

## Standard 7.4 on Initial Exploration of the Client's Legal Problem

### STANDARD 7.4 ON INITIAL EXPLORATION OF THE CLIENT'S LEGAL PROBLEM

#### STANDARD

*The practitioner should interview each client to explore the legal problem, elicit pertinent facts and circumstances, identify legal issues and the client's objectives and inform the client about the steps needed to address the legal problem.*

#### COMMENTARY

##### General considerations

From the outset of the representation, the practitioner should work to create an atmosphere of trust and confidence between the practitioner and the client and to preserve the dignity of the client.<sup>1</sup> The practitioner should take all reasonable steps to protect client confidences and information from unauthorized disclosure.<sup>2</sup>

From the initial contact,<sup>3</sup> the practitioners and the client should identify relevant facts and circumstances and explore the nature of the legal problem presented. Some of this initial fact-gathering will have taken place in the process of determining whether the case will be accepted.<sup>4</sup> This initial contact may be the only opportunity to gather information and identify facts if a decision is made to limit the assistance to advice or brief service. It is, therefore, crucial for the practitioner to elicit as much relevant information from the client as necessary to assure that the advice or brief service will be responsive to the circumstances of the client.<sup>5</sup>

When more extended representation is offered, additional information can be obtained through subsequent contacts between the practitioner and the client. The practitioner and other staff of the provider who have contact with the client should assure that facts elicited in each client

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<sup>1</sup> See ABA Standards for the Provision of Civil Legal Aid (2006), Standard 7.1 (on Establishing an Effective Relationship and a Clear Understanding with the Client).

<sup>2</sup> See ABA Standards for the Provision of Civil Legal Aid (2006), Standard 4.3 (on Protecting Client Confidences).

<sup>3</sup> This Standard deals with a practitioner's responsibility to those persons who are accepted for representation by the provider, even if the exploration of the legal matter takes place while the individual is applying for service, so the Standard and commentary use the term "client" throughout.

<sup>4</sup> See ABA Standards for the Provision of Civil Legal Aid (2006), Standard 5.2 (on Policy for Acceptance of Applicants for Service).

<sup>5</sup> The responsibility of the practitioner to investigate beyond the information supplied by the client in situations where the provider will offer only limited representation may vary depending on the ethical rules of the jurisdiction where the service is provided, and practitioners should be aware of those requirements. See also, 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).

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contact are recorded and included in the case record so that the client is not subjected to unnecessarily repetitive interviews.

### **Obtaining pertinent facts and identifying legal issues**

As part of the interview, the practitioner should attempt to identify the facts that give rise to the legal problem or problems that the client seeks to resolve. Effective interviewing requires particular skills to elicit the necessary information in a manner that keeps the flow of information open and assures that the client, not the practitioner, defines the problem. At the same time, the practitioner should keep the discussion focused on relevant facts and should attempt to elicit all important information about the client's circumstances.

The client may not organize the facts in the same manner as the practitioner would for effective presentation of a case. Moreover, the client may not perceive the relevance of some facts and may overestimate the importance of others. The practitioner should be a skilled listener who can draw out facts and discern their importance. A good interviewer will let clients tell their stories in their own words without losing sight of the issues that are truly relevant.

The practitioner should guard against controlling interviews too strictly. Holding clients to a rigid set of questions may serve the practitioner's need to categorize information chronologically or to state essential elements of a case, but in practice may simply shut off the flow of relevant information that could be obtained from the client. The client may feel inhibited by an unfamiliar situation and may be reluctant to volunteer information unless specifically asked, with the result that significant facts are never revealed. The practitioner should encourage the client to talk, but should intervene constructively to flesh out important issues and pursue matters of particular relevance. If necessary, the provider should offer its practitioners and other staff training in interviewing skills.

Interviews should not be narrowly circumscribed by the practitioner's initial definition of the legal problem that is presented. If the problem is categorized too soon, the practitioner may not explore all of the legal issues that may be present. The problem that the client initially describes may be only a symptom of other difficulties that may be amenable to a legal solution. For example, the client may ask for help with an eviction for nonpayment of rent, but that may result from an interruption of income as a result of an unlawful termination of public benefits or employment. By artificially limiting the client interview to the facts that pertain to the eviction, the practitioner may miss the other important legal issue.

The practitioner should be attentive to the risk that some clients may dwell on things that turn out to be irrelevant. It is the practitioner's responsibility to keep the interview focused on pertinent facts and circumstances. On the other hand, the interviews should be flexible enough to allow clients to present their major concerns. An overemphasis on certain facts or circumstances may be a symptom of a client's anxiety or misunderstanding about the case. The practitioner's awareness of and response to that anxiety may be important to effective client communication and involvement in resolving the matter. Moreover, such facts may indicate other legal problems that should be explored by the practitioner, even though they are not related to the problem initially presented by the client.

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### **Helping the client determine the objectives and identifying the next steps to be taken**

Initial interviews provide the first opportunity for the applicant who is accepted as a client to understand the risks and possibilities involved in the case and to begin to formulate tentative objectives for the representation, subject to further factual investigation and research of potential issues by the practitioner.<sup>6</sup> At the end of the initial interview the client should have received a clear explanation in lay terms of the legal issues presented, the steps the practitioner is likely to take in pursuing the case and the steps, if any, that the client should take or avoid to preserve or protect the client's legal rights and interests. The interviewer should understand clearly the types of information or advice that may be appropriately given to clients in an initial interview and should have sufficient legal knowledge to recognize circumstances that require a more expert practitioner to speak with a client. Initial exploration of a legal matter by authorized non-attorney practitioners should be reviewed by a supervising attorney to assure that all legal issues are identified and appropriate steps taken.<sup>7</sup>

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<sup>6</sup> See ABA Standards for the Provision of Civil Legal Aid (2006): Standard 7.5 (on Investigation); Standard 7.6 (on Legal Analysis and Research).

<sup>7</sup> See ABA Standards for the Provision of Civil Legal Aid (2006), Standard 2.9 (on Use of Non-attorney Practitioners).