

PERFORMANCE STANDARDS FOR LAF SUPERVISORS

LAF supervisors should adhere to the LAF Attorney Performance Standards as well as the guidelines set out in this document.

Supervision of Legal Work

All Lawyers and other Casehandlers

Written Efforts. Supervisors should review, provide feedback, and make suggested revisions of all significant writing done by staff (except where the staff member is co-counseling or being supervised on a particular case by another supervisor). All appellate briefs fall in the “significant” category as do major briefs, memoranda of law, and non-routine pleadings and discovery. It is important that the supervisor give staff appropriate deadlines to allow enough time for the supervisor to comment on the writing.

Casework. Supervisors should take all appropriate steps to ensure that all their staff’s matters and cases (litigated and non-litigated) are handled in accordance with the LAF Attorney Performance Standards and the Rules of Professional Conduct.

Major Litigation. Supervisors should encourage staff to engage in complex and meaningful litigation and impact cases. Supervisors should ensure that staff has adequate supervision on all major litigation efforts and that each case is appropriately staffed. Supervisors should ensure that oral arguments on significant motions are mooted. Supervisors must make sure that staff who are engaged in time-consuming, complex litigation have sufficient time to devote to it.

Appeals. Supervisors should ensure that staff has adequate supervision on all appellate cases. Supervisors should ensure that appellate briefs are reviewed before filing and that appellate arguments are mooted.

Case Review. Supervisors should conduct “hands-on” case reviews of open cases, ensuring that every staff member’s open cases are reviewed at least once annually. Open files should be inspected by the supervisor, and questions that arise should be answered by the staff.

Evaluations. Supervisors must perform annual evaluations of each staff attorney and paralegal. Supervisors will need to observe staff in court and in depositions, and review their cases and written product in order to make an informed written evaluation. The evaluation must provide honest and useful feedback to the staff-person, including areas of strength and areas that require improvement.

Instilling Enthusiasm for the Job. Supervisors should take steps to instill in staff an enthusiasm for the work of LAF. Regular feedback and periodic efforts to recognize staff achievements can assist in this endeavor, as can communication to staff of other LAF accomplishments and “victories.” Supervisors must also ensure that policy and good practice information is regularly communicated to all staff.

Teaching/Training. Much of what the supervisor does is “teaching.” Supervisors must guide staff in the principles of effective litigation, effective organization techniques for their work, and relevant substantive and procedural law. Supervisors must also ensure that each member of the staff is obtaining appropriate training and developing professional skills.

Co-Counseling. One effective teaching mechanism is for supervisors to co-counsel cases with staff or to arrange co-counseling among staff. Supervisors can be the lead attorney or in secondary slots so long as their participation is significant and includes a sharing of case responsibilities.

New Lawyers (and Experienced Lawyers New to LAF)

New lawyers require additional supervision above and beyond what is appropriate for experienced attorneys.

Orientation. New lawyers require considerable orientation in their first weeks on the job. Supervisors must ensure that new lawyers obtain instruction regarding the case management software, rules of ethics, intake scheduling and procedures, LSC compliance requirements, LAF resources, case acceptance schedule (priorities), telephone system, fax machines, computer network, computer software, electronic brief-banks and motion bank, timekeeping responsibilities, LAF forms, office supplies, dress code, client eligibility rules, transit card policies, travel and expense reimbursement rules, probationary evaluation, case acceptance meetings, community issues, substantive area teams, intranet and internet use, tech assistance, mentors and supervision assignments.

The Collective Bargaining Agreement, at Section 13.2(c)(3), requires supervisors of new lawyers, within 30 days of their starting date, to provide them: (a) a tour of the community; (b) a tour of the courts they may practice in; and (c) an overview of office administrative policies including intake procedures, office priorities, referral sources, case acceptance systems, access to research materials, and LSC regulations.

Case Reviews. The Collective Bargaining Agreement, at 13.2(c)(4)(b), requires supervisors to conduct monthly case reviews of new lawyers’ cases during the first four months. The case review must include a face-to-face meeting with the new attorney and a discussion whether the size and complexity of the caseload is appropriate. A new attorney who is given a temporary placement and then permanently placed is entitled to receive four monthly case reviews when placed in the permanent assignment even if that attorney has already received some monthly case reviews in the temporary assignment. Supervisors are required to report to their Deputy Director that they have completed the monthly case review of each new lawyer.

Accompanying to Court/Deposition. The Collective Bargaining Agreement, at 13.2(c)(4)(a), requires supervisors or their designees to attend the new attorney’s first two hearings in each substantive area in which the attorney practices except where the supervisor and the new attorney agree it is unnecessary. Although not required by the CBA,

supervisors should arrange to have the new attorney observe a deposition as early as possible and should attend the first two depositions taken by the new attorney.

Co-Counseling. Supervisors should co-counsel several cases with new lawyers during their first year at LAF. Where possible, the co-counseling should include a joint writing effort and should allow the new lawyer to observe the supervisor conduct a deposition and argue a motion.

Other New Staff

Supervisors shall take all appropriate steps to ensure that other new staff are properly oriented, trained and supervised during the critical first six months of their employment at LAF. Extra case reviews (if the new staff person is a casehandler), appropriate training and periodic feedback should be provided. Supervisors must make certain that non-lawyers do not engage in the practice of law and that all rules of ethics are complied with by all LAF staff.

Other Supervision Responsibilities

Personal Caseload. Supervisors will maintain their own personal caseload but that caseload must not interfere with their primary responsibility to supervise staff. Supervisors should not have more than 20 open cases in litigation and at least one-third of their open cases should be co-counseling endeavors.

Ensuring Community Links/CLE activities and community outreach. LAF is committed to engaging in outreach within the communities we serve and to developing working relationships with community groups and social service organizations. Supervisors should initiate, maintain and foster links to and communication with community groups, community social service agencies, and other entities that serve the low-income communities of Cook County. Where appropriate, supervisors should promote and implement CLE efforts and advocacy training.

