

Standard 3.1 on Full Legal Representation

STANDARD 3.1 ON FULL LEGAL REPRESENTATION

STANDARD

A provider should offer full legal representation or actively participate in a delivery system in which such representation is available.

COMMENTARY

General Considerations

This Standard addresses the responsibility of the provider in determining the areas in which it will offer full representation and in assuring that such work is of high quality and responds to the pressing needs of its client communities.¹

There are many issues that clients confront that cannot be resolved favorably without full representation. Full representation involves 1) identifying the client's legal problem, 2) determining the client's objective and 3) pursuing that objective rigorously throughout the matter at hand. Full representation is distinguished from limited representation, as set forth in these Standards, in which the scope of what the provider and its practitioners will do for the client is limited at the outset of the attorney-client relationship.²

Full representation is called for when the clients would be likely to prevail only if fully represented. Full representation is called for when the facts and law are complex, the forum is particularly challenging for litigants or the client is unlikely to be able to handle the issue alone because of language or cultural barriers, emotional factors or a disability. The importance of full representation also increases in relation to the potential gravity of the loss in the event that the client is not successful, or the significance of the benefit to be gained with success. Cases that threaten permanent loss of shelter, or income, or that threaten the stability and safety of the family, for instance, call for full representation because of the potential harm that may befall clients. In other circumstances, there may be potentially valuable affirmative gains, such as significant economic benefit to an individual or to the low income community that require full representation to be realized.

Not all full representation involves dedication of significant time and resources. If the nature of the case warrants it, a commitment to full representation of a client may be met with relatively brief service.³ In some circumstances, the matter may be resolved with a phone call or a letter and the client and practitioner determine that no more assistance is necessary. A client may decide after consulting with the practitioner not to pursue further action in a case. Such

¹ Standards governing how practitioners should carry out various types of full representation are set forth in Section 7 of these Standards.

² 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).

³ See ABA Standards for the Provision of Civil Legal Aid (2006), Standard 7.8 (on Legal Counseling).

Standard 3.1 on Full Legal Representation

assistance differs from limited representation where the decision is made *a priori* that the representation will be limited regardless of the full range of advocacy that might be possible in the matter.

The most frequent forums for full representation in the legal aid context are court litigation⁴ and administrative hearings.⁵ Such representation may range from negotiating a settlement to appearing in a hearing or trial, to pursuing an appeal on behalf of a client. Litigation may also range from simple, somewhat repetitive procedures to highly complex advocacy calling for sophisticated legal analysis and significant provider resources.

Representation of a client before a legislative and administrative body generally involves full representation.⁶

Full representation is not always adversarial. Some involves transactional work on behalf of a group or individual.⁷ A provider may, for example, help a group incorporate and obtain the appropriate permits and approvals to engage in a business to benefit a low income community. Such work often takes place in the context of community economic development,⁸ which can involve a commitment to a long-term strategy which involves full representation.⁸

Responsibilities of the provider

Making an informed decision about what types of full representation will be offered. Every provider should either have the capacity to provide full representation that is needed by the low income population or be part of an overall delivery system in which appropriate forms of full representation are available.⁹ Full representation is often the most effective way to help achieve a client's objective. If resources permitted, many providers would opt to offer full representation to all clients whom it represents. Unfortunately, however, legal aid providers seldom have sufficient resources to fully represent every person seeking their services, and so must choose those areas in which they will offer full representation and those in which they can only offer limited representation as defined by these Standards.¹⁰

⁴ For the Standards addressed to practitioners' participation in litigation, *see* ABA Standards for the Provision of Civil Legal Aid (2006), Standards 7.7 to 7.7-11.

⁵ For the Standard addressed to practitioners' participation in administrative hearings, *see* ABA Standards for the Provision of Civil Legal Aid (2006), Standard 7.12 (on Administrative Hearings).

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): Standards 7.15 (on Transactional Representation); 7.16 (on Representation of Groups and Organizations).

⁸ *See* ABA Standards for the Provision of Civil Legal Aid (2006), Standard 3.3 (on Community Economic Development).

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

¹⁰ *See* ABA Standards for the Provision of Civil Legal Aid (2006): Standards 3.1 (on Limited Representation); Standard 3.4-1 (on Representation Limited to Legal Advice); Standard 3.4-2 (on Representation Limited to Brief Service).

Standard 3.1 on Full Legal Representation

Two choices are involved in a legal aid provider's determination of the most effective way to deploy and allocate its resources to provide full representation. The first is to identify the substantive areas in which it will offer full representation. The second is to determine the types of full representation that will be offered.¹¹ Only a few providers are likely to offer every possible mode of full representation.

Some providers are organized to provide only limited representation, for instance, providing intake, advice and referral for a regional or statewide legal aid delivery system. Providers that do not themselves offer full representation should have cooperative arrangements with other entities that provide such representation and to which they can refer clients. All providers should participate in and support statewide and regional systems that have the capacity collectively to offer a full range of services, including full representation as described in this Standard and commentary. In a geographic area in which there is only one provider, that provider should offer full representation.

In order to maximize the effectiveness of its resources, a provider may identify those legal issues in which it will offer full representation and may utilize other delivery methods, including limited representation for others. A provider may also determine that a particular group of clients, for whom limited representation would not be appropriate because of language or cultural barriers or mental or physical limitations (including those who are employed and have inflexible workplace hours and policies) will be afforded full representation in specific areas, where other clients might be offered more limited representation.

