

Standard 7.1 on Establishing an Effective Relationship and a Clear Understanding with the Client

STANDARD 7.1 ON ESTABLISHING AN EFFECTIVE RELATIONSHIP AND A CLEAR UNDERSTANDING WITH THE CLIENT

STANDARD

The practitioner should establish an effective, professional relationship and a clear understanding about the representation with each client.

COMMENTARY

General considerations

When a client is accepted for representation by a legal aid provider, the individual has an attorney-client relationship with both the provider and the practitioner and both practitioner and provider have concomitant duties to meet the professional responsibilities associated with the representation.¹ For practitioners to meet their responsibilities, it is particularly important to establish a relationship of mutual trust and candor with each client and to be certain that both the practitioner and the client clearly understand and agree upon the scope and conduct of the representation and the expectations of the practitioner and the client.²

Establishing an effective, professional relationship

Respect and diligence on behalf of clients. There are many factors that may impede a practitioner's ability to establish an effective, professional relationship with a low income client. The practitioner needs to be sensitive to the personal concerns that clients may bring and that may affect their participation in the representation. Some low income persons mistrust or fear lawyers and see them as part of an unfamiliar legal system or may see them as part of a social services bureaucracy from which they are already alienated. Others may be intimidated by the "professionals" from whom they seek help. Most clients bring significant personal anxiety about the legal problem that caused them to seek assistance. Some may misunderstand what constitutes a legal problem or what remedies are available through the legal system and may harbor doubts about the representation they receive.

¹ See ABA Standards for the Provision of Civil Legal Aid (2006): Standard 4.2 (on Establishing a Clear Understanding); Standard 4.3 (on Protecting Client Confidences). Some institutional responsibilities will be particularly the responsibility of the provider. See e.g., ABA Standards for the Provision of Civil Legal Aid (2006): Standard 6.3 (on Responsibility for the Conduct of Representation); Standard 6.4 (on Review of Representation).

The provider also has a responsibility to take steps to overcome impediments to establishing an effective attorney-client relationship with low income persons seeking and using its services. See e.g., ABA Standards for the Provision of Civil Legal Aid (2006): Standard 2.4 (on Cultural Competence); Standard 2.5 (on Staff Diversity); Standard 4.5 (on Access to Services); Standard 4.6 (on Communication in the Primary Languages of Persons Served); Standard 4.7 (on Client Complaint Procedure); Standard 6.1 (on Characteristics of Staff).

² 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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To help overcome any such anxieties, it is important that the practitioner treat all clients with courtesy and respect. The initial interview of the client by the practitioner should be conducted in a manner that helps allay unreasonable fears on the part of the client, while eliciting facts relevant to the legal problem.³

To establish a professional relationship grounded in trust and confidence, the practitioner should keep the client informed about the status of the representation and respond promptly to requests for information.⁴ The practitioner should tend to the client's legal problem promptly and with diligence.⁵

Culturally competent representation. The practitioner should also be aware of cultural differences that can affect relationships with low income persons from the diverse communities served by the provider. Some clients have deeply ingrained values that may diverge widely from the values inherent in the adversarial legal process. To be effective, practitioners often need to bridge different value systems and to understand and empathize with their clients, while translating clients' values into the language of the legal process. Practitioners serving culturally diverse communities should receive training in cultural competence.⁶

Establishing a clear understanding

The responsibilities of the provider to establish a clear understanding with a client are treated at length in Standard 4.2 on Establishing a Clear Understanding and the considerations set forth there apply to the practitioner. The practitioner should communicate directly with the client regarding appropriate mutual expectations in the representation. If the representation is limited and will involve only one or two contacts between the client and the practitioner, the primary concern will be that the limitations of the representation are clearly understood by the client.⁷

Particularly in representation that will involve ongoing representation of the client, both the client and practitioner should understand the client's right to be kept informed of the progress of the case and to participate in key decisions regarding its conduct.⁸ The client should be encouraged to initiate contacts with the practitioner and should know how to do so. The practitioner should make sure that the client recognizes the importance of keeping the practitioner informed of changes in circumstances that might affect the case and advising the practitioner and provider of changes in contact information. The practitioner should also advise

³ See ABA Standards for the Provision of Civil Legal Aid (2006), Standard 7.4 (on Initial Exploration of the Client's Legal Problem).

⁴ Model Rules of Prof'l Conduct R. 1.4(a)(3) and (4) (2003). See ABA Standards for the Provision of Civil Legal Aid (2006), Standard 7.2 (on Client Participation in the Conduct of Representation).

⁵ Model Rules of Prof'l Conduct R. 1.3 (2003) reads: "A lawyer shall act with reasonable diligence and promptness in representing a client." The comment to the Model Rules of Prof'l Conduct R. 1.3 (2003) notes: "Perhaps no professional shortcoming is more widely resented than procrastination."

⁶ See ABA Standards for the Provision of Civil Legal Aid (2006), Standard 2.4 (on Cultural Competence).

⁷ See ABA Standards for the Provision of Civil Legal Aid (2006): Standard 3.4 (on Limited Representation); Standard 7.14 (on Practitioner's Responsibilities in Limited Representation).

⁸ 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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clients of their responsibility to assist in preparing the case by locating witnesses, documents, or physical evidence; cooperating with discovery requests; and keeping records.