Compliance with LSC and Other Grantee Requirements. LAF is subject to a great many rules and regulations given the grant requirements under which we operate. Supervisors must learn the operational rules, inculcate them in staff, and devise and enforce administrative mechanisms to assure compliance with all grant requirements.

Review of Closed Files. All closed cases in which extended representation was provided should be reviewed by the supervisor or the supervisor's designee at the time of closing, as well as at least 10% of closed cases in which less than extended representation was provided. In addition, all closed cases of new casehandlers should be reviewed during their first year at LAF.

Handling Client Complaints. Supervisors should respond to client complaints with promptness and courtesy.

Implementation of LAF Policy. Supervisors are responsible for implementing LAF policy. Supervisors should be familiar with LSC regulations, the Rules of Professional

Conduct, and the provisions of the Collective Bargaining Agreement. Supervisors should consult with the appropriate Deputy Director or the Executive Director where guidance or clarification is needed regarding a policy matter.

Discipline. Supervisors are required to take disciplinary action where warranted. Supervisors should consult with a Deputy Director before taking disciplinary action.

Case Acceptance. Each office/project of LAF must devise and implement a case acceptance procedure that allows careful evaluation of cases before representation is extended. Generally the case acceptance procedure will involve a meeting of certain office/project staff. Supervisors must preside over the case acceptance meetings and assure that decisions are made in accordance with LAF priorities. Supervisors must also establish procedures for their office/project that allow expedited case acceptance decisions in situations requiring action before the next scheduled case acceptance meeting.

Appropriate Allocation of Responsibilities (with co-supervisor). Where two supervisors share supervisory responsibilities, duties and tasks should be allocated equally between them. There is no requirement of symmetry; one supervisor may be directly responsible for supervising three layers and a paralegal while the other may supervise two lawyers and handle all matters related to outreach.

Recognition. Supervisors should ensure that their staff receive recognition where warranted. In addition to providing feedback to the staff-person, supervisors should make sure that excellent performance is noted in the LAF Intranet, the LAF Newsletter and other organs of communication.

Communication. Supervisors should communicate to their staff all LAF policy changes and relevant new developments. Supervisors should communicate staff concerns and comments on LAF policies and practice to the Deputy Directors and the Executive Director.

Security. Supervisors should take appropriate steps to enhance the safety and security of staff.

Sexual Harassment and Discrimination. Supervisors should take appropriate steps to prevent sexual harassment and discrimination.

Linking with Other LAF Resources. Supervisors should ensure that staff are aware of resources within LAF and facilitate linking their staff to other LAF personnel where appropriate.

ARDC Complaints and Malpractice Matters. Supervisors must ensure that all ARDC Complaints against LAF staff and complaints or suggestions of malpractice are communicated immediately to a Deputy Director.

LAF ATTORNEY PERFORMANCE STANDARDS

The purpose of this document is to assist each LAF attorney in providing competent and appropriate legal representation to LAF clients and to provide objective standards to all attorneys. While specific practices may vary among the LAF offices, this document is designed to give LAF lawyers a baseline or standard to measure performance.

A. The Standards - General

1. **Keep up with New Developments in the Law.** In order for LAF to provide effective legal services to its clients, attorneys must keep up with new developments in the law. This general standard applies both to providing effective representation on cases and to maintaining a high level of competence in one's areas of specialization. The demands put on LAF attorneys by their litigation efforts, various office responsibilities, and involvement with community groups often leave little time for attorneys to read and absorb new developments in the law. It is up to each attorney to carve out portions of time from hectic schedules to do the reading and self-educating. Some methods of maintaining a working knowledge of new legal developments are:
 - a. Periodically review the rules of evidence and civil procedure, state federal, and local rules.
 - b. Obtain and read the Federal Practice Manual for Legal Aid Attorneys published by the Sargent Shriver National Center on Poverty Law.
 - c. Attend appropriate in-house trainings and those offered by outside sources.
 - d. Regularly read and review advance sheets, periodicals, and publications in your area of interest. Attorneys should pay particular attention to the decisions of the Seventh Circuit, Illinois federal district courts, Illinois appellate courts, and the Illinois Supreme Court.
 - e. Obtain training and maintain expertise in electronic research tools such as Westlaw to learn new developments.
 - f. Regularly review the Clearinghouse Review.
 - g. Maintain participation on relevant listservs.
 - h. Discuss with other attorneys, and especially with the appropriate supervising attorney and members of substantive teams, questions

and issues in your area of specialization which arise from reading advance sheets and other materials. Utilize this reading and discussion to attempt to spot and formulate issues.

- i. Keep abreast of the political and social climate by daily reading of newspaper and other source materials such as agendas of government bodies and community organizations.

2. **Balance Your Duties and Commitments.** LAF attorneys are responsible for providing free legal services to the low-income and elderly community in Cook County. Often, if LAF does not provide these services, no other organization will fill the void. The many needs of the community are greater than we can meet even when all attorneys and support staff are exerting their best efforts. Therefore, each LAF attorney should consistently put in the time and effort necessary to provide effective representation.

An exact time commitment, in terms of hours work per week, is impossible to formulate. The amount and the urgency of the work to be done vary from week to week. However, there are some general principles which may aid attorneys in evaluating whether they are making a sufficient time commitment.

First, lawyers must schedule some time for reading publications in his/her field, advance sheets, the rules of civil procedure, and the rules of evidence, in order to keep abreast of the latest developments.

Second, the LAF commitment to the poverty community often requires attendance by LAF attorneys at community meetings, fundraisers, and CLE events. Such events may take place on evenings and weekends.

Third, the operation of a program with six different offices and a widely varied service caseload requires that meetings be held among various LAF staff members. These meetings usually require travel, but are important to the functioning and planning of the program.

Using the above standards, many LAF attorneys find that they must put in an average work week of more than forty-hours and may have to work some week-ends. In addition, the nature of LAF work sometimes requires that attorneys devote more than their normal work week to particularly urgent or important matters.