In determining areas in which it will offer full representation a provider may consider the degree to which it seeks to accomplish systemic change that will benefit the low income communities it serves, as well as individual clients. Some issues affect large numbers of people and are rooted in policies and practices of governmental agencies and businesses that frequently interact with low income persons. Such issues sometimes require advocacy aimed at changing the underlying policy or practice. Systemic work is often capable of producing a long-term favorable remedy that affects a large number of people and is an important part of the panoply of strategic approaches that may be employed to meet the needs of the low income population. Not all providers elect to undertake systemic work. On the other hand, some providers are organized specifically for the purpose of accomplishing systemic change for a particular population, or with regard to a particular issue.

Providers that adopt a policy of seeking systemic change through their work generally find that addressing such issues requires long-term strategies. While there are a number of ways in which a provider might seek systemic change, direct representation of clients is the most common and generally calls for some form of full representation.¹²

¹¹ Standards governing how practitioners should carry out various types of full representation are set forth in Section 7 of these Standards.

¹² This is not to say that the only way to have a systemic impact is through full representation. A provider may, for instance, effect significant systemic change by participating in court or bar association committees on issues that relate to the administration of justice.

Standard 3.1 on Full Legal Representation

A focus on systemic change affects two important choices that a provider makes in determining its approach to service delivery. The first relates to the substantive areas in which it will offer full representation. A provider that offers only limited representation in a substantive area is unlikely to be able to mount a strategy to have a long-term systemic impact in the area.

The second factor that may be affected is the types of representation that will be offered. A serious commitment to systemic work, for example, might lead a provider to undertake legislative and administrative advocacy, or a significant appellate practice. It should be noted, however, that systemic impact can be obtained by strategically focused individual representation in trial or administrative practice. Similarly, community economic development and group representation can have a significant systemic impact.

Providing adequate support for full representation. A legal aid provider has several responsibilities with regard to full representation. As noted above, initially the provider should make an informed decision about the substantive areas in which full representation is most appropriate to meet the pressing needs of the low income population. It should assure that adequate resources, particularly staff, are deployed to support the full representation to which it is committed. It should adequately budget to meet the expense of full representation, including cost of discovery and experts.¹³ If the provider engages in systemic work, it should reduce the other workload requirements of practitioners who take on such work, if necessary.¹⁴

A provider that undertakes appellate work should have a policy regarding the approval of appeals challenging adverse rulings and defending lower court victories against appeals pursued by the adverse party. The policy should reflect factors such as the likely outcome on appeal, the potential benefit and risk to the client, the resources of the provider required for prosecution of the appeal, and the relationship of the issue to the provider's substantive goals and objectives.

A provider needs practitioners who are versed in the law and process that is necessary for effective, full representation. Providers have a responsibility to assure that staff receive the necessary training to improve the advocates' practice skills and to keep them current in the substantive law so that they may represent their clients effectively.¹⁵

They should be familiar with the practice expectations in the various forums in which they operate, including state and federal trial and appellate courts, as appropriate. Providers that appear in tribunals with highly specialized procedures, such as public utility commissions or zoning boards should assure that their practitioners are able to practice effectively in those settings.

The provider also has a responsibility to make certain that its practitioners understand the low income communities in its service area. They should be aware of any cultural values that might

¹³ See ABA Standards for the Provision of Civil Legal Aid (2006), Standard 5.5 (on Policy Regarding Costs of Representation).

¹⁴ See ABA Standards for the Provision of Civil Legal Aid (2006), Standard 6.2 (on Assignment and Management of Cases and Workload).

¹⁵ See ABA Standards for the Provision of Civil Legal Aid (2006), Standard 6.5 (on Training).

Standard 3.1 on Full Legal Representation

affect a client's reaction to some forms of full representation, such as litigation and similarly lengthy and adversarial processes.¹⁶

It is important that the provider encourage its practitioners to stay abreast of changes among the issues that affect the low income communities it serves, including: 1) changes in the economy; 2) changes in patterns of racial and ethnic discrimination; 3) new governmental policies and practices of agencies that affect the low income population; and 4) the development of new technologies. Such changes can give rise to new legal issues and to new strategies to address old and new legal problems. The provider should encourage its practitioners to participate in various forums in which such issues and strategies are discussed. Appropriate opportunities include state, regional and national trainings; e-mail lists and other computer-based discussions, as well as publications of national and state advocacy entities pertinent to the practitioners' work.

A provider should constantly strive to increase the effectiveness of the strategies that it pursues. It should examine whether established strategies are still effective at achieving successful individual outcomes and lasting results for the entire low income community and should explore new approaches to advocacy that evolve as new issues arise.¹⁷

Methods for evaluating the effectiveness of full representation will vary depending on the type of representation and the provider's overall objective. A provider might, for instance, record the degree to which clients' objectives have been met in individual cases and periodically assess the overall effectiveness of its individual representation. In some circumstances, it might be valuable periodically to follow up with clients to determine the long-term impact of the assistance they received. This would be particularly true if the provider has articulated a long-term goal for its work in a particular area. Thus, for instance, a provider might set a goal for its domestic violence work of helping its clients find a stable and safe environment in which to live, and would find it useful to know if it has succeeded in the goal over time.

Evaluation of the success of systemic work can be challenging, but it is also important that the effectiveness of such work be examined periodically. Systemic work should have a clear long-term objective for the effort. The proper evaluative technique will be a function of what the long-term objective is. Periodic assessments of whether the intended beneficiaries of systemic work have taken advantage of a remedy obtained can be important to guiding future efforts and in making choices regarding which strategies are most beneficial.¹⁸

¹⁶ See ABA Standards for the Provision of Civil Legal Aid (2006), Standard 2.4 (on Cultural Competence).

¹⁷ See ABA Standards for the Provision of Civil Legal Aid (2006), Standard 2.6 (on Achieving Lasting Results for Low Income Individuals and Communities).

¹⁸ See ABA Standards for the Provision of Civil Legal Aid (2006), Standard 2.11 (on Provider Evaluation).