RESOLVED, That the American Bar Association adopts revised STANDARDS FOR THE PROVISION OF CIVIL LEGAL AID, dated August 2006, including the Introduction; and

FURTHER RESOLVED, That the American Bar Association recommends implementation of these STANDARDS by entities providing civil legal aid to the poor.
REPORT

Background of ABA Civil Legal Aid Standards and Revision Process

In 1961, the American Bar Association first adopted standards for civil legal services to the poor. After federal legal aid funds became available through the Office of Economic Opportunity, the ABA revised those Standards in 1966 to address issues relating to federal involvement and increased funding for legal aid. In 1970, the ABA adopted a third set of Standards addressing new issues that developed as the delivery system evolved.

Further changes in the delivery system unfolded between 1970 and 1986, when another revised version of the Standards was adopted by the House of Delegates. The Legal Services Corporation became operational in 1975. The amount of federal, state, and private funding for legal services increased dramatically, as did the number of staff-based and pro bono organizations providing civil legal assistance to the poor. During this period, the Canons of Ethics gave way to the Code of Professional Responsibility which, in turn, has been superseded by the Model Rules of Professional Conduct, all of which bear on the obligations of lawyers to provide equal justice to all citizens.

In the 20 years since the most recent version of the Standards was adopted, an equally daunting series of changes in the delivery system and legal aid practice have occurred. There have been fundamental changes in society, in low income communities, in the legal aid delivery structure and in the practice of law, all of which profoundly affect how legal aid providers function and how they serve low income persons. The Model Rules of Professional Conduct have undergone significant changes, some directly related to legal aid practice. There has been an explosion of developments in the use of information technology that have had a revolutionary effect on society and have reshaped the practice of law. Courts have significantly increased their efforts to accommodate the needs of unrepresented litigants. To provide appropriate guidance in the current environment, the Standing Committee on Legal Aid and Indigent Defendants decided that it was time to once again revisit these important Standards.

The ABA Standards have been, and continue to be, widely relied upon to guide organizations providing such civil legal assistance to the poor by addressing issues that arise in the context of the competing demands for high quality legal work, efficiently produced within available resources. It is important that they provide guidance relevant to the 21st Century.

To bring the Standards up to date, the Standing Committee in September 2004 formed a Task Force of advisors drawn from members of the bar and the legal aid community, including experienced practitioners; the Legal Services Corporation management; legal services clients; and representatives of national organizations involved in legal aid. The Task Force was assisted by a reporter – John Tull – an expert in delivery of legal aid who also served as the reporter to the 1986 revisions. Another legal aid expert, Linda Perle of the Center on Law and Social Policy, later joined as a second reporter to assist in drafting tasks. The Task Force met by telephone conference call several times each month from March 2005 through April 2006. It considered and refined drafts of each individual standard, then circulated those widely in the legal services
community for comment. All proposals were posted on a publicly-available web page for the convenience of all interested individuals.

The Task Force also conducted a series of hearings to receive oral testimony from interested individuals and organizations. Hearings were held in Washington, D.C. (December 2004), Austin, Texas (May 2005), San Francisco, California (June 2005), Chicago, Illinois (October 2005) and Orlando, Florida (November 2005). All of the hearings were at venues where legal aid leaders gather.

Comments offered in the course of the hearings, or through other communications, were reviewed by the Task Force and modifications were made to the proposed drafts as appropriate. The revised Standards now offered for adoption as ABA policy were thus developed through an open process, and reflect the best thinking of all involved in delivery of civil legal aid to the poor.

**Structure of the 2006 Revised Standards**

This revision substantially reorganizes the Standards so that their application will be clear. The Standards found in the first six sections relate primarily to legal aid providers as institutions. Section one of the Standards describe key functions of the governing body of a legal aid program. The next five sections focus on the provider’s responsibilities in the areas of provider effectiveness, relations with clients, internal systems and quality assurance. The final section is directed primarily toward practitioners (lawyers and other staff who are authorized to provide services directly to clients). The standards in this section provide guidance pertaining to issues of client relations and legal practice. This new organizational structure is intended to make the document as a whole more accessible to those who rely on these Standards for guidance.

