



MidPenn Legal
Services
Performance
Standards

April 2011

MidPenn Legal Services Performance Standards

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MidPenn Legal Services Performance Standards

4/20/11

INTRODUCTION

These Performance Standards were developed in part to assist MidPenn staff in more clearly understanding and carrying out the mission and vision of the program:

- to provide equal access to justice and high quality legal services;
- to help our clients become independent and self-sufficient;
- to treat our clients with dignity and respect;
- to provide access to the courts in a broad range of civil legal matters;
- to provide direct representation, advice, pro se clinics & community education;
- to seek solutions to systemic problems that affect our clients.

The American Bar Association Standards for the Provision of Civil Legal Aid and the Legal Services Corporation Performance Criteria were used as guidance in developing these Performance Standards. Performance Standards 1 – 6 and 22 are generally applicable to all staff, although some provisions apply to advocates only or to attorneys only, which should be evident from the wording and/or context. Performance Standards 7 – 21 and 23 – 26 are generally applicable to advocates and in some cases only to attorneys, which should be evident from the wording and/or context. In addition, not every “Relevant Factor” listed under each standard will be applicable in every case. Rather, the nature of the client’s legal problem(s), the complexity of the issues and other relevant considerations will dictate the extent to which each “relevant factor” applies to a particular client’s case.

I. Performance Standards Related to Client Relations and Projecting a Positive Public Image of MidPenn Legal Services.

PERFORMANCE STANDARD 1: Establishing an Effective Relationship with the Client

STAFF SHOULD ESTABLISH A POSITIVE, EFFECTIVE, PROFESSIONAL RELATIONSHIP WITH ALL CLIENTS IN A WAY WHICH FOSTERS CLIENT TRUST AND CONFIDENCE IN THE STAFF AND IN THE PROGRAM.

The staff member treats the client courteously and sensitively, while demonstrating a commitment to preserving client dignity and overcoming such possible obstacles to an effective relationship with the client as:

- a) Fear and mistrust of the legal profession;
- b) Lack of understanding of legal remedies;
- c) Disabilities or conditions which may impede communication or access;

- d) Language and cultural barriers that may prevent effective communication.

Relevant Factors include the following:

1. The staff member shows respect for clients by answering phone calls in a respectful and courteous manner; by beginning appointments on time; by promptly returning telephone calls from clients; by treating clients respectfully and appropriately, avoiding conduct which may be perceived as short-tempered, rude, abrupt, hostile, or condescending.
2. The staff member dresses appropriately while representing the program.
3. The staff member seeks to preserve the goodwill of those who are denied service, by:
 - a) Explaining clearly, accurately, promptly and courteously, the reasons for rejecting representation of the client;
 - b) Explaining the procedures and rights available to a client who wishes a review of the decision declining representation, and volunteering such information when a client complains or is upset about a lack of assistance; and
 - c) Whenever possible, referring rejected applicants for service to other sources of assistance, after confirming that the referral offers a reasonable possibility of assistance to the client.

PERFORMANCE STANDARD 2: Preserving Client Confidences

CONSISTENT WITH ETHICAL AND LEGAL RESPONSIBILITIES, STAFF MUST PROTECT CLIENT INFORMATION FROM UNAUTHORIZED DISCLOSURE.

Relevant Factors include the following:

1. Attorney staff applies the PA. Rules of Professional Responsibility (Rule 1.6) relating to Confidentiality of Information, in a manner which exercises good judgment and consults with their managing or supervising attorney for guidance as necessary.
2. Non-attorney staff (who are also obligated to comply with the PA. Rules of Professional Responsibility) must also protect client information from unauthorized disclosure and should consult with their managing attorney as necessary.

3. The staff member does not leave files or client information exposed on any desk that is in a public area or in an area where confidential information (including client identity) may be disclosed to other than MidPenn staff.
4. The staff member does not interview the client in public areas such as waiting rooms or locations where persons other than MidPenn staff may overhear conversations.
5. The staff member does not reveal the fact that the program is representing a client, except as authorized by the client or required by law.
6. In responding to an applicant for service who is unable to be represented because of a conflict of interest with a current or a former client, the staff member follows the program's Conflict of Interest Determination Procedure and the Conflict of Interest Statement for Support Staff.
7. The staff member does not discuss clients or client cases among program staff when there may be other clients or non-program individuals present.
8. The staff member does not disclose information regarding a client or an applicant for services to a funding source or others, without first discussing the request with and getting the approval of the Managing Attorney, the Director of Advocacy or the Executive Director.

PERFORMANCE STANDARD 3: Promoting Program Stature and Credibility

STAFF MEMBERS SHOULD RECOGNIZE THAT THEIR PROFICIENCY AND GOOD JUDGMENT ENHANCES THE INSTITUTIONAL STATURE AND CREDIBILITY OF THE PROGRAM, WHICH IN TURN STRENGTHENS ITS CAPACITY TO REPRESENT CLIENTS SUCCESSFULLY. MIDPENN STAFF MEMBERS ARE EXPECTED TO PROMOTE A POSITIVE REPUTATION FOR THE PROGRAM.

