

STANDARD 2.6 ON ACHIEVING LASTING RESULTS FOR LOW INCOME INDIVIDUALS AND COMMUNITIES

STANDARD

A provider should strive to achieve both clients' objectives and lasting results that respond to the low income communities' most compelling legal needs.

COMMENTARY

General considerations

The effectiveness of a provider can be measured by the tangible, lasting results of its efforts on behalf of its clients and the low income communities it serves. Each provider should strive to accomplish meaningful results in all of the legal assistance activities it undertakes. Lasting results can be achieved in several ways: by favorably resolving individual legal problems; by teaching low income persons how to address the legal problems that they face; by improving laws and practices that affect low income persons; and by assisting members of the low income community to become economically self-sufficient.

The legal problems of individual clients often involve the most basic issues of survival. Problems that merely inconvenience persons who have an economic cushion can have enormous long-term consequences for low income persons and can disrupt every aspect of their lives. An unlawful delay or termination of social security benefits may leave a low income person with no money for food, medicine, shelter or utilities. Unlawful repossession of a car may mean a low income person cannot get to work or to necessary medical care. The provider should be able to respond quickly with high quality assistance that favorably resolves these individual problems in a substantial percentage of cases.

Strategic focus

A provider should establish a clear focus for its legal work and for what it seeks to accomplish for and with its clients. Having a strategic focus starts with making intentional choices about what legal work it will undertake, how it will deploy its resources and how it will deliver service.¹ The provider should know what it hopes to accomplish with its legal work so that it can measure if it is successfully achieving desired results for clients.

There are a number of ways in which a provider may maintain a strategic focus that enhances the results achieved for clients. It calls for deliberative decision-making and intentionality at all levels of the provider regarding what the program's legal work is intended to accomplish. At a program level, the provider may set broad goals for its legal work, such as protecting low income persons' access to shelter, or fostering the stability and safety of the family. Many providers set

¹ See ABA Standards for the Provision of Civil Legal Aid (2006): Standard 2.1 (on Identifying Legal Needs and Planning to Respond); Standard 2.2 (on Delivery Structure).

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broad priorities that provide the basis for making more specific choices about the acceptance of legal work and the focus in broad substantive areas affecting its clients.

The focus of legal work undertaken by a provider is sharpened if the provider deliberately identifies the broadly stated results it seeks to achieve in major substantive areas, or through its projects or specialty units. Thus, a domestic violence unit might identify an objective in its work to be to help its clients find and retain a safe environment in which to live. Identifying a longer term goal than simply obtaining a protective order focuses the unit on more long term results and provides a basis for measuring the success of the work in terms of those results.

In each individual case, the client sets the objective and the practitioner representing the client has a responsibility to pursue that objective.² In addition, some providers establish benchmarks regarding what the provider deems to be the most desirable, realistic outcome in cases of a certain type. The benchmarks might vary among offices based on what is realistic, given local circumstances. Experience suggests that setting benchmarks for results in recurring cases tends over time to improve the results achieved.

All types of legal assistance should accomplish results for clients of the provider. A clear strategic focus on the intended results forms the basis for a periodic evaluation of the success of the efforts, and provides the basis making appropriate adjustments, as necessary. In community economic development, for instance, it is important that the provider clearly articulate the objectives intended for the work. The provider should know whether the intended outcome of the work is to create jobs, housing or goods and services, and if a goal is to foster client self sufficiency and independence. Strategies that employ various forms of limited assistance, such as advice lines, community legal education and assistance to pro se litigants should also be examined to determine the degree to which those who are assisted learn how to help themselves and accomplish meaningful results with the assistance offered.³

When a provider engages in a periodic evaluation of its operation, it should measure the degree to which it is accomplishing meaningful results for its clients. A provider that has clear objectives for its work has a solid basis for a meaningful assessment of the results it achieves.⁴

Systemic advocacy

In the course of serving its clients, a provider is likely to identify laws, policies and practices that have a detrimental effect on low income persons and that deter it from accomplishing desired results. It will also encounter the efforts of others to change policies and laws in ways that harm the interests of low income persons. A provider should engage, when appropriate, in advocacy that addresses such systemic problems. Advocacy to accomplish systemic change is called for when an issue is likely to recur, affects large numbers of clients and is unlikely to be resolved

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

³ See ABA Standards for the Provision of Civil Legal Aid (2006): Standard 3.4 to 3.4-2 on various forms of limited representation; Standard 3.5 (on Assistance to Pro Se Litigants); Standard 3.6 (on Provision of Legal Information).

