



AMERICAN **BAR** ASSOCIATION™

Commission on Domestic
& Sexual Violence

STANDARDS OF PRACTICE

for the Supervision of Domestic
& Sexual Violence Attorneys

This project was supported by *Grant No. 2017-TA-AX-K020* awarded by the Office on Violence Against Women, U.S. Department of Justice. The opinions, findings, conclusions, and recommendations expressed in this publication/program/exhibition are those of the author(s) and do not necessarily reflect the views of the Department of Justice, Office on Violence Against Women.

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I. Preface

The ABA Commission on Domestic & Sexual Violence (hereinafter “Commission”) would like to extend our deepest gratitude to all those who informed the development of these Standards of Practice for the Supervision of Domestic & Sexual Violence Attorneys (hereinafter “Standards”). Thank you to the Department of Justice, Office on Violence Against Women, who supported this project from conceptualization through final publication. The Commission would also like to thank the twenty attorneys who comprised the Steering Committee that helped to draft these standards:

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II. Introduction

The Commission provides national training and technical assistance regarding civil legal practice on behalf of victims of gender-based violence. These Standards arise from a trend that the Commission has noticed in recent years: attorneys representing domestic and sexual violence (hereinafter “DSV”) victims often do not have adequate supervision. The Commission sees this problem manifest itself generally in two situations: first, attorneys in legal settings such as firms, legal aid or legal services units whose supervisors are not trained in supervision or given appropriate time to properly supervise, and second, attorneys in non-legal settings, such as victim services programs, state coalitions, counseling or shelter programs who are the only attorney on staff and who therefore lack proper legal supervision and face other ethical dilemmas. One notable request for help of many was from an attorney who had never met or spoken with the supervisor named in the grant proposal funding her position. Another shocking request for guidance of many was from an attorney whose non-attorney Executive Director was demanding to see her client files.

In response to these issues and this trend, the Commission decided to host a Steering Committee Meeting to Develop Best Practices for Supervision of Domestic & Sexual Violence Attorneys (hereinafter “Steering Committee Meeting”). This Steering Committee convened in November 2018 for two days, and was comprised of twenty DSV attorneys from across the country who work in both traditional legal and non-legal settings. When selecting members for the Steering Committee, the Commission strove for geographic and demographic diversity. All Steering Committee members had experience supervising attorneys and being supervised within this field.

These Standards were borne from the Steering Committee Meeting and have been peer reviewed by additional attorneys prior to publication. They are intended to serve as best practice guidelines for the supervision of DSV attorneys in both legal and non-legal settings. **The Standards are divided into three parts: *Foundational Principles, Agency Responsibilities and Standards, and Supervisor Responsibilities and Standards.***

The *Foundational Principles* outline some of the basic values of supervision which emerged from the Steering Committee Meeting, such as employee retention and a commitment to diversity. These are the ideologies through which all Standards and their accompanying comments should be read and interpreted.

Agency Responsibilities and Standards is directed toward organizations and organizational executive leadership. These Standards provide guidance to organizations on important duties that they must perform before, during, and after hiring attorney supervisors for their office.

Supervisor Responsibilities and Standards is directed toward individual attorney supervisors. These Standards outline best practices for supervisors to utilize when supervising DSV attorneys.

III. Foundational Principles

- A. Agencies must recognize that providing meaningful supervision takes time and preparation. Agencies must include the act of supervision as a professional activity in supervisors' work plans.**
- B. As a foundation for providing high quality legal services to survivors, agencies must make a commitment to retaining employees.**
- C. The responsibility to retain employees includes developing timed and measurable goals for increasing staff benefits, hiring, and promotion packages, and implementing formal plans to address, prevent, and remedy both vicarious and direct work-related trauma.**
- D. Individualized self-care should be institutionalized, including provision of up-to-date tools, training, and resources, as well as building an office culture that embraces self-care.**
- E. Supervisors should be trained about how to recognize vicarious trauma, and should remain aware of each supervisee's caseload and cumulative vacation days.**
- F. Agencies must make a commitment to diversity and equity at all levels of the organization, including the Board of Directors.**
- G. Agencies must make significant financial commitments and prioritize organizational structures to reduce or eliminate barriers to hiring, retention, or promotion, consistent with principles of diversity, equity, and inclusion.**
- H. Supervisors must explicitly and actively acknowledge, address, and work to mitigate privilege and oppression in their work, their agency, and in relationship to their staff.**

- A. Agencies must recognize that providing meaningful supervision takes time and preparation. Agencies must include the act of supervision as a professional activity in supervisors' work plans.**

Comment:

Supervision itself takes time; supervisory activities include sitting in on client intakes, attending hearings, reviewing employee files, and conducting employee reviews and check-ins. As such, supervision should be included as one of the professional activities in a work plan for supervisors. These responsibilities take more time when a supervisor has more supervisees assigned to them. Having a written work plan will help protect both supervisors and their supervisees from being overextended by upper management.

- B. As a foundation for providing high quality legal services to survivors, agencies must make a commitment to retaining employees.**

Comment:

Turnover is an endemic problem among legal staff at DSV agencies, and it is critical to have policies and an office culture that strive to retain valued employees and the experience, expertise,

and maturity they bring to the work. One reason for turnover among staff is a failure to respond appropriately to vicarious trauma and burnout from the difficult nature of the work. It is important for organizations to encourage meaningful self-care for all staff and to support their employees who are experiencing vicarious trauma. Some employers have started vicarious trauma support groups, where members can speak confidentially about frustrations with their work. Employers must ensure that supervisors are well-versed in the effects of vicarious trauma and recognize the signs when they develop in their supervisees. Possible policies to slow the onset of vicarious trauma include banning emails after the close of business or reserving email phone privileges for senior staff only.¹

C. The responsibility to retain employees includes developing timed and measurable goals for increasing staff benefits, hiring, and promotion packages, and implementing formal plans to address, prevent, and remedy both vicarious and direct work-related trauma.