Attorneys may exercise reasonable flexibility in determining how to organize their work days. Any reasonable schedule that accommodates attorneys' work habits while enabling them to make their court appearances and meetings generally is satisfactory, so long as staff are informed of expected arrival and departure times. It generally is necessary to be in the office during normal working hours in order to accommodate the demands of the

clients and the legal community.

3. **Supervision.** LAF is committed to a policy of providing adequate initial and ongoing supervision and training to ensure that staff attorneys will acquire and continue to develop the skills necessary to be effective legal services lawyers. Supervisors are expected to provide timely and appropriate supervision. When an immediate supervisor is not accessible, attorneys should contact other appropriate LAF staff or the appropriate Deputy Director.

In their first year of practice as an attorney, LAF attorneys should have all significant writing efforts reviewed by their supervisor.

In major cases, no pleadings, motions, or briefs should be submitted to a court without a prior review by the appropriate supervisor. Attorneys should be willing to accept constructive criticism of their work and to spend the time required to revise written materials in accordance with supervisory suggestions.

Even when attorneys no longer require supervision, teamwork on any important task can improve the quality of the final product.

4. **Work with Community Organizations.** Given the inadequate number of lawyers serving the poor and the need for the poor and their advocates to develop the ability to deal directly with the legal system, there is a significant role to be played by community groups and effective advocacy organizations. For example, these groups provide LAF clients with non-legal services and resources, help LAF identify impact issues, and assist LAF in keeping informed with the changing needs of its client base. Consequently, attorneys must make a conscious effort to develop good relationships with community groups. Community events should be announced in the various offices and attorneys should attend such functions. Attorneys also should establish a good relationship with key people in the community, whether or not they are associated with organized groups.

While state and local bar associations are not, strictly speaking, “community groups,” as used herein, LAF attorneys are expected to participate in bar associations activity where that participation will benefit LAF’s clients.

While community involvement and group representation are important activities for LAF attorneys, not all community ventures are worthwhile. At times, an attorney may have to advise a group not to undertake a particular project. Such advice can be more easily given, and will be more readily accepted, if the attorney has an established relationship with the group.

B. **Identification of Impact Issues.**

Impact issues may be generated by community organizations, client cases, or in myriad other ways. The ability to determine whether an issue is appropriate for litigation or other impact activity requires not only technical competence, but also a knowledge of developing law, organizational goals, and the political climate. The ability to identify potential law reform issues, both in an attorney's area of specialization and in other areas, frequently depends upon communication with other attorneys inside LAF and at other agencies and firms. Attorneys should keep informed of the work of other LAF attorneys by reading the LAF Intranet and discussing current projects at team and committee meetings.

C. **Guidelines: Processing Case from Intake to Closing.**

1. **Intake.** Intake practices vary from office to office. Intake requires that the advocate have a working knowledge of the law in many areas, the ability to spot issues in many substantive areas, and knowledge of available legal and community resources. During intake, the advocate must collect detailed and comprehensive information in order to determine what problems the client needs resolved and what role LAF will play. Frequently an advocate can provide advice or a referral during the initial interview, but in many cases it will be necessary to obtain additional facts, do additional research, review the case, and/or discuss the case with other LAF advocates before determining whether LAF will accept the case. Applicants for LAF representation should be promptly served, and all advice and information provided to the applicant should be accurate and complete. All offices/projects should maintain systems for checking the advice/referrals given to clients.

If a client has limited ability to speak English, all interviews should be conducted in the client's native language. No client shall be made to feel that he/she is burdening or inconveniencing LAF by requiring an interpreter. LAF discourages its staff from expending time on cases that we cannot accept.

Applicants and clients must be treated with dignity and courtesy. When meeting with them, some formality in dress and manner is appropriate.

The goals of a good intake interview are to obtain all the important information quickly and efficiently, and to explain to applicants what needs to be done and what they can expect. It is also important to determine what other legal problems they have beyond those they have articulated.

Advocates should recognize limitations on their time and take care not to promise to do things that they may not be able to do. Where the decision is made not to proceed on an applicant's case, the applicant should be informed as soon as possible that LAF will not be able to accept his/her case. If the applicant has a weak case or unrealistic goals, [s]he should be so advised with a careful and respectful explanation. The applicant also should be informed about the estimated time any action will take and about any

obstacles on the horizon. Building up unreasonable expectations is counter-productive.

2. **Deciding to Open a Case.** The minimum requirements for accepting a case are that the applicant be eligible and that the case be within the case acceptance criteria determined by the program. Additionally, resources and caseloads shall be factored into the decision as to whether a case will be accepted for representation. If a case is not accepted for representation, applicants should be promptly advised of applicable time limits and other sources of legal representation or appropriate lay assistance.

No individual advocate should commence or agree to commence extended representation cases until such action has been agreed on in a case acceptance meeting or approved by the appropriate supervisor. When a client is accepted for representation on a limited basis, that limitation must be carefully explained to the client and written into the retainer agreement. The Executive Director must approve all federal case filings (bankruptcies excepted) and all appeals to the First District Appellate Court, the Seventh Circuit Court of Appeals, or any supreme court.

A signed retainer and citizenship or alienage documentation must be obtained in all cases where more than advice or limited services are to be provided. Citizenship or appropriate alienage documentation is also required in *all* instances in which the applicant or client has been seen face to face.

It is important to be clear who the client is. In situations involving numerous family members or multiple clients with the same adverse party, the casehandler and client need to agree at the outset—in order to prevent conflicts from arising—as to who has the authority to make decisions regarding the case. LAF has a form entitled “Joint Representation Agreement” which should be used or modified in some of these circumstances. Where questions of legal ethics (e.g. conflicts of interest) are presented, staff shall consult with their supervisor and document the information in the case management system.

When a case is rejected, the advocate should immediately inform the applicant of the decision and the reasons for it. The basis for the rejection must be recorded in the database or in the case file. Where appropriate, a letter to the applicant should confirm the decision made.

