

Oregon State Bar

*Legal Services  
Program*

**Standards and  
Guidelines**

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The Legal Services Program Standards & Guidelines  
were developed by the

## Interim Civil Legal Services Task Force

*October, 1997 - April, 1998*

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Oregon State Bar Legal Services Program  
Standards & Guidelines

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## I. Mission Statement

It is the mission of the Oregon State Bar Legal Services Program:

To use the filing fee revenue to fund an integrated, statewide system of legal services centered on the needs of the client community as identified in the Mission Statement of the OSB Civil Legal Services Task Force Final Report, May 1996; and

To use its oversight authority to work with Providers to insure that the delivery of services is efficient and effective in providing a full spectrum of high quality legal services to low-income Oregonians.

To work to eliminate barriers to the efficient and effective delivery of legal services caused by maintaining legal and physical separation between providers of general legal services to low-income Oregonians in the same geographical area, while maintaining Providers' ability to offer the broadest range of legal services required to serve the needs of clients.

*OSB Civil Legal Services Task Force Final Report, May 1996  
Appendix I, Page 1 & 2*

*“Legal services programs exist to ensure that institutions and organizations created to serve public interests and needs, particularly governmental and civic institutions, treat individuals equally no matter what their economic situation. This is not a radical notion; it is the cornerstone of American concepts of justice and fair play.*

*The mission of Oregon’s statewide legal services delivery system should continue to be centered on the needs of its client community. It should be expansive, recognizing that equal justice contemplates more than simply providing a lawyer in every family law or unlawful detainer case (though it certainly includes this goal as well). This mission must contemplate lawyering in its broadest sense, acknowledging that the interests of low income clients can only be served if the delivery system is dedicated to providing full and complete access to the civil justice system in a way that empowers this segment of the population to define, promote, and protect its legitimate interests. As such, the mission must be to:*

- \* *Protect the individual rights of low income clients;*
- \* *Promote the interest of low income individuals and groups in the development and implementation of laws, regulations, policies and practices that directly affect their quality of life;*
- \* *Employ a broad range of legal advocacy approaches to expand the legal rights of low income individuals and groups where to do so is consistent with considerations of fundamental fairness and dignity; and*
- \* *Empower low income individuals and groups to understand and effectively assert their legal rights and interests within the civil justice system, with or without the assistance of legal counsel.”*

## II. Governing Structure

### A. Statutory Authority

On September 24, 1997, the Oregon State Bar Legal Services Program (OSB LSP) was established by the Board of Bar Governors as directed by ORS 9.572 to 9.578 (Appendix A1). The OSB LSP is charged with: the administration of filing fee funds appropriated to the OSB by ORS 21.480 (Appendix A2) for funding legal services programs; the establishment of standards and guidelines for the funded legal services programs (Providers); and the development of evaluation methods to provide oversight of the Providers.

### B. Governing Committee

1. **Purpose:** The Governing Committee (OSB LSP Committee) is charged with oversight of the OSB LSP and the funds appropriated to the Bar by the Oregon Legislature under ORS 9.572. The OSB LSP Committee will receive direction from the Board of Governors.

2. **Duties to the OSB Board of Governors:** The OSB LSP Committee will be responsible for reviewing and reporting to or making recommendations to the OSB Board of Governors on the following:

The Standards and Guidelines for the OSB LSP and their periodic review  
Applications for funding to the OSB LSP  
Disbursement of funds and annual OSB LSP budget  
Assessment of Provider Programs  
Annual reporting by the Providers  
Legislative issues involving the legal aid filing fee funds  
Complaints and grievances about Providers  
Additional work of the OSB LSP

#### 3. Membership

a. **Appointment:** Appointment of members to the OSB LSP Committee shall be made by the Oregon State Bar Board of Governors.



- b. **Membership:** The OSB LSP Committee will consist of 9 members: 7 members, in good standing, of the Oregon State Bar; and 2 public members. The membership should be representative of the statewide aspect of the OSB LSP and should reflect the diversity of the service areas. No more than 3 attorney members should be from the Portland metropolitan area. The following criteria should be considered in selecting members:
  - (1) Commitment to the basic principles of access to justice
  - (2) Ability to advance the mission of the OSB LSP
  - (3) Knowledge and understanding of providing quality legal services to low-income people.
  - (4) History of support for legal services providers
  - (5) Representation of a geographic area with special attention given to practice area specialties.
- 4. **Term of Appointment:** Appointments will be made for 3 year terms with the exception of the initial attorney appointments. To stagger vacancies on the OSB LSP Committee and to provide continuity, the initial appointments will be: 3 attorneys appointed for 3 years; 2 attorneys appointed for 2 years, and 2 attorneys appointed for 1 year.
- 5. **Liaisons to Committee:** The Oregon Law Foundation and the Campaign for Equal Justice are invited and encouraged to each have a liaison to the OSB LSP.
- 6. **Meetings:** The OSB LSP Committee will meet quarterly. The Chair can call Special Meetings as needed. Meeting notices and agendas will be sent out according to public meeting law. Members can participate by telephone.
- 7. **Quorum:** Five members constitute a quorum for voting purposes.
- 8. **Subcommittees:** The OSB LSP Committee Chair has the authority to appoint additional subcommittees to make recommendations on specific issues as needed.

a.

C. **Program Staff**

1. **Director of Legal Services Program:** The OSB will hire a Director of Legal Services Program (OSB LSP Director) who will be supervised by the Executive Director of the Oregon State Bar. The OSB LSP Director will staff the OSB LSP Committee and be responsible for supporting its work and for the effective administration of all aspects of the LSP.

a. The LSP Director will be responsible for monitoring, reviewing, reporting and making recommendations to the OSB LSP Committee on the following:

These Standards and Guidelines and their periodic review  
Applications for funding  
Disbursement of funds and Annual OSB LSP budget  
Assessment of Provider Programs  
Annual Reporting by the Providers  
Legislative Issues regarding the filing fee funds  
Complaints and grievances about Providers  
Additional work of the OSB LSP

b. The LSP Director will be responsible for providing technical assistance to Providers to ensure compliance with these Standards and Guidelines.

### III. Standards and Guidelines for Providers

The following standards and guidelines shall apply to all programs providing civil legal services in Oregon who receive, or who may apply to receive, funding from the Oregon State Bar Legal Services Program (OSB LSP) pursuant to ORS 9.572 *et seq.* These Standards and Guidelines apply only to services funded by filing fees received from the OSB LSP.

#### A. Statement of Goal

It is the goal of the OSB LSP that all Providers shall be an integral part of an integrated delivery system for civil legal services which incorporates the Mission, Values and Core Capacities set forth in the OSB Civil Legal Services Task Force Final Report, May 1996, (Appendix E). The filing fee money should be used to fund providers in an integrated system designed to provide relatively equal levels of high quality client representation throughout the state of Oregon and designed to address the core capacities identified in the OSB Legal Services Task Force Report. The integrated delivery system should be structured to eliminate the legal and physical separation of offices serving the same geographical area, avoid duplication of administrative functions and costs, reduce the burdens on staff and clients, and minimize other barriers to the efficient delivery of legal services described in the Declaration of Angel Lopez and Charles Williamson authorized by the Board of Bar Governors in January 2002 (Appendix G), while maintaining the Provider's ability to offer a broad array of high quality legal services consistent with the Mission Statement.

#### B. Provider Structure

1. **Non Profit:** A Provider shall be an Oregon nonprofit corporation, incorporated as a public benefit corporation under ORS Chapter 65, and be recognized as tax exempt under section 501(c)(3) of the Internal Revenue Code.
2. **Board of Directors:** A Provider shall have a Board of Directors which reasonably reflects the interests of the eligible clients in the area served, and which consists of members, each of whom has an interest in, and knowledge of, the delivery of quality legal services to the poor. Appointments to the Board of Directors shall be made so as to ensure that the members reasonably reflect the diversity of the legal community and the population of the areas served by the Provider including race, ethnicity, gender and similar factors.

- a. A majority of the directors should be active or active emeritus members of the Oregon State Bar, appointed by the county bar association(s) in the Provider's service area, or by the Oregon State Bar.
  - b. At least one-third of the directors should be persons who are eligible to be clients, but are not current clients, when appointed. The directors who are eligible clients should be appointed by a variety of appropriate groups designated by the program that may include, but are not limited to, client and neighborhood associations and community based organizations which advocate for or deliver services or resources to the client community served by the Provider.
3. **Staff Attorney Model:** A Provider shall have at least one active member of the Oregon State Bar on staff.
4. **Pro Bono Program:** A Provider shall maintain a Pro Bono Program, certified by the Oregon State Bar pursuant to section 15.300 *et seq.* of the Oregon State Bar Board of Governors' Policies (Attachment B), as a part of its system of delivery of legal services.
5. **Efficient Use of Resources:** A provider should, to the maximum extent practicable, integrate its operations and staff into existing programs that provide general legal services to low-income Oregonians in the same geographical area and meet the criteria set out in paragraphs B.1 – B.4, rather than maintain organizations that are legally and physically separate. If separate organizations currently exist, the Provider should take whatever actions are required to achieve program integration that will eliminate unnecessary, costly, and inefficient duplication without compromising the Provider's ability to offer the full range of legal services contemplated by these Standards and Guidelines including, but not limited to, challenging federal restrictions that impede such integration.

### C. Provider Use of Funds and Eligibility Guidelines

1. **Use of Funds:** A Provider shall use funds received pursuant to ORS 9.572 *et seq.* only for the provision of civil legal services to the poor.

The use of funds from the OSB LSP or compliance with these Standards and Guidelines is a matter between the Provider and the OSB. Nothing in these rules shall be construed to provide a basis to challenge the representation of a client. The sole remedy for non-compliance with these Standards and

Guidelines is found in the procedures under non-compliance in ORS 9.572 and in these rules, Section V.E. & F.

2. **Eligibility Guidelines:** The Board of Directors of a Provider shall adopt income and asset guidelines, indexed to the Federal poverty guidelines, for determining the eligibility of individuals seeking legal assistance from the program. A copy of the income and asset guidelines shall be provided as a part of the application for these funds and shall be consistent with the Provider's mission and written priorities.
3. **Payment of Costs:** Eligible clients shall not be charged fees for legal services provided by a Provider with funds pursuant to ORS 9.572 *et seq.* However, a Provider may require clients to pay court filing fees or similar administrative costs associated with legal representation.
4. **Recovery of Attorney Fees:** A Provider may also recover and retain attorney fees from opposing parties as permitted by law.

#### D. Procedures for Priorities and Policy for Avoiding Competition with Private Bar

1. **Procedures for Establishing Priorities:** A Provider shall adopt procedures for establishing priorities for the use of all of its resources, including funds from the OSB LSP. The Board of Directors shall adopt a written statement of priorities, pursuant to those procedures, that determines cases and matters which may be undertaken by the Provider. The statement of priorities shall be reviewed annually by the Board.
  - a. The procedures adopted shall include an effective appraisal of the needs of eligible clients in the geographic area served by the recipient, and their relative importance, based on information received from potential or current eligible clients that is solicited in a manner reasonably calculated to obtain the views of all significant segments of the client population. The appraisal shall also include and be based on information from the Provider's employees, Board of Directors, local bar, and other interested persons. The appraisal should address the need for outreach, training of the program's employees, and support services.
  - b. In addition to the appraisal described in paragraph a, of this section, the following factors shall be among those considered by the Provider in establishing priorities.

- (1) The population of eligible clients in the geographic area served by the Provider, including all segments of that population with special legal problems or special difficulties of access to legal services;
  - (2) The resources of the Provider;
  - (3) The availability of free or low-cost legal assistance in a particular category of cases or matters;
  - (4) The availability of other sources of training, support, and outreach services;
  - (5) The relative importance of particular legal problems to the individual clients of the Provider;
  - (6) The susceptibility of particular problems to solution through legal processes;
  - (7) Whether legal efforts by the Provider will complement other efforts to solve particular problems in the areas served;
  - (8) Whether legal efforts will result in efficient and economic delivery of legal services; and
  - (9) Whether there is a need to establish different priorities in different parts of the Provider's service area.
2. **Avoidance of Competition with Private Bar:** The Board of Directors of a Provider shall adopt a written policy to avoid using funds received from the OSB LSP to provide representation in the types of cases where private attorneys will provide representation to low-income clients without charge in advance as with contingency fee cases. A copy of the policy shall be provided as a part of the application for these funds and shall be consistent with the Provider's mission and written priorities.

## **E. Provider Grievance Committee and Process**

1. **Grievance Committee:** The Board of Directors of a Provider shall establish a grievance committee, composed of lawyer and client members in approximately the same proportion as the makeup of the Board.

2. **Grievance Process:** The Provider shall establish procedures for determining the validity of a complaint about the manner or quality of legal assistance that has been rendered, or about the denial of legal assistance due to a determination that a potential client is financially ineligible.
  - a. The procedures shall minimally provide:
    - (1) Information to a client at the time of the initial visit about how to make a complaint;
    - (2) Prompt consideration of each complaint by the director of the program, or the director's designee; and
    - (3) If the director is unable to resolve the matter, an opportunity for a complainant to submit an oral and written statement to the grievance committee.

#### **F. Additional Standards for Providers**

A Provider shall conduct all of its operations, including provision of legal services, law office management, and operation of the pro bono program in conformity with the following recognized standards, as applicable:

1. "Standards for Providers of Civil Legal Services to the Poor," as approved by the American Bar Association House of Delegates, August, 1986. (Appendix C)
2. "Standards for Programs Providing Civil Pro Bono Legal Services to Persons of Limited Means," as adopted by the American Bar Association House of Delegates, February, 1996. (Appendix D)
3. Legal Services Corporation Performance Criteria, 1996. (Appendix F)
4. Oregon Code of Professional Responsibility.

