

**STANDARDS FOR THE OPERATION
OF A
TELEPHONE HOTLINE
PROVIDING LEGAL ADVICE AND INFORMATION**

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INTRODUCTION

The delivery of personal legal services is a dynamic function that reflects the needs and demands of clients and potential clients. A generation ago research demonstrated the difficulties low and moderate income people had finding and retaining lawyers. The legal profession and society in general focused on solutions to the problem of limited access by providing greater resources for legal aid and pro bono representation, expanding and improving lawyer referral and prepaid legal services and lessening restrictions on lawyer advertising. Although the poor remain vastly under-served, these developments have contributed to the ability of people who know they have a legal problem to find a lawyer who will assist them in resolving the problem.

However, more recent research demonstrates that people need improved resources to help them determine whether they have a legal problem and to provide brief advice on when to use a lawyer and how to proceed if they do not obtain a lawyer. Telephone hotline services providing legal advice and information have emerged as a formidable mechanism to assist people in becoming aware of their legal rights and responsibilities, making important decisions and responding to the information that they receive from hotline personnel.

Telephone hotline services are viable, yet limited, mechanisms of providing legal help. They provide a scope of representation that is agreed to by the lawyer and client, as permitted under the state rules of professional conduct. They provide valuable services when properly operated, offering people with legal problems a resource that is not readily available by other methods. As a result, telephone hotline services providing legal advice and information serve the essential

goal of increasing access to justice for those who may not otherwise have an avenue to that access.

In most respects, lawyers staffing hotline services deliver legal advice like lawyers in office settings. The responsibilities of hotline lawyers are the same as those in the traditional practice. However, hotline services have unique features. Since the time spent with each caller is typically less than that spent with clients in an office setting, the sheer volume of cases increases. The volume also increases because the nature of the hotline services enables more clients to use it. The office location and business hours are no longer obstacles for those who live or work far from the lawyer's office. Since the hotline staff spend less time on most matters, the cost of the legal service is less, expanding accessibility to those who lack the discretionary income for traditional representation.

Yet the scope of legal service provided by hotline staff is typically more limited than that provided by lawyers through full representation. In some circumstances, the hotline service is simply an inadequate vehicle to meet the needs of clients with complex matters. In these respects, lawyers participating in telephone hotline services providing legal advice and information have responsibilities that differ from those of lawyers who provide case-by-case, in-person representation in the traditional model of full representation.

These responsibilities create obligations for hotline services and the lawyers who participate in these mechanisms. The standards set out here address those responsibilities with a focus on three issues: 1) abiding by the core values of the legal profession; 2) defining the scope of

representation provided to callers; and 3) assuring that callers understand the scope of services available through the hotline. Hotline services providing legal advice and information must advance the core professional values of the legal profession, including competence, confidentiality, avoidance of conflicts of interest and the independence of professional judgment. The standards presented here discuss these values and call for participating lawyers to fully comply with all applicable rules of professional conduct and for hotline services to comply with regulations that govern their operations.

In addition to ethical considerations, matters of safety should be addressed in operation of telephone hotlines. For example, hotline services that receive calls concerning domestic violence and abuse should have procedures designed to protect safety of callers. These standards recognize and generally address those concerns.

Telephone services vary. Some, such as those frequently sponsored by bar associations or Yellow Pages publishers, offer callers only pre-recorded information on a variety of subjects, which can be accessed by selecting digits on a touch-tone telephone. No individual advice is available. This type of service plays a valuable role in consumer education, but is not addressed in the standards set forth here.

The hotline services addressed in these standards are those that have the *capacity* to provide fact-specific legal advice that assists callers in reaching decisions about legal matters, taking steps to resolve those matters or making a decision not to take action. In such a situation, the hotline service is facilitating legal services and the hotline staff providing callers with advice are

practicing law. The lawyers participating in these hotline services must then comply with the state-based rules of professional conduct.

Difficulties sometimes arise when a caller seeks only general information that is not fact-specific. While hotline personnel should provide that information, they must assume the attorney-client relationship exists and provide information while operating within the governing rules of professional conduct. Some hotline services advance a position that they only offer information, and not advice, and therefore are not subject to the application of the rules. If a service *only offers information under all circumstances* and does not offer advice based on the facts presented by individual callers, the service may be able to justify this position. But if the hotline service has the *capacity* to offer fact-specific advice to callers, even though in some circumstances the personnel only provide information, the personnel are practicing law and the rules of professional conduct apply to them. In this situation, the hotline personnel do not know when their services will be limited to general information or expanded to legal advice until the matter is concluded. Therefore, the hotline service has the responsibility to operate in ways that abide by the core values of the legal profession and the lawyers must comply with the state-based rules of professional conduct.

Nevertheless, hotline services providing legal advice and information, and the lawyers who participate in them, have a right to define and limit the scope of the services they provide. Finding a balance that meets the lawyer's obligation to provide sufficient information in the format of brief advice and to limit the scope of services can be difficult. Callers frequently request specific information and are not interested in discussing the details of their problems. In

this situation, hotline personnel should be able to respond without conducting an investigation into a specific matter. However, when callers seek advice, hotline personnel have an obligation to probe the surrounding circumstances sufficiently to be certain the advice is competent and reasonably complete within the context of the caller's issue. Limiting the scope of services through a hotline service is no different in this respect than when a lawyer provides the same limited services in an office setting. However, hotline services should be aware that callers have expectations different from those of lawyers in office settings, particularly in the degree of service that is available. Consequently hotline services should be very conscientious about defining the scope of those services and communicating their limitations to callers.

As noted above, hotline services vary and have no universal definition. A hotline service may be a stand-alone entity operated by a sole practitioner, a facet of a legal aid or non-profit program, a service of a bar association or one of the options available to those who participate in a group or prepaid legal services plan. In these various contexts, the same word or phrase may carry different meanings or connotations. For example, a group or prepaid *provider* generally refers to the lawyers who directly provide legal services to clients. In other contexts, a provider may be construed as the overseeing entity that enables the hotline services to be provided.

The standards presented here are designed to address matters pertinent to those who establish, operate and control hotline services, as well as hotline personnel, including staff, consulting lawyers and volunteers. Most of the standards are directed toward those who determine the policies and operations of the system. These standards refer to "hotline services" or "hotlines."