3. **File Maintenance.** All case files must be kept so that the attorney on the case and any other advocates in the office can determine from looking at the file alone (or the database) the current status of the case, what has been done, and what remains to be done. Advice and limited service cases have a quick turnaround and are different from cases opened for extended representation. In advice and limited service cases, a brief summary of the facts should be

related, and the file or database notes should reflect what advice or service was provided. In all files opened for extended representation, the file or database must contain dated notations as to all significant action taken on the case including advice given, telephone and in-person communications, letters written, meetings, conferences, court hearings, deadlines, and other activities.

All documents and letters in the file should indicate whether they were sent or filed, or are merely drafts. Only one copy of each should be kept in the file. The date of completion should appear on all written documents. For pleadings and other documents filed with the court, the file should contain a copy of the document stamped with the date of filing by the clerk. Original client documents should not be kept in the case file after the file is closed. Copies of original client documents should be made for the file and originals returned to the client.

All LSC documents (such as the citizenship attestation and retainer) must be maintained in the main client file.

4. **Attorney/Client Relationship Throughout the Case.** Every client at LAF will be treated with respect and dignity. The lawyer cannot solve all the client's problems and should be clear in explaining to the client the limits of what the lawyer can and will do and the reasons for those limits. Clients should be kept advised of the status of their case. Telephone calls should be returned with reasonable promptness to avoid client frustration.

While the attorney may have many cases of varying importance, the individual client will often feel that her case is the most important. Occasionally, a particular client may request more of the attorney's time than the case warrants. In this situation, the attorney should establish limits by such means as informing the client that calls will not be returned until there are developments to report, or that the client will not be seen without an appointment. Staff should call on their supervisors for assistance with extremely difficult clients.

5. **Correspondence Throughout the Case.** The decision whether to communicate information by letter or orally will depend upon the case, the client, and the nature of the information to be communicated.

Letters should be used to confirm important information affecting the client's rights. For example, a decision not to pursue a matter (such as a decision not to appeal or a decision to withdraw) should be discussed with the client and confirmed in a letter.

Confirming letters should be used when clients must take action to protect their rights (e.g., performing the client's obligations in a settlement or contacting the attorney at least a week before the trial date). Such letters

should also be used when complicated information is discussed, especially where legal action is taken as a result, or when there is any doubt about whether the client understood or will remember the advice given. Lastly, confirming letters should be sent when clients request that the attorney pursue a course of action that the attorney believes is against the client's interest; in those circumstances the confirmation letter should detail both the advice given by the attorney and the decision rendered by the client. Letters to clients who have limited English ability should be prepared in the client's language.

The attorney should also use letters when confirming important conversations with other persons, such as agreements with opposing counsel to extend deadlines. Even if a confirming letter is used, conversations should also be recorded in the file or database. Letters summarizing meetings or telephone conversations should include the date, nature, and substance of the meeting or conversation.

Certified mail should be used when sending items of value, such as original documents. In some cases, certified or registered mail is required by statute. Certified mail should also be used whenever the attorney wants proof of receipt. In some cases, it may be desirable to send the same letter by certified mail and regular mail to ensure receipt or to confirm that the reason for non-delivery is a change of address.

When enclosures are sent, copies of the enclosures should generally be made and retained in the client file. If an item is too long or a copy is not necessary, include a description of what is enclosed in the cover letter and make a notation of the enclosure in the file or database.

6. **Preparing the Case; Promptness, Zealous Advocacy and Civility.** Lawyers shall act with reasonable diligence and promptness in representing a client. A lawyer should act with commitment and dedication to the interests of the client and with zeal in advocating for the client. Zealous representation can be accomplished with civility. LAF lawyers should act in a professional and civil manner in all aspects of the job. Sometimes it is helpful to explain to a client that civility to an opposing party or counsel is fully compatible with zealous advocacy.

Applicable statutes of limitation and other deadlines must be determined immediately after the client first presents a case. A merits determination should also be made before deciding to accept a case for extended representation. This will involve some initial information gathering, which may include contacting witnesses and researching the law.

Once the decision to accept a case has been made, the facts of the case should be analyzed carefully before action is taken. Such analysis should consider the law, the identity of the adversaries, the desired relief, the judge,

what forum in which to file, whether to request a jury, and such procedural matters as statutes of limitation and other deadlines. Matters which will take time to accomplish are best undertaken at the outset, such as obtaining medical records or scheduling depositions of certain witnesses. Early on in state court litigation the lawyer should determine whether a motion to challenge jurisdiction or to substitute judge will be necessary.

In a major case, the best practice is to develop a litigation/discovery plan in the case's infancy. Whenever possible, discovery should begin shortly after the time the complaint is filed. All appropriate discovery should be considered and conducted, including written interrogatories, document requests, depositions and requests for admission. Documents obtained in discovery from the adverse party must be reviewed thoroughly and promptly. Discovery deadlines should be carefully observed and motions to compel, where warranted, should be filed in a timely manner. Written discovery should be tailored to the needs of the case, but attorneys may find it helpful to review model discovery requests of other LAF staff. Depositions should be carefully planned to elicit all necessary information that the deponent can provide as expeditiously as possible.

Where LAF is defending against a claim or complaint, in addition to observing the standards set out above, the lawyer should decide whether to file a motion to dismiss, affirmative defenses, counterclaims and/or a jury demand. Deadlines for jury demands must be carefully observed.

There is no definite timetable (other than the statutes of limitations) in which cases must be prosecuted. But long periods of time should not pass in which cases are back-burnered. When representing defendants, an aggressive defense and appropriate discovery efforts may move the matter along and produce more favorable settlements.

Motions for summary judgment are useful litigation tools that must be considered in each case.

a. **Development of Facts**

Many cases are won or lost on the facts and not the law. Attorneys must have a thorough knowledge of the facts relevant to their case. It is equally important that attorneys maintain a system which will assure that the relevant facts appear in the case file or database in an organized manner.