Comment:

In addition to turnover due to staff burnout, many legal staff are forced to leave their jobs because of inadequate compensation. Many attorneys carry large amounts of student debt which require high monthly payments. Where possible, organizations should include salary increases in grant applications so attorneys can be more appropriately compensated. Where it is not possible to increase staff salary, there are numerous other ways to compensate staff for their work with an aim to retain them. Many offices have implemented flex time policies for employees to take time off when necessary, outside of vacation or sick days, or to structure their work hours around both client and family demands. This can also be helpful to slow or prevent vicarious trauma and burnout. Offices are also giving employees the opportunity to regularly work from home. This demonstrates that the supervisee is valued, and goes a long way toward establishing trust between the employee and the employer. Other important benefits include healthcare packages with comprehensive mental health coverage and 401(k) or 403(b) matching, as well as meaningful professional development opportunities, so employees see that the overall value of their compensation is higher than their salary alone.

D. Individualized self-care should be institutionalized, including provision of up-to-date tools, training, and resources, as well as building an office culture that embraces self-care.

Comment:

One concern raised by the Steering Committee was the presence of “martyr culture” within many legal organizations. In this context, the Commission defines “martyr culture” as a professional environment which encourages unhealthy work habits, and where employees feel the need to sacrifice their personal needs for the benefit of clients or the greater organization. While on its face, agencies may believe that having “martyr” employees will be beneficial to client outcomes, or to their grant deliverables, unfortunately the opposite is often true. The quality of work that may arise in this environment is likely to be lower than work produced by employees practicing healthy work habits. Additionally, while short-term goals may be met in an office that maintains a martyr culture, it is simply unsustainable for the long term, as staff often end up leaving the agency, exhausted, embittered, or too traumatized to continue. Staff who remain will almost certainly provide a lower standard of care to their clients. In this difficult line of work, where attorneys are likely to experience vicarious trauma through their clients, it is essential that martyr culture be dismantled and replaced with institutionalized self-care for all staff. In other words, self-care should not be an afterthought;

¹ For resources on dealing with vicarious trauma, including an organization blueprint and leadership talking points, see U.S. DEP’T OF JUST., OFF. FOR VICTIMS OF CRIME, *Vicarious Trauma Toolkit*, available at <https://vtt.ovc.ojp.gov> (last visited May 13, 2019).

rather, legal agencies should provide opportunities and resources for employees to engage in self-care.

Self-care is a broad concept and can look very different for different people. The Oxford Dictionary defines “self-care” as “the practice of taking action to preserve or improve one’s own health.”² For some, self-care may mean taking a ten-minute walk around the office every afternoon to get fresh air. For others, self-care may mean only answering the phone between certain hours. Agencies should not only permit but encourage each individual’s self-care routines, so long as they do not make service delivery impossible or unethical.

E. Supervisors should be trained about how to recognize vicarious trauma, and should remain aware of each supervisee’s caseload and cumulative vacation days.

Comment:

Supervisors must be trained on recognizing trauma and its effects in their supervisees. More specifically, supervisors should remain aware of each supervisee’s caseload and unused paid time off to ensure that they are not overloaded, and are taking advantage of breaks from work. Often, supervisors themselves have difficulty using their paid time off and are prone to some of the bad habits discussed above. It is essential for supervisors to model appropriate work hours and vacation habits, in addition to other self-care practices, for the rest of the staff. Only when leadership begins to engage in healthy work habits will non-supervisory staff feel fully comfortable practicing self-care.

F. Agencies must make a commitment to diversity and equity at all levels of the organization, including the Board of Directors.

Comment:

Organizational diversity is important in all workplaces, but it is critical in offices that house DSV attorneys. Because DSV attorneys represent a diverse array of clients, attorneys and others in their organization must reflect that same diversity. Only by featuring a broad spectrum of experiences and opinions will organizations provide the best representation to DSV survivors. This diversity is important at all levels, from entry-level staff through the Executive Director and the Board of Directors. There must be organizational commitment to the guiding principle of diversity, and resources must be directed toward this goal. The American Bar Association has adopted a policy which “urges all providers of legal services, including law firms and corporations, to expand and create opportunities at all levels of responsibility for diverse attorneys and urges clients to assist in the facilitation of opportunities for diverse attorneys, and to direct a greater percentage of the legal services they purchase, both currently and in the future, to diverse attorneys.”³ As a basic matter, agencies must have nondiscrimination policies in place, and must ensure that staff are aware of the policies. Agencies must also develop inclusive policies and practices. Some agencies may find it helpful to develop a diversity committee whose purpose is to educate staff and guide leadership on matters of diversity, equity, and inclusion. Where an agency chooses to develop a diversity committee, the committee should be funded and should be held accountable for its actions in order to be effective.

² *Self-care*, ENGLISH OXFORD LIVING DICTIONARIES, <https://en.oxforddictionaries.com/definition/self-care> (last visited May 13, 2019).

³ A.B.A., POLICY AND PROCEDURES HANDBOOK 2018-2019, at 16A113, *available at* https://www.americanbar.org/content/dam/aba/administrative/board_of_governors/2018_2019_greenbook_april_18_2019.pdf (last visited May 13, 2019).

G. Agencies must make significant financial commitments and prioritize organizational structures to reduce or eliminate barriers to hiring, retention, or promotion, consistent with principles of diversity, equity, and inclusion.

Comment:

It is important for hiring staff to understand implicit bias, as bias often subconsciously plays a role in the hiring of new staff. To educate hiring staff about implicit bias, it may be helpful to have each member of a hiring panel take an Implicit-Association Test through Harvard University's Project Implicit.⁴ These tests often reveal the unconscious biases that each person holds and can help hiring staff be conscious to avoid bias in the interview and hiring process. It is important that staff reflect on the results of this bias test, either by bringing in an outside professional, or discussing it internally.⁵

To ensure that hiring staff have a diverse pool of applicants, it may be necessary to use additional resources to post open positions. For example, posting positions to community-specific forums may help increase the diversity of an applicant pool. In addition, paying for new hires to relocate may increase diversity among new staff. Agencies should also take care to recruit a diverse set of pro bono attorneys. Agency leadership should be involved in local specialty or minority bar associations to help recruit diverse pro bono attorneys and employees.

Involvement in the community is also essential to developing and maintaining a diverse work environment. When organizations are fully integrated into communities, they have a greater opportunity to contribute positively to the field. In order to have the most impact, it is essential for agencies to have a presence in their communities, and for agencies to reflect those communities.