However, when the standards are directed toward those who interact with callers or otherwise serve the hotline, the standards refer to the “hotline personnel,” “staff,” or “lawyers.”

Overall, this set of standards is intended to recognize the value of telephone hotline services in the delivery of legal services. The standards are set out to advance and encourage best practices among those who establish systems to meet the needs of callers looking for a convenient and cost-effective source of legal advice and information. As such, these standards carry no sanctions for a hotline service or participating lawyers who fails to meet them. However, lawyers who breach their rules of professional conduct are subject to disciplinary proceedings in the states where they are admitted.

Some standards will simply not apply to the methodologies of some hotline services. The standards are intended to address variations from one hotline model to another. However, no particular service or mechanism should be criticized or sanctioned for not employing recommendations that do not reasonably apply to the operations of that model.

The standards include three words or phrases used to denote degrees of importance. Many of the standards in the first section state that the hotline provider “**must**” pursue or refrain from certain conduct. The use of “**must**” is generally limited to those circumstances where the service, lawyers it employs, or other personnel could be subject to sanctions from some source if the system fails to comply with the standard. Most of the standards *urge* compliance by stating that the hotline service or lawyers “**should**” pursue or refrain from certain conduct or procedures. This phrase is used here to encourage hotline services to adopt best practices. Finally, a few

standards suggest that the service or lawyers “**may wish to**” take some action. These standards address issues that need to be considered by hotline services and personnel.

The phrase “legal services” is used in these standards to broadly mean all legal services. The phrase is not limited to legal aid and should not be confused with the services provided by entities funded by the Legal Services Corporation. “Legal aid” is used throughout to describe donated or subsidized legal services provided to the poor. Finally, the standards include frequent references to “rules of professional conduct.” This refers to the ethics provisions adopted by the states to govern the conduct of lawyers. The failure of lawyers to abide by these provisions can result in disciplinary proceedings or other possible sanctions. In some states, these ethics rules are known by different names, such as the code of professional responsibility.

I. General Standards

1.1. Compliance with Core Values. A telephone hotline service delivering fact-specific legal advice must advance the core values of the legal profession. Lawyers participating in telephone hotline services must comply with the rules of professional conduct in those jurisdictions where they are admitted.

Comment. People access legal information from a variety of sources, including friends and neighbors who have addressed similar matters, newspaper columns, radio shows, Internet sites, self-help books and over-the-counter software. While these resources may be sufficient to answer some questions about legal problems, they do not exercise judgment after an assessment of facts and provide assistance in the decision-making process as a result of that assessment. These are functions provided by lawyers who bring competence, skill and dedication into their services. The legal profession is unlike any other source of legal information because of core values incorporated into the rules of professional conduct. These values include competence, confidentiality, the avoidance of improper conflicts of interest and the independence of professional judgment provided to the client. Without the adherence to these values, a telephone hotline providing legal services becomes something less than the practice of law and delivery of legal services. Some hotline services are structured in a way that may provide callers with nothing more than information. However, when a telephone hotline service has the capacity to provide fact-specific legal advice enabling callers to further their decision-making process, its lawyers have the obligation to do so within the parameters of the rules of professional responsibility.

1.2. Scope of Representation. A telephone hotline service provides limited representation and a hotline service must insure that the client is aware of, and consents to, the limitations in the legal services provided. Hotline personnel may limit the information they provide to narrow, factual information when requested by the caller to do so. However,

telephone hotline personnel staffing calls should provide fact-specific legal advice to callers, delineating alternative courses of action and a range of choices, whenever possible. When the caller asks for fact-specific legal advice, hotline personnel should probe the circumstances sufficiently to formulate a competent legal analysis, within the scope of the agreed limited services.

Comment. Research documents a profound need for legal information to help people make decisions about whether to pursue a legal remedy as the solution to a problem. As more people proceed without representation by a lawyer in the traditional sense, they need detailed information concerning legal procedures and the substance of the legal matter at issue.

Telephone hotline services can serve as this source of information, but by their very nature, the services provided by telephone exclude means traditionally available to accomplish a client's objective. To state an obvious example, a person who calls a hotline service presumably understands that he or she will not be represented by a lawyer in court as a result of that call. Nonetheless, the hotline service must take steps to insure that the callers understand the limited scope of representation that will be provided, e.g., brief consultation and advice, and perhaps, in some cases, document preparation and negotiations.

Within the confines of the inherent limitations of a telephone consultation, the greatest service hotline personnel can provide is to address a caller's specific factual issues and then provide the caller with as many reasonable alternative choices or courses of action as are available. This provides callers the most beneficial advice as well as maximizes the caller's flexibility to choose what is best for that caller's needs. Providing responses to hypothetical questions is a technique that has been used by some hotline services to avoid creation of the attorney-client relationship and the ethics rules that attach to that relationship. At best, this method produces limited benefit

to the caller, and at worst, it causes confusion and leads callers into bad choices. Often, however, the caller will want straightforward, factual information such as might be found in a book in a public library; in the case of a for-profit hotline service, the caller may not be willing to pay for more than that. In such cases, hotline personnel should have no obligation to provide more than the information requested.

Although many legal matters are routine, most legal problems present some unique circumstances. Hotline personnel have the responsibility to gather sufficient information to formulate an adequate assessment of the situation necessary to provide competent advice, set out alternatives and make recommendations. Both hotline personnel and callers should recognize that hotline services have constraints that may make this analysis difficult or impossible in some circumstances, where, for example, lengthy documents need to be reviewed. When this is apparent, hotline personnel may wish to provide the caller with general information and direct the caller to more appropriate resources.

1.3. General Compliance Obligations. A telephone hotline service providing legal advice and information is directly or indirectly subject to laws, rules, regulations and restrictions from numerous sources, depending on its structure and nature of operations. The hotline service must be aware of all such laws, rules, regulations and restrictions and operate in full compliance.