Relevant Factors include the following:

1. The staff member shows a commitment to building effective relationships and a reputation for high quality services for the program among clients, the community-at-large, adversaries, the legal community, including judges and other decision-makers.
2. The staff member exercises sound judgment by making practical decisions, considering costs and benefits of approaches, setting and implementing priorities, seeking and providing guidance, and avoiding frivolous claims.
3. The staff member is familiar with and abides by the rules of professional conduct appropriate to the tribunal in which the client is being represented.

II. Performance Standards Related to Program Policies and Procedures

PERFORMANCE STANDARD 4: Contribution to Program

STAFF IS EXPECTED TO WORK COOPERATIVELY WITH OTHER STAFF MEMBERS AND PARTICIPATE ACTIVELY WITHIN THE PROGRAM ON ISSUES OF IMPORTANCE.

Relevant Factors include the following:

1. The staff member demonstrates the ability to interact and communicate effectively with differing personality styles, developing good working relationships and abiding by the highest standards of truthfulness in dealings with MidPenn supervisors and co-workers.
2. The staff member requests assistance to improve the quality and quantity of their work accepts constructive criticism and supervision and is willing to revise written work product, or to modify or acquire necessary advocacy skills according to suggestions received.
3. The staff member demonstrates a commitment to share expertise and experience with other MidPenn staff and is available for consultation about their skills and advocacy.
4. Advocates avoid contributing to unreasonable work demands placed upon support staff and are sensitive to issues of work flow (does not wait until the last minute to assign work) and gives clear and (when written) legible instructions to support staff.
5. Advocates who are exempt staff may regularly work more than the scheduled number of hours and are expected to do so when required by job responsibilities.

PERFORMANCE STANDARD 5: Implementation of Program Mission and Policies

STAFF ACTS IN FURTHERENCE OF THE PROGRAM'S MISSION AND COMPLIES WITH PROGRAM POLICIES.

Relevant Factors include the following:

1. Legal work is within MidPenn's priorities, implements the program's mission, and is carried out in accordance with relevant program policies.
2. The staff member demonstrates a commitment to and participates in effective advocacy efforts to achieve long-term or systemic benefits for the client community to meet client needs on legal problems within program priorities.

3. The staff member knows and adheres to requirements of all funding sources and MidPenn policies and procedures.
4. The staff member is aware of the importance of compliance with funder requirements, including but not limited to the LSC requirements for the contemporaneous entry by advocates into the program's data base of time spent on cases, matters and supporting activities; written attestation of citizenship or documentation of eligible alien status in cases involving in-person contact with the client or representation beyond counsel or advice or limited action; verification of financial eligibility with regard to income and assets; written retainer agreements in extended service cases; timely closing of cases after legal assistance has ceased.
5. The staff member manages their time effectively, is flexible, reliable and is able to adapt to changes.
6. The staff member continues to develop job-related skills and proficiency.
7. The staff member helps cover other staff member responsibilities in emergencies and understands the need to accept more responsibilities during crisis or emergency situations.

PERFORMANCE STANDARD 6: Community Advocacy

STAFF IS ENGAGED WITH THE CLIENT COMMUNITY AND COMMUNITY GROUPS

Relevant Factors include the following:

1. The staff member functions as a community advocate for the needs of poor persons by interacting with the client community within the relevant service area, in order to:
 - a) Remain aware of clients' changing circumstances and legal needs;
 - b) Advise clients regarding changes in laws and regulations and problems they face that they may not recognize as presenting legal issues; and
 - c) Keep the client population informed regarding MidPenn's services.
2. As appropriate, the staff member facilitates and extends the presence of MidPenn in the client community, by serving on boards of directors and other governing bodies of community-based organizations and representing community-based client groups.
3. As appropriate, the staff member regularly and effectively links his or her advocacy in substantive law areas with participation in or involvement with other human

services providers, nonprofit organizations, community and client groups, and government agencies.

III. Performance Standards Related to Resolving Client Problems Effectively

PERFORMANCE STANDARD 7: Results of Representation

ADVOCATES SHOULD ENGAGE IN WORK DESIGNED TO ATTAIN LASTING RESULTS RESPONSIVE TO THE PROGRAM'S MISSION, VISION AND STRATEGIC PLAN.

Relevant Factors include the following:

1. The advocate pursues the client's objective zealously within the confines of the law, through high quality representation.
2. In those instances where the advocate identifies laws, policies, or practices that actively work to the detriment of the client's interests, or which are ignored, misapplied, or applied inconsistently by agencies or individuals in a way that harms clients, the advocate demonstrates a willingness and ability, where appropriate, to engage in multiple forms of advocacy, consistent with funding restrictions, including:
 - a) Non-representational strategies including participation on bar and judicial committees.
 - b) Systemic impact in individual cases to bring attention to a particular issue and to compel a change over time.
 - c) Informal intervention with higher placed officials in an administrative agency to bring about a change in practice or procedures.
 - d) Working with coalitions to address policy issues which affect the client community.
 - e) Affirmative litigation involving complex statutory or constitutional questions.
 - f) In instances where seeking class action relief, legislative or administrative advocacy or other means of advocacy restricted by LSC regulations appears appropriate to properly represent the clients' interests, seeking the assistance of an unrestricted entity such as Community Justice Project, private pro bono counsel or others to take over or assist with the representation.