H. Supervisors must explicitly and actively acknowledge, address, and work to mitigate privilege and oppression in their work, their agency, and in relationship to their staff.

⁴ PROJECT IMPLICIT, <https://implicit.harvard.edu/implicit/takeatest.html> (last visited May 13, 2019).

⁵ See *Frequently Asked Questions*, PROJECT IMPLICIT, <https://implicit.harvard.edu/implicit/faqs.html> (last visited May 14, 2019); *Implicit Bias Awareness: Resources and Activities*, UNIV. OF OREGON, OFF. OF THE VICE PRESIDENT FIN. & ADMINISTRATION, <https://vpfa.uoregon.edu/implicit-bias-awareness-monthevents-and-resources-february-2018> (last visited May 14, 2019); CHERYL STAATS ET AL., STATE OF THE SCIENCE IMPLICIT BIAS REVIEW (5th ed. 2017), available at <http://kirwaninstitute.osu.edu/wp-content/uploads/2017/11/2017-SOTS-final-draft-02.pdf>; Reading List and Education Resources Implicit Bias and Racial Impact Statements, Cal. Courts, Beyond the Bench Conference (2015), https://www.courts.ca.gov/documents/BTB_23_4P_1.pdf.

IV. Agency Responsibilities and Standards

A. Staff

- 1. Agencies should have a dedicated annual training budget for both new hires and existing staff. All job descriptions should include participation in regular job-related training.**
- 2. Agencies should provide cross-training on the ethical standards and norms of all professions present within the agency and partner agencies.**
- 3. Executive leadership at agencies that are not covered by attorney privilege should find competent sources of legal supervision for staff.**
- 4. Agencies should develop comprehensive, detailed, written, and realistic job descriptions when engaging in hiring and promotion.**
- 5. All staff should be trained in work management skills, including establishing appropriate boundaries for the successful and timely completion of work.**
- 6. Organizations should develop opportunities for advancement and compensation that are not solely tied to supervisory responsibilities.**
- 7. Agencies should develop a comprehensive, dynamic safety plan for all worksites and ensure physical security measures exist in each office, in court, and online.**
- 8. Agencies should commit funding to security where necessary, and train all staff on the safety plan.**
- 9. Agencies must provide appropriate work space and tools for attorney staff, including but not limited to a secured private office, a secure, separate client database, malpractice insurance, bar dues reimbursement, and case research access.**

B. Supervisors

- 1. All supervisors, including the Executive Director, should receive comprehensive training on supervision and management of staff within 90 days of promotion or hire.**
- 2. Agencies should provide access to regular mentorship and professional development regarding supervisory responsibilities.**
- 3. Legal departments and teams should develop comprehensive annual work plans that include legal representation, outreach, training, policy, and future planning.**
- 4. Legal departments and teams should periodically reassess their priorities.**
- 5. Implementers of grant deliverables should be given an opportunity to provide meaningful input into proposals, especially related to outcomes.**
- 6. Agencies should develop protocols for evaluating supervisors' capacity, skills, and performance both before and after hire/promotion, including how supervising attorneys deal with their own and their supervisees' vicarious trauma and traumatized clients.**
- 7. Evaluation of supervisors should include an assessment of the supervisor's communication to staff and follow-through with staff.**
- 8. Agencies should commit to the long-term skills building of supervisors by incorporating feedback of both senior and junior employees into their evaluation of supervisors.**
- 9. Supervisors should be holistically reviewed in a separate track from other staff review to avoid any perceived or actual conflict.**

A. Staff

- 1. Agencies should have a dedicated annual training budget for both new hires and existing staff. All job descriptions should include participation in regular job-related training.**

Comment:

One key to ensuring effective supervision of DSV attorneys is maintaining a training budget for all staff. The American Bar Association Standards for the Provision of Civil Legal Aid, Standard 6.5 states simply: “A provider should provide access to ongoing and comprehensive training for all personnel.”⁶ Subject matter training, and especially continuing legal education (CLE) credit courses, are integral to the continued development of good litigators. Trainings must be made available to both new hires and existing staff, and the expectation of participation in trainings must be included in all job descriptions. In addition to outlining clear expectations of a position, including training in job descriptions will inform applicants that the organization takes training seriously.

Although training opportunities are sometimes free of cost, there are often costs associated with attending trainings, such as travel, lodging, and per diem. Additionally, there are several nationally-acclaimed trainings that come with a cost. Agencies must do everything possible to maintain funding for attorneys to travel to and attend free and paid trainings. As the Commentary to Standard 6.5 states, “a provider facing budget reductions should resist the temptation to make disproportionate cuts in training. Expertise of current staff is crucial to maintaining a capacity for quality representation, and it is short-sighted and ultimately costly to postpone or eliminate training as a response to limited funding.”⁷

In addition to external trainings, it is important for agencies to leverage in-house knowledge to train less experienced staff. Senior attorneys should be utilized to conduct in-house trainings where they have subject matter expertise, and these trainings should be recognized as part of a senior attorney’s job responsibilities. This is often a cost-effective way to conduct trainings, although as with supervision, agencies must recognize that trainings will take time from a senior attorney’s case schedule, and monitor caseloads accordingly. In-house training can take the form of several single events, or could be structured to provide more targeted training to individual employees through a mentorship program. A mentorship program would pair a senior attorney with a junior attorney to provide guidance and advice on legal practice generally as well as other specific training needs.

Where there is no subject matter expertise in-house on a topic, agencies may turn to local law firms, law schools, or retired judges with subject matter expertise to provide high quality trainings on a pro bono basis. In addition to being an educational opportunity for staff, this is also a good way for an agency to remain integrated in the community.

⁶ STANDARDS FOR THE PROVISION OF CIVIL LEGAL AID, Standard 6.5 (on Training) (ABA STANDING COMM. ON LEGAL AID & INDIGENT DEFENDANTS 2016).

⁷ *Id.*

2. Agencies should provide cross-training on the ethical standards and norms of all professions present within the agency and partner agencies.

3. Executive leadership at agencies that are not covered by attorney privilege should find competent sources of legal supervision for staff.