Comment. A telephone hotline service and the lawyers who staff it are subject to a wide variety of legal controls, depending on the specific design and operation of the service. The operations are subject to various state laws such as those governing the unauthorized practice of law and federal laws such as those controlling telephone communications. Staffing is subject to workplace laws. Hotline staff working in a legal aid office may be members of a union, subjecting the hotline service to a union agreement. Funders, particularly the Legal Services

Corporation, place restrictions on programs they fund, which may limit or prohibit advice and information given on certain types of cases.

Not only do legal limitations apply to the service overall, but the rules of professional conduct establish ethical parameters for lawyers who participate in hotline services. A lawyer's failure to comply with these rules could lead to professional discipline resulting in a suspension or revocation of the lawyer's right to practice law. Therefore, legal personnel of hotline services must operate in compliance with ethics rules, such as those governing conflicts of interests, confidentiality, competence, the unauthorized practice of law, fee-sharing and the marketing of legal services. Lawyers are also subject to rules of procedure for the courts. These rules may have an impact on the operations of telephone hotline services providing legal services as well.

1.4. Conflicts of Interest. A telephone hotline service providing legal advice and information must maintain a method of screening calls to avoid conflicts of interest as required by applicable rules of professional conduct.

Comment. Although some telephone services operate as nothing more than a source of legal information, hotline services that have the capacity to provide advice or information regarding fact-specific circumstances may face conflicts of interest. Hotline services therefore have an obligation to institute measures that screen callers for potential conflicts of interest with its lawyers. In the day to day operations of a hotline service, it may receive calls from a wide variety of individuals. In fact, the ability to help a large number of people is generally a key benefit of the hotline method of providing legal services. As a result, lawyers staffing hotline services have a greater likelihood of facing conflicts of interest compared to lawyers working in more traditional legal settings.

When a hotline service is part of a larger system of legal services, such as a legal aid office, the system of checking conflicts should be integrated with the office as a whole.

1.5. Confidentiality and Expectations of Privacy. Callers to telephone hotline services providing legal advice and information are entitled to confidentiality and an expectation of privacy. Ethics rules governing confidentiality apply to lawyers communicating through hotline services just as they apply to communications through any other method of providing legal services. A hotline service should adopt and follow procedures to maintain caller information in whatever form retained, in a safe and confidential manner.

Comment. Confidentiality and the expectation of privacy are core values to the legal profession. The ability for lawyers and clients to communicate frankly and in full confidence is essential to the delivery of legal advice and representation. Therefore, the importance of confidentiality is not reduced simply because the relationship is exclusively handled through telephone conversations. Furthermore, the expectation of privacy cannot be limited to those who are accepted as clients, but must extend to all callers who reveal information pursuant to the processes of intake and screening. Hotline services need to establish procedures to be followed by lawyers and other staff that ensure information is maintained confidentially. This should include avoiding unnecessary conversations inside and outside the hotline operations regarding client disclosed information and establishing procedures adequate to ensure confidentiality. In domestic violence situations, it is often appropriate to establish procedures for use of confidential client-protected passcodes to avoid unintended disclosure of the fact or substance of confidential communications.

1.6. Third Party Callers. A telephone hotline service providing legal advice and information should develop and maintain procedures addressing ethical compliance when third parties contact the hotline on behalf of someone else and should have procedures addressing concerns for the safety and well being of the person who is the subject of the call and others.

Comment. Individuals may call hotline services to obtain legal advice and information for someone else who is unable or unwilling to contact the hotline service for themselves because of physical or mental limitations, the inability to speak a language offered by the hotline service or other reasons. Individuals calling on behalf of others may be legal guardians, family members, case workers or friends. The hotline service should have procedures guiding its personnel as they determine who the client is and addressing the ethics issues that arise from these situations. Sometimes the caller will have a legal relationship that permits them to substitute for the client, such as a legal guardian. In other situations, the third-party caller has no legal interest in the matter, such as a caseworker or translator. In still other circumstances, the caller could have a legal interest adverse to the person for whom they are calling, as may be the case with family members. For example, sometimes a caregiver for an elderly person may be the third party caller, but in fact be the abuser in domestic violence situations. Therefore, procedures may need to distinguish among the various types of third-party callers and examine the pertinent ethics issues that arise in each circumstance. Ethics issues of particular concern include conflicts of interest and confidentiality.

Hotline services should also recognize that they do not have an obligation to serve the interests of all callers and can implement non-discriminatory policies to refuse service under various circumstances, such as those resulting from some third-party calls. See Standard 3.5, Refusal of Service.

1.7. Competence. A telephone hotline service providing legal advice and information must take measures to assure its personnel provide competent advice and information as determined by state rules of professional conduct.

Comment. The ability of a hotline service to help its clients is directly related to the competence of the persons responding to questions and providing advice. A hotline service should therefore develop safeguards to ensure that telephone personnel are properly trained and knowledgeable in the areas of law in the jurisdiction for which they are expected to advise clients. In addition, a hotline service should attempt to establish criteria for measuring and maintaining quality assurance and determining the competence of the people who provide its services.

However, it should be noted that ethical compliance with competence requirements is also interrelated to the scope of services that are provided by any mechanism giving brief advice. If hotline personnel were to address complex issues in a limited timeframe or without a thorough review of applicable documents, the information is increasingly likely to be inadequate. This could lead to charges of incompetent service or representation. A hotline service should continually consider the scope of its services and assess the relationship between this scope and the ability of its personnel to provide competent advice and information to callers.

1.8. Unauthorized Practice of Law. A telephone hotline service providing legal advice and information must not foster, assist or participate in the unauthorized practice of law as set forth by state criminal statutes and state rules of professional conduct.

Comment. Each state has established its own set of laws regarding the requirement of licensing lawyers to practice law and has established the criteria to determine whether an unlicensed person is engaged in the unauthorized practice of law. Violation of such licensing statutes may constitute a state crime.

The potential for unauthorized practice of law applies to telephone hotline services in at least two ways. Hotline services with limited resources may use paralegals to staff the telephones. Paralegals should only do so under the direction and supervision of lawyers. However,

interpretations of unauthorized practice statutes may impose limitations on the role of paralegals in some states.

Lawyers may be engaged in the unauthorized practice of law when they provide legal advice to clients regarding the laws of states where they are not licensed or otherwise have no authority to provide such service. Hotline lawyers should only provide legal advice on legal matters in jurisdictions in which they are licensed or otherwise authorized to provide legal services.

