

## Standard 7.11 on Litigation

### STANDARD 7.11 ON LITIGATION

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*The practitioner should proficiently and zealously engage in litigation when it is determined to be the most effective means to resolve the client's problem.*

#### COMMENTARY

Litigation is only one of a variety of forms of representation that may be used to address a client's problem. In many cases, clients seek legal help because they have been sued and are already involved in litigation as defendants. Many recurring legal problems of the poor, such as evictions, consumer fraud, and family law matters, are traditionally the subject of litigation. When there is a choice in the representational approaches that can be used to address the client's problem, the practitioner should consider the advantages and disadvantages of litigation over other modes of representation.

Litigation has the advantage of providing the opportunity to obtain an enforceable order to remedy the client's problem. It often offers the most direct means to seek the client's objective. On the other hand, in litigation, the client and practitioner lose substantial control of the timing of representational efforts. Once the litigation is initiated, it may not be resolved for months or even years. Such a protracted strategy may undermine the opportunity for more timely resolution of the client's problem through other means.

The conduct of litigation involves tactical decisions that make it difficult to lay down specific rules about what a practitioner should do in every case. A practitioner who is defending a client who has been sued will take different actions than one who is bringing affirmative litigation on behalf of a client. In general, before embarking on a course of litigation, the practitioner should be diligent in researching all relevant facts and legal theories in support of the client's claim or defense, should be prepared to undertake necessary discovery, and must be aware of procedural devices available to assert and protect clients' interests.<sup>1</sup>

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<sup>1</sup> See ABA Standards for the Provision of Civil Legal Aid (2006), Standards 7.11-1 through 7.11-8 for specific standards that relate to different aspects of the conduct of litigation and litigation tools.