#### **G. Columbia County Exception**

The Columbia County Legal Aid program is a Pro Bono Program, which currently does not have an attorney on staff as required by B.3. of this section. However, the Columbia County Legal Aid program shall make efforts over the next four (4) years to

comply with B.3. of this section. In addition, the Columbia County Legal Aid program shall comply with the *ABA Standards for Programs Providing Civil Pro Bono Services to Persons of Limited Means, February 1996, Standard 4.8*, (Appendix D) requiring appropriate attorney supervision of its non-attorney staff. Finally, the Columbia County Legal Aid program shall take steps to comply with all other Standards.

This exception is based on the fact that since the early 1980s the Columbia County Legal Aid program has been a successful Pro Bono program. Over the years the program received filing fees.

The program does not currently have a staff attorney due to the lack of financial resources. The program has been able to provide pro bono legal services without a staff attorney. Based on this history, the Columbia County Legal Aid program is granted an exception to B.3. of this section for no more than four (4) years.



## IV. Cooperative Collaboration by Providers

A. **Mechanism for Cooperation:** Providers will create a mechanism for cooperation among themselves and other programs providing services to low-income Oregonians:

To facilitate additional communication between organizations;

To coordinate and integrate key functions across program lines;

To create a forum for identifying client needs;

To collaborate and strategize how best to meet the needs of the client community;

To discuss funding needs and potential funding mechanisms;

To work with the court system, the legislature, the OSB, local bars, and members of the private bar to create a broad network to develop better access to the justice system.

To eliminate the legal and physical separation among the programs in order to minimize the duplication of administrative and other costs of delivering legal services to low-income Oregonians.

## V. Oversight by OSB Legal Services Program

The filing fees collected for legal services by the OSB LSP will continue to be used to support programs providing basic civil legal assistance to low-income Oregonians. The increase in court fees was calculated to replace decreased funding by other sources to legal services in Oregon and to enhance the broad based, full range of advocacy approaches and services to clients.

### A. Funding of Providers

1. **Presumptive funding:** To maintain the current statewide level of service the OSB LSP will continue to fund those legal services providers receiving filing fees at the enactment of 1997 Oregon Laws Chapter 801 Section 73 and the 2003 legislative increase in filing fee funds. These providers will receive the funds from the OSB LSP after administrative fees, up to 5.1 million dollars (2003 filing fee level adjusted for inflation increased by the 1.6 million dollar gap to meet the legal needs of the poor assessed in 2003) with an annual cost-of-living increase. The increase in the presumptive funding level meets the 1997 and 2003 legislative intent to provide additional funding for legal services to the poor at the same time continuing the approach adopted by the Interim Civil Legal Services Task Force who developed the Standards and Guidelines in 1998.

- a. **Initial Funding:** Providers will be required to complete the Initial Compliance Determination Application. Providers must complete the application and demonstrate compliance with these Standards and Guidelines within two months after this document becomes effective to qualify for funding under the OSB LSP beginning September, 1998.

Funding will continue under presumptive funding until:

1. Provider is found not in compliance at which point Section V.F. will be implemented; 2. Provider discontinues provision of services at which point Section V. F. 5. will be implemented; or 3. OSB LSP no longer receives funding under ORS 9.572 *et seq.*

- b. **Distribution of Funds:** Presumptive funding will be based on the same distribution formula that was in effect at the enactment of 1997 Oregon Laws Chapter 801 Section 73. The Providers will be encouraged to utilize provisions c. and d. of this Section to modify grants and

subcontract to meet unmet needs, to provide services to the underserved populations and to encourage a full range of services throughout Oregon.

- c. **Modification of Grants:** A Provider receiving presumptive funding may request that the OSB LSP transfer funds allocated to it to another Provider receiving presumptive funding in order to maintain the existing statewide level of service or to improve the statewide availability of services. The OSB LSP will consider the request and submit its recommendation to the BOG.
  
- d. **Subcontracting of Funds:** Providers may subcontract with others to provide specific services or to enhance services under the following conditions:
  - (1) The subcontract is for no more than one year;
  - (2) All subcontracts must be approved by the OSB when the aggregate total of the subcontracts for the year or when any one subcontract equals or exceeds \$50,000 or is greater than 25% of the Provider's annualized grant;
  - (3) The subcontract is for services within the parameters of these Standards and Guidelines;
  - (4) The subcontract includes language insuring compliance with Sections III. C. 1, 3, 4 and III. F. of these Standards and Guidelines if the subcontract is with an organization, other than a current Provider, providing legal services to low-income people, or with a law firm or attorney;
  - (5) The Provider must include provisions to obtain the needed information on the services performed by subcontract for inclusion in its annual report; and
  - (6) For all subcontracts, the Provider must give the OSB LSP 30 days notice of intent to subcontract along with a copy of the proposed subcontract.

2. **Additional Funds:** If there are funds over those allocated for presumptive

funding, the OSB LSP may award those funds to current Providers or applicants who demonstrate the ability to provide services that address the unmet needs and emerging needs of low-income Oregonians and the needs of the uncounted and under-served, low-income populations. The OSB LSP will determine the process for application for those funds.

## **B. Performance Evaluation of Providers**

The OSB LSP has the responsibility to ensure that filing fees funds are effectively being used to provide high quality legal services to low-income Oregonians. The Annual Reporting Requirements and the Accountability Process are designed to provide the OSB LSP with the information necessary for the oversight required by Statute and not to be unduly burdensome on Providers.

All oversight activities shall be conducted in accordance with the American Bar Association's Standards for Monitoring and Oversight of Civil Legal Services Programs.

## **C. Annual Reporting Requirements**

1. **Annual Audit:** All Providers shall annually undergo a financial audit by an independent auditor, which meets generally acceptable accounting practices. A copy of the final audit report shall be submitted to the OSB LSP.
2. **Annual Report:** Each Provider shall annually file with the OSB LSP a report detailing its activities in the previous year. The report will be due by the first day of October and needs to contain the following information in the requested format:
  - a. The numbers and types of cases and matters in which legal services were delivered;
  - b. A listing of the Provider's staff and Governing Body;
  - c. A copy of its budget;
  - d. A narrative description of the Provider's operations, including a description of its needs assessment, priority setting, and grievance

processes, which is sufficient to demonstrate that the Provider is in compliance with these Standards and Guidelines.

A Provider may comply with this requirement by submitting copies of reports or applications to the Legal Services Corporation, the Oregon Law Foundation or other funding agencies that provide the requested information.

#### **D. ACCOUNTABILITY PROCESS**

1. **Process:** The process will focus on the effectiveness of the providers in meeting the needs of individual clients and the larger client community, and in the development and use of resources. The goals of the review are to assure compliance with OSB LSP Standards and Guidelines; assure accountability to clients, the public and funders; and to assist with provider's self-assessment and improvement.

The process has three components:

1. A periodic self assessment report submitted by providers, including a narrative portion and a statistical/financial portion;
2. A periodic accountability report provided by the OSB LSP to the OSB Board of Governors and other stakeholders summarizing the information from the providers' self assessment reports and other information including ongoing contacts with providers by OSB LSP staff and annual program financial audits; and
3. Ongoing evaluation activities by the OSB LSP including peer reviews, desk reviews, ongoing contacts and other evaluation activities consistent with the OSB LSP Standards and Guidelines.

#### **E. Complaint Procedure**

##### **1. Complaints about Legal Services Providers:**

- a. Each Provider under the OSB LSP is required to have a written internal grievance procedure to address complaints about the manner or quality of legal assistance provided in individual cases or about the denial of legal assistance in individual cases. Any such complaint received by the

OSB LSP will be directed to the Providers' internal process except when there appears to be a pattern to the complaints or when the complaint falls into one of the categories listed below. Providers will furnish the OSB LSP with the resolutions to the referred complaints.

- b. Ethics complaints and malpractice claims will be referred to the appropriate department of the Bar.
- c. Complaints that Providers are acting outside the scope of the statute, ORS 9.574, not in compliance with these Standards and Guidelines, or misusing funds will be addressed by the OSB LSP's Committee or Grievance Committee through the Director of the OSB LSP.
- d. Complaints regarding the overall quality of legal assistance or the performance of the Provider will be addressed by the OSB LSP Committee or Grievance Committee through the Director of the OSB LSP.
- e. The OSB LSP Committee, the Executive Director of the Bar, and the General Counsel of the Bar will be notified of the complaints against Providers. A listing of all complaints, which will include synopses and resolutions, will be kept by the OSB LSP Program Director.
- f. Each complaint will be investigated (except ethics and malpractice complaints which will be referred to the appropriate body) and responded to timely. If a Provider is found not to be in compliance with these Standards and Guidelines, the procedure under Non-Compliance by Provider (F of this section) will be implemented.

## 2. Complaints from Applicants to the OSB LSP

Applicants who are not granted funds by the OSB LSP may make a written presentation to the Board of Governors during the OSB LSP Committee's funding recommendation.

## F. Non-Compliance by Provider

1. **Informal Negotiation:** When it is found that a Provider is not in substantial compliance with these Standards and Guidelines, the OSB LSP Director (the Director) will negotiate and work with the Provider to assist it in coming into

compliance. This period of negotiation will last no more than 60 days and no less than 15 days.

The Director will notify the OSB LSP Committee and the OSB Executive Director that the Provider is out of compliance prior to formal notice being given.

2. **Formal 30 Day Notice:** If the Provider continues to be out of substantial compliance, the Provider and the Provider's Board Chair will be given a formal 30 day written notice that details how it is out of compliance and the steps necessary to achieve compliance. The Director will continue to assist the Provider in resolving the problem.
3. **Mediation:** If after 30 days from the receipt of the formal notice, the Provider still has not demonstrated compliance, the Director will immediately send a second notice to the Provider and the Provider's Board Chair. The second notice will list three names of mediators and give the Provider 15 days from receipt of the second notice to agree to one of the mediators or suggest another mediator. If the Provider and the Director cannot agree on a mediator within the 15 day period, the Director will petition the presiding judge for a judicial district to appoint a mediator.

In the mediation, the OSB LSP will be represented by the Director or by the Chair of the OSB LSP Committee. The Provider will be represented by its Executive Director or Board Chair. Within one week of the mediation, a written decision will be forwarded to the OSB LSP Committee, the OSB Executive Director, the OSB Board of Governors and the Provider's Board Chair.

4. **Hearing:** If the mediation fails to produce a resolution in the matter, the Director shall give the Provider and Provider's Board Chair a written notice of hearing. The hearing will be held no sooner than 30 days after Provider's receipt of notice of hearing.

The Provider will have the opportunity to present evidence that it has come into compliance or is making satisfactory progress towards compliance. The OSB LSP Committee will make up the hearing panel. Prior to suspension of funding, a written report will be presented to the OSB Board of Governors and OSB Executive Director within 5 days after the hearing is held which outlines the facts and decision.

5. **Suspension of Funding:** If the report indicates that the Provider is still not in compliance and is not making satisfactory progress towards compliance based on the decision of the hearing, the Director shall suspend funding until the Provider is able to demonstrate compliance. Notice of suspension shall be served on the Provider in person or by certified mail and will be effective immediately upon service.

The OSB LSP Committee, in consultation with the OSB Executive Director and the OSB General Counsel, will determine if during the suspension all or part of the suspended funds should be used to contract with another Provider for legal services. If the Provider continues to provide legal services as defined under the funding agreement during the suspension, any unused funds accrued during the suspension will be paid to the Provider.

6. **Termination of Services:** If the Provider terminates its provision of legal services as defined under these Standards and Guidelines, funding will cease and all unexpended funds shall revert back to the OSB LSP. The OSB LSP Committee will meet to determine the reallocation of those funds to other Providers or to new applicants.



## Appendices

- A. Statutory Authority
  - A1. ORS 9.572 et seq.
  - A2. ORS 21.480
- B. Oregon State Bar Board of Governor's Policies Section 15.300 et seq.
- C. "Standards for Providers of Civil Legal Services to the Poor," as approved by the ABA House of Delegates, August, 1996.
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- E. OSB Civil Legal Services Task Force Final Report, May, 1996
- F. Selected Legal Services Corporation Performance Criteria, 1996

**9.572 Bar to establish Legal Services Program; director; advisory and technical committees.**

(1) The Oregon State Bar shall by rule establish a Legal Services Program. The program shall provide standards and guidelines for legal service providers receiving funding from fees collected under ORS 21.480. The rules shall also provide methods for evaluating legal service providers. Funding received under the program may be used only for the provision of legal services to the poor without charge and for expenses incurred by the Oregon State Bar in the administration of the Legal Services Program.

(2) The Oregon State Bar shall appoint a director of the Legal Services Program established under this section. The bar shall prescribe the duties of the director and fix the salary of the director.