1.9. Fee-Sharing. A telephone hotline service providing legal advice and information must comply with all state rules of professional conduct governing fee-sharing both with lawyers and with those who are not lawyers.

Comment. A core value of the legal profession is the independence of the lawyer's judgment. That independence may be threatened if a lawyer has financial obligations to those other than the lawyer and his or her firm or legal services organization. Lawyers who provide legal services through telephone hotline services that charge callers are generating legal fees. State ethics provisions limit the ways in which legal fees can be divided among lawyers who are not in the same firm and between lawyers and those who are not lawyers. If a hotline service routes calls to lawyers, fees may only be divided in compliance with certain requirements such as informed consent, overall reasonableness and a division of fees in proportion to the services provided.

Limitations on the division of fees with those who are not lawyers could serve as fundamental obstacles for hotlines that may be established by individuals or entities, such as corporations, that are not law firms. In most jurisdictions, ethics rules prohibit lawyers from dividing legal fees with those who are not lawyers, except under narrow circumstances, such as those governing prepaid legal services. Several years ago, fee-sharing limitations prevented lawyers in some states from accepting payment by credit cards because the arrangement was deemed to be

improper fee sharing with the credit card companies. These restrictive interpretations have been relaxed. However, ethics rules governing fee-sharing may prevent lawyers from working for certain delivery mechanisms that are owned by an individual or entity that is not a lawyer, firm or prepaid plan.

1.10. Marketing Hotline Services. A telephone hotline service providing legal advice and information must operate so that its lawyers comply with state rules of professional conduct governing marketing and promotion.

Comment. State-based rules of professional conduct include ethics provisions governing the communications of legal services, addressing the propriety of marketing and promotion. Lawyers involved in hotline services have an obligation to abide by these rules. Services that market themselves in ways that could violate the rules may expose the lawyers to the possibility of disciplinary action. Marketing materials cannot overstate or fraudulently misstate the services that are provided. State rules may require that advertisements be retained for a defined period of time that materials include the name of a lawyer responsible for the information and the ads include labeling or disclaimer requirements. Hotline services should recognize that such rules may apply to the lawyers working with them regardless of whether the service is operated as a for-profit or non-profit entity.

1.11. Procedural Rules. A telephone hotline service providing legal advice and information must operate so that its lawyers comply with applicable procedural court rules.

Comment. A hotline service may be structured in a way that imposes certain court rules on the lawyers who participate in the service. For example, a hotline service may provide form preparation services where the client files documents in a jurisdiction that requires disclosure on

pleadings of representation or assistance in the preparation of documents. In these instances, the hotline service must operate in a way that assures compliance.

1.12. Telephone Communications. A telephone hotline service providing legal advice and information must comply with all applicable laws governing telephone communications.

Comment. The Federal Communications Commission regulates the use of telephones in business services, for example, limiting the permissible use of and governing the billing structures for 900 numbers. Also state criminal statutes control the manner and circumstances of recording calls. Hotline services must follow all applicable laws governing telephone communications.

II. Procedures

2.1. Scope of Services. A telephone hotline service providing legal advice and information should clearly define the scope of services it provides to its callers.

Comments. A telephone hotline service is a viable, yet limited, mechanism of providing legal help. While its reach has substantial potential, its value should not be overstated. A hotline service may be a mechanism that provides general information, fact-specific advice or, in some cases, additional services, such as document preparation or referrals. There is no universally accepted definition of a hotline for legal services or a consensus of the scope of a hotline's services. Those services, in fact, vary considerably. Some hotline services are integrated into multi-varied delivery mechanisms providing a range of legal services, such as legal aid offices or traditional law practices. Other hotline services are stand-alone, entrepreneurial services that provide legal advice or information exclusively over the telephone. Still other hotline services provide legal assistance as part of the services given by a state or local bar association, or other public interest entity.

Telephone hotline services that provide legal advice and information vary greatly. Thus, some degree of public confusion over the services available from a particular hotline is likely. Furthermore, some legal needs exceed the scope of what can be done competently over the telephone or within the resources of a specific hotline service. Consequently, it is important for the hotline service to identify, define and effectively communicate the scope of the services it makes available.

This scope of services should be published in some form by the hotline service, circulated to all hotline personnel and appropriately communicated to callers directly and in materials that provide information about the hotline services.

2.2. Prompt Service. Telephone hotline personnel should respond to calls with reasonable promptness. In doing so, the service should recognize the need to establish mechanisms that avoid placing callers on hold for an extended period of time and should minimize the delay in making call backs, if call backs are provided by the service. Procedures should be in place to inform callers of likely delays and to advise them of alternatives. Additionally, the hotline service may wish to establish emergency response mechanisms.

Comment. The basic nature of a telephone hotline service is that of a service which is readily available on a quick, if not immediate, basis. In reality, however, hotline services cannot generally be expected to be staffed with sufficient personnel to provide immediate access on all legal topics at all times. Hotline calls are not evenly distributed and cover a broad range of topics, making it difficult, at best, to accurately schedule an appropriate number of lawyers with the necessary range of expertise to respond to the calls. However, a hotline service should recognize that callers perceive a need for a quick response. Fee-generating hotline services will lose clients if their calls are not handled promptly. In all situations, callers may turn to less reliable alternatives for the information they need, or they may forsake all efforts to obtain legal information or advice.

A hotline service may deliver prompt service in several ways. A hotline service may establish an emergency response procedure to give priority to those cases identified as emergencies. When calls are backed up, the hotline service should give callers an estimate of the waiting time and offer to take the information necessary for a call back at a later time, if the hotline has the technical capacity to do so. This may be done electronically, giving the caller an option to go into a voice mail system. A hotline service should monitor the times, subject matter and frequency of calls it receives and set the schedules of staff in a way that maximizes call processing efficiencies. If a hotline service has the capacity to make call backs, it should also establish a policy addressing the timeframe in which call backs occur.

When callers access the hotline service outside of the hours of its operation, a recorded message should inform them of the hours of operation, the scope and nature of the services offered, the charges, if any, and directions with regard to emergency circumstances, if any.