Comment:

Any agency that provides legal services is bound by the ethical standards of the profession. This is true regardless of whether the agency is a law firm with fifty attorneys or a domestic violence shelter with one attorney. Where an agency employs or interacts with individuals not covered by attorney-client privilege (e.g., community advocates, client support persons, etc.) executive leadership must understand the professional ethical standards that bind attorneys. This will ensure that office protocols are in place to protect both clients and employees, and will protect the agency from liability. Agency leadership should communicate early and regularly with employees about information sharing, information protection, and who has what specific duties and obligations under law, grant conditions, professional ethics, and/or agency policy. These guidelines to staff should be as specific as possible, and should serve to educate each member of the staff on not only their own responsibilities, but also the responsibilities of others.⁸

4. Agencies should develop comprehensive, detailed, written, and realistic job descriptions when engaging in hiring and promotion.

Comment:

It is important that written job descriptions for all staff positions be as specific as possible.⁹ Detailed, written job descriptions help ensure that supervisors and supervisees have the same expectations as one another that are open to revision and updating.

5. All staff should be trained in work management skills, including establishing appropriate boundaries for the successful and timely completion of work.

Comment:

In addition to substantive training, all staff should be trained in basic work management skills to ensure the efficiency of the office. These skills include time management, professional boundaries, and work-life balance.¹⁰ This is particularly important for staff with supervisory roles, who must be trained on establishing boundaries with their supervisees. For example, time limits on a supervisor's "open door" policy may be a helpful boundary for a supervisor to draw when considering their other work. By the same token, supervisors should not be expected to carry a full caseload, as time must be carved out for supervision itself as a part of job responsibilities. Supervisors will be more likely to succeed when they are given reasonable workloads of both supervision duties and client responsibilities. Absent this balance, supervisors will have insufficient time and opportunity to successfully supervise their employees and handle their client's cases.

⁸ Additionally, the Department of Justice, Office on Violence Against Women grant regulations prohibit disclosure of any personally identifying client information to agency leadership, including for the purpose of "routine monitoring and supervision." See 28 CFR § 90.4(b).

⁹ For a more detailed explanation of why training must be included in all job descriptions, see Standard IV(A)(1).

¹⁰ For a more detailed explanation of the importance of work-life balance and institutionalizing self-care, see Standard III(D).

6. Organizations should develop opportunities for advancement and compensation that are not solely tied to supervisory responsibilities.

Comment:

Supervisory responsibilities should be reserved for individual employees who are suited to the role. Unfortunately, often the only way for attorneys to advance in a legal setting is promotion to a supervisor position. There are many employees who excel in their roles as litigators and should be promoted, but who would not be effective supervisors. Advancement within an organization should not be limited to supervisory positions. Agencies should have non-supervisory advancement and compensation opportunities, such as being a senior staff attorney. A senior staff attorney may be an experienced attorney who has subject matter expertise and can train younger attorneys on specific topics, or be available as a resource. Another option might be to allow experienced attorneys opportunities for greater community engagement through participation in task forces or committees—along with a change in title and compensation.

As a general matter, agencies should strive for career path transparency as well as compensation transparency. Agency leadership should value salary negotiation and supervisee self-advocacy. Salary structure must account for wage gaps created by historical marginalization.¹¹ Agencies should be proactive about not reinforcing these historical wage gaps by not basing starting salary on a new hire's prior salary; rather, the salary should correlate with the position. Agencies should utilize all forms of compensation in advancing deserving employees, including salary, leave policy, non-financial rewards, title, and space.¹²

7. Agencies should develop a comprehensive, dynamic safety plan for all worksites and ensure physical security measures exist in each office, in court, and online.

8. Agencies should commit funding to security where necessary, and train all staff on the safety plan.

Comment:

Staff safety (in addition to client safety) must be a top priority for any agency employing DSV attorneys. Agencies must be proactive and anticipate safety risks from opposing parties, clients, and current and former staff. There must be protocol in place for staff to know what steps to take in case of an emergency, and staff must be trained on that protocol.

It is also important that agencies train on safety risks particular to DSV attorneys. Agency leadership must advise staff of any tools or protocols for security such as barring an abusive individual from the office. Alternative safety solutions include contacting local law firms to donate space, pro bono, to hold depositions or other meetings with adverse parties. Where possible, it is also beneficial to train judges and court personnel on safety for DSV victims, attorneys, and advocates while physically in court. One important lesson here for staff will be the importance of maintaining personal boundaries, such as by refraining from connecting with clients or other witnesses on social media. Additionally, staff should not use personal email accounts or phones to communicate with clients; rather, staff should have work email addresses and a work phone with which to communicate with clients. In

¹¹ For more information on the wage gap, see NAT'L WOMEN'S L. CTR., *The Wage Gap: The Who, How, Why, and What to Do* (Oct. 2018), available at <https://nwlc-ciw49tixgw5lbab.stackpathdns.com/wp-content/uploads/2018/10/The-Wage-Gap-Who-How-Why-and-What-to-Do-2018.pdf>.

¹² For examples of employers successfully combatting the wage gap, see Maya Raghu & Caitlin Lowell, NAT'L WOMEN'S L. CTR., *Employer Leadership to Advance Equal Pay: Examples of Promising Practices* (Mar. 2017), available at <https://nwlc-ciw49tixgw5lbab.stackpathdns.com/wp-content/uploads/2017/03/Equal-Pay-Practices-4.19.17.pdf>.

the alternative, other technical advances such as a Google phone number may also be helpful when an attorney is out of the office but must call a client. These boundaries and precautions will be particularly important in rural or isolated communities, where many community members already know one another. Maintaining appropriate physical barriers and behavioral protocols will help mitigate some of the risk posed by these cases.

9. Agencies must provide appropriate work space and tools for attorney staff, including but not limited to a secured private office, a secure, separate client database, malpractice insurance, bar dues reimbursement, and case research access.