(3) The Oregon State Bar may establish any advisory or technical committees it deems necessary to advise the bar in establishing and operating the Legal Services Program. [1997 c.801 s.73]

**9.574 Funding of program.** All fees collected under the provisions of ORS 21.480 shall be deposited with the State Court Administrator. Within the first 25 days of the month following the month in which the fees are collected, the State Court Administrator shall make the distribution required by ORS 21.480 (4). The remaining funds deposited with the State Court Administrator shall be deposited by the State Court Administrator with the Oregon State Bar. All amounts so deposited with the Oregon State Bar are continuously appropriated to the Oregon State Bar, and may be used only for the funding of legal services provided through the Legal Services Program established under ORS 9.572 and for expenses incurred by the Oregon State Bar in the administration of the Legal Services Program. [1997 c.801 s.72]

**9.576 Review of providers; mediation; hearing; suspension of funding.**

(1) The director of the Legal Services Program appointed under ORS 9.572 shall periodically review legal service providers who receive funding from fees collected under ORS 21.480. If the director determines that there are reasonable grounds to believe that a provider is not in substantial compliance with the standards and guidelines adopted under ORS 9.572, the director shall negotiate with the provider in an attempt to bring the program into compliance.

(2) If the director of the Legal Services Program is unable to negotiate satisfactory compliance with the standards and guidelines of the program established by the Oregon State Bar under ORS 9.572, the director shall give the provider 30 days in which to bring the program into compliance. If the director concludes that the program is not in compliance at the end of the 30-day period, the matter shall be submitted to mediation. The director and the provider shall jointly select a mediator. If the director and provider are unable to select a mediator within 15 days after the expiration of the 30-day period, any presiding judge for a judicial district may appoint a mediator upon the petition of the director.

(3) If mediation under subsection (2) of this section fails to produce a resolution of the matter, the director shall give the provider notice that a hearing will be held not sooner than 30 days after the date the notice is given. If, after hearing, the director determines that the provider is not in compliance with the standards and guidelines of the program and that the provider has failed to show satisfactory progress towards achieving compliance, the director shall suspend further funding of the program until such time as the provider makes a showing of compliance. [1997 c.801 s.74]

**9.578 Other funding sources.** The Oregon State Bar may apply for, accept and expend moneys from any public or private source, including the Federal Government, made available for the purpose of establishing or funding legal service programs in Oregon. [1997 c.801 s.75]

9.580 [Repealed by 1983 c.618 s.1]

9.590 [Repealed by 1953 c.609 s.2]

9.595 [1981 c.193 s.11; repealed by 1983 c.618 s.1 (9.545 enacted in lieu of 9.595)]

9.600 [Repealed by 1953 c.609 s.2]

9.610 [Repealed by 1953 c.609 s.2]

**21.480 Legal aid fees in circuit courts.**

(1) In all counties wherein legal representation is provided for the poor without fee by a nonprofit legal aid program operating under the Legal Services Program established pursuant to ORS 9.572, the clerk of the circuit court shall collect the fees provided for in this section to assist in defraying the operating costs of the legal aid program and to fund mediation programs offered through the State Department of Agriculture. The fees provided for in this section are in addition to all other fees collected by the clerk of the court, and shall be collected by the clerk in the same manner that other fees are collected by the clerk.

(2) The clerk shall collect the following fees from the plaintiff or other moving party in each civil suit, action or proceeding in the circuit court when the plaintiff or party files the first paper in the suit, action or proceeding, and from a defendant or respondent when the defendant or respondent files an appearance in the suit, action or proceeding:

(a) \$7, for filings in the small claims department of a circuit court.

(b) \$13, upon the filing of a complaint that is subject to the filing fee established under ORS 105.130 (2). If the defendant demands a trial, the clerk shall collect a fee of \$28 from the defendant, and an additional fee of \$15 from the plaintiff. In no event shall the plaintiff in an action subject to the filing fee established under ORS 105.130 be required to pay a total fee of more than \$28 under the provisions of this subsection.

(c) \$24, if the action, suit or proceeding is subject to the filing fees established by ORS 21.111.

(d) \$22, if the action, suit or proceeding is subject to the filing fees established by ORS 21.110 (2).

(e) \$28, for any other filings in a circuit court not specifically provided for in this subsection, including all probate proceedings, protective proceedings under ORS chapter 125, adoption proceedings and change of name proceedings.

(3) All fees collected under this section shall be deposited with the State Court Administrator in the manner provided by ORS 9.574.

(4) Ten percent of the funds deposited with the State Court Administrator under this section shall be transferred by the State Court Administrator on a monthly basis to the State Department of Agriculture, until such time as the amount specified under subsection (5) of this section has been transferred to the State Department of Agriculture for the biennium. Moneys transferred to the State Department of Agriculture under this section are continuously appropriated to the department and may be used by the department only for the purpose of funding mediation programs established by the department. Moneys appropriated to the department under this subsection may not be used by the department to fund the costs of conducting individual farm credit mediations. The department shall consult with the Dispute Resolution Commission in establishing and operating mediation programs funded under this subsection.

(5) The amount transferred by the State Court Administrator to the State Department of Agriculture under subsection (4) of this section shall not exceed:

(a) \$80,000 in the 1997-1999 biennium; and

(b) \$100,000 in all biennia after the 1997-1999 biennium. [1977 c.112 s.1; 1981 c.664 s.1; 1983 c.114 s.1; 1985 c.342 s.5; 1989 c.385 s.1; 1997 c.801 ss.45,45a]

Note: For text of 21.480 operative until January 15, 1998, see section 45, chapter 801, Oregon Laws 1997. See section 45b, chapter 801, Oregon Laws 1997, and notes preceding 1.001 for further explanation.

21.485 [1977 c.112 s.2; 1981 c.664 s.2; 1983 c.114 s.2; 1985 c.342 s.6; 1989 c.385 s.2; repealed by 1995 c.658 s.127]

Note: 21.485 is repealed January 15, 1998. See 1995 Edition for text of 21.485 operative until that date. See notes preceding 1.001 for further explanation.

21.490 [1977 c.112 s.3; 1983 c.763 s.39; repealed by 1997 c.801 s.77]

# OREGON STATE BAR BOARD OF GOVERNORS POLICIES

## Pro Bono

### 15.100 Aspirational Standard

"Pro Bono Publico," or "Pro Bono," service includes all uncompensated services performed by attorneys for the public good. Such service includes civic, charitable, and public service activities, as well as activities that improve the law, the legal system, and the legal profession. The direct provision of legal services to the poor, without an expectation of compensation, is one type of pro bono service.

Each attorney in Oregon should endeavor annually to perform 80 hours of pro bono services. Of this total, the attorney should endeavor to devote 20 to 40 hours, or to handle two cases, involving the direct provision of legal services to the poor, without an expectation of compensation.

If an attorney is unable to provide direct legal services to the poor, the attorney should endeavor to make a comparable financial contribution to an organization that provides or coordinates the provision of direct legal services to the poor.

### 15.200 Recognition of Attorneys who Volunteer Through OSB-Certified Programs

Recognition under this paragraph is intended to provide encouragement, in tangible form, to those Oregon Pro Bono programs, and their volunteer attorneys, who help meet the need for legal services by providing direct representation to low-income individuals.

As part of its annual planning process, the Board shall consider the ways in which the Bar can acknowledge the volunteer efforts of Oregon attorneys, particularly those attorneys who provided at least 40 hours of pro bono services through programs certified under Sections 15.400 and 15.500 of this Policy. In so doing, the Board shall seek input from Bar staff and appropriate Bar committees.

### 15.300 General Requirements for Certification as an OSB Pro Bono Program (A) Program Criteria.

- (1) Enrollment of Participating Attorneys. The program must be open to any OSB member in its service district without regard to race, creed, color, sex, sexual orientation, age, national origin, religious beliefs, physical or mental handicap or veterans' status.
- (2) Attorney/Program Compensation. The program must not provide any compensation to the participating attorneys (except to cover filing fees or other out-of-pocket expenses or to provide professional liability insurance for the pro bono activity).

The Pro Bono program must have a policy that prohibits the handling of and provides for the referral of cases that are clearly fee-generating.

- (3) Intake/Referral/Quality Control. The program must demonstrate that it:
  - (a) investigates the participating attorneys' level of interest and area of expertise;
  - (b) determines that participating attorneys are members of the OSB in good standing;
  - (c) provides back-up resources to participating attorneys when needed;

*OSB Pro Bono Standards*

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OSB Legal Services Program Standards and Guidelines

- (d) maintains a tracking system to follow-up on all cases referred to participating attorneys;
- (e) maintains a record-keeping system to collect and record the amount of time spent on cases by each participating attorney;
- (f) maintains a client grievance procedure.

(B) Procedure. In order for a Pro Bono program to obtain OSB certification, the program must submit an application and meet the applicable criteria set forth in Sections 15.400-15.600 below. The OSB Executive Director shall determine whether a program is eligible for certification, and this determination shall be final. If the recognition is granted, the written decision shall specify under which section of this policy it is granted.

**15.400 OSB Certification of Pro Bono Programs for Low-Income Clients**

**(A) Program Criteria.**

(1) Governance. The Pro Bono program must be an organized program with a designated agent for service of process. The Pro Bono program must have as its purpose the provision of direct legal representation to low-income people.

(2) Client Eligibility. The Pro Bono program must have established financial eligibility criteria that are at least as restrictive as those set by the Legal Service Corporation (125% of the Federal Poverty Income Guideline).

The Pro Bono program must provide services to eligible persons without regard to race, creed, color, sex, sexual orientation, age, national origin, religious beliefs, physical or mental handicap or veterans' status. However, a pro bono program may qualify if it can show that its services are designed to help a specific segment of the low-income population that is otherwise under-represented.

The Pro Bono program must not charge fees to clients as a condition of receiving services. (Donations from clients, whether encouraged or not, are not considered fees.)

**15.500 OSB Certification of Pro Bono Programs That Receive Funding Under the Older Americans Act or That Charge Nominal Fees to Clients**

(A) Criteria for Certification. The following programs are also eligible for OSB certification, provided they otherwise meet the criteria for certification specified in Section 15.300 above:

(1) Programs that are funded through grants authorized under the Older Americans Act and that serve clients who do not meet the financial eligibility criteria specified in Section 15.300, so long as the program, as a whole, gives priority to the elderly with the greatest economic and social need.

(2) Programs that charge no more than nominal fees to clients as a condition of receiving services.

**15.600 OSB Certification of Pro Bono Programs that are Administered by Non-Profit Organizations**

(A) Purpose. The purpose of the recognition under this paragraph is to encourage and facilitate volunteer service by OSB members to charitable, educational, social service or other non-profit organizations whose mission is other than the provision of direct legal services to low-income individuals.

(B) Criteria for Certification — General. In order for a non-profit organization's pro bono program to be certified through the Oregon State Bar, it must be a non-profit organization,

organized and existing under the laws of the State of Oregon, with a designated agent for service of process.

**(C) Criteria for Certification of Law Related Education Programs.**

(1) **Statement of Purpose.** The purpose of certification under this section is to provide encouragement in tangible form to those law-related education activities and their volunteer attorneys whose purpose is to educate or assist in the education of school children on the role of law in our society, how the law affects them and how they can affect the law.

(2) **Program Sponsor.** To be certified, an LRE activity must be sponsored by the State Bar or Oregon New Lawyers Division, a local bar association, a school district or by a non-profit organization whose program purpose includes facilitating law-related education in primary or secondary schools.

(3) **Nature of Activity.** The LRE activity must be one that provides direct instruction of students or that assists in the preparation of materials for use in teacher training or in classroom instruction on issues related to citizenship, the role of law in society, or the general legal rights and responsibilities of students as individuals in society. Examples of such programs include but are not limited to:

(a) Mock trial competitions, in which the attorney is either involved in coaching students, serving as a judge, or coordinating the competition.

(b) Classroom presentations, in which the attorney prepares and makes presentations to classrooms on law-related issues.

(3) who do not engage in the practice of law except for the provision of pro bono services specified in B(2) above; and

(4) who obtain professional liability coverage through the Professional Liability Fund or the program referring the pro bono cases.

**(C) Membership Fees.** Active Emeritus members are assessed a fee that is equivalent to the inactive membership fee plus the Client Security Fund assessment.

**(D) Procedure.** On the annual statement the bar shall notify potentially eligible attorneys of the availability of the active emeritus status category of active membership and provide interested members with an application form. The Executive Director, or designee, is authorized to determine members' eligibility for the active emeritus status and this determination shall be final.

**(E) Reporting Requirement.**

(1) OSB-Certified Pro Bono Programs under 15.400 and 15.500 shall report to the OSB no later than January 31 of each year the total hours of pro bono services that the Active Emeritus attorneys have provided in the past calendar year.

(2) If an Active Emeritus attorney does not provide 40 hours of pro bono legal services in Pro Bono Programs certified under 15.400 and 15.500 during the calendar year for which Active Emeritus status was given, the attorney shall be given the opportunity to make up the previous year's hours by December 1 of the next succeeding year. Such makeup hours shall be in addition to the minimum of 40 hours required to be provided during such year.

(3) Any Active Emeritus attorney who does not make up deficit hours as allowed in subparagraph (2) of this section shall be ineligible for Active Emeritus status the following year.

**(F) Conversion from Inactive Status to Active Emeritus Status**

(1) Prior to January 1, 1997, inactive members of the OSB may petition for Active Emeritus status and have the \$200 fee for change from inactive to

active status waived.

(2) Beginning January 1, 1997, inactive members of the OSB may petition for Active Emeritus status. No fees will be waived.

**15.700 Active Emeritus Status.**

(A) Purpose. The purpose of the Active Emeritus Status category of active membership in the Oregon State Bar is to facilitate and encourage the provision of pro bono legal services to low-income Oregonians by attorneys who otherwise would withdraw from the practice of law.

