

## Standard 7.6 on Legal Analysis and Research

# STANDARD 7.6 ON LEGAL ANALYSIS AND RESEARCH

### STANDARD

*The practitioner should conduct a legal analysis of each client's legal problem and research pertinent legal issues, when necessary and appropriate.*

### COMMENTARY

Legal analysis and research are essential steps in the full representation of clients.<sup>1</sup> They are closely linked to case planning<sup>2</sup> and information gathering.<sup>3</sup> The facts that define the client's problem determine the scope and direction of the initial research. That preliminary research, in turn, forms the basis of tentative legal theories that shape potential case strategy. In many cases, initial legal research will identify alternative theories that require further analysis of the facts and may suggest areas for additional factual investigation and more intensive legal research. Research and analysis should continue as part of the ongoing reevaluation of the strategies and theories of the case, so that representation efforts can be concentrated on those issues that are most relevant and critical to resolving the client's problem.

In cases where the provider offers extended legal representation, it is essential that the practitioner engage in thoughtful legal analysis of the client's problem, even if the issues appear at the outset to be relatively simple. Without adequate legal analysis and research, important legal issues and potentially creative responses may be overlooked. The purpose of research is to formulate the best arguments that can be made on behalf of a client, given the facts. It should also identify an adversary's likely legal position and help shape the client's response. Research should first explore whether existing law can be directly applied to further the client's interests. If necessary, the research should determine if there is a basis for distinguishing law that disfavors the client's position.

The practitioner should be familiar with statutes, regulations, and case law that may have a bearing on the client's case, and should not rely solely on secondary sources such as treatises. The practitioner should use all appropriate tools for legal research, including computer assisted research that can facilitate the efficient and thorough evaluation of all legal issues in the matter. The practitioner should be trained to conduct effective electronic research to assure that the scope of the inquiry is sufficiently broad and is not limited by a search that is too narrowly defined.<sup>4</sup> The practitioner should also make certain that each source is current by reviewing later

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<sup>1</sup> See ABA Standards for the Provision of Civil Legal Aid (2006), Standard 3.1 (on Full Legal Representation). When the provider is offering only limited representation, the practitioner often will not be conducting extensive legal research but should, nonetheless, engage in thoughtful legal analysis of the issues that the client's problem presents. 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).

<sup>2</sup> See ABA Standards for the Provision of Civil Legal Aid (2006), Standard 7.7 (on Case Planning).

<sup>3</sup> See ABA Standards for the Provision of Civil Legal Aid (2006), Standard 7.5 (on Investigation).

<sup>4</sup> See ABA Standards for the Provision of Civil Legal Aid (2006), Standard 2.10 (on Effective Use of Technology).

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interpretations of relevant citations. Legal research and analysis undertaken by authorized non-attorney practitioners should be reviewed by their supervising attorneys to assure that legal issues outside the expertise of the practitioners are not overlooked.<sup>5</sup>

Effective representation of a client may require that a practitioner expand the scope of research to determine whether there is a basis for modifying, extending, limiting, or reversing current law, including that which is unfavorable to the client. Research may identify a constitutional basis for striking down a statute or statutory grounds for modifying a regulation. Changing societal norms may provide the argument for modifying or reversing current case law. Alternatively, research may determine that only a direct statutory or regulatory change by a legislature or administrative agency can adequately resolve the client's problem or serve the needs of the low income community.<sup>6</sup>

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<sup>5</sup> See ABA Standards for the Provision of Civil Legal Aid (2006), Standard 2.9 (on Use of Non-attorney Practitioners).

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