3. Advocates are encouraged to undertake impact work in their area of practice or in a related area, commensurate with the advocate's experience, that furthers MidPenn's mission, vision, priorities, and strategic plan.

PERFORMANCE STANDARD 8: Client Participation in the Conduct of the Representation

SUBJECT TO LEGAL AND ETHICAL OBLIGATIONS, ADVOCATES MUST ABIDE BY CLIENT DECISIONS REGARDING THE OBJECTIVES OF THE REPRESENTATION AND MUST CONSULT WITH CLIENTS REGARDING THE MEANS USED TO ACHIEVE THOSE OBJECTIVES AND MUST KEEP THE CLIENT REASONABLY INFORMED OF THE STATUS OF THE MATTER.

Relevant Factors include the following:

1. The advocate defers to the client regarding the objectives of the legal representation and is careful to avoid substituting his/her judgment for that of the client.
2. The advocate uses professional skills to identify strategic options for resolving the client's problem and explains the potential risks and consequences of each, so that the client can meaningfully participate in decisions regarding major case strategy.
3. The advocate informs the client of the expectation that the client will, when appropriate, assist in the preparation of the case, by helping to identify and locate witnesses, documents or physical evidence, cooperating with discovery requests, and keeping documentation and records.
4. The advocate consults with the client regarding the means to be used to accomplish the client's objectives, with respect to all but minor, technical, or unavoidably emergent decisions about the case.
5. In group representation, the advocate clarifies that the advocate's proper role is to advise the group, not to lead it.
6. If the client indicates an interest in pursuing a frivolous or malicious claim, presenting false evidence, or engaging in other illegal activity in the representation, the advocate explains the applicable ethical prohibitions and, if appropriate, timely seeks withdrawal as counsel of record.
7. In active, open cases, the advocate ordinarily maintains contact with each client at least every 30 days.
8. In cases that are inactive or pending an appeal, the advocate ordinarily maintains client contact at least every 90 days.

9. The advocate informs the client promptly of major developments in the case, or where new or revised strategies are required.
10. The advocate responds promptly (ordinarily the same day or the next day) to reasonable requests from the client for information about the case.
11. When appropriate, the advocate gives the client copies of major correspondence and pleadings (i.e. complaint, answer, settlement proposal, etc.).
12. The advocate makes particular efforts to communicate meaningfully with clients with special circumstances such as physical or mental disabilities, limited English proficiency, illiteracy or other limitations which may make communication or understanding more difficult.

PERFORMANCE STANDARD 9: Establishing a Clear Mutual Understanding with the Client

ADVOCATES SEEK TO MAINTAIN A CLEAR MUTUAL UNDERSTANDING WITH EACH CLIENT THROUGHOUT THE REPRESENTATION, BEGINNING WITH AN INITIAL EXPLORATION OF THE CLIENT'S PROBLEM

Relevant Factors include the following:

1. Before the initial interview, the advocate becomes familiar with the information gathered by MidPenn intake workers.
2. The advocate conducts the interview in a way that promotes the full development of facts leading to the legal problem(s) and related problems that the client hopes to resolve. This includes the following elements, where warranted and as appropriate:
 - a) Establishing rapport with the client and placing the client at ease;
 - b) Identifying the advocate;
 - c) Explaining how the program works;
 - d) Explaining the purpose of the interview;
 - e) Eliciting the client's problem(s);
 - f) Organizing the presented facts;
 - g) Providing counsel and advice;
 - h) Explaining what MidPenn can do, including any limitations on the offered representation;

- i) Exploring other resources;
 - j) Describing the next immediate step;
 - k) Allowing and encouraging the client to ask questions;
 - l) Except for counsel and advice matters, explaining the retainer agreement to the client, including writing a description of what the advocate agrees to do, and ensuring that the client executes the original and receives a copy of the retainer; and
 - m) Accompanying the client out of the office at the end of the interview.
3. For transactional representation such as drafting of simple wills, powers of attorney and similar documents, the advocate fully explains the purpose and effect of the document(s) and provides competent and diligent legal assistance.
 4. The advocate advises the client at the outset of representation that appeals from court or administrative decisions are not automatic and that a separate decision on whether to represent the client in further appeals will be made, if necessary.
 5. The advocate is alert to the possibility of an undiscovered conflict of interest with a current or previous client of MidPenn and cooperates fully with program policy and procedures regarding conflicts.
 6. In situations involving client groups or many family members, the advocate reaches agreement with the client at the outset on who has the authority to decide what action to take in the representation, in order to avoid potential conflicts of interest.
 7. The advocate strives to reach agreement with the client regarding the responsibilities each has in the case.
 8. The advocate attempts to ensure that the client is aware of the importance of keeping the program informed of changes in circumstances affecting their case and advising the program of any change of address or telephone number.