(B) Eligibility. The Active Emeritus Status category of active membership is available to attorneys in good standing:

(1) who were admitted to practice law for the preceding fifteen years; however, all fifteen years of practice need not have been in Oregon;

(2) who agree to provide annually a minimum of 40 hours of pro bono legal services to indigent clients referred by Pro Bono Programs certified under 15.400 and 15.500;

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**Approved by the American Bar Association House of Delegates, August, 1986, as limited by the general introduction. The American Bar Association recommends appropriate implementation of these Standards by entities providing civil legal services to the poor.**

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## STANDARDS FOR PROVIDERS OF CIVIL LEGAL SERVICES TO THE POOR

### INTRODUCTION

In a society based on law, justice is available only to those who can make the legal system work for them. A right is not a right unless it can be enforced; a remedy is not a remedy if it is available only in theory. For the poor, who lack the economic resources to hire a lawyer, justice historically has often been difficult or impossible to achieve. Lack of economic resources as well as dependence on public institutions and programs create a magnitude of legal problems for the poor that have been difficult to resolve.

The concept of public funding for entities providing legal services to the poor developed in direct response to this overwhelming need. Although public funding of civil legal services is a relatively recent development, these institutionalized efforts have become a fundamental part of the American system of justice. Their importance is affirmed by the sustained support they have received from clients, the organized bar, the judiciary, elected officials and the public.

The American Bar Association first adopted Standards for the operation of civil legal aid programs in 1961. Those Standards were reviewed and revised in 1966, and the Standards currently in effect were approved in 1970. The Standards for Civil Legal Aid have not been addressed by the American Bar Association since that date.

The past sixteen years have significantly increased the understanding of how to meet the legal needs of the poor most effectively, and have witnessed both a substantial growth in legal services efforts, and the emergence of a variety of delivery modes, involving both staff and private lawyers. These developments warrant the promulgation of a new set of Standards to apply to such practice. The continued evolution of systems for providing civil legal aid suggests the need for the continuing evolution of Standards to match new understanding.

#### The Purpose of the Standards

The Standards are written to serve several purposes. Indigent persons should receive legal representation of a quality as high as the client of any lawyer. The Standards are designed principally to guide organizations providing such civil legal assistance to the poor. Organizations representing the poor are confronted with a number of difficult operational and practice issues. The resources available to them to meet the legal needs of the poor are generally insufficient given the high level of demand that exists. Consequently, legal services providers are consistently faced with difficult choices regarding how to allocate scarce resources, while striving to assist practitioners to meet their professional obligation to their clients. The Standards are intended to provide guidance to such organizations by addressing issues that arise in the context of the competing demands for high quality legal work, efficiently produced within available resources.

The Standards may serve as a guide for civil legal aid organizations which are just being established. They may provide a basis for evaluating the effectiveness of legal aid organizations.

### Definitions of Significant Terms Used in the Standards

Legal aid organizations are referred to throughout the Standards as "legal services providers." A legal services provider is an organization which regularly makes civil legal representation available to the poor without charge or at greatly reduced cost. The term does not include a private lawyer or law firm that accepts a referral from a legal services provider for representation of a client, or when they provide pro bono services.

The term "practitioner" as used in the Standards refers to an attorney who represents an indigent client under the auspices of a legal services provider or to a paralegal, law student, lay advocate or tribal advocate who is supervised by an attorney and engages in activities specifically authorized by federal, state or tribal law. In such circumstances the attorney is ultimately responsible for the work of the non-attorneys being supervised. In those circumstances where an activity requires a particular type of practitioner, such as an attorney, the Standards and commentary use the more appropriate descriptive term, rather than the term "practitioner".

Serving the needs of the poor for civil legal services involves the combined efforts of full time staff attorneys devoted to such work, and the substantial commitment of private lawyers' time, whether on a compensated or a pro bono basis. All such attorneys are included within the term "practitioner" as it is used in these Standards.

### Application of the Standards

Some Standards focus principally on the responsibilities of legal services providers as organizations which serve the civil legal needs of the poor. Others address the role of the practitioner who represents an indigent client under the aegis of such an organization.

Many private lawyers represent poor clients free of charge, independent of any legal services organization. Because they are written as a guide for representation provided through legal services providers, many Standards are not appropriate for such individual efforts. Nevertheless, the Standards, particularly those pertaining to the responsibility of individual practitioners, may provide practical guidance to effective lawyering by those attorneys.

There is a wide diversity in the form and organization of legal services providers. Some organizations operate principally, or exclusively, to provide legal services to the poor. For others, representation of the poor is incidental to their central purpose. Many organizations operate with a core of staff attorneys, supplemented by components that include the substantial involvement of private attorneys working on a volunteer or compensated basis. Some programs which use the volunteer efforts of private lawyers are sponsored directly by bar associations, either as an integral part of the association or as a free-standing operation. Law school clinical programs provide legal services through law students working under the supervision of faculty or private attorneys. Some programs are operated by church groups, ethnic societies or charitable organizations.

There are also many different funding sources for legal services providers. A majority of providers receive some portion of their funding from the Legal Services Corporation, the predominant source of funds for indigent civil legal assistance. Funds from this source are governed by a number of specific requirements created by statute, regulation, and grant conditions. There are a number of legal services organizations, however, which receive all or part of their funds from other sources, including: Interest on Lawyers' Trust Account (IOLTA) programs; bar associations; private philanthropic foundations; community charitable fund raising organizations; federal, state, and local governmental agencies; and gifts. Typically, these funding sources impose relatively fewer conditions on the expenditure of their funds.

The Standards are written to provide guidance to all organizations providing legal services to the poor, whatever their method of delivery, or source of funds. The Standards recognize, however, that the institutional structure and funding of the provider will affect whether, or how, a particular Standard might be applied. Some Standards will not be appropriate for certain legal services providers for legal, practical and institutional reasons. Some bar sponsored pro bono programs, for example, would encounter difficulty complying with some of the Standards related to governance. Other Standards, pertaining to ongoing involvement with clients, may be impractical and unnecessary for some programs and for individual private practitioners who participate in a private attorney component of a provider. Where application of a particular Standard is not reasonable or is impractical for some types of providers it need not be followed. However, the Commentary to the Standard acknowledges the limitation and suggests how the provider might seek to serve the underlying principles embraced by the Standard by alternative means.

### Use of the Standards

All lawyers are bound by the ethical standards adopted by the appropriate authority in the jurisdiction in which they practice. The ethical standards in virtually every state are based in whole or part upon either the Model Rules of Professional Conduct or the former Model Code of Professional Responsibility. The American Bar Association historically has taken the lead in developing and articulating the ethical norms which govern the practice of law. These Standards do not impose any different ethical requirements than those already contained in the Model Code of Professional Responsibility and the Model Rules of Professional Conduct. In some instances, they touch upon issues that are governed by the accepted rules of professional conduct, and elucidate their application in the context of the special circumstances of providing civil legal services to indigents. In those instances the commentary may make appropriate reference to, but does not alter, the controlling ethical requirement.

All attorneys should review and abide by the appropriate rules of conduct which govern practice in their jurisdiction. These Standards do not, and are not intended to, provide references to all the Model Rules and Model Code provisions which may apply to the representation of an indigent person.

The Standards are intended only as guidelines. They do not create any mandatory requirements for the operation of any legal services provider or the actions of any practitioner. Failure to comply with a Standard should not give rise to a cause of action, nor should it create any presumption that a legal services provider or a practitioner has breached any legal duty owed to a client or to a funding source. Rather, the Standards represent the current combined and distilled judgment of a number of persons who have substantial experience in the area. Their adoption by the American Bar Association stands as a recommendation to legal services providers and practitioners regarding how they should operate in order to maximize their capacity to provide high quality legal services to their clients in the face of scarce resources.

The Standards themselves are set forth in bold face capitalized type. Each Standard is accompanied by extensive commentary to explain or illustrate the Standard, or to identify issues that might arise in its application. The commentary is not intended to expand any Standard beyond what is stated in the Standard itself.

### **The Underlying Principles of the Standards**

A number of essential principles have guided the development of these Standards. These principles underlie all of the Standards and are basic to civil legal aid practice. Some are also specifically addressed by a separate Standard.

1. **High Quality.** The Standards are based on the competency standard which is stated as a minimum in the Model Rules of Professional Conduct (Rule 1.1) and the Model Code of Professional Responsibility (DR 6-101). They are also based on the belief that all practitioners should strive to provide representation of the highest possible quality, and therefore, they address issues of practitioner qualifications and training, supervision systems that support quality, specific quality assurance control mechanisms, and the fundamental elements of effective representation.

2. **Zealous Representation of Client Interests.** All lawyers have an ethical responsibility to pursue their clients' interests zealously within the confines of the law and applicable standards of professional conduct. This has particular implications for legal services providers which represent the poor.

When effective resolution of individual clients' problems is circumscribed by existing laws and practices, or when existing laws and practices result in the same or similar problems for many indigent clients, representation of a client may call for a practitioner to reach beyond the individual problem to challenge the law, policy or practice. The fact that such advocacy may be complex, difficult, or controversial should not be a barrier to a practitioner pursuing it. Furthermore, the range of legal problems that confront a provider's clients and the generally limited resources available to it to respond may call for a provider and its practitioners to use a variety of representational modes and innovative lawyering on behalf of clients.

3. **Client Participation in the Representation.** In all legal representation, clients should decide the objectives sought by the representation, within the limits imposed by law and the practitioner's ethical obligations, and should be consulted in determining the means used to pursue those objectives. (See Model Rules of Professional Conduct, Rule 1.2(c); Model Code of Professional Responsibility, DR 7-101.) Particularly in the representation of low-income clients, there is great potential for developing an unequal relationship between the client and practitioner. The Standards recognize this reality and emphasize the need for specific efforts at every stage of representation to assure that practitioners communicate with their clients consistent with ethical requirements.

4. **Responsiveness to the Needs of Clients.** Legal services providers represent the principal organized effort to respond to the civil legal needs of the poor. Typically, their resources are extremely limited in the face of overwhelming need. Providers, therefore, have an acute responsibility to assure that those resources are utilized in a way that maximizes the effectiveness of their legal work and is responsive to the most pressing client needs. Generally, not all clients can be represented, and not all legal problems can be addressed. Frequently, as well, a choice must be made regarding whether the commitment of substantial funds and attorney time to a potentially costly representation is prudent or even possible given the limitations imposed by severely limited resources.

The Standards seek to give guidance regarding the factors which are appropriate to consider in making such difficult choices. Prioritization of legal problems in terms of their importance to clients is acknowledged as one legitimate factor to be considered among others. The Standards recognize that determining which matters are most significant to clients is a task fraught with difficulty. Accordingly, the commentary to various Standards suggests a number of ways for a provider to seek input from the eligible client population regarding which problems are perceived by them to be most critical. In addition, providers are urged to consult with participating private attorneys, with the bar generally, and with agencies dealing with the poor.

Similarly, various policies regarding provider operation and delivery structure will affect its capacity to serve its clients effectively. The Standards espouse the principle that guidance from the clients to be served will assist the provider to make intelligent decisions about such matters.

STANDARDS FOR PROVIDERS OF  
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# ***STANDARDS FOR PROVIDERS OF CIVIL LEGAL SERVICES TO THE POOR***

## **I. STANDARDS FOR RELATIONS WITH CLIENTS**

### **Standard 1.1 Establishing an Effective Relationship with the Client**

A Legal Services provider and practitioner should strive to establish with each client an effective relationship which preserves client dignity and dispels any client fear or mistrust of the legal system.

### **Standard 1.2 Establishing a Clear Understanding**

The Legal Services provider and practitioner should establish a clear mutual understanding regarding the scope of the representation, the relationships among the client, the provider and the practitioner, and the responsibilities of each.

### **Standard 1.3 Protecting Client Confidences**

Consistent with ethical and legal responsibilities, a Legal Services provider and practitioner must preserve information relating to representation of a client from unauthorized disclosure.

### **Standard 1.4 Client Fees**

A Legal Services provider should establish a policy governing any fees and costs for which a client is responsible. The policy should provide for the following:

1. The client should be fully informed at the initiation of representation of the provider policy regarding costs or fees.
2. A practitioner employed by the provider may not accept a client or an applicant for services as a private client for a fee, or otherwise receive a fee from such an individual.
3. A private practitioner representing clients referred by a provider on a PRO BONO or compensated basis may not accept a fee from the client for those services, except as agreed to by the provider prior to the initiation of representation.

4. A Legal Services provider and a private practitioner to whom it refers a client should establish an agreement prior to the initiation of representation regarding disposition of any attorneys fees which may be recovered from an adverse party.

**Standard 1.5 Client Participation in the Conduct of Representation**

Subject to the limitations imposed by law and ethical obligations, the practitioner must abide by the client's decision regarding the objectives of the representation, must consult with the client regarding the means used to achieve those objectives, and must keep the client reasonably informed of the status of the matter.

**Standard 1.6 Client Access**

A Legal Services provider should locate and operate its service facilities, extend the assistance of private practitioners, and structure its outreach and publicity efforts in a manner that facilitates access for clients.

**Standard 1.7 Communication in the Client's Primary Language**

To the extent practicable, Legal Services providers should have the capacity to communicate with clients directly in their primary language.

**Standard 1.8 Affirmative Action in Employment**

A Legal Services provider must avoid discrimination in employment. In addition, it will generally enhance the provider's ability to communicate with clients effectively if the extent practicable it employs personnel who reflect the general composition of the client population with respect to race, ethnicity, age, sex, and handicap.