The hotline service may also include the capacity to record incoming messages placed after hours or when no one is available to take a call. If the service offers incoming messages, it should also take steps to safeguard the potential client against adverse conflicts of interest. The outgoing message should warn the caller not to include details about the caller's legal matter until the service has had an opportunity to screen the caller for possible conflicts of interest during a live conversation.

2.3. Managing Backlogs. Telephone hotline services providing legal advice and information should develop procedures to manage backlogs of calls. Information about backlogs should be conveyed to callers so that callers know what to expect when their calls cannot be taken within a reasonable amount of time. The procedures for managing backlogs should be consistent with the capacities of the hotline personnel who are responsible for the implementation of those procedures. The procedures should not result in burdens on the personnel that would create an adverse impact on the quality of the legal information or advice that is provided by the hotline service, or the manner or demeanor by which it is provided.

Comment. Although a telephone hotline service is among the most efficient methods of providing legal information and advice to individuals, the hotline service will frequently find it difficult to balance the availability of the resources providing the service with the demand for that information and advice. A hotline service that generates fees may meet the demand by expanding its resources, adding hardware and personnel to take additional calls in order to meet that demand. A subsidized hotline service, provided through a legal aid office, as part of a pro

bono service or within a bar association, may not be able to expand its services because of limited resources. The more likely alternative in these settings is to reduce the hours available to take calls and to employ a system for returning calls. In both the marketplace and non-marketplace settings, hotline services may elect to make call backs as a method of providing the greatest possible service to the largest number of callers. Even a hotline service with a large staff will have peak calling times when call backs are the best alternative to manage the flow of calls.

Important issues arise with the use of call backs. Some callers will not be able to receive a call back. They may simply not have access to a telephone, either at work, at home, or both. In some circumstances, a call back risks alerting others of a legal situation that the caller intends to keep confidential. For example, calls may involve financial situations or domestic disputes that may alarm or alert family members, or may even put the caller at risk of physical harm. In some cases involving domestic violence, call backs can jeopardize the safety or life of the caller. When a hotline service uses call backs, it should employ procedures to avoid harmful outcomes. These procedures may include scheduling call backs with the client and flagging intake information that signals potential problems so that other personnel who may be involved in call backs will avoid detrimental actions. Consideration should be given to the use of confidential client-protected passwords in domestic violence calls to insure confidentiality of both the fact and substance of the communication. However, these measures may be impractical, particularly with a hotline service where several people handle calls. In order to reduce the risk of harm, the caller must be in a position to make an informed decision about whether or not to receive a call back. Therefore, it is incumbent on the hotline service to adopt and employ a procedure that explains the potential risk to callers who are given an option to receive a call back.

If a hotline service provides call backs, it should keep in mind the goal of providing diligent responses to those with legal needs and do so within the capacity of the personnel and resources available. If the responses cannot be made soon after the initial call is received, the hotline

service must reconsider its ability to meet this goal and either adjust those resources or eliminate call backs, and inform callers of this limitation in the service.

2.4. Document Retention and Information Back-up. Document retention and information back-up should be consistent with the needs of the telephone hotline service to serve clients, maintain skilled staff and comply with all applicable rules and regulations regarding retention.

Comment. Unlike more traditional law practices, legal services provided through telephone hotlines are limited, frequently confined to a single telephone conversation and generally do not involve the generation of paper documentation, either internally as part of case management, or externally pursuant to the needs of the case itself. Hotline services may include document preparation services that involve the exchange of documents, via fax or mail. The limited flow of paper or electronic information, however, does not eliminate the need for a hotline service to retain basic documents and back-up information.

Document retention systems are necessary to advance case management and staff training, meet compliance obligations and potentially protect the client and hotline service. Depending on the scope of services, a hotline service may require a paper or electronic filing system that includes case management materials. In some circumstances, the hotline service is used preliminarily to progress towards and assist in more complete representation, such as for the screening and intake of potential clients in a legal aid office. The creation of a file system at the time the client first uses the hotline service eliminates redundant information collection as the case progresses. There are advantages to the retention of electronic note-keeping and client data. In some hotline services, intake notes are a necessary part of quality control and skills training for hotline personnel. Supervisors can review notes taken by the personnel staffing the telephone and spot issues where the information provided to callers can be improved. This can be done individually

as supervisors oversee the work of personnel and can also be built into subsequent training programs.

Document retention may also be essential in meeting funding requirements and other compliance needs, such as the documentation of numbers and types of cases handled as a requisite for obtaining or maintaining funding. Retained documents may also assist the hotline service if a claim of incompetence or malpractice is raised.

A hotline service should consider the needs for document retention and create and implement policies that back-up and retain materials in the ways that meet those needs.

2.5. Databases, Document Exchanges and Systems of Internal Support. A telephone hotline service should create and maintain a system of internal support that provides personnel who staff the hotline with the capabilities to support the needs of clients accurately and expeditiously. The system should take advantage of substantive legal information, legal databases and the availability of documents commonly needed to address hotline questions.

Comment. Systems of internal support create platforms enabling hotline personnel to respond with the speed and accuracy that meets the needs and expectations of callers who use hotline services to obtain accurate and helpful legal information. Technology enables those staffing hotlines to have nearly instant access to databases of legal information, accessible by keyword searches, at an unprecedented level. However, support systems must be kept up-to-date and often need to focus on specific jurisdictions. Hotline services that are operated as part of a larger delivery mechanism, such as those that are within a legal aid office, enjoy an economy of scale in the development and maintenance of customized systems of support, since substantial efforts are required to assemble and maintain databases. Hotline services within these types of settings should share information resources internally in order to reduce the burden of developing and

maintaining otherwise duplicative databases, thereby allowing a greater portion of hotline resources to be applied to the delivery of information to callers. Hotline services should also consider ways in which they can share resources with other hotline services and other external entities to reduce the burden of maintaining duplicative sources of information.

2.6. Lawyer Access. Telephone hotline services providing legal advice and information must have lawyers accessible to callers, either directly staffing telephones or as supervisors capable of providing legal advice and information to the hotline staff who are taking the calls. Hotline services must avoid the perception that lawyers are staffing the telephones when they are staffed by non-lawyers, such as paralegals or law students. Telephone hotline services should adopt and employ procedures that inform callers that those giving legal information and advice are not lawyers when that is the situation .