In developing the facts, an attorney should start with a good idea of what facts are needed and the best method(s) for obtaining those facts, including a thorough, comprehensive interview with the client. Attorneys should remember that clients may tell their stories in a manner which they feel is most favorable to them. If an attorney feels

that a client has not been candid, [s]he should inform the client of the need for truthfulness and full disclosure. Attorneys may need to simultaneously maintain a healthy skepticism of certain aspects of a client's version of the facts as well as a respect for the client. Attorneys may want to consult with their colleagues or their supervisor for guidance on eliciting necessary information from the client.

Lawyers should not rely solely on the client's perception of the facts. Whenever it is practical, the attorney should get first-hand knowledge of relevant facts. All relevant documents should be obtained and reviewed, including relevant public records. In appropriate cases, the attorney should visit the site of the controversy. Key witnesses must always be interviewed. One should not assume that the testimony of a potential witness will be favorable to the client because of the client's account of what the witness saw. Photographs or video may be helpful and the LAF MIS department may be contacted for technical assistance.

The attorney should not develop a case while wearing blinders. If there are facts that favor the other side, it is incumbent upon the lawyer to become aware of them. Do not ignore such facts or let your client convince you to downplay their importance.

In developing a case for trial, it may be appropriate to assemble a trial notebook which includes the facts the attorney will present and which rules of evidence may come into play. The trial notebook may include strategies for rebutting and corroborating key facts. In preparation for trial, the attorney should also consider the applicable law and whether, if necessary, existing law can be extended, modified or reversed to the benefit of the client.

Judges and juries, after hearing both sides of a case, frequently feel that the truth lies somewhere in the middle. A persuasive closing argument can tip the scale toward a favorable outcome. Closing arguments, arguments on significant motions, and appellate court arguments should be mooted and critiqued by other LAF attorneys.

b. Negotiating Settlements.

Aggressive representation requires that attorneys be careful about compromising clients' positions. While the settlement of claims can be beneficial to the interests of a client, a settlement should not be forced upon a client or entered into because of the attorney's fear of trying a case or because of pressure from the bench. All offers of settlement must be communicated to clients. Settlement proposals and their accompanying considerations should be thoroughly

explained to the client. All options should be thoroughly explained to the client. When possible, the client should sign the settlement agreement, along with the attorney.

Attorneys should carefully listen to their client's concerns and goals when discussing a settlement offer or demand. Some clients may be inclined to accept a less-than-generous offer while some clients may have unrealistically high expectations. Clients may have legitimate personal concerns which may affect their litigation goals. The lawyer should make sure the client understands what is possible and what is not possible in a settlement.

7. **Legal Research.** Before beginning any extensive research, attorneys should identify and outline the primary and collateral legal issues they wish to address. It is helpful to discuss these issues with other, more experienced attorneys and to check with them before a research project is begun. Often other LAF attorneys have written briefs and memoranda that reflect research done in related or similar cases. Model briefs and motions are available in LAF brief banks on the computer network. The attorney should not rely on such materials unless the attorney has independently verified and (if necessary) updated the prior research.

In addition to such standard research tools as Westlaw, attorneys should familiarize themselves with and routinely consult specialized services such as Clearinghouse Review and reporters in particular areas of substantive law.

8. **Writing Performance.** All written documents must be clear, concise and persuasive. Documents should contain sufficient information to make their purpose self-explanatory. For example, if you are responding to a letter from opposing counsel, say so. The audience to which a document is directed must be considered, and the writing must be adapted accordingly. A less formal style may be appropriate for internal documents such as training materials; a more advocacy-oriented approach will be used in briefs. All significant writing efforts should be: (1) proofread and appropriate corrections made; and (2) reviewed by a supervising attorney before the document leaves the office.
9. **Brief Writing.** A brief or memorandum of law should be prepared whenever the court requires it. Attorneys should also offer to submit a brief to the court if the legal issues are unusual or novel, if the relief requested is unusual, or if the judge is unfamiliar with the area of law.

A brief should inform the reader of the type of case involved, the current state of the proceedings, and the reason for its submission. For appellate litigation, briefs should follow the format required by the court. Attorneys should consult the appropriate court rules and resources such as the Attorney's Guide to the Seventh Circuit Court of Appeals.

The argument section of a brief generally requires the most research. In preparing and writing this section, the following matters should be considered:

- a. **Outline** - Generally, it is a good idea to prepare a detailed outline of the argument before beginning to write. Include cases in the outline and review the outline with your supervising attorney before commencing to write.
- b. **Form** - One common method of organization is the “inverse pyramid” form. In this form, the argument begins with the general discussion of the area of law. Cases establishing the general principles are cited and analyzed for their rationale. In federal court, this should include the leading Supreme Court cases and then the Seventh Circuit and Illinois District Court cases. The case law is then discussed to focus on the precise issues in your case. If there are specific cases on point, cite them and explain why they are relevant. If there are no cases on point, cite analogous cases and explain why the court should consider them. These principles deduced from the cases should then be applied to the specific case you are briefing to show how they support the conclusion and proposed relief.
- c. **Drafts** - Briefs should be written in several drafts before the final version is completed. Each time, clarify the language and eliminate excess verbiage. Briefs should be completed ahead of the filing date so that they may be properly reviewed prior to filing.
- d. **Citations** - Before filing, all citations should be verified for accuracy. Do not rely on previous drafts. Check original sources. Use the most current versions of *The Bluebook: A Uniform System of Citation*. Be consistent. Shepardize cases cited.
- e. **Final Draft** - Allow at least two days for final revisions, proofreading, and collating. Typographical errors detract from the quality of the brief and lessen its impact.
- f. **Style** - Recognize that the same style is not suitable in all cases. There may be occasions when you want to express outrage and indignation, but there also will be occasions when something outrageous will be overbearing and destructive. Analyze your brief carefully and consider whether it will have the desired effect.
- g. **Quotations** - Avoid excessive use of quotations from cases. All quotes should be checked carefully against the original source. Do not rely on old briefs. Use the most current versions of *The Bluebook: A Uniform System of Citation* for the form of quotations.

