006), Standard 2.3 (on Participation in Statewide and Regional Systems).

⁴ See ABA Standards for the Provision of Civil Legal Aid (2006), Standard 2.11 (on Provider Evaluation).

⁵ See ABA Standards for the Provision of Civil Legal Aid (2006): Standard 6.5 (on Training); Standard 5.2 (on Policy for Acceptance of Applicants for Service); Standard 2.2 (on Delivery Structure); and Standard 2.6 (on Achieving Lasting Results for Low Income Individuals and Communities). See also, ABA Comm. on Ethics and Prof'l Responsibility, Formal Op. 334, pp. 8-9 (1974); ABA Comm. on Ethics and Prof'l Responsibility, Informal Op. 1359 (1976).

Standard 2.1 on Identifying Legal Needs and Planning to Respond

Whatever its form, planning should help establish or affirm key aspects of the provider's operation:

- The provider should have a clear sense of its focus and what it hopes to accomplish overall for its clients. It should take steps to ensure that all staff have a clear, shared sense of the mission and vision of the organization and how it will accomplish that mission.
- The provider should determine the substantive areas in which it will represent its clients. The decision may include broad determinations of the areas in which it will assist clients and may set specific objectives for its legal work in each area. Setting long-term goals and objectives for the provider's substantive legal work can be a valuable tool for maximizing the effectiveness of that work.
- The provider should determine broad strategic approaches, including the degree to which it will engage in efforts to accomplish systemic change.
- The provider needs to make an intentional choice regarding its overall delivery approach, including what types of assistance⁶ and what delivery mechanisms⁷ will best serve the needs of its low income population.
- The provider should plan in the context of its role in the regional or statewide delivery system of which it is a part. To the degree possible, its role and the focus of its legal work should be selected to foster the capacity of the overall delivery system to provide a full range of services to the low income community.⁸

Effective planning has an evaluation element built into it. It is important that a provider's efforts to identify the legal needs of the low income community it serves and to engage in planning to meet those needs be regularly assessed by it to determine if its efforts have been successful and if its objectives have been met.⁹

⁶ See Section 3, ABA Standards for the Provision of Civil Legal Aid (2006), Standards 3.1 to 3.6.

⁷ See ABA Standards for the Provision of Civil Legal Aid (2006), Standard 2.2 (on Delivery Structure).

⁸ See ABA Standards for the Provision of Civil Legal Aid (2006), Standard 2.3 (on Participation in Statewide and Regional Systems).

⁹ See ABA Standards for the Provision of Civil Legal Aid (2006), Standard 2.11 (on Provider Evaluation).