**II. STANDARDS FOR INTERNAL SYSTEMS AND PROCEDURES**

**Standard 2.1 Eligibility Guidelines**

A Legal Services provider should establish written guidelines to determine an applicant's eligibility for legal assistance.

**Standard 2.2 Case Acceptance Policy**

A Legal Services provider should establish a policy governing the acceptance of representation which focuses resources on the identified priorities of the provider, considers the maximum number of legal matters the provider can reasonably handle and allocates available resources so that representation is of high quality.

**Standard 2.3 Central Record Keeping**

A Legal Services provider should adopt, implement, and maintain internal systems for the timely, efficient, and effective practice of law, including:

1. A uniform system for maintaining client files,
2. A system for noting and meeting deadlines in the representation,
3. A system for handling client trust funds separate from provider funds.

**Standard 2.4 Standard Case Files**

A file should be established for each client which:

1. Records all material facts and transactions,
2. Provides a detailed chronological record of work done on each matter,
3. Sets forth the planned course of action delineating key steps to be taken with a firm timetable for their completion, and
4. Minimizes disruption in the event the representation is transferred to another practitioner.

**Standard 2.5 Policy Regarding Costs of Representation**

A Legal Services provider should establish a clear policy and procedure regarding payment of costs in cases in which discovery, use of expert witnesses, and other cost-generation activities are appropriate. Where necessary, the provider should budget sufficient funds for such costs.

### III. STANDARDS FOR QUALITY ASSURANCE

#### **Standard 3.1 Characteristics of Personnel**

A Legal Services provider should strive to assure that representation is provided by persons who are competent, sensitive to clients, and committed to providing high quality legal services.

#### **Standard 3.2 Assignment of Cases and Work Load Limitations**

A Legal Services provider should assign cases and limit individual work loads for its practitioners according to established criteria which include the following:

1. The practitioner's level of experience, training and expertise,
2. The status and complexity of the practitioner's existing caseload,
3. The practitioner's other work responsibilities,
4. The availability of adequate support for and supervision of the performance of the practitioner, and
5. Other relevant factors which directly affect the performance of legal work.

#### **Standard 3.3 Responsibility for the Conduct of Representation**

To the extent that the provider is responsible for representation, it should supervise the performance of the practitioner to assure that the client is competently represented. A provider is responsible for representation undertaken by its staff practitioners. When a provider delegates responsibility for representation to a private attorney, it should offer the practitioner appropriate support and training.

#### **Standard 3.4 Review of Representation**

To the extent that the provider is responsible for representation assigned to practitioners, it should review the representation using qualified attorneys. That review should:

1. Evaluate the quality of the representation,

2. Determine whether all pertinent issues have been identified and all remedies explored,
3. Ensure timely and responsive handling of all aspects of the representation,
4. Ensure that clients are appropriately involved in establishing objectives and the means to achieve those objectives and are kept reasonably informed of developments in the representation, and
5. Identify areas in which the provider should offer appropriate training and assistance.

**Standard 3.5 Training**

A Legal Services provider should provide systematic and comprehensive training of staff and private practitioners and other personnel appropriate to their functions and responsibilities.

**Standard 3.6 Providing Adequate Resources for Research**

The Legal Services provider should assure that availability of adequate resources for appropriate legal research and factual investigation.

**Standard 3.7 Periodic Evaluation of the Provider**

A Legal Services provider should periodically evaluate the effectiveness of its operation.

**IV. STANDARDS FOR GENERALLY APPLICABLE REPRESENTATION FUNCTIONS**

**Standard 4.1 Initial Exploration of a Legal Matter**

The practitioner should begin each instance of representation with an initial exploration of the client's problem which:

1. Begins development of an atmosphere of trust and confidence between the practitioner and the client,

2. Elicits known facts and circumstances pertinent to the client's problem;
3. Tentatively identifies the legal issues presented;
4. Establishes initial client objectives; and
5. Informs the client about the nature of the legal problem and the next steps to be taken by both the client and the practitioner.

**Standard 4.2 Information Gathering**

Each client problem should be investigated to establish accurate and complete knowledge of all relevant facts, favorable or unfavorable to the client's position.

**Standard 4.3 Legal Research and Analysis**

The practitioner should analyze each matter and research pertinent issues to determine the relationship between the client's problem and existing law, and whether there is a good faith basis to seek extension, modification, or reversal of existing law which is unfavorable to the client.

**Standard 4.4 Case Planning**

The practitioner should determine a course of action for handling each legal matter which:

1. Relates material facts to legal issues raised by the client's problem,
2. Identifies applicable law and available remedies; and
3. Enables the client and practitioner to make knowledgeable decisions about the means to pursue the client's objective at each stage of the representation, with full consideration of available resources and of the risks and benefits of each option.

**Standard 4.5 Counseling and Advice**

The practitioner should effectively counsel and advise the client throughout the representation:

1. To reach a common understanding with the client of the nature of the legal problem and the client's objective in seeking legal assistance;

2. To identify and evaluate the means available for achieving the client's objective;
3. To assure the client understands the advantages, disadvantages and potential risks of each option and effectively participates in determining the means by which the client's objective is pursued.

## V. STANDARDS FOR SPECIFIC REPRESENTATION FUNCTIONS

### **Standard 5.1 Nonadversarial Representation**

A practitioner should pursue nonadversarial, informal representation when it may best accomplish the client's objective.

### **Standard 5.2 Negotiation**

Negotiations should be planned and conducted according to a thorough analysis of the facts and law related to the matter and should be conducted with an adverse party so as to further the accomplishment of the client's objectives. A formal agreement with the adversary should be entered into only when the agreement is specifically authorized by the client.

### **Standard 5.3 Litigation**

The conduct of litigation should meet the following specific standards:

#### **Standard 5.3-1 Strategy**

A clear, long-range strategy for prosecution or defense of the client's claim should be developed and should be periodically reviewed in light of new developments in the case and in the governing law.

#### **Standard 5.3-2 Pleadings**

Pleadings should be drafted so as to preserve and advance the client's claim in accord with the requirements of applicable law. The degree of specificity of pleadings, absent a mandatory requirement of applicable law, is a matter for tactical decision.

**Standard 5.3-3**      **Motion Practice**

Motions should be considered to promote the successful, expeditious and efficient resolution of the litigation in the client's favor.

**Standard 5.3-4**      **Discovery**

Formal discovery should be utilized when appropriate to the case, should be thoroughly prepared, and should seek to obtain necessary information in a timely manner and in a useful format.

**Standard 5.3-5**      **Trial Practice**

All matters should be presented in a manner that is appropriate to the rules, procedures and practices of the tribunal, and that reflects thorough and current preparation in the facts and the law.

**Standard 5.3-6**      **Enforcement of Orders**

When a favorable judgment, settlement, or order is obtained, necessary steps should be taken to ensure that the client receives the benefit thus conferred.

**Standard 5.3-7**      **Preservation of Issues for Appeal**

A lawyer should remain aware of possible factual and legal bases for appeal from an adverse judgment or ruling, and should make a deliberate decision with appropriate client participation as to the need to preserve such issues for appeal in light of the overall litigation strategy.

**Standard 5.3-8**      **Appeals**

If there is an adverse appealable judgment or order, a decision should be made whether an appeal is warranted. The decision should be based on:

- o      The merits of the client's appeal;
- o      The potential benefits and risks of pursuing the matter; and
- o      Established criteria which reflect identified priorities and available resources of the provider or the willingness and ability of a private practitioner to undertake the appeal.



The client should be advised at the outset of the representation that prosecution or defense of an appeal by the provider is not automatic. If the appeal is pursued it should be prosecuted or defended with all due diligence.

**Standard 5.4 Administrative Hearings**

Representation of clients in adjudicatory administrative hearings should be effectively carried out in manner appropriate to the procedures and practices of the hearing tribunal.

**Standard 5.5 Administrative Rule-Making**

If representation before an administrative body regarding the adoption of rules, regulations, and orders of general application is appropriate to achieve client objectives, a Legal Services provider should strive to provide such representation unless prohibited by law or inconsistent with provider priorities.

**Standard 5.6 Legislative Representation**

If representation before a legislative body is appropriate to achieve client objectives, a Legal Services provider should strive to provide such representation unless prohibited by law or inconsistent with provider priorities.

**Standard 5.7 Community Legal Education**

When consistent with its priorities, a Legal Services provider may undertake community legal education which responds to client needs, advises clients of their legal rights and responsibilities, and enhances the capacity of clients to assist themselves collectively and individually.

**Standard 5.8 Economic Development**

When consistent with its priorities, a Legal Services provider may provide legal assistance to eligible clients in their creation and operation of entities designed to address their needs. Such representation should be provided by practitioners who have expertise in pertinent substantive law and the requisite skills to achieve client objectives.

## VI. STANDARDS FOR PROVIDER EFFECTIVENESS

### **Standard 6.1 Identifying Client Needs and Objectives**

A Legal Services provider should interact effectively with poor persons in its service area to be aware of their legal needs; and based on that interaction and other relevant information should engage in comprehensive planning to establish priorities for the allocation of its resources.

### **Standard 6.2 Delivery Structure**

The provider should establish a delivery structure tailored to local circumstances which will effectively and economically meet identified client needs through high quality work.

### **Standard 6.3 Use on Non-attorney Practitioners**

To maximize the efficient use of its resources the provider should explore the use of paralegals, tribal and lay advocates, law students and other legal assistants in the representation of clients. Representation of clients by non-attorney practitioners should be undertaken only as specifically authorized by state, federal or tribal law and appropriate ethical restrictions. The activities of such individuals should be supervised by an attorney who is responsible for the work performed.

### **Standard 6.4 Relations with the Private Bar**

A Legal Services provider should maintain active and cordial relations with the organized Bar and should seek to involve the private Bar in its activities.

### **Standard 6.5 Results of Representation**

A Legal Services provider should strive to achieve lasting results responsive to client identified needs and objectives.

### **Standard 6.6 Institutional Stature and Credibility**

A Legal Services provider should achieve institutional stature and credibility which enhance its capacity to achieve client objectives.

## VII. STANDARDS FOR GOVERNANCE

### **Standard 7.1 Functions and Responsibilities of the Governing Body**

#### **Standard 7.1-1 General Policy and Review**

A Legal Services provider should have a Governing Body which established broad general policies consistent with client needs, which assures compliance with applicable laws governing the operation of non-profit corporations, and which regularly reviews provider operations.

#### **Standard 7.1-2 Prohibition Against Intrusion in Case Matters**

The Governing Body and its individual members shall not interfere directly or indirectly in the representation of any client by a practitioner.

#### **Standard 7.1-3 Fiscal**

The Governing Body should assure the financial integrity of the Legal Services Provider by:

1. Adopting a budget within available resources consistent with client needs and objectives and the needs of staff for reasonable working conditions and compensation;
2. Monitoring spending in relation to the approved budget; and
3. Providing for an annual independent financial examination.

#### **Standard 7.1-4 Relations with the Chief Executive**

The Governing Body should hold the chief executive accountable for program operations through the following:

1. The Governing Body should establish specific criteria to recruit and select as chief executive the most capable and effective person available to carry out the duties established by the Board to achieve provider goals, to implement provider policy and to manage provider operations.

2. The Governing Body and chief executive should establish a relationship of open, honest communication based on trust, mutual respect, and a common understanding of the areas of responsibility and authority assigned to each.
3. The Governing Body should conduct ongoing oversight and periodic evaluation of the performance of the chief executive.
4. When necessary, the Governing Body should take corrective action to improve performance by the chief executive. If corrective action does not result in the desired performance, employment should be terminated in a fair and timely manner.

**Standard 7.1-5 Client Grievance Procedure**

The Governing Body should establish a policy and procedure governing complaints by applicants relating to denial of service and complaints by clients relating to the quality and manner of service.

**Standard 7.1-6 Serving as a Resource to the Provider**

The Governing Body should serve as a resource for the Legal Services provider, assist in community relations and fundraising, and when appropriate, engage in forceful advocacy on behalf of the provider.

**Standard 7.2 Membership of the Governing Body**

**Standard 7.2-1 Representation of the Community**

To the extent practicable, membership of the Governing Body should be representative of the client and legal communities.

**Standard 7.2-2 Client Board Members**

To the extent practicable, the Governing Body should include members who, when selected, are financially eligible to receive legal assistance from the provider.

**Standard 7.2-3 Qualifications of Individual Members**

All members of the Governing Body should:

1. Be committed to the delivery of high quality legal services that respond to client needs;
2. Have a concern for the legal needs of clients;
3. Recognize the need for communication with clients and the legal community;
4. Be committed to open dialogue between attorneys and clients on the Board;
5. Be willing to commit adequate time to obtain the necessary understanding of provider operations to meet their Board responsibilities.

**Standard 7.2-4 Training of Members of the Governing Body**

The provider should strive to assure that all members receive orientation and training necessary for full, effective participation on the Governing Body.

**Standard 7.2-5 Conflicts of Interest**

Governing Body members should not knowingly attempt to influence any decisions in which they have a conflict with provider clients.

**Standard 7.2-6 Selection of Members**

To the extent practicable, members of the Governing Body should be selected in a manner that reflects the diverse interests of the client population. Members should not be selected by employees of the provider nor by any institution or agency which is in conflict with the provider or its clients.

**Standard 7.3 Communication with Clients**

The Governing Body should strive to communicate effectively with the client population.