- h. **Grammar** - Follow recognized rules of grammar and punctuation. Useful books include Strunk and White's *The Element of Style*, Ray and Ramfield's *Legal Writing: Getting It Right and Getting It Written*, and *The Chicago Manual of Style*.
- i. **Moot Court** - All arguments on major motions, closing arguments, and appellate court arguments should be mooted with at least three experienced attorneys participating. In general, if the issue is important enough to warrant extensive briefing, argument on the issue should be mooted.

10. **Preparation for Motions, Trials, Arbitration Proceedings and Oral Arguments** Motions should be thoroughly researched and prepared so that an effective and articulate argument can be made. Where any novel issues of law are involved, briefs are absolutely necessary.

Every possible eventuality should be anticipated so that confrontation with the unexpected is minimized. Holding a "moot court" with colleagues who are familiar with the issues can be an effective means of preparation.

For each case that goes to trial or arbitration, a trial notebook or other equivalent method for assembling trial materials should be utilized. In court it is helpful to have a pocket-sized or indexed version of the Rules of Evidence. A trial brief is an important element of quality representation and should be prepared where it is permitted.

Prior to the day of trial, the attorney should review the anticipated testimony of each of the witnesses. A practice session with a witness will familiarize the witness with the experience of direct and cross-examination.

Exhibits should be arranged so that they can be readily accessed during trial, so that the proceedings are not delayed. Some courts allow, or require, attorneys to have their exhibits marked before trial. Similarly, transcripts of depositions should be organized for prompt access.

No attorney who is inexperienced in a particular matter or area of the law should appear in court on that matter unless she is accompanied by an experienced attorney. More than one attorney should be assigned to work on major litigation, a jury trial, or an appeal.

Prior to oral argument, attorneys should thoroughly review the matter and attempt to anticipate all questions that may be raised. Also, the likely approach of the particular judge should be discussed with experienced attorneys. "Moot court" may be helpful. Careful preparation is essential to be able to react quickly and respond authoritatively.

In the opening statement, the attorney should tell the court what she plans to cover and begin the argument. If, during oral argument, the court expresses a desire to hear about certain aspects of the case, such concerns should be addressed directly. But the attorney must return to the important elements of the argument after answering the court's questions.

11. **Closing the File.** When representation of a client is at an end, certain procedures should be followed to close the client's file. All important original documents should be returned to the client and the attorney should make sure that the client has copies of all final orders in the case. The file (hard copy or electronic) should contain a clear summary of all actions taken; and all pleadings, notes and correspondence should be organized so an attorney reviewing the file at a later date can understand what happened. When a file is closed, the attorney should notify the client in writing that her file is closed and that LAF's representation in the case is at an end.

If a client wants her file back, do not return the entire file; send the client all of her original documents that you may possess and copies of other documents, excluding your notes and work-product. Send a cover letter describing the items returned. No documents regarding a client should ever be given to anyone except with the client's signed authorization or pursuant to a court order.

If litigation has resulted in an adverse result and the client has made the decision to appeal the decision, the attorney must decide whether LAF will represent the client in her appeal. The attorney should consult with the appropriate supervisor.

If a decision is made not to represent a client in an appeal, the attorney should inform the client orally *and* write a letter to the client that explains the decision, confirms the discussion that took place between the client and attorney, and states the applicable time limits for appealing. A decision *not* to represent a client in an appeal of her case should be made promptly in order to allow the client time to obtain alternative counsel.

Attorneys shall follow and be familiar with Illinois Supreme Court Rule 13 and the Rules of Professional Responsibility regarding withdrawal from representation. Attorneys should not withdraw from representation of a client due to loss of contact with a client unless the attorney has made reasonable attempts to contact the client and the client has failed to respond to the attempts.

12. **When In Doubt.** Whenever an attorney has any doubt about how to proceed, she should consult her supervisor. If the advice seems wrong, she should feel free to consult enough other experienced colleagues to obtain a consensus.

In the event a supervisor is unresponsive to the concerns of an attorney or is

not providing appropriate supervision, attorneys should communicate their concerns to the appropriate deputy Director.

13. In the event that any of these performance standards conflict with the terms of the Collective Bargaining Agreement (“CBA”), the CBA shall pre-empt these standards.

LAF PARALEGAL PERFORMANCE STANDARDS

At LAF, a paralegal is defined as a person qualified through education, training or work experience to assist attorneys in providing legal services to LAF’s clients. A paralegal at LAF performs legal work either under the supervisory authority of an attorney or pursuant to statute or governmental agency regulations. At LAF, a paralegal can perform a wide range of functions, beginning with initial intake up through trial and appeal. Where authorized, a paralegal can directly represent clients at administrative proceedings. A particular paralegal’s duties may vary from Project to Project and from Office to Office. Notwithstanding any such variations, the purpose of this document is to establish basic standards for those duties assigned to a particular paralegal that will enable him/her to provide competent and appropriate assistance to LAF clients.

A. Unauthorized Practice of Law Many functions customarily performed by an attorney can be delegated to paralegals, so long as they are supervised by an attorney. Such authority, however, has certain limitations. Only attorneys are licensed to practice law in Illinois. Therefore, paralegals must be careful not to engage in the unlawful practice of law. This means paralegals cannot independently, without direction or supervision, represent or give legal advice to clients. Paralegals also cannot sign court papers, take or defend depositions, or represent a client in court. A paralegal, however, can represent clients where permitted to do so by federal and state administrative agencies. Paralegals at LAF are qualified to appear at administrative proceedings and act on behalf of clients where governmental agencies expressly authorize non-lawyers to represent claimants.

B. Confidentiality With only limited exceptions, unless a client gives consent, a paralegal should not reveal information to anyone outside LAF relating to the representation of a client. In particular, a paralegal should not disclose a client’s confidences or any legal advice given to the client. Confidential communications made to a paralegal, as a representative of an attorney, are subject to the attorney client privilege. *Equity Residential v. Kendall Risk Management, Inc.*, 246 F.R.D.557, 566-67 (N.D.Ill. 2007); *Boettcher v. Fournie Farms, Inc.*, 243 Ill App.3d 940, 945 (5th Dist. 1993). Similarly, a paralegal’s work product, when the paralegal is working under the supervision of the attorney, becomes merged with the attorney’s work product. A paralegal should not cause the waiver of the attorney client or work product privileges by disclosure to third persons of confidential information. A paralegal also should protect from disclosure, including disclosure within LAF to persons not working for a particular client, sensitive or secret confidential information, such as information about a client’s medical condition.