Comment. Many hotline services provide access to lawyers either directly or through a routing system upon the completion of screening and intake performed by an administrator. However, some hotline services make use of paralegals and law students to provide information directly to callers, under the supervision of a lawyer. A hotline service would generally be in violation of the unauthorized practice of law if it did not at least have a direct nexus to the lawyer serving as supervisor. This role is analogous to that of a paramedic in an ambulance who has a doctor available directly through some form of communication.

Fee-charging hotline services will have competitive pressures to provide direct communications with lawyers, but public service non-profit hotlines may need to utilize trained paralegals or law students to maximize their capacities. In either circumstance, if a hotline service provides advice and information to a caller through someone who is not a lawyer, the service must not allow the caller to misperceive that the information is coming directly from a lawyer.

In these respects, a hotline service is no different from the delivery of the legal services and information in more traditional settings, such as in a law office. However, a caller may more readily assume the person on the other end of the telephone is a lawyer. Therefore, a hotline service should have the obligation to inform the caller that the person is not a lawyer when that is the situation.

2.7. Document Services. Telephone hotline services that provide document preparation should set out the scope of those services and establish operating procedures to facilitate the efficient delivery of those services. Hotline services should establish procedures designed to maximize assistance to their callers. These procedures should direct hotline personnel to recognize limitations in the abilities and competencies of callers to proceed with legal matters on a pro se basis and to recognize the relative complexities of the legal issues being discussed. Hotline personnel should direct callers who show a limited capacity to resolve their legal needs on a pro se basis to other legal service resources. See Standard 1.2.

Comment. Many callers who contact a telephone hotline service have minor legal needs that involve the completion and filing of simple documents. While hotline personnel may talk the caller through the process, the successful completion of the legal task is more likely if hotline personnel assist in the preparation of the documents prior to signing, filing or processing. Health care directives, living wills and powers-of-attorney are examples of the types of documents that can be reviewed and discussed through a hotline service. Some hotline services develop and provide packets with forms and instructions to assist individuals with the preparation and execution of these documents.

The exchange of documents through fax or email can meet the needs of consumers who otherwise would find it difficult to visit a lawyer in a law office during the course of regular business hours. Document preparation provided by a telephone hotline service may be more cost

effective for both the provider and the consumer. Hotline services that provide document preparation should indicate the scope and limitation of those services in order to minimize unmet expectations or unfulfilled legal needs. Hotline personnel should use reasonable efforts to identify callers who may not have the capacity to carry out their own form preparation or understand the consequences of their actions, even with the assistance of the hotline's resources. Procedures should be developed to suggest alternatives to callers who indicate or show they are unable to successfully attend to their legal needs through the resources of the hotline service.

2.8. Screening for Legal Needs and Providing Preventive Law Services. Telephone hotline services should recognize, and if possible and appropriate, utilize the opportunity to screen callers for potential legal needs and provide callers with information designed to prevent and avoid further legal problems. Checklists may be developed and procedures established to prompt the use of the lists.

Comment. Frequently people in need of legal services are involved in life transitions. The legal information that hotline callers seek out may be a small part of their total legal and personal needs. For example, a grandparent with limited assets pursuing the appointment of guardianship for a minor may not consider the need for a will providing direction for the care of the minor in the event of the grandparent's death. A person seeking advice on how to negotiate a personal injury claim with an insurance adjuster may not know that a workers' compensation claim is also available. A hotline service may have an opportunity to build in checklists for callers seeking various types of information that would screen for the need to address related legal issues. Furthermore, a hotline service may develop a preventive law program analogous to a medical checklist.

This standard raises issues concerning the time, costs, resources and value of services provided by a telephone hotline. Callers paying for hotline services by time, such as \$3.00 per minute,

will be less inclined to submit to a series of questions, many of which may seem irrelevant. They may want nothing more than quick, straightforward answers to their questions. Similarly, the resources of a hotline service operating as part of a legal aid office may be so limited that the time expended by the hotline personnel to explore related legal needs does not appear justified. The fee-based hotline service should not use a checklist to increase the costs to callers. The subsidized hotline service should not unnecessarily limit a call in order to go on to the next. In both circumstances, operating procedures should be developed to efficiently examine and address the legal needs of the caller. These needs, as in any request for legal services, may go beyond those that are immediately apparent to the caller.

2.9. Referrals to Non-Legal Resources. Telephone hotline services providing legal advice and information should establish procedures to identify and maintain information about non-legal services that assist with the problems of callers. Hotline personnel should know of these resources and refer callers to them when it appears the resources would assist with the callers' problems.

Comment. Many people who contact telephone hotline services for legal advice and information have needs that are most effectively addressed through non-legal remedies. Sometimes these needs can be addressed with legal remedies and sometimes the needs will be addressed with alternatives to legal remedies. In order for hotline services to effectively address the needs of these callers, hotline services should maintain information about non-legal services. These include shelters for victims of domestic violence and a variety of government resources, such as social security, veterans administrations, human services, housing agencies, child support collection units, and public benefits and health care programs. Other support and conflict resolution entities may be sponsored by community and religious organizations.

Hotline services should maintain information about and make referrals to alternative dispute resolution resources. Most urban areas have independent community-based mediation centers that may be less costly, more convenient and quicker than the courts to resolve minor disputes.

Maintaining current and accurate information about resources is time-consuming, but many agencies now have web sites. Hotline services can make these sites easily accessible to hotline personnel.

2.10. Referrals to Other Legal Service Providers. A telephone hotline service should establish policies for the referral of callers to other legal service providers where appropriate and when available. The procedures must be followed uniformly by all hotline personnel. The procedures should address the circumstances for making referrals to legal aid and pro bono legal services, non-profit lawyer referral services, private practitioners not affiliated with the hotline service and private practitioners affiliated with the hotline services, if any. When hotline personnel refer callers to practitioners who have any interest in or formal affiliation with the hotline service, hotline personnel should inform the callers of the nature of the relationship at the time of the referral.