American Bar Association

**\*\*FULL TEXT AVAILABLE UPON REQUEST\*\***

**STANDARDS  
FOR PROGRAMS PROVIDING  
CIVIL PRO BONO LEGAL SERVICES  
TO PERSONS OF LIMITED MEANS**

February 1996

**Standing Committee on Lawyers'  
Public Service Responsibility**

**Approved by the American Bar Association House of Delegates, February 1996. The American Bar Association recommends appropriate implementation of these Standards by entities providing civil pro bono legal services to persons of limited means.**

**American Bar Association  
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## STANDARDS WITHOUT COMMENTARY

## **STANDARDS FOR PROGRAM GOVERNANCE**

### **Role and Responsibility of Governing Body**

#### **Standard 1.1-1 General Policy Development**

A pro bono program should establish a governing body which adopts broad general policies.

#### **Standard 1.1-2 Oversight and Review**

The governing body should ascertain that the pro bono program is in compliance with any contractual obligations and applicable laws governing the program and should regularly review the program's operations.

#### **Standard 1.1-3 Fiscal**

The governing body should assume responsibility for the financial integrity of the pro bono program by adopting a budget, monitoring revenues and expenditures in relation to the approved budget and providing for an annual independent financial examination.

#### **Standard 1.1-4 Fundraising, Recruitment, Recognition and Public Relations**

The governing body should support the operation of the pro bono program by assisting in activities such as fundraising, volunteer recruitment, volunteer recognition and public relations.

#### **Standard 1.1-5 Non-Interference In Attorney-Client Relationship**

The governing body and its individual members should not interfere directly or indirectly in the representation of a client by a volunteer attorney.

#### **Standard 1.1-6 Non-Interference In Specific Acceptance and Referral Decisions**

The governing body and its individual members should not interfere directly or indirectly in the decision of the pro bono program staff to accept or reject a specific matter, or to refer a matter to a particular volunteer.

#### **Standard 1.1-7 Conflicts of Interest**

Governing body members should not attempt to influence any decisions in which they have a conflict with clients served by or through the pro bono program.

## **Membership of the Governing Body**

### **Standard 1.2-1 Representation of the Legal Community**

The governing body should include members who represent various segments of the legal community.

### **Standard 1.2-2 Representation of the Community at Large**

To the extent practicable, the governing body should include members of the community at large, with special emphasis on participation by the client community.

### **Standard 1.2-3 Orientation and Training**

A pro bono program should strive to assure that all members receive the orientation and training necessary for full and effective participation on the governing body.

## **STANDARDS FOR PROGRAM EFFECTIVENESS**

### **Standard 2.1 Identification of Clients' Needs**

A pro bono program should establish a means of identifying the legal needs of persons of limited means who reside within its service area.

### **Standard 2.2 Program Priorities**

A pro bono program should establish priorities for the allocation of its resources based upon identified client need while taking into account areas of interest and expertise of volunteers, any volunteer need for specialized training and support, and the priorities of other providers of legal services in the service area.

### **Standard 2.3 Delivery Design**

A pro bono program should establish a design for the delivery of legal services which is tailored to local circumstances and which effectively and efficiently meets identified client need.

### **Standard 2.4 Quality Assurance**

A pro bono program should strive to assure that all clients served through the program receive high quality legal services.

**Standard 2.5 Results of Services Provided**

A pro bono program should strive to achieve lasting results responsive to clients' needs and objectives by utilizing volunteers to resolve or assist in resolving clients' individual problems, to improve laws and practices affecting clients, and to increase client self-sufficiency.

**Standard 2.6 Fiscal Management**

A pro bono program should establish and maintain systems and procedures to account for revenues, expenditures and program services in conformity with appropriate accounting principles for non-profit organizations.

**Standard 2.7 Relations with Other Providers of Legal Services**

A pro bono program should strive to cooperate, collaborate and coordinate with other providers of legal services.

**Standard 2.8 Relations with the Organized Bar**

A pro bono program should strive to develop and maintain an active, cooperative and collaborative relationship with the organized bar.

**Standard 2.9 Relations with the Judiciary**

A pro bono program should strive to work with the judiciary to develop methods for judges to provide their support and assistance to the program.

**Standard 2.10 Relations with Community Organizations**

A pro bono program should strive to develop and maintain active and cooperative relations with community organizations and social service agencies that serve clients.

**Standard 2.11 Institutional Stature and Credibility**

A pro bono program should strive to attain institutional stature and credibility to enhance its ability to achieve client objectives.

**Standard 2.12 Periodic Program Evaluation**

A pro bono program should periodically evaluate its effectiveness and implement appropriate improvements, as needed.

## **STANDARDS FOR RELATIONS WITH CLIENTS AND VOLUNTEERS**

### **Standard 3.1 Establishment of Relationships**

A pro bono program should clearly communicate the nature of the relationship it is establishing with each client and volunteer and delineate each party's rights and responsibilities. A program should aid a client and the volunteer who is representing or otherwise assisting that client in communicating clearly their duties and responsibilities to each other.

### **Standard 3.2 Conflicts of Interest**

A pro bono program should establish policies and procedures to identify and address conflicts of interest.

### **Standard 3.3 Non-Discrimination and Diversity**

A pro bono program should not impermissibly discriminate in the acceptance and placement of cases, in the recruitment of volunteers or in the employment of staff. To the extent practicable, staff hired and volunteers recruited should reflect the diversity of the community being served.

## **Relations with Clients**

### **Standard 3.4-1 Establishment of an Effective Relationship**

A pro bono program should strive to establish a relationship with each client which fosters trust and preserves client dignity. It should assist volunteers in establishing a similar relationship with their clients.

### **Standard 3.4-2 Client Confidences**

Consistent with ethical and legal responsibilities, a pro bono program should preserve information regarding clients and applicants from any disclosure not authorized by the client or applicant.

### **Standard 3.4-3 Client Access**

A pro bono program should adopt policies and procedures which facilitate access to its service by the client community.

**Standard 3.4-4 Communication with Clients**

A pro bono program and its volunteers should communicate effectively with clients.

**Standard 3.4-5 Eligibility Guidelines**

A pro bono program should establish written guidelines to determine an applicant's eligibility for service.

**Standard 3.4-6 Grievance Procedure**

A pro bono program should establish a policy and procedure to address complaints regarding the denial, quality and manner of service.

**Standard 3.4-7 Client Satisfaction**

A pro bono program should obtain information from clients regarding their satisfaction with the program and its volunteers.

**Relations with Volunteers**

**Standard 3.5-1 Recruitment**

A pro bono program should develop effective strategies for recruiting volunteers.

**Standard 3.5-2 Utilization**

A pro bono program should develop effective strategies for utilizing volunteers to meet clients' legal needs.

**Standard 3.5-3 Training and Support**

A pro bono program should provide training opportunities and support services to its volunteers.

**Standard 3.5-4 Professional Liability Insurance**

A pro bono program should obtain professional liability insurance coverage for itself, its staff and its volunteers.



**Standard 3.5-5 Costs Policy**

A pro bono program should establish and communicate to clients and volunteers a policy and procedure regarding the payment of costs in matters in which filing fees, service fees, discovery, use of expert witnesses and other expenses related to representation are appropriate.

**Standard 3.5-6 Attorneys' Fees Policy**

A pro bono program should establish and communicate to clients and volunteers a policy regarding the receipt of attorneys' fees by program volunteers.

**Standard 3.5-7 Retention**

A pro bono program should develop effective methods for retaining its volunteers.

**Standard 3.5-8 Recognition**

A pro bono program should develop effective methods for the recognition of its volunteers.

**STANDARDS FOR FACILITATING EFFECTIVE DELIVERY OF SERVICE****Standard 4.1 Acceptance Policy**

A pro bono program should establish a policy regarding the acceptance of matters which focuses resources on the identified priorities of the program, considers the maximum number of matters that volunteers can reasonably address and takes into account the resources available to provide volunteers with any necessary preparation and support.

**Standard 4.2 Volunteer Qualifications**

A pro bono program should strive to determine that representation and advice are provided by volunteers who are competent and sensitive to clients.

### **Standard 4.3 Client Intake System**

A pro bono program should establish or utilize an intake system through which knowledgeable staff or volunteers determine eligibility, discover potential conflicts of interest, obtain essential facts, identify legal issues and maintain client confidentiality and client dignity.

### **Standard 4.4 Placement System**

A pro bono program which places matters with volunteers for assistance should establish a system for timely and appropriate referral. When placing matters, a program should provide volunteers with information regarding the nature of the problem and all known pertinent facts and documents.

### **Standard 4.5 Tracking and Oversight**

A pro bono program should establish a system for obtaining information regarding the progress of matters placed with volunteers. Based upon the information received, the program should provide the assistance required, subject to any limitations imposed by rules of professional conduct.

### **Standard 4.6 Record Keeping**

A pro bono program should develop internal systems for identifying conflicts and for maintaining, retrieving and evaluating data regarding applicants, clients, volunteers and services provided.

### **Standard 4.7 Program Personnel**

A pro bono program should employ personnel who are competent, sensitive to clients and committed to the provision of high quality legal services.

### **Standard 4.8 Attorney Supervision of Non-Attorney Staff**

A pro bono program should provide for appropriate attorney supervision of its non-attorney staff.



**OSB CIVIL LEGAL SERVICES TASK FORCE  
FINAL REPORT**

May, 1996



**This Appendix Contains the Key Findings and Recommendations from the  
Report. For a Full Copy of the Report  
Please call the OSB at 620 0222 - Ext. 323**

**OSB CIVIL LEGAL SERVICES TASK FORCE  
FINAL REPORT**

**May, 1996**

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# **OSB CIVIL LEGAL SERVICES TASK FORCE FINAL REPORT**

**Stephen S. Walters, Chair  
May 24, 1996**

## **Introduction; Task Force Charge**

In the summer of 1995 Oregon, like every state in the United States, faced a crisis in its delivery of civil legal services to low-income residents. The new Congress was considering legislation which would ultimately eliminate the Legal Services Corporation, the federal entity which provides funding to local legal services programs (including four programs in Oregon). At the very least, it appeared inevitable that 1996 federal funding for legal services would be reduced by as much as 35% from 1995 levels. Congress was also prepared to impose severe restrictions on the activities of all programs receiving LSC funding, which would have a serious impact upon the ability of LSC program attorneys to provide a full range of high quality legal services to their clients.

In response to this crisis, OSB President Judy Henry, in consultation with Chief Justice Wallace P. Carson, appointed the OSB Civil Legal Services Task Force. Stating that "the organized bar has an important role to play in assisting our programs in planning for the future and in assuring the continuing availability of legal assistance to all of the people of our state," the OSB gave the Task Force the general charge to "develop a plan for civil legal services in Oregon for 1996 and future years, which will, when implemented, effectively provide a full range of legal services to low income Oregonians with all available resources." Steve Walters of Portland was appointed Chair of the Task Force; its members were Judge David Brewer, Neil Bryant, Ned Clark, Mike Haglund, Judge Jack Landau, Jim Massey, Katherine McDowell, Katherine O'Neil, Larry Rew, and Martha Walters. Barrie Herbold served as liaison to the BOG. Ann Bartsch was the OSB staff liaison and reporter. Ira Zarov of Oregon Legal Services served as the liaison to the legal services programs.

Following its initial meeting in September, the Task Force organized itself into four subcommittees, each with a separate charge. Each subcommittee was asked to invite participation and otherwise to secure information from other interested persons, including program board and staff, representatives of the Multnomah Bar Association, and the OSB Low Income Legal Services Committee. (A complete list of all participants is attached to this report as Appendix 5.) The full Task Force met periodically to review the recommendations as they were developed by the subcommittees.

Task Force participants contributed hundreds of volunteer hours to the consideration and final drafting of the reports and recommendations which follow. Complete reports from all of the Task Force subcommittees are included as appendices to this report. The following is a digested description of each subcommittee's activities, along with a listing of its key findings

and recommendations.

### **Subcommittee 1: Client Need/Priorities; Delivery System**

This subcommittee was chaired by Judge David Brewer of Eugene. The subcommittee was asked to gather information on Oregon's existing civil legal services delivery system, for use by the other subcommittees, addressing the following questions:

What legal needs of client community are programs currently addressing? Are there any areas of need which are not being addressed, and which should be incorporated into Oregon's legal services delivery system?

What delivery systems are in place in Oregon to meet these needs? What systems could be developed or expanded?

The subcommittee was also asked to develop an overall mission statement for Oregon's civil legal services delivery system, for adoption by the full Task Force and ultimately by the Board of Governors, as well as by other entities concerned with civil legal services (e.g. the Oregon Law Foundation).

The subcommittee's initial report and Mission Statement were presented to the full Task Force in December and to the Board of Governors in January, 1996. That document is attached as Appendix 1 to this report. The Mission Statement was also adopted by the Board of Directors of the Oregon Law Foundation in February.

#### **Key Findings:**

1. Not more than one third of the legal needs of Oregon's low income population were being addressed by legal services programs before the funding cuts.
2. However, as of December, 1995, Oregon did have in place a legal services delivery system capable of providing a full range of civil legal services to low income Oregonians. Key components of that system were federally funded LSC programs and a network of locally based volunteer attorney programs providing supplemental services to the staffed offices. That system will be undercut by the adoption of pending federal legislation providing for severe funding cuts to LSC programs, and for severe restrictions on the activities of those programs which were inconsistent with the Task Force's mission statement for civil legal services.

### **Subcommittee 2: Structure and Organization**

This subcommittee was chaired by Jim Massey of Sisters. It was asked to address the following questions:

Will existing legal entities and organizations be able to perform or facilitate the performance of the work identified by the previous working group? Are there opportunities for resource savings through reconfiguration of existing programs? If the existing structure will not be able to perform the work, what other entities can be developed to perform it?