PERFORMANCE STANDARD 10: Responsibilities Where Limited Representation is Provided

ADVOCATES MAY LIMIT THE SCOPE OF REPRESENTATION PROVIDED TO A CLIENT IF THE LIMITATION IS REASONABLE UNDER THE CIRCUMSTANCES AND THE CLIENT KNOWINGLY CONSENTS

Relevant Factors include the following:

1. The advocate adequately informs each client of the limited nature of the assistance and determines that the client agrees to proceed knowing that limitation.
2. The advocate devotes adequate time to fully inquire into the facts of the client's situation and applies the law with a full understanding of those facts.
3. The advocate adequately informs the client about the probable actions/developments that the client will face and practical steps that should be taken to mitigate their effect.
4. The advocate providing advice, exercises sound professional judgment in deciding what advice will be the most useful based on the client's objective, the pertinent law and the client's ability to act on that advice.
5. The advocate takes care to assure that clients who, because of circumstances such as physical or mental disability, illiteracy, or limited English proficiency, will not be able to follow through on the limited assistance offered, are either referred to another MidPenn advocate or are otherwise provided the kind of assistance necessary to resolve the client's problem, or where such is not possible, that the client is advised what is likely to happen.
6. The advocate who provides oral advice to a client by telephone, follows up such advice with a written summary of the key points, either by letter or brochure, sent shortly after the telephone contact, except in circumstances where to do so could endanger the client or would otherwise be inappropriate.
7. In situations where MidPenn has programmatically determined that the provision of limited representation by way of counsel and advice or limited action, is generally appropriate in particular types of cases, through its Telephone Advice Project or through the application of the program's Case Acceptance Guidelines, advocates should nonetheless be aware of and apply these standards.

PERFORMANCE STANDARD 11: Case Planning

THE ADVOCATE DETERMINES A COURSE OF ACTION FOR HANDLING THE CLIENT'S CASE THAT IDENTIFIES APPLICABLE LAW AND AVAILABLE REMEDIES AND ENABLES THE CLIENT AND ADVOCATE TO MAKE KNOWLEDGABLE DECISIONS TO PURSUE THE CLIENT'S OBJECTIVES.

Relevant Factors include the following:

1. Case planning should involve an open ended evaluation of the facts presented and an identification of the legal issues that arise from those facts.

2. Case planning should consider a number of factors that can effect the outcome of the case, including the client's willingness and commitment to pursue a lengthy strategy or desire for a quick resolution; or in appropriate circumstances, the existence of other members of the low income community who may have a stake in the outcome of the case.
3. Case planning creates a tentative road map for handling a case to achieve the client's desired objective. At its earliest stage, the advocate presents the client with various options that may be pursued.
4. The case plan should be regularly reviewed and adjusted in response to significant developments in the case. The client should be consulted when these developments occur and should participate in making key strategic decisions.
5. When a case strategy is adopted, key steps for implementation should be determined, with a firm timetable for their completion. A firm timetable is important so that, to the extent practicable, the advocate controls the pace and direction of the case, rather than the adverse party.
6. If more than one advocate is involved in handling the case, responsibilities should be specifically assigned.
7. Resources necessary to pursue the case, including the assistance of other advocates or need for litigation funds for depositions or expert witnesses, should be identified and requested.
8. In the specific context of litigation, the advocate engages in long-range strategy planning which includes the following:
 - a) Identifying the facts that must be obtained through discovery and other means;
 - b) Identifying the legal issues requiring research;
 - c) Assessing the opponent's probable response and how it may be countered;
 - d) Estimating the resources necessary and available to pursue the client's objective; and
 - e) Assessing the probable costs to the opponent and their possible impact on their willingness to negotiate and compromise.
9. In extended service cases, where deemed appropriate by the advocate's legal supervisor, the advocate completes and updates a Case Planning Checklist for review by and discussion with the legal supervisor.

10. The advocate prepares for litigation assuming the client's claim or defense has to be established at a full trial or hearing.
11. The advocate identifies legal issues that could be the basis for an appeal to ensure that a sufficient record is created.

PERFORMANCE STANDARD 12: File Maintenance

THE ADVOCATE SHOULD MAINTAIN A NEAT AND ORDERLY CASE FILE WHICH FULLY DOCUMENTS ALL OF THE LEGAL ASSISTANCE PROVIDED AND IS COMPLIANT WITH ALL REGULATORY REQUIREMENTS.

Relevant Factors include the following:

1. Client case files should be kept neat and orderly, such that another advocate, if necessary, could pick up the file and with relative ease, determine the issues, status, next steps and assume responsibility for client representation with a minimum of confusion.
2. All files should contain legible contemporaneous notes of conversations with clients, witnesses, opposing parties / attorneys or others connected with the case. If notes of such conversations are recorded in the case management system, they should be printed and placed in the physical file before closing.
3. The Intake Sheets, Asset Form, Client Retainer (if applicable), CID Form (if applicable) and any other administrative forms should be kept together at the bottom of and on one side of the file folder.
4. All documents including file notes, letters, court pleadings and orders should be kept in reverse chronological order, with the most recent item nearest the top of the file. Variations on this theme which segregate certain documents to one side of the file are acceptable, provided they are also kept in reverse chronological order.
5. At such time as an open case file grows in size and/or complexity, it will become necessary to create separate folders to be placed in a large expandable file folder and to group the file contents in some other organized fashion, such as separate folders for notes, correspondence, pleadings, discovery, documentary evidence, research, etc. with each folder appropriately labeled.
6. At time of closing, documents within files should be organized and separate folders in large case files should be labeled appropriately.