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

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favorably for individual clients on a one-on-one basis. Advocacy is appropriate to defend the status quo when proposed changes will erode the rights of low income persons or harm the interest of low income communities.

Systemic advocacy involves many potential strategies, some of which are relatively low cost and others of which may be costly and long-term:

- ***Non-representational strategies.*** There are a number of ways outside of direct legal assistance to clients in which a provider may achieve systemic results for the low income community it serves. It might, for instance, participate in bar and judicial committees to improve the accessibility of the courts to low income persons.
- ***Systemic impact in individual cases.*** At times, representation in any individual case may have a result which has an impact beyond the interests of the parties, including in matters that are appealed. Systemic advocacy is generally based on a deliberate strategy, however, that targets an offending law, policy or practice. A provider may, therefore, deliberately focus representation in many individual cases on a particular policy or practice, with an eye to bringing attention to a particular issue and to compel a change over time.
- ***Informal intervention.*** It is not uncommon for a practice that is harmful to clients to result from a failure of an agency to apply the law as it is intended or from it establishing procedures that limit low income persons' access to services offered by the agency. A legal aid provider that is attentive to patterns of decision-making by administrative agencies may be able to identify misapplications of the law or procedures that limit access and bring about a change in the practice by intervening informally with higher placed officials in the agency.
- ***Working with coalitions.*** A provider might work with a coalition of organizations to address policy issues that affect the low income population.⁵ Not all systemic advocacy is adversarial. Providers working with community economic development, for instance, often find that forming alliances with other interests is the most successful way to bring about fundamental economic changes that positively affect a low income community.
- ***Media advocacy.*** To help create a climate that is favorable to change, some systemic advocacy involves a media strategy that seeks to inform the general public or the low income community of harmful or unfair policies and practices.
- ***Affirmative litigation.*** There are many laws, policies and practices that if unchallenged, rule out positive resolution of clients' legal problems. Sometimes they involve laws that on their face are detrimental to the interests of low income persons. Other times, a law or policy, even one designed to protect the interests of the poor, may not be applied uniformly or consistently in accordance with its terms. Sometimes laws and policies that are favorable to clients' interests are challenged in litigation and need to be defended. To challenge an unfavorable law or to enforce or defend a favorable one on behalf of clients may require complex litigation, sometimes involving complex statutory or constitutional questions.

⁵ See ABA Standards for the Provision of Civil Legal Aid (2006), Standard 3.2 (on Legislative and Administrative Advocacy).

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- *Legislative and administrative advocacy.* Some systemic change can only be accomplished by seeking a legislative change or a change in agency policies, rules, regulations and practices of general application. In addition, many proposed changes in statutes and administrative rules will, if adopted, significantly harm the interests of low income persons and call for advocacy to oppose such changes.⁶

Some legal aid providers concentrate their efforts on broad challenges to legal problems confronting many clients. Such efforts can be the most cost-efficient way to utilize the limited resources available to meet the legal needs of low income persons. Repetitive representation of individuals to obtain a limited remedy that does not ultimately resolve a recurring legal problem can be costly and time-consuming. Representation that addresses the basic cause of such legal problems may, on the other hand, ultimately expend fewer resources with more lasting benefits for large numbers of low income persons.

Nevertheless, some systemic representation requires a substantial commitment of resources. A decision to undertake costly systemic advocacy should be made deliberately by the provider and the client, taking into consideration the potential for success; the resources necessary to proceed, balanced against the potential benefit or risk; and the provider's priorities.

All providers should be alert to areas in which they can have a positive impact on policies and practices that have a detrimental impact on the low income communities they serve. Not all providers are organized, however, to undertake complex—and potentially costly—representation that involves broad constitutional challenges, or to engage in administrative and legislative advocacy. Even for those that are able to, resource limitations will preclude undertaking every major case which is presented.

A provider that does not engage in costlier forms of systemic advocacy should, nonetheless, assure that its practitioners undertake adequate research and investigation to advise and counsel their clients regarding the options open to them under the law, and to refer them to other sources of representation, if necessary. The provider should participate in regional and statewide systems to help assure that all types of representation are available and to be aware of the appropriate place to refer clients it is unable to assist.⁷

⁶ See ABA Standards for the Provision of Civil Legal Aid (2006), Standard 3.2 (on Legislative and Administrative Advocacy).

⁷ See ABA Standards for the Provision of Civil Legal Aid (2006), Standard 2.3 (on Participation in Statewide and Regional Systems).