This subcommittee met five times in the fall and winter of 1995-96. It invited board and staff representatives of Oregon's existing, and developing, legal aid and volunteer attorney programs to meet with the full Task Force to share their plans for necessary restructuring in light of the anticipated LSC funding cuts and restrictions on program activities. The subcommittee made no recommendations on questions it considered to be internal to the programs and their boards of directors, e.g. whether particular programs should or should not merge. However, subcommittee members did participate in ongoing discussions which were taking place among the programs, and the subcommittee's meetings provided an opportunity for strategizing and planning among the programs, bringing in the expertise of the broader legal community.

The subcommittee's full report is attached as Appendix 2. Its key findings and recommendations are as follows.

**Key Findings:**

1. In late April, 1996, Congress enacted HR 3019, the fiscal year 1996 appropriations bill which includes funds for the Legal Services Corporation. The legislation incorporated a long-anticipated series of restrictions on activities of LSC funded programs, including prohibition of most legislative and administrative advocacy, participation in class actions or welfare reform litigation, and representation of undocumented aliens (including undocumented migrant workers). The legislation further provides that LSC recipient programs may not use non-LSC funds, including state generated funds, to undertake any of these activities.

The 1996 restrictions on LSC funding and substantive work threaten the historic commitment to key Oregon legal services delivery system values.

2. Oregon's four LSC funded programs (Oregon Legal Services, Multnomah County Legal Aid Service, Marion-Polk Legal Aid, and Lane County Legal Aid) will continue to receive LSC funding, and will comply with the new restrictions in conducting their work on behalf of low-income Oregonians.

Consistent with the Task Force's mission statement for Oregon's civil legal services delivery system, Oregon's legal community must take responsibility for developing and nurturing other non-LSC entities capable of providing services which fill in the gaps



which the new Congressional restrictions will otherwise impose.

3. As of the date of this report, the following structural changes have been made (or are in the process of being made) in Oregon's civil legal services delivery system.

**Organization of Full Service Law Centers** In response to the imposition of restrictions on programs which receive Legal Services Corporation funding, new entities have been and are being organized to provide critically important services to clients, which LSC recipients will no longer be able to provide. Oregon Law Center has been incorporated in Portland and will receive funding from OLF and other sources. The Lane County Law and Advocacy Center has been established in Eugene. A similar "Full Service Law Center" may be established to serve Marion and Polk counties.

**MCLAS/OLS Reconfiguration** Effective May 13, 1996, Oregon Legal Services' Central Support Office and Multnomah County Legal Aid Service are sharing office space (at the former MCLAS office), resulting in an estimated savings of about \$100,000 per year. The two programs are discussing possible merger later this year. **Marion-Polk** There have been no structural changes so far at Marion-Polk Legal Aid, although the question of merger with other entities is on the table. One attorney position has been lost because of resource limitations.

**Jackson County** There have been no structural changes so far in Jackson County (Center for Non-Profit Legal Services). A ballot measure which would have provided county funding for the Center and other social service agencies, was defeated by the voters on May 21. It appears that it will be necessary for the program to continue to receive LSC funding as a subgrantee of Oregon Legal Services for its private attorney involvement program.

**Campaign for Equal Justice** The Campaign for Equal Justice is now separately incorporated, free-standing 501(c)(3) corporation.

**Volunteer Lawyers Project** The Volunteer Lawyers Project in Multnomah County considered a merger with Multnomah County Legal Aid, but declined to do so in light of the restrictions which would be placed on its activities. It now appears that parts of VLP's program will be taken up by MCLAS (along with financial support from the Multnomah Bar Association), and others will pass to the newly organized Oregon Law Center.

**Staffing losses** Programs report various levels of staff attrition in the wake of the Congressional action. So far, one local office -- Oregon Legal Services' branch office in Klamath Falls -- has been closed. Most full-time staff at Multnomah County Legal Aid Service have been reduced to 80% time.

**Key Recommendations:**

**1. Three fundamental premises should drive organizational and structural issues:**

**A. Quality and Independence**

**Legal services delivery in Oregon should not be driven by or be dependent on LSC funding or mandates. Legal services programs will continue to be an important and vital resource -- of many -- for providing access to the justice system for low income Oregonians.**

**B. Preservation of Funding Allocation**

**Funding levels for service to low-income client groups no longer eligible for LSC funded services, and for all other restricted forms of legal services representation, including welfare reform, class litigation, legislative and administrative advocacy, group representation and client education and training, must be maintained at levels sufficient to provide adequate representation to low-income clients.**

**C. Independence and Access**

**Planning and selection of substantive work, and prioritization of delivery to particular client groups or populations, should be based upon sound commitment to principles of equal access to justice consistent with DR 7-101 and EC 2-26, 27 and 28 of the Code of Professional Responsibility, and without regard to the disfavored social, political or economic status of any eligible client.**

**2. Consortium for Delivery of Services**

**There should be an ongoing independent consortium of Oregon legal aid providers. Membership would be open to any organization providing legal services to low income Oregonians, as well as any organization which sponsors the delivery of such services (e.g. the MBA). The consortium would provide a forum for ongoing identification of unmet client needs to which resources should be targeted, while avoiding duplication of efforts by member programs. The consortium would allow for coordination and integration of key functions across program lines, and facilitate communication among program funding sources.**

**The consortium should include:**

Current LSC recipient programs  
Non-profit legal centers  
Public Interest Law Firms  
Law school clinics  
Campaign for Equal Justice  
Bars, particularly OSB and MBA

3. **Reorganization/Restructuring for Efficiency of Delivery**

The existing legal services programs should continue the ongoing process of internal evaluation to identify means of streamlining, reducing costs and gaining new efficiencies. The programs should continue to evaluate, within the consortium context, whether program mergers, consolidation or sharing of particular functions or services or development of new means or methods of access and delivery are appropriate. Areas of continued discussion and evaluation should be:

- Merger;
- Consolidation of programs/services/shared systems; and
- Appropriate use of technology.
- Intake and referral improvements;
- Coordination among programs with the Bar;
- Coordination with ADR programs.

The various programs should continue to inform and advise one another as this process continues.

4. **Development of Non-Restricted Entities**

In response to the imposition of restrictions (on and after April 26, 1996) on programs which receive Legal Services corporation funding, new entities have been and are being organized to provide critically important services to clients, which LSC recipients will no longer be able to provide. Oregon Law Center has been incorporated and will receive funding from OLF and other sources; the Lane County Law and Advocacy Center has been established in Eugene. The Task Force makes the following recommendations regarding these "Full Service Law Centers:"

Should be an entity or entities capable of performing legislative and

administrative advocacy.

Should be an entity or entities capable of providing representation to underserved populations with cultural barriers, language barriers, or local access programs, e.g. migrant workers. Should be capable of providing services all over the state.

Should develop pro bono capacities of the bar statewide -- not just as supplement (to take individual cases overflowing from legal services programs), but in such areas as class actions, legislative advocacy, policy development, low income housing development, etc.

Should include all LSC restricted work, particularly class actions on issues affecting low income populations, such as welfare reform and administration of public benefit programs.

As indicated above, the question whether there should ultimately be one such program, with branch offices in key locations (e.g. Salem) was left for study by the OSB legal aid oversight group.

#### 5. Development/Expansion of New Resources

The Subcommittee recommends development and expansion of new and non-legal services resources to complement consortium activities:

There are currently some regional hotlines operated by all legal services programs. Development of additional hotlines could be beneficial; a prime topic would be a (statewide) Child Support hotline.

Local and statewide bar groups should expand their pro bono efforts, working in cooperation with offices statewide. As a corollary, all programs should consider using emeritus attorneys in their area, on the model of the "ELVIS" program in Marion-Polk Legal Aid Service.

There should be strategic, thoughtful reassignment of OLF funding, filing fee surcharge resources, and other available funds to provider programs.

Courts, Bar and OLF should continue to support efforts to increase ADR resources (e.g. farmworker mediation program) and self help mechanisms (Oregon Family Law Task Force is investigating the Maricopa County model).

The OSB should expand its existing Tel-Law program to cover new topics.

**The OSB Order Desk/Pamphlet distribution efforts could include legal aid brochures, which are already available from the programs.**

**OSB should expand its Modest Means program as far as possible.**

## 6. OSB Oversight and Support

The Oregon State Bar should take on an expanded role in oversight and provision of technical assistance to legal aid programs. This oversight/technical assistance role should be assigned to a small group (not more than five persons) who would be directly accountable to the Board of Governors. Members of the group should be OSB members who are knowledgeable in the areas of law office management and legal services/pro bono delivery, and who are independent of the programs. The group should develop defined standards for ongoing assessment of the programs' operations based on existing national standards (e.g. ABA's SCLAID standards, LSC Performance Criteria, Code of Professional Responsibility). Their assessments should concentrate on outcomes, with the emphasis on achieving quality results for clients.

If the Oregon legislature is willing to delegate allocation of filing fee surcharge revenues to the Oregon State Bar Board of Governors, this group would be an appropriate entity to take on this task, or at least, to evaluate and make recommendations to the BOG. (A significant minority of Task Force members believe that, while it is critically important that the OSB assume an oversight/technical assistance role with respect to civil legal services programs, this role should be separated from that of allocation of actual amounts of filing fee surcharge funding.)

### **Subcommittee 3: Funding**

This subcommittee was chaired by Katherine O'Neil of Portland. The subcommittee was asked to address the following questions:

What current funding sources are in place to support legal services delivery in Oregon?  
How can they be expanded to meet future needs? What new financial resources can be developed to support a reconfigured delivery system?

The subcommittee gathered information from each of the programs on their present financial base -- components and amounts, short term and long term financial prospects. The subcommittee gathered similar information from the major non-LSC funding sources for legal services and volunteer attorney programs in Oregon, specifically the Campaign for Equal Justice, the Oregon Law Foundation, the Multnomah Bar Association, and the legislature (the source of the filing fee surcharge legislation). Members of the group also researched funding mechanisms which have had success in other states, using information supplied by the American Bar Association's PERLS (Project to Expand Resources for Legal Services) Project. The goal was to develop insights for the BOG on how the organized bar could best step in and help alleviate the anticipated shortfalls.

The subcommittee's full report is attached as Appendix 3. Its key findings and recommendations are as follows.

Key Findings:

1. In FY 1996, funding to the Legal Services Corporation (the federal agency which funds local legal services programs across the country, was cut by approximately 30 percent, to a total of \$278 million. This translates into a loss of approximately \$1 million (of total 1995 funding of approximately \$6 million from all sources) for Oregon's civil legal services programs. There are proposals in the current Congress to reduce LSC funding to \$141 million in FY 1997 (\$1.5 million shortfall for Oregon) and to eliminate it entirely by FY '98. If these proposals are successful, states like Oregon will be charged with all responsibility for providing civil legal services for their low income residents.

2. Oregon programs report the following projected shortfalls in their geographic service areas for 1996:

Jackson County (Center for Nonprofit Legal Services): \$70,000

Lane County (Lane County Legal Aid Service, Lane County Law and Advocacy Center): \$125,000

Marion and Polk Counties (Marion-Polk Legal Aid): \$125,000

Multnomah County (Multnomah County Legal Aid Service): \$440,000

Remaining Oregon counties (Oregon Legal Services): \$210,000

3. Oregon is relatively fortunate in having developed significant sources of non-federal funding for civil legal services at the state and local level. Non-federal funding constituted approximately 51% of the resources available to the legal aid/volunteer attorney programs in 1995. The most significant sources of in-state funding are:

**Campaign for Equal Justice** Now incorporated as an independent 501(c)(3) entity, the Campaign solicits contributions from Oregon attorneys and law firms, and solicits grants and other assistance from a wide variety of private sector sources, on behalf of legal services programs. In 1995, a total of \$322,000 was raised.

**Filing Fee Surcharge** Pursuant to ORS 21.480-.490 (appendix 3A to this report), circuit and district courts collect a surcharge on filing fees paid by moving parties in civil suits, which is paid to the legal aid program in that county by the State Court Administrator. This mechanism produces approximately \$1.5 million annually.

**Oregon Law Foundation/IOLTA** Programs providing civil legal services to low

income Oregonians have been (and should continue to be) the major recipients of funding from OLF's IOLTA (Interest on Lawyers Trust Accounts) program. In 1996, OLF will make a total of \$599,000 in grants, with approximately \$496,000 going to programs in the legal services category.

Without assistance from the Oregon State Bar, the courts, and the legal community generally, these funding sources will not be able to make up the shortfall in federal funding in the foreseeable future.

**Key Recommendations:**

1. **Filing Fees surcharge** Oregon's circuit and district courts will be consolidated effective January 15, 1998. Currently, legal services programs receive a surcharge on each filing fee paid into circuit court in the amount of \$22.00. In cases currently being filed in district court, the surcharge is \$8.50.

The BOG should urge Chief Justice Carson to exercise his discretion to maintain the \$22 filing fee for all courts after merger of Circuit and District courts in January, 1998.

Alternately, the BOG should make its #1 Legislative agenda for the '97 Legislature a revision in the laws related to filing fees with the fees going to the OSB for distribution.

2. **OSB dues assessment** The FY '96 shortfall could be met by a \$100 per attorney contribution made with the annual OSB dues. Subsequent Congressional cuts would require a greater per attorney contribution.