7. All files, including brief service by telephone, should contain clear documentation of the legal advice given and/or service provided to the client.
8. All files, including brief service by telephone, should contain a copy of a closing letter sent to the client, or an acceptable explanation why no closing letter was sent. Where the client is limited in their ability to understand English, the closing letter should either be translated into the language that is understandable to them or some other arrangement should be made for the client to become aware of the information being communicated in the letter.
9. Closing letters should indicate in clear language which is understandable to the client, the nature of the problem for which they sought legal assistance and a summary of the advice or service which the advocate was able to provide; a reminder of any other information deemed important for the client to remember; an indication that the client's file is being closed and the reason for this; the advocates willingness to accept phone calls to answer questions that the client may have; and the ability of the client to reapply for assistance in the future if the need should arise.
10. Closing letters, as well as all letters and communications with clients, should be courteous and professional, yet convey a sense of empathy and concern for the client's well-being.

PERFORMANCE STANDARD 13: Investigation

THE ADVOCATE SHOULD INVESTIGATE EACH CLIENT PROBLEM TO ESTABLISH ACCURATE AND THOROUGH KNOWLEDGE OF ALL RELEVANT FACTS.

Relevant Factors include the following:

1. The advocate begins gathering information promptly upon undertaking a matter, unless there is a reasonable strategic reason not to, which is noted in the file.
2. The advocate is attentive to the need to uncover unfavorable facts, as well as favorable ones.
3. The advocate organizes the facts in relation to the legal issues, in order to evaluate their impact on the client's objectives and to identify the need for further investigation.
4. The advocate records the results of the investigation in contemporaneous written notes for the case file or electronic entries in the case management system. As appropriate, this includes:

- a) Interviewing witnesses and informally contacting opposing counsel or an unrepresented adversary to obtain the facts asserted by the opponent;
- b) Obtaining documents in the client's possession and those available through discovery, or obtainable as public records under state or federal law;
- c) Personally observing the scene at which key events took place; and
- d) Taking photographs.
- e) After notice to the client, conducting a criminal records check of the client, opposing party and other persons as well as a check of personal web pages of such persons on Myspace, Facebook or other similar social network sites where the results may be relevant to issues involved in the case.

PERFORMANCE STANDARD 14: Legal Research and Analysis

THE ADVOCATE SHOULD ANALYZE EACH MATTER WHEN NECESSARY AND APPROPRIATE, AND DOCUMENT THE RESEARCH CONDUCTED REGARDING PERTINENT ISSUES, IN ORDER TO DETERMINE THE RELATIONSHIP BETWEEN THE CLIENT'S PROBLEM AND EXISTING LAW

Relevant Factors include the following:

1. The advocate conducts preliminary research that forms the basis of tentative legal theories that shape potential case strategy.
2. The advocate continues to conduct legal research and analysis as part of an ongoing reevaluation of strategies and theories, to concentrate efforts on those issues that are most relevant and critical to resolving the client's problem.
3. The advocate reduces legal research and analysis to writing which is kept in the case file. This writing should include a discussion of favorable and unfavorable law discovered in research.
4. The advocate does not rely exclusively upon secondary sources such as treatises, instead directly reviews primary sources in order to allow consideration of their relevance to the client's problem and to obtain full comprehension of the legal issues involved.
5. The advocate makes certain that each consulted source of legal research is current.
6. When research indicates that a client's interest cannot be reasonably pursued without a major effort to modify existing law, the advocate discusses with a legal supervisor, managing attorney or the Director of Advocacy, as appropriate, the

likelihood of success, the resources needed to represent the client, the importance of the issue to the client and its relation to program priorities and whether other resources exist which might resolve the problem.

PERFORMANCE STANDARD 15: Legal Counseling

THE ADVOCATE EFFECTIVELY COUNSELS THE CLIENT THROUGHOUT THE REPRESENTATION TO ASSURE THAT THE CLIENT UNDERSTANDS AVAILABLE OPTIONS AND THE POTENTIAL BENEFITS AND RISKS.

Relevant Factors include the following

1. The advocate strives to ensure that the client has a full understanding of their legal problem and helps the client to identify possible outcomes and the options available to accomplish them.
2. The advocate offers candid guidance based on the law and specific circumstances of the client, taking into account damaging as well as favorable facts and honestly conveys potential negative outcomes and alternatives as well as positive ones.

PERFORMANCE STANDARD 16: Negotiations

THE ADVOCATE PLANS AND CONDUCTS NEGOTIATIONS IN ORDER TO FURTHER CLIENT OBJECTIVES, AND ENTERS INTO FORMAL AGREEMENTS WITH ADVERSARIES ONLY WHEN SPECIFICALLY AUTHORIZED BY THE CLIENT.

Relevant Factors include the following:

1. Before undertaking negotiations, the advocate seeks to ascertain:
 - a) The strengths and weaknesses of the positions of both the client and the opponent;
 - b) The probable overlap between the ranges of settlements acceptable to each party;
 - c) The client's opening and potential fall-back positions; and
 - d) The points of leverage, including personal and non-legal considerations, which will dispose the parties toward settlement.
2. In matters subject to litigation, the advocate considers the appropriateness and timing of negotiations as part of an overall litigation strategy that is based on a

thorough analysis of the facts and the law, and an evaluation of the circumstances of the client and the adversary.