Comment:

Because attorneys must maintain their clients' confidences, it is essential that every attorney has a secure, private workspace that allows for confidential information to be exchanged without fear of being overheard. Databases with client information must similarly be only available to staff tied to the attorney's privilege. Malpractice insurance may be available to a nonprofit legal agency from the National Legal Aid & Defender Association for a reduced price. For case research, legal research companies like LexisNexis and Westlaw generally offer nonprofit rates. Additionally, agencies may establish partnerships with local public law libraries or law schools to access their research databases.

In addition to the physical barriers and other systems required, agencies must remember that an attorney's email, mail, and voicemail are all privileged and cannot be intercepted, handled, or accessible to anyone who is not tied to the attorney's privilege. This may require accommodations such as a separate phone and fax line and a separate PO box.

The agency may also need to maintain an Interest on Lawyers Trust Account (IOLTA) account to receive and maintain client fees. Although the legal services relevant to these Standards are unpaid, there are often circumstances under which clients may have to direct money to the organization for filing fees or other costs.

B. Supervisors

1. All supervisors, including the Executive Director, should receive comprehensive training on supervision and management of staff within 90 days of promotion or hire.

Comment:

Once management and supervisors have been hired or promoted to their positions, it is essential that they be trained specifically on management and supervision techniques. This training should begin as soon as is practicable, but no later than 90 days after the promotion or hire.

2. Agencies should provide access to regular mentorship and professional development regarding supervisory responsibilities.

Comment:

Training is essential as a general matter,¹³ but supervisor-specific training is essential for several reasons. First, supervisors must be made aware of their ethical duties and responsibilities. Pursuant to American Bar Association Model Rule of Professional Conduct 5.1, any lawyer who supervises

¹³ For a more in-depth explanation of the importance of training for all staff, see Standard IV(A)(1).

another lawyer “*shall* make reasonable efforts to ensure that the other lawyer conforms to the Rules of Professional Conduct [emphasis added].”¹⁴ Supervisors have a proactive duty under the Rules of Professional Conduct to ensure that their supervisees comply with the rules, and it is important for newly hired or promoted supervisors to be aware of that duty. Additionally, the Model Rules of Professional Conduct specify circumstances under which a supervisor shall be considered responsible for their supervisee’s conduct: a supervisor “shall be responsible for another lawyer’s violation of the Rules of Professional Conduct if . . . (2) the lawyer is a partner or has comparable managerial authority in the law firm in which the other lawyer practices, or has direct supervisory authority over the other lawyer, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take remedial action.”¹⁵ In other words, inadequate supervision, such as by a supervisor failing to stop or prevent their supervisee from taking unethical action, constitutes a violation of the rules on its own.

Additionally, the American Bar Association Standards for the Provision of Civil Legal Aid, Standard 6.3 states: “A provider is responsible for the conduct of representation undertaken by its practitioners and should supervise the work to assure that each client is competently represented.”¹⁶ These standards, targeted specifically to civil legal aid organizations, reaffirms Rule of Professional Conduct 5.1’s assertion that there is managerial responsibility for supervisees’ actions.

Finally, as a practical matter, it is important for supervisors to be trained on management skills because this will empower them to be the most effective supervisors they can be. This should include human resources training to train a manager on how to handle difficult office situations such as another staff member being terminated. Effective supervisors can get the best out of their employees and also encourage higher levels of staff retention, and as such, training supervisors has an exponential impact on the rest of the agency.

3. Legal departments and teams should develop comprehensive annual work plans that include legal representation, outreach, training, policy, and future planning.

4. Legal departments and teams should periodically reassess their priorities.

Comment:

Supervisors should lead their department or team in developing a work plan that accounts for all activities by all members of the team. This will be helpful to clarify roles across a team, to account for employees’ time, and to ensure equity among team members in terms of workload. Additionally, having a written work plan in place will be helpful if upper management asks a member of the supervisor’s team to take on additional responsibility. If this occurs, the supervisor must speak frankly with upper management to assess which of that employee’s pre-existing responsibilities should be foregone in favor of the newly requested responsibility.

Finally, work plans should account for attorneys who leave the organization.¹⁷ Where an attorney has left the organization for any reason, the organization should maintain funding for malpractice tail coverage¹⁸ to protect themselves from liability.

¹⁴ MODEL RULES OF PROF’L CONDUCT r. 5.1 (AM. BAR ASS’N 2016).

¹⁵ *Id.*

¹⁶ STANDARDS FOR THE PROVISION OF CIVIL LEGAL AID, Standard 6.3 (on Responsibility for the Conduct of Representation) (ABA STANDING COMM. ON LEGAL AID & INDIGENT DEFENDANTS 2016).

¹⁷ For a detailed explanation of planning for temporary or permanent attorney absence, see Standard V(K).

¹⁸ Malpractice tail coverage extends the period during which law firms may report a claim to their insurance carrier, allowing for coverage of claims after an attorney has left the organization.

5. Implementers of grant deliverables should be given an opportunity to provide meaningful input into proposals, especially related to outcomes.

Comment:

It is important that supervisors, as well as other employees responsible for implementing grant deliverables, have an opportunity to participate in the grant-writing process. Supervisors and others who implement grant deliverables are in the best position to realistically assess what future deliverables should be written into grant proposals as they are the individuals completing the work each day. In some offices that house DSV attorneys, supervisors are already the primary authors of grant applications. That is certainly acceptable as well, but it is important that, at a minimum, supervisors be able to provide their input on the process. Alternatively, a development team may be best-suited to write much of a grant application, while a supervisor could write portions that relate to deliverables. Where possible, consult with non-supervisor employees on grant applications as well.

6. Agencies should develop protocols for evaluating supervisors' capacity, skills, and performance both before and after hire/promotion, including how supervising attorneys deal with their own and their supervisees' vicarious trauma and traumatized clients.

Comment:

Upper management must have systems in place to evaluate supervisors' performance. This is important before hire, to determine the most effective candidate, but also after hire, to ensure that supervisors are performing at their best. As supervisors play a critical role in the continued success of agencies that employ DSV attorneys, it is essential that there are mechanisms by which to hold them accountable for their performance.

7. Evaluation of supervisors should include an assessment of the supervisor's communication to staff and follow-through with staff.

8. Agencies should commit to the long-term skills building of supervisors by incorporating feedback of both senior and junior employees into their evaluation of supervisors.