**Application of the Standards**

The Standards focus on both the responsibilities of legal aid providers as organizations which serve the civil legal needs of low income persons and the role of practitioners who represent low income clients under the aegis of such an organization.

**Legal Aid Providers.** The Standards provide guidance to all organizations providing legal aid, whatever their method of delivery or source of funds. The spectrum includes large organizations with multiple funding sources that offer a wide range of services across a large geographic area and diverse client base as well as relatively small organizations focused on a small geographic area, a specific population or a comparatively narrow legal issue.

Legal aid providers may have different institutional structures as well. Some operate principally to provide legal assistance to low income persons and their communities. Others provide legal assistance to low income persons as an incidental part of their central purpose. Many providers operate with a core of staff attorneys. Others principally use the volunteer efforts of members of the bar to provide legal assistance. Law school clinical programs provide legal services through law students working under the supervision of faculty or outside attorneys.
The Standards are intended to apply to all such organizations, but recognize that a provider’s institutional structure and funding will affect how a particular Standard might apply to it. Some legal aid providers will not be able to meet certain Standards for legal, practical and institutional reasons. A legal aid component of a large social service agency, for example, would likely encounter difficulty complying with all of the Standards related to governance. Other Standards may be impractical and unnecessary for some programs and for individual practitioners who participate in a private attorney component of a provider. Where application of a particular Standard is not reasonable or is impractical for some types of providers, it need not be followed. Where possible, the commentary to the Standards acknowledges such limitations and suggests how the provider might seek to serve the underlying principles embraced by a Standard by alternate means.

**Practitioners.** The majority of the Standards set forth in this revision relate primarily to legal aid providers as institutions. However, the entire document, and especially the last section, offers guidance with which every staff legal aid practitioner should be familiar.

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

**Use of the Standards**

The Standards are presented as aspirational guidelines for the operation of legal aid providers and the provision of service by their practitioners. They are based on the combined and distilled judgment of individuals with substantial experience in the area. Each Standard is accompanied by extensive commentary to explain or illustrate the Standard, and to identify issues that might arise in its application. The Standards do not create any mandatory requirements and failure to comply with a Standard should not give rise to a cause of action or a finding of a legal ethics violation, nor should it create any presumption that a legal aid provider or a practitioner has breached any legal duty owed to a client or to a funding source.

The Standards are presented together with commentary, which is offered for adoption by the House of Delegates along with the black letter of the Standards. The Standing Committee on Legal Aid and Indigent Defendants believes that the commentary is integral to, and an essential component of, the entire document. Because the black letter Standards are sometimes very succinct, it is only through the commentary that the full meaning of a Standard can be fully understood. It is intended that the Standards and commentary will always be presented as a whole, and that neither will be published separately.

The Standards do not expand, add or change any ethical responsibilities with which a legal aid provider or practitioner must comply and all lawyers are bound by the ethical rules that apply in

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1 The American Bar Association has also adopted Standards that apply specifically to pro bono programs, which provide more detailed guidance to those providers. See *Standards for Programs Providing Civil Pro Bono Legal Services to Persons of Limited Means* (1996).
the jurisdiction in which they practice. The Standards do touch upon issues that are governed by the accepted rules of professional conduct, and elucidate their application in the context of providing civil legal aid to low income persons. In those instances the commentary may make appropriate reference to, but does not alter, the controlling ethical requirement. Because the American Bar Association historically has taken the lead in developing and articulating the ethical norms that govern the practice of law, the commentary to the Standards generally refers to the ABA Model Rules of Professional Conduct in analyzing pertinent professional responsibilities. The Standards do not provide references to every ethical rule that may apply in the representation of a low income person.