C. Intake. A paralegal may assist in intake and screening for a particular Project or Office. Intake practices vary throughout LAF, but these practices all seek to

achieve the same goals: to obtain all the important information quickly and efficiently and to explain to applicants what needs to be done and what they can expect. Each LAF Project will maintain clear job descriptions for the paralegals.

At the intake stage, the paralegal should determine whether an applicant is eligible for LAF's services, whether the case falls within program priorities, and whether there may be a conflict of interest. (If it appears that LAF is currently representing a party adverse to the applicant, or has in the past represented an adverse party, the paralegal should consult with an attorney or appropriate supervisor about whether the conflict is apparent or actual, and about what the paralegal should say to the applicant.) If there is no conflict of interest, the paralegal should determine what other legal problems the applicant may have beyond those that the applicant has articulated.

Intake requires that the paralegal have a working knowledge of both the law in the area(s) in which the paralegal practices and the available legal and community resources.

During intake, the paralegal must collect detailed and comprehensive information in order to determine what problems the client needs resolved and what role LAF will play. Frequently, a paralegal can provide advice (with appropriate supervision) or a referral during the initial interview, but in many cases it will be necessary to obtain additional facts, do additional research, review the case, and/or discuss the case with LAF attorneys before determining whether LAF will accept the case. Applicants for LAF representation should be promptly served, and all advice and information provided to the applicant should be accurate and complete. All Offices/Projects should maintain systems for checking the advice/referrals given to clients. If a client has limited ability to speak English, all interviews should be conducted in the client's native language. No client shall be made to feel s/he is burdening or inconveniencing LAF by requiring an interpreter.

Applicants and clients must be treated with dignity and courtesy. When meeting with them, some formality in dress and manner is appropriate.

D. File Maintenance. A paralegal may assist attorneys in setting up and maintaining case files. Case files should be organized in an orderly and understandable fashion and should be updated regularly. All case files must be kept so that the attorney on the case and any other advocates in the office can determine from looking at the file alone (or the database) the current status of the case, what has been done, and what remains to be done. Advice and limited service cases have a quick turnaround and are different from cases opened for extended representation. In advice and limited service cases, a brief summary of the facts should be related, and the file or database notes should reflect what advice or service was provided. In all files opened for extended representation, the file or database must contain dated notations as to all significant action taken on the case including advice given, telephone and in-person communications, letters written, meetings, conferences, court hearings, deadlines, and other activities.

The paralegal can assist with closing files when the representation of clients is at an end. When providing such assistance, the paralegal will help to ensure that originals of all important documents are returned to the client and the copies of all final orders in the case are in the file. The file (hard copy or electronic) should contain a clear summary of all actions taken; and all pleadings, notes, and correspondence should be organized so an attorney reviewing the file at a later date can understand what happened. Consistent with LAF document retention policies, the paralegal can arrange for temporary storage of closed files on-site and then box and send the files off-site at the appropriate time.

E. Litigation Support A paralegal should have the training, knowledge, and skill necessary to assist an attorney through all phases of the litigation process.

- 1. Interviewing Clients** A paralegal can interview and maintain contact with a client so long as the client knows of the paralegal's status and the paralegal is being supervised by an attorney. When a paralegal interacts with the client, the paralegal should conduct him/herself professionally as the spokesperson and representative of LAF. A paralegal should treat each client with respect and dignity.

If a paralegal is called upon to help develop the facts in a case, the paralegal may need to conduct a thorough, comprehensive interview with a client. Paralegals should try to learn all facts, good or bad, that relate to the client's story and are pertinent to the claims the client may have. Paralegals should remember that clients may tell their story in a manner which they feel is most favorable to them. If a paralegal is concerned that a client has not been candid, s/he should inform the client of the need for truthfulness and full disclosure. If the paralegal is still worried, s/he should consult with more experienced colleagues, or colleagues who have dealt with the client before, or with his or her supervisor.

A paralegal should take comprehensive notes of any client interview, date the notes, and make them part of the file. The paralegal should also attempt to gather all relevant documents.

- 2. Locating And Interviewing Witnesses And Conducting Investigations**

When preparing a client's case, it is important not to rely solely on the client's perception of the facts. Whenever the paralegal acts as the fact-gatherer, if it is practical, s/he should attempt to get first-hand knowledge of relevant facts. All relevant documents should be obtained and reviewed, including relevant public records. In appropriate cases, the paralegal should visit the site of the controversy. Key witnesses must always be interviewed. One should not assume that the testimony of a potential witness will be favorable to the client because of the client's account of what the witness saw. Where appropriate, a witness's

statement should be signed and verified for accuracy. Photographs or video may be helpful.

No paralegal should develop a case without considering both sides of the dispute. If there are facts that favor the other side, it is incumbent upon the paralegal to become aware of them. Do not ignore such facts or let your client convince you to downplay their importance.

3. **Drafting And Filing Pleadings** With appropriate supervision, a paralegal can draft certain pleadings. At LAF, we often see recurrent claims or defenses that can be alleged in form pleadings requiring ministerial fill-in-the-blanks. It may make sense to have a paralegal prepare the initial draft of such documents. Paralegals should take advantage of available document assembly software when preparing pleadings such as divorce petitions or bankruptcy schedules. No document should be sent to or filed with the court without prior review by an attorney. Also, only an attorney, not a paralegal, can sign court papers.

Paralegals shall learn and be familiar with the filing requirements for particular courts, and know how to prepare all of the forms that must accompany a complaint or answer, including *in forma pauperis* petitions. They should also be able to assist an attorney with the electronic filing of pleadings and other court documents.