Comment:

Upper management should have protocols for getting feedback from a supervisor's supervisees. While supervisees should be encouraged to raise any supervision issues immediately, having a regular check-in on the state of their supervision creates an open environment for feedback. These regular check-ins should happen separately in time from the supervisees' own performance evaluation to avoid any real or perceived retaliation for either party providing negative feedback on the other.

In addition to learning how supervisors perform in their supervisory roles in the office, upper management should inquire into supervisors' non-supervisory performance, such as by observing their court appearances or attending a coalition meeting with them. It is important that supervisors consistently represent the ideals of their organization, and it is upper management's responsibility to ensure that they do.

9. Supervisors should be holistically reviewed in a separate track from other staff review to avoid any perceived or actual conflict.

Comment:

Protocols should be put in place to ensure there that a supervisor's own evaluation of a supervisee is not dependent on that supervisee's evaluation of them. This can be accomplished by conducting supervisor reviews at a different point in time or ensuring that reviews are kept confidential. In addition to obtaining feedback from a supervisee, agencies may find it helpful to get feedback from a supervisor's clients to ensure that case-handling responsibilities are still being met.

V. Supervisor Responsibilities and Standards

- A. Supervisors should develop a time frame of substantive competency benchmarks for supervisees and customize them for each new hire.
- B. Supervisors should provide for a meaningful “open door” or office hour policy in addition to routine formal feedback.
- C. Supervisors should schedule regular check-in meetings with supervisees that are not performance reviews, and make observation of in-court and out-of-court performance part of their routine.
- D. Where supervisors and supervisees are not in the same office, supervisors should implement a formal distance supervision and practice protocol which includes scheduled virtual meetings; in-person meetings and supervision; and long-distance work product review.
- E. Remote employee job descriptions should include formal networking and community engagement.
- F. Supervisors should implement randomized case file audits.
- G. Supervisors should provide formal, explicit, and routine check-ins, feedback, and performance reviews for more experienced supervisees as well as CLE and non-CLE learning opportunities, including on vicarious trauma and self-care.
- H. Supervisors should provide attorneys with an appropriate range of cases based on their experience in the domestic and sexual violence field, which should be re-evaluated based on performance reviews and supervision.
- I. There should be an overall cap on cases based on types of cases to ensure high-quality representation.
- J. Caseload management should be a transparent process.
- K. Supervisors should ensure that a coverage plan is in place for staff taking both expected and unexpected leave (short-term, long-term, and permanent) that is ethical and responsive to caseloads.
- L. Supervisors should work with agency leadership to develop and implement alternative metrics for describing and reporting case outcomes that more accurately reflect the work than mere case closings.
- M. Withdrawal from a case due to an irredeemable attorney-client relationship is permissible, but should only be considered after other strategies to meet the client’s needs have been unsuccessful.
- N. When weighing withdrawal from a case, supervisors should consider the unique experience of clients coping with the aftermath of domestic and sexual violence, including trauma, relocation, lack of trust, and safety concerns, as well as the unique experience of serving domestic and sexual violence clients, including a heightened risk to the attorney and the organization.

A. Supervisors should develop a time frame of substantive competency benchmarks for supervisees and customize them for each new hire.

Comment:

Supervisors should maintain a list of substantive competency benchmarks and the time period during which they should be achieved. Examples of benchmarks include conducting a client interview, drafting pleadings, co-counseling a hearing, and litigating a contested trial alone. Specific benchmarks and time frames should be modified for each hire depending on a number of factors, including if they are a new attorney, an experienced attorney, new to the practice area, new to practice in the state, or new to legal services.

B. Supervisors should provide for a meaningful “open door” or office hour policy in addition to routine formal feedback.

Comment:

In order to provide helpful feedback, supervisors need to observe their supervisees in court, in client interviews, and in community events. This means, again, that time must be allocated for supervisors to perform supervisory duties.¹⁹ Expectations of supervisees should be clear through both written job descriptions²⁰ and ongoing conversations with supervisors. These conversations, along with other feedback, should take place regularly in the form of performance evaluations, but also in more informal check-ins and with a supervisor maintaining an “open door” policy. The American Bar Association Standards for the Provision of Civil Legal Aid, comment to Standard 6.4 on Review of Representation provides supplemental methods to providing oversight and review:

- “Day-to-day interaction between practitioners and supervisors, by means of formal conferences or informal discussions regarding pending cases and other legal work;
- Assignment of responsibility for complex representation jointly to a senior practitioner and one or more junior practitioners to assure that the work of the least experienced staff is overseen by someone of proven ability;
- Regular office or team meetings to inform supervisors and peers of the status of an individual’s case and other legal work;
- Frequent written or electronic case management reports to supervisors on the status of the practitioner’s open cases, in sufficient detail to signal a need for further inquiry in the event that a case is not proceeding properly;
- Attendance by the reviewer at proceedings, such as hearings and trials, meetings or other settings where the reviewer has an opportunity to observe the practitioner’s performance.”²¹

There should not necessarily be an expectation that a supervisor will be available during all business hours, but supervisors should allocate some time each day to be available to their supervisees for questions. Face-to-face interaction with supervisees is preferable, but an “open door” policy could be effectuated where a supervisor and supervisee work in different locations. For example, remote office hours could take place over the phone or video chat. Off-site supervision in general will require more creativity and will require the supervisor to be more proactive.²²

¹⁹ For a further explanation of the necessity of having time carved out for all expected tasks, see Standard III(A).

²⁰ See *id.*

²¹ STANDARDS FOR THE PROVISION OF CIVIL LEGAL AID, Standard 6.4 cmt. (on Review of Representation) (ABA STANDING COMM. ON LEGAL AID & INDIGENT DEFENDANTS 2016).

²² For a more detailed description of how off-site supervisors can make themselves available to their supervisees, see Standard V(D).

Whether the supervisor is on-site or off-site, office hours provide an opportunity not only for supervisees to ask questions and get feedback, but also provide an opportunity for supervisors to assess their supervisees' overall well-being. As discussed in Standard III(B), it is critical that supervisors be trained on signs of vicarious trauma and burnout and be vigilant to ensure that their supervisees are practicing appropriate and effective self-care.

