

Standard 7.15 on Transactional Representation

STANDARD 7.15 ON TRANSACTIONAL REPRESENTATION

STANDARD

The practitioner should proficiently and zealously represent clients in transactional matters to accomplish their objectives.

COMMENTARY

General considerations

Not all the legal issues facing legal aid clients involve matters in which there is a party with an adverse interest. Some clients seek legal assistance with issues associated with community economic development, with starting a small business or a non-profit organization or with a personal matter, such as drafting a will or power of attorney. The legal work associated with such efforts often involves transactional representation. Such work involves assisting an individual or an organization to comply with legal requirements necessary to pursue a business or personal objective, and often includes drafting or reviewing documents.

Transactional work increases in importance as legal aid providers and their practitioners address issues associated with the creation of employment and the enhancement of economic stability in low income communities. It is also a staple of work for some providers that serve older citizens, or persons with HIV/AIDS, who desire a power of attorney or a will.

Types of transactional representation

Transactional representation encompasses a wide range of work for clients, including:

- Buying, selling, leasing and establishing clear title to property;
- Incorporating groups and drafting by-laws and other necessary corporate documents;
- Meeting zoning and licensing requirements;
- Complying with tax laws;
- Assisting with business planning;
- Helping secure grant money and financing;
- Helping with advance directives;
- Estate planning, including drafting of wills, powers of attorney and similar documents.

Transactional representation is particularly important in community economic development where a practitioner may be assisting an organization to incorporate, to start a business and to obtain funding for its operations and for its projects.¹ The practitioner may also represent the interests of a low income neighborhood with matters such as zoning and creation of enterprise zones. In addition, a practitioner may provide transactional representation to a group or organization related to its operation or to a project in which it is involved. Individuals may need transactional representation connected with the transfer of property or drafting of a will or power of attorney.

¹ See ABA Standards for the Provision of Civil Legal Aid (2006), Standard 3.3 (on Community Economic Development).

Standard 7.15 on Transactional Representation

Skills and knowledge associated with transactional representation

The skills associated with transactional representation are different from those associated with advocacy, although the practitioner owes the same duties to the client. The representation must be competent² and diligent³ and the practitioner must protect the information obtained in the representation from unauthorized disclosure.⁴ The practitioner must also avoid conflicts of interest, although conflicts in transactional representation may be less immediately apparent than they are in adversarial representation.⁵

Competence in transactional representation requires knowledge about the law related to the area of work. Failure to include a necessary element in a document being prepared for a client may not be noted until later when the omission proves fatal to the objective originally sought by the individual, often long after the error can be corrected. Transactional work also often involves problem solving and negotiation skills to help the client achieve a broad goal consistent with legal requirements that may affect or limit how that goal can be accomplished.

In dealing with complex business matters, the practitioner needs to have knowledge of the legal issues associated with the operation of a business and to understand the business possibilities for the organization. The practitioner may properly assist an organization with the development of a business plan.⁶ Because transactional representation may call for knowledge about the links among many legal and business matters, it is an area in which an inexperienced staff practitioner may find it beneficial to associate with outside counsel familiar with such matters.

Other professional responsibilities of the practitioner in transactional representation

Scope of representation. In transactional representation, there is a particular need for clarity regarding the client's objectives and the scope of the representation. Transactional representation on behalf of an individual to draft a power of attorney is straightforward and involves an easily definable, discrete legal task. On the other hand, an organization that is seeking to pursue housing or economic development will have multiple business objectives, each of which may give rise to a need for legal representation. Moreover, such an organization may just be developing its business plan and may be seeking counsel regarding viable options.⁷

² Model Rules of Prof'l Conduct R. 1.1 (2003).

³ Model Rules of Prof'l Conduct R. 1.3 (2003).

⁴ Model Rules of Prof'l Conduct R. 1.6 (2003). *See also* ABA Standards for the Provision of Civil Legal Aid (2006), Standard 7.3 (on Practitioner Responsibilities in Protecting Client Confidences).

⁵ Model Rules of Prof'l Conduct R. 1.7 to 1.10 (2003).

⁶ *See* ABA Standards for the Provision of Civil Legal Aid (2006), Standard 7.16 (on Representation of Groups and Organizations).

⁷ *See* ABA Standards for the Provision of Civil Legal Aid (2006), Standard 7.8 (on Legal Counseling).

Standard 7.15 on Transactional Representation

The practitioner and the client need to clearly agree upon the specific tasks that will be undertaken by the practitioner and by the client.⁸ For instance, the practitioner may assist the client with preparation of an application for tax exempt status, but expect the client to complete the preparation and filing of the necessary documents.

The practitioner and client should also clearly agree upon the duration of the representation and the understanding should be stated in the retainer agreement. Without such an agreement, an organizational client might assume, for example, that a practitioner assisting it to incorporate will be available to the resulting corporation for a variety of other legal needs associated with its start-up; the practitioner, on the other hand, might see the assistance as a one-time task.

Identification of the client. As in all representation, it is important in transactional work that the practitioner clearly establish who the client is.⁹ When the client is a group or organization, the practitioner should be aware of the importance of knowing who speaks for the entity and who decides on the objectives for the representation.¹⁰

There may be times when two parties ask a practitioner to assist them jointly in a transaction. A community-based organization might, for instance, seek assistance drafting a memorandum of understanding with another organization that is also a client of the practitioner. A practitioner needs to be cautious when considering a request to represent two clients in the same transaction since their interests are different even though they are not hostile. Such representation should only be undertaken if both parties consent in writing and the practitioner is confident both clients' interests can be met, that each is capable of making informed decisions in the matter, and that neither will be harmed unduly if the resolution does not work out.¹¹

⁸ See ABA Standards for the Provision of Civil Legal Aid (2006): Standard 4.2 (on Establishing a Clear Understanding); Standard 7.1 (on Establishing an Effective Relationship and a Clear Understanding with the Client).

⁹ See ABA Standards for the Provision of Civil Legal Aid (2006), Standard 4.2 (on Establishing a Clear Understanding).

¹⁰ See ABA Standards for the Provision of Civil Legal Aid (2006), Standard 7.16 (on Representation of Groups and Organizations) and Model Rules of Prof'l Conduct R. 1.13 (2003) regarding Organization as Client.

¹¹ See Paragraphs 28 to 33 of the Comment to Model Rules of Prof'l Conduct R. 1.7 (2003).