3. The advocate generally attempts negotiation before commencing litigation, unless this would jeopardize the client's interests. The advocate seeks specific client approval before a final agreement or settlement is offered or accepted.
4. Where the client has authorized the advocate to file suit in the event that settlement negotiations are unsuccessful, before entering into pre-complaint settlement negotiations with a prospective defendant, the advocate must prepare a written **statement of facts** which must be signed by the client, and which states the particular facts supporting the complaint, required by LSC regulations.
5. The advocate ensures that any formal final agreement is reduced to writing, preferably drafted by the advocate instead of opposing counsel, in a way that covers all material issues and potential enforcement problems. The terms of any informal oral agreement reached should be confirmed in writing.

PERFORMANCE STANDARD 17: Drafting Pleadings

THE ADVOCATE DRAFTS PLEADINGS SO AS TO PRESERVE AND ADVANCE THE CLIENT'S CLAIM IN ACCORD WITH THE REQUIREMENTS OF APPLICABLE LAW.

Relevant Factors include the following:

1. The advocate files pleadings only after the completion of sufficient research and factual investigation to decide the most effective legal argument and theory of the case, unless immediate action is necessary to protect the client's health or safety, or to safeguard important rights.
2. The advocate thoughtfully considers all elements of pleadings for their strategic and tactical impact on the case, including the following:
 - a) The choice of parties is based on their necessity to the case and their likely impact on such matters as the effectiveness of discovery or the breadth of available relief.
 - b) The choice of forum accounts for jurisdictional limitations and the likelihood of success.
 - c) At a minimum, pleadings should clearly set forth all necessary elements that are required by applicable law and should reflect a level of specificity necessary in the judgment of the advocate based on tactical considerations, court rules and applicable law.

- d) The choice of claims for relief or defenses takes into account their importance to overall strategy; potential impact on the hearing tribunal, in negotiation and on appeal; problems of proof, and the areas of discovery open for the parties.
 - e) When representing a defendant, the advocate should raise all appropriate affirmative defenses or compulsory counter claims that might otherwise be waived.
 - f) Advocates should choose remedies from a broad range of available relief.
 - g) If the client decides, after discussion, to forego an available claim for relief, the advocate confirms that decision in a letter to the client, as appropriate.
3. The advocate complies with the applicable rules of pleading of the forum and files them in a timely manner.
 4. A sufficient time before filing, the advocate submits all non-routine pleadings for review by the managing attorney or legal supervisor, as appropriate.

PERFORMANCE STANDARD 18: Motions

MOTIONS SHOULD BE CONSIDERED TO PROMOTE THE SUCCESSFUL, EXPEDITIOUS, AND EFFICIENT RESOLUTION OF THE LITIGATION.

Relevant Factors include the following:

1. The advocate plans motion practice in each litigated case according to the potential uses of motions:
 - a) as procedural vehicles to reach and resolve substantive issues;
 - b) to control the pace and direction of the litigation; and
 - c) to protect the client's interests and place the case in a more favorable posture.
2. The advocate cogently researches, carefully drafts and proofreads, and prepares and argues each motion, recognizing that motions may educate the decision-maker regarding the factual and legal issues in the case.

PERFORMANCE STANDARD 19: Discovery

THE ADVOCATE USES THOROUGHLY PREPARED AND TIMELY FORMAL DISCOVERY WHEN APPROPRIATE.

Relevant Factors include the following:

1. The advocate considers the use of formal discovery in contested cases and engages in such, when appropriate.
2. The advocate employs a litigation strategy using a written discovery plan that identifies facts that must be obtained and their probable sources.
3. The advocate uses the most efficient and effective method to obtain the needed information.
4. If important facts or information are obtained through informal investigation that may later be disputed, the advocate also seeks to confirm those facts and information through formal discovery to enhance their utilization at trial.
5. The advocate seeks the review of non-routine discovery by the managing attorney, legal supervisor or the Director of Advocacy.
6. The advocate carefully prepares discovery inquiries to obtain unambiguous responses, and thoroughly analyzes the information obtained to permit follow-up to clarify ambiguities and to pursue new potential avenues of inquiry.
7. When replying to an adversary's discovery requests, the advocate issues prompt, straightforward responses that are also carefully prepared to prevent inadvertent, damaging disclosures and admissions.

PERFORMANCE STANDARD 20: Trial or Hearing Preparation and Presentation

THE ADVOCATE THOROUGHLY PREPARES FOR AND PRESENTS THE CLIENT'S CASE AT A TRIAL OR HEARING AND ASSURES THAT FAVORABLE JUDGMENTS ARE ENFORCED.

Relevant Factors include the following:

1. Prior to trial or hearing, the advocate:
 - a) Reviews and indexes all discovery and documentary evidence to be used at trial.
 - b) Prepares a witness list and develops a schedule for serving subpoenas and other methods of ensuring the availability of evidence at trial.
 - c) Develops written outlines of case theories, legal claims and corresponding elements of necessary proof, anticipated evidentiary issues, direct examination, cross examination, and opening and closing statements or, in routine cases, has other appropriate method of preparing and logically organizing case materials and legal planning for use during litigation.

