

Standard 7.16 on Representation of Groups and Organizations

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STANDARD

The practitioner should proficiently and zealously represent groups and organizations to respond to the legal needs of the communities served by the provider.

COMMENTARY

General considerations

Many of the legal needs of low income communities can be addressed effectively by a practitioner assisting groups and organizations that are made up of persons who are eligible for the provider's services or seek to respond to the needs of the communities served by the provider. Representation of groups and organizations is often a central component of strategies to respond to needs of low income communities. Ongoing interaction with community organizations can also serve as an important source of information about needs in the community that help guide a provider's strategic planning efforts.¹

Representation may take many forms. It may involve transactional work to help a community-based group organize and function effectively and accomplish its objectives,² or it may involve advocacy, including litigation to protect or assert the interests of the organization and its members. A practitioner might engage in legislative or administrative policy advocacy on behalf of members and constituents of a group or organization.³ A practitioner might help a group, such as a tenant's association, to organize. The practitioner might also agree to represent both a group and its individual members who have legal problems related to the purpose for which the group was formed. Thus, a practitioner might help a tenant's association to organize and might also agree to represent some or all of its members with their landlord-tenant legal problems.

Representation of groups and organizations is essential to community economic development.⁴ In addition, community-based groups may organize to provide services that respond directly to the needs of low income communities and may seek legal assistance for itself and its members. Representation of groups and organizations may range from a one-time intervention that assists an organization with a discrete legal issue to a long-term commitment that extends over years and involves multiple issues.

¹ See ABA Standards for the Provision of Civil Legal Aid (2006), Standard 2.1 (on Identifying Legal Needs and Planning to Respond).

² See ABA Standards for the Provision of Civil Legal Aid (2006), Standard 7.15 (on Transactional Representation).

³ See ABA Standards for the Provision of Civil Legal Aid (2006): Standard 3.2 (on Legislative and Administrative Advocacy); Standard 7.13 (on Legislative and Administrative Advocacy by Practitioners).

⁴ See ABA Standards for the Provision of Civil Legal Aid (2006), Standard 3.3 (on Community Economic Development).

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Capabilities necessary for effective representation of groups and organizations

Working with community groups requires effective interpersonal skills in addition to the legal skills associated with the particular legal issue for which the group seeks legal assistance. Groups have their own internal dynamic and the practitioner should understand those dynamics and relate appropriately to the group and its leaders. The practitioner should commit adequate time to understand the overall goals of the group as well as the specific objective for legal work that is undertaken. The practitioner should recognize the responsibility to be an organizer, advocate or a counselor for the group, but not its leader, even though at times the group may be overly deferential to the professional judgment of the practitioner. The practitioner should recognize that the goals of a group may lead it to address issues in ways that do not involve legal process.

Representing community groups often calls for an extensive time commitment. The practitioner will often need to be available to the group or organization outside of normal business hours as many groups can only meet at night or on weekends to accommodate members who work.

Professional responsibilities of practitioners working with groups and organizations

A practitioner representing a group or organization needs to clearly understand who is authorized to speak for it.⁵ Organizations that are incorporated will generally have a leadership structure that identifies who has authority to decide on a course of action, including determining the objectives for the representation and approving actions that need to be taken. Some organizations' by-laws may identify situations when approval for a course of action must be made by the members of the group, and not the leadership. Many community groups are not incorporated, however, and it will be less clear who has decision-making authority and what the processes are for making decisions. To avoid conflict in the event of disagreements within the group, the practitioner should reach a specific understanding with the group at the outset of the representation regarding who is authorized to make decisions about the representation and by what process. Depending on circumstances, the practitioner and the group may agree that some decisions need to be decided by the membership.

The practitioner should clearly understand the responsibility to represent the interests of the group and not of individuals within it.⁶ In groups and organizations that are cohesive and clear about their goals and strategies, conflicting internal interests are less likely to be a problem. On the other hand, it is possible in any group or organization that internal disagreements will develop about its control, direction or operation. The practitioner should be familiar with the ethical rules in the appropriate jurisdiction that relate to conflicts within a group or organization

⁵ Model Rules of Prof'l Conduct R. 1.13(a) (2003) regarding Organization as Client states: "A lawyer employed or retained by an organization represents the organization acting through its duly authorized constituents." *See also*, ABA Standards for the Provision of Civil Legal Aid (2006), Standard 4.2 (on Establishing a Clear Understanding).

⁶ Model Rules of Prof'l Conduct R. 1.13(f) (2003) reads:

"In dealing with an organization's directors, officers, employees, members, shareholders or other constituents, a lawyer shall explain the identity of the client when the lawyer knows or reasonably should know that the organization's interests are adverse to those of the constituents with whom the lawyer is dealing."

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that the practitioner is representing.⁷ A practitioner who is asked to represent any constituent of the group, in a related or different matter must be careful to abide by the pertinent ethical rules in its jurisdiction regarding conflicts of interest.⁸

Scope of representation. The practitioner should reach a clear understanding with the group about the scope and duration of the representation. The legal needs of groups and organizations can involve multiple issues that call for many types of representation. Assistance with transactional matters raises a specific set of questions regarding the scope of representation that are discussed in the commentary to Standard 7.15 on Transactional Representation. Direct advocacy on behalf of the group in litigation or another adversarial proceeding is subject to the same considerations with regard to scope of representation as with an individual client and is subject to the considerations set forth in the commentary to Standard 4.2 on Establishing a Clear Understanding.

A general retainer to represent the interests of members or constituents of the group or organization before a legislative or administrative body should identify the group's objectives and means of communication for the practitioner to seek guidance regarding the advocacy and to communicate about its conduct, as discussed in the commentary to Standard 3.2 on Legislative and Administrative Advocacy and Standard 7.13 on Legislative and Administrative Advocacy by Practitioners.

Communication. It is also important for the practitioner to have well understood means for communicating with the group regarding developments in the representation. Communication is often through the designated leads of the group or organization.⁹ In some circumstances, however, depending on the dynamics in the group and the nature of the representation, communication might also be directed to the membership. The practitioner should be sensitive to the dynamics of the situation to determine what is appropriate. For major decisions affecting the individual members in the group, it is often advisable to communicate with the membership directly.

⁷ See Model Rules of Prof'l Conduct R. 1.13(b)-(d) (2003) which relate to the responsibilities of a lawyer with regard to actions that a member or constituent of an organization might take that are adverse to the interests of the represented organization and might do it substantial harm.

⁸ Model Rules of Prof'l Conduct R. 1.13(g) (2003) reads:

"A lawyer representing an organization may also represent any of its directors, officers, employees, members, shareholders or other constituents, subject to the provisions of Rule 1.7 [Conflict of Interest: Current Clients]. If the organization's consent to the dual representation is required by Rule 1.7, the consent shall be given by an appropriate official of the organization other than the individual who is to be represented, or by the shareholders."

⁹ Paragraph 6 of the Comment to Model Rules of Prof'l Conduct R. 1.4 (2003) on Communication states: "When the client is an organization or group, it is often impossible or inappropriate to inform every one of its members about its legal affairs; ordinarily, the lawyer should address communications to the appropriate officials of the organization."