**Conclusion**

It is a challenge for legal aid providers and practitioners to serve all of the values that are important to effective legal aid practice. These Standards and commentary are intended to provide useful guidance regarding how to accomplish these important goals. The newly-revised *Standards for the Provision of Civil Legal Aid* reaffirm the important values that underlie effective legal aid work and provide fresh guidance to providers and practitioners in the 21st century.

Respectfully submitted,

William O. Whitehurst, Chair  
Standing Committee on Legal Aid and Indigent Defendants  
August 2006
Resolution on Standards for the Provision of Civil Legal Aid

Submitting Entity: Standing Committee on Legal Aid and Indigent Defendants

Submitted By: William O. Whitehurst, Chair

1. Summary of Recommendation(s).

The resolution seeks ABA adoption of revised *Standards for the Provision of Civil Legal Aid*. This will be the ABA’s fifth edition of such standards. In 1961, the American Bar Association first adopted *Standards for Providers of Civil Legal Services to the Poor*. Those Standards have been periodically revised to address changes in society, legal ethics and legal practice and new versions were adopted by the House of Delegates as ABA policy in 1966, 1970 and 1986. During the past 20 years there have been further changes in the social and legal environment, and revision of the Standards is again necessary. The Standing Committee on Legal Aid and Indigent Defendants engaged in a thorough and lengthy process of redrafting with the assistance of a task force of experts, hearings and solicitation of public comment on draft revisions. After incorporation of changes as appropriate to accommodate comments by members of the legal aid community and other interested persons, the revised *Standards* are presented for consideration by the House of Delegates. The resolution also recommends the appropriate implementation of the Standards by entities providing civil legal aid to the poor.

2. Approval by Submitting Entity.

The Standing Committee on Legal Aid and Indigent Defendants voted to submit this resolution to the House of Delegates at its meeting by telephone conference call on May 1, 2006.

3. Has this or a similar recommendation been submitted to the House or Board previously?


4. What existing Association policies are relevant to this recommendation and how would they be affected by its adoption?

This resolution would replace the 1986 *Standards for Providers of Civil Legal Services to the Poor* as ABA policy. The revised *Standards* are consistent with existing policies calling for support for legal services for the poor, immigrants and other vulnerable individuals, and make appropriate references to other ABA standards that impact upon the delivery of legal services to related populations.

5. What urgency exists which requires action at this meeting of the House?

There have been fundamental changes in society, in low income communities, in the legal aid delivery structure and in the practice of law, all of which profoundly affect how legal aid providers function and how they serve low income persons. The Model Rules of Professional Conduct have undergone significant changes, some directly related to legal aid practice. There has been an explosion of developments in the use of information technology that have had a
revolutionary effect on society and have reshaped the practice of law. Courts have significantly increased their efforts to accommodate the needs of unrepresented litigants. To provide appropriate guidance in the current environment, the Standing Committee on Legal Aid and Indigent Defendants believes that it is time to once again revisit these important Standards.

6. **Status of Legislation.** (If applicable.)

There is no pending legislation, state or federal.

7. **Cost to the Association.** (Both direct and indirect costs.)

It is not anticipated that this resolution will result in any direct or indirect costs to the Association for implementation of the Standards. The Committee will publish these standards and will recoup at least part of the publication costs through sales.

8. **Disclosure of Interest.** (If applicable.)

No members of the Standing Committee or of its task force of expert advisors would benefit from adoption of this resolution, nor do any members have any financial or other personal interests that would be affected by the resolution.

9. **Referrals.**

This resolution has been referred to the following entities with a request for support or cosponsorship:

- StC on the Delivery of Legal Services
- StC on Pro Bono and Public Service
- Commission on Domestic Violence
- Commission on Homelessness and Poverty
- Commission on Interest on Lawyers' Trust Accounts
- Commission on Immigration
- Commission on Law and Aging
- Steering Committee on the Unmet Legal Needs of Children

10. **Contact Person.** (Prior to the meeting.)

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11. **Contact Person.** (Who will present the report to the House.)

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