- d) Prepares witnesses by explaining the trial procedures, reviewing their testimony, explaining what the advocate is attempting to prove and attempting to reduce any anxiety they may feel about the trial.
 - e) Prepares exhibits that will be introduced at trial.
 - f) Reviews the law and brings it to the proceeding in a form that can readily be referred to as needed.
 - g) Drafts and submits trial and post-trial memoranda of law, as appropriate.
 - h) Reviews trial and hearings preparation in all non-routine cases with the managing attorney or supervising attorney as appropriate.
2. The advocate conducts a trial or hearing in a way that is appropriate to the rules, procedures and practices of the tribunal, and reflects preparation and organization.
 3. The advocate keeps accurate trial notes or drafts a post-trial memo to the file that outlines the advocate's impression of the trial, important developments at the proceeding and any information that may be relevant to a potential appeal.
 4. The advocate takes reasonable and necessary steps to assure that the client receives the benefit conferred by a favorable judgment, settlement or order that is obtained on the client's behalf.

PERFORMANCE STANDARD 21: Appellate Practice

WHEN THERE IS AN ADVERSE APPEALABLE JUDGMENT OR ORDER, THE ADVOCATE DETERMINES WHETHER TO APPEAL IN ACCORDANCE WITH MIDPENN POLICIES AND PROCEDURES REGARDING APPEALS AND EXPLAINS THAT DECISION TO THE CLIENT IN A TIMELY MANNER, IN ORDER TO ENABLE THE CLIENT TO SEEK OTHER REPRESENTATION IN THE EVENT THAT MIDPENN DOES NOT UNDERTAKE THE APPEAL. WHERE AN APPEAL IS UNDERTAKEN, IT SHOULD BE HANDLED PROFICIENTLY AND ZEALOUSLY.

Relevant Factors include the following:

1. After an unsuccessful outcome in the representation of a client in a trial court or in an administrative proceeding resulting in a final agency decision, the attorney advises the client of their right to appeal and discusses the legal and practical implications of appealing an adverse judgment. When counseling the client, the attorney makes clear that if the client wishes to appeal, a separate decision will be made as to whether MidPenn would be able to offer representation for purposes of an appeal.

2. If the client wants to appeal, the attorney considers the relevant issues involved, including an evaluation of the pertinent law, and discusses with their legal supervisor or managing attorney, whether to recommend that MidPenn provide representation in such appeal.
3. Where the attorney, after consultation with their legal supervisor or managing attorney, decides not to seek approval to represent the client on appeal because in their professional judgment there is insufficient merit, the attorney informs the client of this decision promptly, both orally and in writing, such that the client has an adequate opportunity to seek alternate counsel and take other appropriate steps.
4. Where the attorney decides to recommend representation of the client in the appeal or is unsure whether to do so, the attorney completes a *Request to Appeal Form* well in advance of any appeal deadline; obtains the signature of their Managing Attorney indicating their recommendation regarding approval; and forwards the completed Form to the Director of Advocacy together with a copy of the Order/Decision from which an Appeal is proposed.¹
5. If the *Request to Appeal* is not approved, the attorney notifies the client immediately and in sufficient time for the client to seek other representation if they still wish to appeal.
6. If the *Request to Appeal* is approved, the attorney closes the case file from the trial court or administrative agency and opens a new case file for the appeal, in accordance with program policies and procedures and has the client sign a new Client Retainer Agreement for the appeal.
7. The attorney works with co-counsel assigned by the Director of Advocacy and strives to become thoroughly familiar with the rules of appellate procedure and to develop skills needed to assure careful research and cogent written and oral argument.
8. The attorney complies with MidPenn Legal Services' Procedures for Taking and Handling Appeals and all applicable appellate rules of procedure regarding deadlines for filing notices of appeal, motions, briefs and record transcripts, as well as the requirements governing form and style of briefs and other documents.
9. The attorney prepares for oral argument by participating in a moot court argument with other advocates as deemed appropriate and as coordinated by the Director of Advocacy.

¹ In situations where the attorney decides to seek reconsideration of an adverse decision by the trial court, the outcome of which may not be known prior to the expiration of the appeal deadline, the attorney should follow the *Request to Appeal* procedure simultaneous with or immediately following submission of such.

10. Where an attorney represents an Appellee in an appeal filed by an opposing party, the attorney, while not required to submit a Request to Appeal, promptly notifies the Director of Advocacy and follows Relevant Factors 6 – 9 above.

PERFORMANCE STANDARD 22: Quality of Written Work (Applies to All Staff)

A STAFF MEMBER'S WRITING IS CLEAR, PRECISE AND PERSUASIVE.

Relevant factors include the following:

1. The staff member's written work is carefully edited and proofread, and reflects a commitment to quality.
2. All pleadings, memos, letters, etc., are prepared in a timely manner, allowing sufficient time for editing and proofreading by a peer or supervisor as necessary.
3. All written work conveys current knowledge of substantive law, the facts of the matter and any applicable policies. Pleadings are based upon legal research, factual investigation and an analysis of strategic impact.