Comment. Callers' questions and issues are answered and resolved in various ways, including those that are handled solely by the services of the hotline, those that are handled by a referral to a non-legal resource and those that require additional legal services from some other resource. A caller may need legal services beyond those provided by the hotline because the issue is too complex or because the caller is unable to effectively address the problem without further legal assistance. Thus, a telephone hotline service providing legal advice and information should refer callers to additional legal providers. While callers who are not fully served through the parameters of the hotline's services are likely to benefit from referrals to other legal services, various state rules of professional conduct and procedural restrictions limit referral

arrangements. Lawyers operating hotline services should be knowledgeable of those restrictions and comply with the rules in all circumstances.

When a hotline service is a component part of a law firm, the relationship makes the referral less complex, but subject to abuse. A hotline service should not state or imply that it is an independent entity when it refers matters to lawyers who have an interest in or are formally affiliated with the hotline service. The relationship of the hotline service as a component of the law office should be made clear to the caller. It is deceptive and inappropriate when hotline services exist for the purpose of supplying clients to the law firms that operate them without such disclosure. This type of arrangement may be misleading and may taint the advice provided to callers and limit the ability of the lawyers to act in the best interest of their clients.

If a hotline service screens callers for income eligibility, the hotline personnel should refer income-eligible callers to a legal aid or pro bono service that is able to provide the required legal services when it becomes apparent to the hotline personnel that the caller needs such services. If a hotline service does not screen for income eligibility and does not have an arrangement for referrals to other lawyers, the hotline service should maintain and disseminate information about both legal services to those with low incomes and bar-sponsored lawyer referral programs serving fee-paying clients. Hotline personnel should provide callers with information about these resources when it becomes apparent that the caller will benefit from further representation.

Hotline services, particularly those focused on specialized fields of law such as domestic abuse or elder law, sometimes create panels of practitioners for the purpose of accepting client referrals. The goal of the referrals must be to provide the callers with competent representation that meets clients' needs. Procedures should be developed and employed throughout the hotline service to insure that goal is attained and that it is done within governing rules of professional conduct.

Occasionally, hotline services will find it beneficial to establish affiliations with practitioners and enter into financial arrangements for the division of fees. Most states now permit fee-sharing among lawyers who are otherwise not partners or associated under certain circumstances, foremost of which is that it is done with the client's consent. Hotline services that establish affiliations with practitioners must make their arrangements clear to callers and obtain consent. Hotline services with affiliated lawyers may find it beneficial to refer callers to multiple sources, including bar-sponsored lawyer referral services, so that the callers have a broader choice in the selection of a lawyer when they need further representation.

2.11. Quality Control and Client Feedback. Telephone hotline services providing legal advice and information should include on-going systems of quality control focused on ways in which their services may be improved. Procedures governing quality control should include systems analysis, staff review and client feedback and complaint procedures. Procedures may include client satisfaction surveys, subject to limitations on confidentiality and appropriate conduct in contacting clients and former clients.

Comment. As a relatively new method of delivering legal advice and information, telephone hotline services vary in quality. Most hotline services strive to obtain a balance between giving a sufficient level of service to their callers and achieving the effective use of resources. Hotline services evolve to adopt their own systems that best meet client demands within available resources. Consequently, hotline services need to develop quality control mechanisms that analyze the level, quality, effectiveness and utility of services provided and lead to improved services. Hotlines should employ quality control analysis to assess operating systems and procedures as well as the quality of services provided by individual staff members. The procedure should include a system for the receipt of client feedback and complaints and the implementation of program improvements based on the substance of those comments and

complaints. The analysis may address issues such as the duration of hotline shifts, the use of expertise, the value of volunteers, and the usefulness of the information provided.

Client satisfaction surveys play a valuable role in a quality control analysis. Surveys allow hotline services to get a broader picture of the system needs when compared to an assessment that is driven more by client feedback and complaints. Client satisfaction surveys should be quantified so that aspects of the services can be objectively compared over various periods of time. In addition, hotline services that survey prior clients must employ measures to safeguard those clients, for example, giving clients the opportunity to opt out of client feedback surveys. As with returned calls, hotline initiated contacts with clients create a risk that the confidentiality of the client's use of the hotline will be breached. This could jeopardize the safety of a client, who, for example, may continue to live with a spouse after considering but not pursuing a divorce. Therefore, such contact should be avoided without advance client consent. See the comments to Standard 2.3.

2.12. Referral Assessment. A telephone hotline service providing legal advice and information should maintain a record of referral entities and should develop and maintain procedures to advance the on-going availability of the referral entities in an effort to maximize the quality of services provided to callers.

Comment. A hotline service should maintain a record of referrals it makes to outside entities and utilize a mechanism adequate to assess the availability of those entities. Hotline services may wish to check referral sources periodically to determine availability and backlogs of those resources. In the event referral resources cannot accept clients in a timely manner, the hotline service should seek other or additional resources, if available. Hotline services should maintain a reference in the client database to referrals and a cross reference to complaints or comments received back from callers. In the event a referral source proves to be unreliable or not in the

best interest of callers, the hotline service should take steps to alert the referral source of the problem and/or remove the source from the list of hotline referrals.

2.13. Malpractice Coverage. Telephone hotline services providing legal advice and information should assess the needs for malpractice insurance and consider methods of operations when doing so.

Comment. Requiring malpractice coverage for legal services has been a controversial issue in some states. Legal malpractice insurance is currently required only in Oregon. The experience of those who have provided legal advice and information over the telephone for the past twenty years, including those of prepaid legal services, suggest that callers are extremely unlikely to make a malpractice claim. The reasons for the low incidence of malpractice claims have not yet been established. However, it may be a result of the nature of the relationship, where clients have a greater voice in the decision-making than they do in a more traditional delivery of personal legal services. Nevertheless, hotline services are not immune from malpractice claims. Moreover, as hotline services continue to explore various operating procedures, such as the use of pro bono lawyers, law students, lay volunteers or on-going referrals to practitioners with fee-sharing arrangements requiring continued accountability, the potential for claims may increase. As a result, hotline services should examine internal control systems and give every consideration to the maintenance of malpractice insurance. If a hotline service does not carry malpractice insurance, it should make that fact known to those who are affiliated with the service in a relationship that creates malpractice exposure. This includes volunteer lawyers, law students, or paralegals who participate with the service and lawyers who receive referrals from the service.