Communication beyond conversations between supervisors and supervisees can also be effective as a form of positive feedback. For example, if a supervisee has a particularly successful hearing, a supervisor should consider sharing that success story with the full organization. This will make the supervisee feel valued, let them know they did a good job, and can also help build morale for the whole office.

- C. Supervisors should schedule regular check-in meetings with supervisees that are not performance reviews, and make observation of in-court and out-of-court performance part of their routine.**

- D. Where supervisors and supervisees are not in the same office, supervisors should implement a formal distance supervision and practice protocol which includes scheduled virtual meetings; in-person meetings and supervision; and long-distance work product review.**

Comment:

Geography sometimes demands that supervisors and supervisees work in separate locations. This can create barriers to communication between supervisors and supervisees, so it is important for supervisors to be proactive in implementing regular check-ins and work product review.²³ Possibilities include phone calls or video chats every week at the same time to ensure an opportunity to communicate regularly. These check-ins should not only address a supervisee's work performance but their general well-being as well.

Even where a supervisor works remotely, it is still essential that they attend each supervisee's first several client interviews and hearings. Again, supervisors should have a limited caseload, particularly if their supervisees work across county or state lines such that travel times become significant.

- E. Remote employee job descriptions should include formal networking and community engagement.**

Comment:

Where a supervisor works in a remote location, it is important for them to foster relationships between distance supervisees and members of the local bar, local victim advocates, and other stakeholders. A supervisor should make it clear that building local relationships is part of the supervisee's job. Building these connections will help the supervisee feel like part of the advocacy community and will provide them with important relationships that may sometimes fill the space of a remote supervisor who cannot be physically present each day.

²³ For a more in-depth discussion of virtual office hours, see Standard V(B).

F. Supervisors should implement randomized case file audits.

Comment:

It is important for supervisors to review their supervisees' case files periodically to ensure that files are properly maintained. Reviewing case files will ensure that the supervisor is abreast of the goings-on of their supervisees' open and closed cases, and provides an opportunity for the supervisor to give feedback or guidance on the case's progress or outcome. Auditing files will also help ensure that attorneys close their cases in a timely manner. Second, maintaining clear and organized files is helpful if an attorney is unexpectedly unavailable and a colleague must step in to handle a matter, or if a client returns to the organization several years later and a new attorney handles the case. Implementing randomized case file audits is a measure of quality control that will benefit the supervisor, the supervisee, and the organization as a whole.

G. Supervisors should provide formal, explicit, and routine check-ins, feedback, and performance reviews for more experienced supervisees as well as CLE and non-CLE learning opportunities, including on vicarious trauma and self-care.

Comment:

Many attorneys who represent DSV victims have limited litigation experience and the need for supervision is clear. However, supervisors must ensure that they supervise their attorneys with more litigation experience as well. The American Bar Association Standards for the Provision of Civil Legal Aid, Standard 6.4 states that "a provider should review representation provided to clients to assure that they receive high quality assistance and to identify areas in which the provider should offer training and support to its practitioners."²⁴ This guidance applies to all supervisees regardless of experience. Strategic case conferences,²⁵ random case audits,²⁶ and other forms of review should continue for the duration of a supervisee's employment with the organization. Supervisees with considerable experience should be asked how they want to grow and expand their career path as a part of check-ins or other reviews, and supervisors should create a culture that supports ongoing learning.

H. Supervisors should provide attorneys with an appropriate range of cases based on their experience in the domestic and sexual violence field, which should be re-evaluated based on performance reviews and supervision.

Comment:

Caseload management is a difficult task in a field in which there will always be more clients in need of services. It is critical that a supervisor properly manages their supervisees' caseloads to ensure the high-quality representation for all clients. The American Bar Association Standards for the Provision of Civil Legal Aid, Standard 6.2 states that "a provider should assign and manage cases and individual workloads for practitioners and other staff to promote high quality representation and legal work."²⁷ According to Standard 6.2, the factors that should govern the assignment and management of cases are "the availability of adequate time to represent the client competently . . . the practitioner's level of experience, training and expertise, . . . the status and complexity

²⁴ STANDARDS FOR THE PROVISION OF CIVIL LEGAL AID, Standard 6.4 (on Review of Representation) (ABA STANDING COMM. ON LEGAL AID & INDIGENT DEFENDANTS 2016).

²⁵ For a more in-depth discussion of supplemental forms of supervision, see Standard V(B).

²⁶ For a more in-depth discussion on the importance of case file audits, see Standard V(F).

²⁷ STANDARDS FOR THE PROVISION OF CIVIL LEGAL AID, Standard 6.2 (on Assignment and Management of Cases and Workload) (ABA STANDING COMM. ON LEGAL AID & INDIGENT DEFENDANTS 2016).

of pending cases, . . . non-representational legal work and other responsibilities, . . . [and] the provider's capacity for support."²⁸ Other factors to consider include any travel required for the litigation, the need for an interpreter, or access to a paralegal.

While there is no uniform number of cases that would be appropriate for all attorneys representing DSV victims, a caseload between 15–25 is likely appropriate for a full-time staff attorney. While “case” can be defined very differently by different organizations, these Standards define a case as one legal matter with one client. For example, one client with a protective order petition is one case. If that client also has a custody petition pending, that is a second case. A less experienced attorney should be at the lower end of this case range. This case number will also vary based on the type of cases, as contested custody cases often take considerably more time than protection order cases. Attorneys should carry a combination of complex and straightforward cases.

- I. There should be an overall cap on cases based on types of cases to ensure high-quality representation.**
- J. Caseload management should be a transparent process.**
- K. Supervisors should ensure that a coverage plan is in place for staff taking both expected and unexpected leave (short-term, long-term, and permanent) that is ethical and responsive to caseloads.**

Comment:

With attorneys often carrying full caseloads, it can be challenging for an organization when they are out of the office. When employees can give notice of their leave, for example for a vacation or parental leave, employers may have a greater opportunity to arrange case coverage. However, it is important that this case coverage plan be in place even before an organization receives notice of an attorney's expected leave so all employees share the same understanding of the redistribution of work. Additionally, having a coverage plan in place will lead to a smoother work redistribution when an attorney is on leave unexpectedly. An organization must put financial resources toward a coverage plan, and grant proposals should generally never account for just one lawyer per project. Fostering trusted ongoing relationships with other local experienced attorneys may also be helpful to ensuring case coverage. After a conflicts check, and with the express written consent of the client, cases can be transferred either temporarily or permanently to local attorneys.