PERFORMANCE STANDARD 23: Administrative Advocacy in Adjudicatory Administrative Hearings

ADMINISTRATIVE ADVOCACY IS PROFICIENTLY AND ZEALOUSLY UNDERTAKEN BY THE ADVOCATE IN ADJUDICATORY ADMINISTRATIVE HEARINGS.

Relevant Factors include the following:

1. The advocate approaches the case with a thoughtfully planned strategy that is based on an appropriate factual investigation, legal analysis and research, as necessary, and a careful assessment of the strength and weakness of the case.
2. The advocate thoroughly understands hearing practice before the agency.
3. The advocate follows and is aware of changes in regulation and agency practice that affect clients in substantive area of advocate's expertise.
4. The advocate thoughtfully and clearly presents the client's case, in a way that is appropriate to the rules, procedures and practices of the agency, and reflects preparation and organization. Where appropriate, the advocate prepares and files written memoranda, in support of the client's position.

PERFORMANCE STANDARD 24: Legislative and Administrative Advocacy

CONSISTENT WITH THE REQUIREMENTS OF FUNDING SOURCES, ADVOCATES SHOULD MAINTAIN AN AWARENESS OF LEGISLATIVE AND ADMINISTRATIVE DEVELOPMENTS WHICH AFFECT THE CLIENT COMMUNITY AND BE RESPONSIVE TO REQUESTS FOR ASSISTANCE FROM LEGISLATIVE BODIES CONSIDERING ADOPTION OF OR MODIFICATION TO LAWS AFFECTING OUR CLIENT COMMUNITY.

Relevant Factors include the following:

1. The advocate shows awareness that advocacy in the legislative and administrative process may present the most efficient method to advance client interests.
2. The advocate is fully aware of what is permissible and restricted under LSC rules.
3. The advocate stays aware of the development and introduction of proposed laws, rules or policies and their progress through the legislative and rulemaking process and keeps members of the staff and of the low-income community served by MidPenn informed of proposed laws and policies that may affect clients.
4. The advocate, in coordination with the Director of Advocacy, is responsive to requests for information and assistance from members of local, state and federal legislative bodies, with regard to proposed laws, rules or policies which may have an impact on the low-income client community.

PERFORMANCE STANDARD 25: Community Legal Education

THE ADVOCATE UNDERTAKES COMMUNITY LEGAL EDUCATION THAT IS RESPONSIVE TO PROGRAM PRIORITIES AND CLIENT NEEDS.

Relevant Factors include the following:

1. The advocate shows a willingness and capacity to integrate community legal education with the overall legal work of MidPenn, in order to inform and educate client eligible individuals and members of social service organizations and groups who work with client eligible individuals and families, including the following, where appropriate:
 - a) Informing individuals about their legal rights and responsibilities.
 - b) Teaching individuals to represent themselves before appropriate courts and administrative agencies.
 - c) Teaching community-based organization staff and volunteers to provide lay assistance for clients in appropriate circumstances.

2. The advocate considers the following factors in choosing a particular community legal education technique:
 - a) The literacy and sophistication of the client population;
 - b) The predominant language(s) used by the clients;
 - c) The geographic dispersion of clients in MidPenn service area;
 - d) Available resources, including program staff, available private practitioners and public service time or space on television, radio, or other media;
 - e) Means of technologically extending or supplementing program presence in providing education, such as videos, computerized information links and informational packets, audience participation and role-playing; and
 - f) The skills or information being conveyed.

PERFORMANCE STANDARD 26: Community Group Involvement

THE ADVOCATE IS WILLING AND ABLE TO PROVIDE NECESSARY LEGAL ASSISTANCE TO COMMUNITY GROUPS WHOSE MISSION AND PURPOSE ARE COMPATIBLE WITH MIDPENN PRIORITIES, WHERE SUFFICIENT RESOURCES EXIST TO JUSTIFY THE LEVEL OF SUCH COMMUNITY GROUP INVOLVEMENT

Relevant Factors include the following:

1. The advocate's willingness and ability to work with community groups.
2. The advocate's ability to assist community based groups whose mission and purpose are aligned with MidPenn priorities, to organize, function effectively and develop leadership and the capacity to successfully accomplish their mission.
3. The advocate's ability to collaborate with community organizations, private and public resources to improve the economic well being of a community.
4. The advocate's ability to leverage resources and bring volunteers, funds or other asset to work on behalf of the community group.
5. The advocate's ability to work as part of a team, share information and be part of the continuum of services the client needs.
6. The advocate's recognition of the responsibility to be an organizer, advocate or a counselor for the group, but not its leader.

7. The advocate's willingness to be available to the group or organization outside normal business hours or times.
8. The advocate's ability to effectively communicate with the group regarding developments in the representation.

CASE PLANNING CHECKLIST
(For Use in Extended Service Cases As Appropriate)

Client Name _____ File # _____ Advocate _____

Date Opened _____ Case Type _____

Deadlines / Important Dates _____

Client's Goals / Objectives:

Legal Basis for Relief:

Legal Research Needed:

Case Strategy:

Next Steps:

(See Performance Standard 11 – Case Planning – Paragraph 9)