4. **Preparing And Responding To Discovery** Paralegals can provide invaluable assistance in connection with the discovery process. With respect to affirmative discovery sent out on behalf of our clients, paralegals can prepare interrogatories and document requests in those cases where form discovery requests exist. They can also prepare deposition notices and subpoenas. They should keep a calendar of when discovery responses are due. They can help LAF attorneys avoid missing deadlines and advise them when the other side's responses are late. This will enable LAF attorneys to set up conferences as a prerequisite to filing a motion to compel. Paralegals also can review and organize documents produced to us.

With respect to discovery received from the other side, paralegals can work with our clients in formulating responses to interrogatories and gathering (and marking if necessary or appropriate) documents responsive to requests for production.

They can also help prepare attorneys for depositions, including the marking and copying of deposition exhibits.

Paralegals can keep attorneys apprised of the dates for the close of discovery.

5. **Assisting With Preparation Of Briefs** LAF justifiably takes pride in the quality of the briefs it prepares and submits to courts. Well-written, persuasive briefs, that accurately reflect both the facts and the law, give our clients the best chance to prevail on their claims and reflect positively on the reputation of the agency. Sloppy work is not in our client's best interest and is unacceptable. We should make every effort to file briefs that fully comply with court rules and that are on time. Paralegals can play an important role in helping to insure that we file high quality briefs on time.

- a. **Format** In the courts where we practice, paralegals shall learn and be familiar with the formatting requirements for briefs, including such things as limits on the number of pages, the number of words, or font size. They should also know or determine if a particular judge has certain rules regarding briefs.
- b. **Filing** Paralegals shall learn and be familiar with the filing requirement for briefs, such as how many copies must be filed and where (i.e., should the brief be filed only in the clerk's office or does the judge get a copy?). Paralegals should be able to assist attorneys with the electronic filing of motions and briefs. They also can take responsibility for providing courtesy copies to a judge if that is required.
- c. **Research** Paralegals should have a working knowledge of how to use research tools such as Westlaw to conduct basic research, which at a minimum should include pulling cases and cite checking.
- d. **Cite Checking** One of the paralegal's primary functions may be to cite check cases for form and accuracy. Before filing, all citations should be verified for accuracy. Do not rely on previous drafts. Check original sources. Use the most current version of *The Bluebook: A Uniform System of Citation* to check for proper form. Be consistent. Shepardize cases cited to make sure they are still good law and have not been overruled.
- e. **Proofreading** Typographical errors detract from the quality of the brief and lessen its impact. Before a brief is filed, a paralegal may be asked to conduct a careful and thorough review of the brief for misspellings and grammatical errors. Paralegals should check to make sure that references to deposition pages and documents are correct. They should also verify the accuracy of quoted language from cases, depositions, or exhibits.
- f. **Exhibits** Paralegals can organize, mark and/or bind exhibits that will be submitted with the brief.

6. **Pretrial Preparation** Paralegals can assist in the preparation of a Final Pretrial Order; organize, mark and copy exhibits; abstract depositions; schedule witnesses; issue subpoenas; and, if appropriate, arrange for audio-visual equipment to be available in the courtroom.
7. **Assistance At Trial** Paralegals can assist attorneys in the courtroom and they can play an important role in the trial. They can make sure that everything that is needed for the trial is delivered and present in the courtroom for each day of the trial. They can help keep exhibits organized and keep track of those exhibits that have been introduced into evidence. They also can operate audio-visual equipment or other technology to assist with the actual presentation of evidence. They also can coordinate appearances by witnesses to help the trial run smoothly and avoid gaps.
8. **Appeals** Paralegals can help with the compilation of the record on appeal. They can also play a major role in finalizing briefs. The guidelines for assisting with briefs, set forth above, also apply to appellate briefs. Paralegals working on appeals must learn and know the rules regarding the form of appellate briefs and how and when they must be filled. Paralegals should help to insure that there is accurate citation to the record and to case law. Careful proofreading is essential. Paralegals can also help with the preparation of the Table of Contents, the Table of Authorities, and any Appendices.

F. Work With Community Organizations LAF has committed to engaging in outreach within the communities we serve and to developing working relationships with community organizations. Paralegals can and should play a role in participating in good community relations by, among other things, acting as liaison between community groups and LAF. Tasks may include outreach and community education to client groups and social service personnel; advocacy training within communities on legal rights and entitlements; and the training of LAF staff, and other groups, when assigned or approved by the supervising attorney.

G. Participation In Administrative Proceedings Paralegals in certain projects handle cases under an attorney's supervision in which they advocate for clients before administrative agencies. In some instances, they appear and represent the client before an administrative tribunal. Governmental agency rules and regulations permit such non-attorney representation. For example, paralegals present claims for SSI disability benefits and, if the application is denied at the initial and reconsideration stages, argue the case to an administrative law judge. A paralegal accredited by a branch of the immigration service may represent clients in immigration benefits cases. We also have paralegals advocating for clients who call the Public Benefits Hotline.

Representation of clients as part of the administrative process should be carried out according to the procedures and practices of the administrative agency. As with

attorneys, paralegals must act with reasonable diligence and promptness in representing a client. A paralegal will act with commitment and dedication in the interests of the client and with zeal in advocating for the client. Zealous representation can be accomplished with civility. Paralegals, as representatives of both our clients and LAF, should act in a professional and civil manner in all respects of the job.

H. Ethics Attorneys are ultimately responsible for the ethical conduct of the paralegals whom they employ. A paralegal's conduct should conform to the attorney's professional obligations. Therefore, a paralegal at LAF shall learn and be familiar with the ethical standards of conduct required of attorneys and maintain those same standards.

A paralegal's status as a paralegal, and not an attorney, should be disclosed to the client to avoid any misunderstandings or misperceptions about the paralegal's role and responsibilities. The paralegal's status should also be included on all business cards, letterheads, brochures, and advertisement to avoid any possible confusion.

I. Collective Bargaining Agreement In the event that any of these performance standards conflict with the terms of the Collective Bargaining Agreement ("CBA"), the CBA shall pre-empt these standards.