In addition to ensuring that there is always an attorney designated to take over a case from another attorney on leave, every organization that employs a DSV attorney needs a formal system for locating files and searching through calendars. Maintaining an office-wide litigation calendar may assist with this process. Intake staff who are responsible for scheduling client appointments with attorneys should be kept up-to-date on any attorneys on leave and adjust their scheduling processes accordingly.

Unfortunately, there are times when grant funding is eliminated and attorneys are forced to leave an organization with open cases. To protect their own interests and their clients' interests in these cases, organizations should maintain funding for attorneys outside of the grant in order to close any remaining open cases. Additionally, where an attorney has left the organization for any reason, the organization should maintain funding for malpractice tail coverage cost to protect themselves from liability.

²⁸ See *id.*

L. Supervisors should work with agency leadership to develop and implement alternative metrics for describing and reporting case outcomes that more accurately reflect the work than mere case closings.

Comment:

Grant applications and reports often call for specific case numbers in making funding decisions and determining an agency's progress towards fulfilling the grant deliverables. Grant applications should project anticipated case numbers, but they should be attainable and not the only descriptor of the work completed; case numbers alone are not completely reflective of the amount and type of work done by many DSV attorneys.²⁹ One possible alternative metric is the number of hours an attorney has spent on cases, rather than the number of total cases the attorney has closed, as that may better account for an attorney's work who has litigated several complex and time-consuming cases. Reporting variations in case types is also helpful in conjunction with reporting on case hours; for example, noting the number of "brief service" cases versus "litigated outcomes" or "negotiated settlements." Bringing funders on site to the office may also give them a deeper understanding and appreciation for the amount and variety of work being done. Supervisors and leadership should be prepared to advocate with funders on this point.

The alternative metrics recommended in this Standard should also include non-litigation work such as community outreach. Including these additional activities will show the extent of the agency's reach beyond just numbers. Case management systems should be used to track these additional non-litigation services and make them easier to report to funders when the time comes.

M. Withdrawal from a case due to an irredeemable attorney-client relationship is permissible, but should only be considered after other strategies to meet the client's needs have been unsuccessful.

Comment:

First, the factors contemplated by this Standard in the decision to withdraw from client representation are in addition to other local, state, and ethical rules that bind the organization. Agencies should cross-reference all relevant professional standards before making the decision to withdraw from representing a client.

In general, agencies will avoid or limit the circumstances under which withdrawing from a case is necessary by being very clear about the scope of representation from the beginning of the attorney-client relationship. Any retainer should specify exactly what case the attorney agrees to represent the client on (e.g., "pending visitation case before the Smith County Family Court, Case No. 1234 through final order"), and what the attorney will not represent the client on (e.g., "no representation on appeal"). When both parties understand the limit of the attorney-client relationship, withdrawal should be necessary less frequently.

Under no circumstances should representation be conditioned on a client taking specific actions, including signing a confidentiality waiver or participating in counseling, however opting in to these services is a possibility.³⁰

Staff resources are a factor to consider when determining whether to withdraw from a case. Of course, resources should be a determinative factor when deciding whether to initially take on case representation, but there are instances where circumstances change. If the nature of a case

²⁹ For these Standards' definition of what constitutes a case, see Standard V(H).

³⁰ U.S. DEP'T OF JUST., OFF. ON VIOLENCE AGAINST WOMEN, FY 2019 SOLICITATION COMPANION GUIDE OVW GRANT PROGRAMS & POST-AWARD INFORMATION 16 (2019).

changes dramatically, funding is reduced, or attorneys leave unexpectedly,³¹ an agency may need to withdraw from a case. This is particularly true for small offices. Under such circumstances, make sure to communicate promptly and clearly with the client and be available to respond to any questions or concerns they may have.

Finally, in considering whether to withdraw from a case, as with every other phase of client representation, agencies must be proactive in managing their biases. Bias-based withdrawal from representation could occur even where a lawyer withdraws representation in-part or implicitly based on the client's race, gender, or other marginalized status. Foundational Principles III. F. and III. G of these Standards provide a detailed description of the need to increase diversity and limit institutional bias. It is critical that all decisions an organization makes are made with an understanding of its own implicit biases, and supervisors should bear that in mind as they or their supervisees make any case withdrawal decisions.

N. When weighing withdrawal from a case, supervisors should consider the unique experience of clients coping with the aftermath of domestic and sexual violence, including trauma, relocation, lack of trust, and safety concerns, as well as the unique experience of serving domestic and sexual violence clients, including a heightened risk to the attorney and the organization.

Comment:

One major consideration for an agency considering withdrawal from a case is the client's safety. Safety concerns include the client's ability to communicate their needs to the court and their relative level of danger. Where a client would have major difficulties communicating on their own behalf or where they are in a tremendous amount of danger, withdrawal from representation should be avoided if at all possible. In any case where an agency is considering withdrawal from representation due to attorney-client relationship failures, attempts should first be made to mitigate the situation by transferring the case to a different attorney or having a supervisor co-counsel the case. If an agency does need to withdraw from a case, they should make every effort possible to find new counsel for the client.

³¹ For a more in-depth explanation of how to avoid lapses in attorney coverage by developing a coverage plan, see Standard V(K).

VI. Appendix

Resources:

- (1) MODEL RULES OF PROF'L CONDUCT r. 5.1 (AM. BAR ASS'N 2016).
- (2) STANDARDS FOR THE PROVISION OF CIVIL LEGAL AID, Standards 6.2-6.6 (ABA STANDING COMM. ON LEGAL AID & INDIGENT DEFENDANTS 2016).
- (3) NATIONAL COUNCIL OF NONPROFITS, <https://www.councilofnonprofits.org>.
- (4) *Management Information Exchange Website*, MGMT. INNOVATION EXCELLENCE FOR LEGAL AID, <https://mielegalaid.org>.