The BOG should exercise its leadership and chose a method of per capita contribution among the following:

- a. Voluntary contribution collected with OSB dues: "\$100 or other."
- b. Voluntary first year or so and then make it compulsory: "\$100".
- c. Compulsory contribution collected with OSB dues: "\$100" FY '97, "\$250" in subsequent years to make up for continued cuts in Congressional funding. With an option to do 40 hours (or another figure) of pro bono work in an OSB certified pro bono program.

Any compulsory contribution should first be approved by the new OSB House of Delegates with a referral to the general membership following the meeting at which it is approved.



3. **Greater OSB/local bar support for Campaign for Equal Justice** The CEJ would greatly benefit from open, public, frequent support for CEJ from the BOG and other bar leaders. The BOG members can mention the campaign in stump speeches, write about it in all publications. Make CEJ the "lawyers' charity," a part of the legal culture. If BOG members and the county bar presidents did an hour of intake at a legal aid office, they would gain a perspective that would fire their support of the CEJ.
  
4. **Increase income to OLF/IOLTA** The Oregon Law Foundation should be asked to pursue various mechanisms, for which national models exist, to increase IOLTA income. These include "sweep" accounts for IOLTA funds (cash management or sweep account which sweeps all or part of the IOLTA balance that is over a specified threshold amount from low-yield checking accounts into an investment in Treasury backed securities on a daily basis, producing higher yields for the IOLTA account); ongoing negotiations with banks for higher interest rates, and lower service charges, paid on IOLTA accounts.  
  
The Oregon State Bar should assist OLF in investigating mechanisms for increasing income to the Foundation through legislation providing for, among other possibilities: direction of interest on funds in the hands of title insurance companies to OLF; direction of a portion of state abandoned property funds to OLF; direction of unclaimed client trust funds to OLF.
  
5. **Potential funding sources for consideration by legal services programs** include implementation of sliding scale fees for service to clients in the moderate income range (125% - 200% of poverty guidelines); local and county bond issue funding (Jackson County example); retainer contracts with Indian tribes and social service agencies; and gaming revenues.

#### **Subcommittee 4: Ethical Responsibility/Quality Assurance/Transition**

This subcommittee was chaired by Judge Jack Landau of the Court of Appeals. It was asked to consider how the bar could best assist the LSC programs' attorneys in meeting their ethical responsibilities to clients in light of the restrictions imposed by Congress.

The subcommittee also reviewed a memorandum from James N. Gardner of Portland, outlining a potential 10th Amendment challenge to the conditions and restrictions imposed on the Legal Services Corporation and its grantees by Congress.

The subcommittee's full report is attached as Appendix 4. Its key findings and recommendations are as follows.

#### Key Findings:

1. **ABA Formal Opinion 96-399** In February, 1996, the American Bar Association Standing Committee on Ethics and Professional Responsibility released Formal Opinion 96-399, "Ethical Obligations of Lawyers Whose Employers Receive Funds for the Legal Services Corporation to their Existing and Future Clients When such Funding Is Reduced and When Remaining Funding Is Subject to Restrictive Conditions." At approximately the same time, Oregon Legal Services prepared its own proposed response to the anticipated funding and practice restrictions. Rather than duplicate the foregoing efforts, the subcommittee focused on a review of the analysis and recommendations of the ABA Standing Committee and OLS.

In general, the OLS policy appears to follow from, and is entirely consistent with, the formal opinion of the ABA Standing Committee.

Copies of ABA Formal Opinion 96-399, and of OLS' internal memorandum "Implementing New Restrictions," are attached to the full subcommittee report at Appendices 4A and 4B.

#### Key Recommendations

1. The ABA Standing Committee's formal opinion is, of necessity, based on the Model Rules and not on the rules of professional responsibility governing any particular jurisdiction. So far as the Task Force is aware, however, the Oregon Code of Professional Responsibility is consistent with the Model Rules in all respects material to the questions before the ABA Standing Committee. The Task Force has little reason to believe that the ethical obligations of Oregon legal services lawyers will be substantially different under the Oregon Code and, therefore, regards the ABA Standing Committee's formal opinion as a useful source of advice to legal services lawyers in this state. Nevertheless, the Task Force believes that it may be of value to Oregon lawyers to have the Oregon State Bar Legal Ethics Committee review the ABA Standing Committee's formal opinion in the light of the particular requirements of the Oregon Code, to determine the extent to which the obligations of Oregon legal services attorneys are anticipated to be different than those of lawyers generally in the context of the Model Rules. Accordingly, the Task Force has prepared an opinion request to that effect.
2. The Task Force has considered, at least preliminarily, the possibility of other responses to the anticipated funding and practice restrictions than accommodation through modification of legal services policies and practices. Of particular note is the suggestion that the constitutionality of the restrictions be challenged in federal court. Although the Task Force expresses no opinion on the likelihood of success of such a challenge, it does recommend that the option be explored by the appropriate authorities.

In essence, the theory of the proposed lawsuit is that the imposition of federal restrictions on the provision of legal services violates the Tenth Amendment to the federal Constitution. The major premise of the argument is that the operation of state /court systems is at the core of powers reserved to the states by the Tenth Amendment and that the operation of state court systems includes the promulgation and enforcement of rules of professional responsibility. The minor premise of the argument is that the anticipated restrictions on legal services practice will necessitate a modification of such rules of professional responsibility. The key, of course, is the minor premise, namely, whether the expected practice restrictions actually require a modification of state professional responsibility rules or other matters properly regarded as core areas of state sovereignty.

Assuming the potential viability of a Tenth Amendment claim, the question arises: Who would be the proper plaintiff(s)? In all likelihood, the proper party plaintiff would be the State of Oregon, or the Chief Justice, or both; in all events, the matter would be subject to the advice and representation of the Attorney General. The Task Force recommends that the Attorney General be requested to evaluate the possibility of initiating a lawsuit to challenge the constitutionality of the anticipated funding and practice restrictions.

## **Conclusion**

Hundreds of hours of volunteer effort, energy, and emotion have gone into the creation of this final report. The issues with which the Task Force has wrestled with are critically important to the future of access to justice for low-income Oregonians, both in the short and the long term. The Task Force members urge the Board of Governors to put these issues at the head of the bar's agenda for this year and the years to come. As the BOG's original charge to the Task Force stated, the organized bar has a critically important role to play in assuring the continuing availability of legal assistance to all of the people of our state. We urge the Board to take up this work.

**LEGAL SERVICES CORPORATION**  
**PERFORMANCE CRITERIA (from 1996)**

**PERFORMANCE AREA ONE: Effectiveness in identifying and targeting resources on the most pressing legal needs of the low income community.**

The Performance Criteria acknowledge the central importance of strategic planning, and envision a dynamic model in which such planning is followed by and interwoven with implementation and evaluation, constantly adjusting objectives and strategies to better address the most critical legal needs of a low-income community. While much of a Legal Services program's work is necessarily reactive, responding to major changes affecting the low-income population, it is important that such reaction occur within a well thought-out framework, designed to enable the program to be as effective as possible in staying focused upon and addressing the most pressing needs of the low-income community it serves.

It is to be emphasized that this performance area does not require one particular form or method of assessment, such as written surveys, nor does it require extensive documentation of the planning process. Rather, the program should be able to demonstrate that it has, through whatever approaches it uses, come to a reasoned, thorough assessment of its client community's most pressing legal needs. Based on this assessment, the program should set out clearly how it is trying to address the identified needs.

**Criteria**

1. Periodic comprehensive assessment. The program periodically undertakes a comprehensive assessment of the most pressing legal problems and needs, both addressed and unaddressed, of the low-income population in its service area, including all major subgroups. These comprehensive assessments should be made frequently enough, in the light of their cost, to be reasonably calculated to identify new developments and opportunities affecting that population.
2. Ongoing consideration of needs. The program is flexible and responsive enough to recognize and adjust to major new needs of its target population that emerge or develop in between the periodic, in-depth assessments described in Criterion One.
3. Setting priorities and allocating resources. In the light of its comprehensive and ongoing assessment of need, and its available resources, the program periodically sets explicit goals, priorities and objectives. Insofar as possible, these priorities and objectives should be expressed in terms of desired outcomes for the client community, and should articulate the general types of services which the program will provide and the kinds of cases or matters which will and will not be accepted. The program should then target its resources consistent with these goals, priorities, and objectives. To the extent that pressing needs have been identified which the program will not be able to address directly because of resource limitations, the program should consider other methods that might be employed to provide some assistance to affected clients.

4. **Implementation.** The program then implements these priorities and works toward the desired outcomes, by considering, adopting and implementing comprehensive strategies which make use of available and appropriate approaches for legal representation, advocacy, and other program work.

5. **Evaluation and adjustment.** The program, in conjunction with the community that it serves, analyzes and evaluates the effectiveness of its work, in major part by comparing the results actually achieved with the outcomes originally intended, and then utilizes this analysis and evaluation to make appropriate changes as the program carries out future assessments and develops subsequent priorities, objectives, and strategies.

## PERFORMANCE AREA TWO: Effectiveness in engaging and serving the client community

A program must have effective relations with its clients, on both an individual and community-wide basis. Although the centrality of client relations and engagement is explicit or implicit throughout the criteria, this Performance Area sets forth the central values.

### Criteria

1. **Dignity and sensitivity.** The program conducts its work in a way that affirms and reinforces the dignity of clients, is sensitive to clients' individual circumstances and is responsive to each client's legal problems.
2. **Engagement in the client community.** The program is in close touch with the community eligible for its services, and effectively engages that community in all appropriate aspects of its operations.
3. **Access and utilization by the community.** Once a program's priorities and objectives are defined, the program should, over time and within the limits of its resources and program priorities, be accessible to and facilitate effective utilization by the low-income population in its service area, including all major subgroups of that population, and all categories of people who traditionally have had difficulties in getting access to or utilizing Legal Services programs.

**PERFORMANCE AREA THREE: Effectiveness of legal representation and other program activities intended to benefit the low-income population in its service area.**

Area Three addresses the program's implementation of its plans, priorities, and objectives. Of primary importance is Criterion 1, Legal representation, to which Legal Services programs allocate the greatest amount of resources. The fundamental question is whether the program is doing good legal work. Criterion 1 relies on the ABA Standards for Providers of Civil Legal Services to the Poor, which include in the referenced sections considerable detail concerning legal representation. The later criteria address other major areas of program activities.

**Criteria**

**1. Legal representation.** The program conducts its direct legal representation so that it comports with the relevant provisions of professional ethics, the ABA Standards for Providers of Civil Legal Services to the Poor, and other accepted guidelines applicable to the provision of legal assistance to low-income people.

- a. The program has in place adequate capacity and resources to carry out its work, insofar as its resources permit.
- b. The program utilizes systems, approaches, and techniques sufficient to insure the representation is carried out with maximum effectiveness.
- c. Taken as a whole, the program's legal representation achieves as much as is reasonably attainable for the client, given the client's objectives and all the circumstances of the case. In addition, consistent with applicable rules and decisions governing professional responsibility, in its representation the program also achieves as much as reasonably possible for other low-income people similarly situated, and for the eligible population as a whole, commensurate with program priorities and objectives.

**Criterion 2. Other program services to the eligible client population.** To the extent such efforts further program priorities and objectives, the program provides other services which enable clients to address their legal needs and problems. Such services may include, but are not limited to, community legal education, telephone advice and hotlines, facilitation of self-help activities and pro se appearances, utilization of alternative dispute resolution, and other activities.

**Criterion 3. Other program activities on behalf of the eligible client population.** Consistent with its priorities and objectives, and within the limits of available resources and the terms of its funding, a program pursues other activities on behalf of its eligible client community which have a beneficial effect on systemic legal problems of the eligible client population, and also maintains communication with the judiciary, organized bar, government agencies, academic and research centers and other information sources, state and national legal resource groups and other organizations working on behalf of low-income people, and other entities whose activities have a significant effect on the eligible client population.

## PERFORMANCE AREA FOUR: Effectiveness of administration and governance

The program should be led and managed effectively, with high quality administrative systems and procedures. While not a guarantee of effective services to clients, good leadership and strong internal operations increase the likelihood of such effective services, and decrease the risk that previously effective program services will be undermined by organizational problems.

This Area addresses program administration, apart from the systems related to legal representation and other program services activities which are covered in Performance Area Three.

### Criteria

1. Basic administration. The program maintains an effective management structure; has in place effective administrative procedures and personnel; allocates appropriate resources to management functions; and carries out periodic evaluations of administrative operations.
2. Board governance. The program has effective board oversight and involvement in major policy decisions, consistent with Standards 7.1 through 7.3.
3. Financial administration. The program has and follows financial policies, procedures and practices which comport with applicable requirements of the AICPA, OMB, and the program's funding sources, and conducts effective budget planning and oversight.
4. Personnel administration. The program maintains effective personnel administration.
5. Internal communication. The program maintains effective intra-staff and staff-management communications and relations that enhance service delivery.
6. General resource development and maintenance. To the extent possible, and consistent with the program's mission, the program maintains and expands its base of funding, with a goal of increasing the quality and quantity of the program's services to eligible clients. The program also coordinates with and where possible utilizes outside resources such as academic institutions, social service organizations, foundations, corporations, and other institutions and individuals to increase the community's overall resources devoted to the legal problems and needs of the eligible client population.
7. Coherent and comprehensive delivery structure. Overall, the program maintains a delivery structure and approach which effectively utilizes and integrates staff, private attorneys, and other components, is well-suited to meeting the most pressing legal needs of the service area, comports with Standards 6.2 and 6.3, and given available resources constitutes an effective and economical balancing of expenditures on the various functions and activities described in the four Performance Areas.