2.14. Staffing. Telephone hotline services providing legal advice and information should be staffed in ways that maximize the skills of the personnel necessary to meet the needs of the

consumers. Selection, retention, staff organization, training, utilization, competence, specialization, supervision, evaluation and assessment should be considered in the staffing of a hotline service.

Comment. Staffing arrangements for telephone hotline services providing legal advice and information vary substantially. Stand alone hotlines, subject-matter specific hotlines and hotlines within legal aid offices all have different staffing needs and, therefore, operate quite differently. Some services, particularly those operated on a non-profit basis, have large pools of personnel available to staff the telephones. Personnel may include volunteer lawyers, paralegals and law students. Hotline services operated as part of more traditional law practices are likely to rely on a limited number of lawyers within the firm. For-profit hotline services may use a network of lawyers who specialize in fields of practice and are available for routed calls during established shifts.

Regardless of the type of service, hotlines should be structured in ways that take advantage of the skills of the lawyers and other personnel who staff them and best apply those skills to the needs of the hotline callers. The selection of those who staff hotline services should focus on the abilities to work with the hotline clientele. Attributes important to hotline personnel include courtesy, patience and clarity. Hotline staff need to concentrate their services on fast-paced problem-solving and need the ability to quickly probe for relevant facts. In reaching decisions about the selection of hotline staff, hotline services should examine the attributes of successful hotline personnel and incorporate those into the selection criteria.

Hotline services should examine the structure of staffing and pay particular attention to shifts and the hours of work expected of staff. Many hotline services find that personnel are far more effective when staffing a hotline for limited shifts of four hours or less per day. However, in a structure where calls are routed to hotline personnel on an occasional basis, such as in the use of

specialists who serve as part of a network or panel, those personnel can generally operate more efficiently for a longer period because they are not constantly speaking with callers.

Training personnel to staff a hotline is unique. Hotline personnel should be trained in client relations, telephone etiquette, call handling procedures, problem-solving techniques, recognition of the limitations of the hotline services and its relationship with other legal service delivery mechanisms, and the use of all office systems and resources that enable hotline personnel to perform their functions efficiently and effectively.

Like any type of legal service, hotline services include staff with varying degrees of expertise. Some hotlines use the services of volunteers who will have fundamental levels of substantive knowledge. Other hotline services are staffed by lawyers who are experts in their practice areas. For example, subject matter hotlines are likely to have lawyers with significant skill in that subject. For-profit hotline services may operate with a network of lawyers and include a bank of experts relied upon for more complex matters. Hotline services must be staffed by competent lawyers. The level of service to their callers is likely to be enhanced through the resources of those with expertise in various legal topics.

Procedures should be established to set out the methods of supervision, review and assessment of staff performance. Supervision and evaluation are discussed in more detail in Standard 4.3.

III. Intake and Processing

3.1. Recorded Preambles. If a telephone hotline service providing legal advice and information uses recorded preambles, the preambles should be thorough enough to address the scope of the services and provide accurate, up-to-date information on issues such as fields of practice, fee arrangements or income eligibility. The preambles, while providing disclosures and important information, nevertheless should be designed with the caller's convenience in mind and avoid unnecessarily burdening callers.

Comments. A recorded preamble is not an essential component of a telephone hotline service providing legal advice and information, but can be used as a valuable tool that assists the hotline service in its efforts to convey information and efficiently deliver that information to callers. When used, recorded preambles provide hotline callers with their first introduction to the service. Since callers may not be accustomed to the services that are provided, the hotline should consider the opportunity to use the preamble to inform the caller about the scope of the services that are provided. Information that may be helpful to the caller includes the following:

- (a) the name of the service;
- (b) a brief description of the nature and extent of the services rendered by the hotline;
- (c) any qualifications or limitations in the provision of the service;
- (d) a description of any fees, costs or income eligibility limitations that may apply;
and
- (e) information about office hours, hold time and call back options.

Changes in the hotline service may take place from time to time, making a recording out-of-date and even misleading. Procedures should ensure that the recording is up-to-date and accurate.

For the benefit of frequent callers, a bypass mechanism should allow the user to advance through the recorded information and reach assistance without delay. Recorded messages can be

annoying especially to frequent users and in some cases can turn a needy caller away. Thus, a hotline service that uses recorded preambles should keep the length of the message to a minimum and provide callers with a means to by-pass the message.

3.2. Identifying Callers. Hotline personnel should make every reasonable attempt to obtain the identity of callers and should terminate the call when a caller is unwilling to identify himself or herself.

Comments. Some telephone-based services, particularly those operated by bar associations, are fully automated and provide callers with recorded information only. However, telephone hotline services providing legal advice and information as addressed throughout these standards have the capability of providing fact-specific information in response to callers' questions. Even though a caller may only want and ask for very specific and limited information, this format of legal service delivery creates an attorney-client relationship that obligates the participating lawyers to honor the state-based rules of professional conduct governing the jurisdiction or jurisdictions of the hotline service. In order for a lawyer who participates in a hotline service providing legal advice and information to be able to comply with these rules, he or she must be able to identify the caller sufficiently to avoid conflicts of interest and maintain confidentiality. Such information also allows the hotline service to determine whether its personnel are providing advice pertinent to the user or to some third-party for whom the user is calling. See Standards 1.2 and 1.4. Use of confidential client –created passcodes in domestic violence situations can avoid giving confidential information to someone posing as the client.

On occasions a caller may want to remain anonymous. The hotline service should have a policy to terminate the call at such point and hotline personnel should be instructed and directed to comply with such policy. However, prior to terminating the call, the hotline personnel may give

the caller other resources for finding legal information, pursuant to Standards 2.9 and 2.10, if other resources exist.

3.3. Screening for Conflicts. A telephone hotline service providing legal advice and information should have a means of screening callers for conflicts of interest that comply with the state-based rules of professional conduct in the jurisdictions governing the lawyers who participate in the service, but does not unduly burden callers or add to any expense the caller may incur in the use of the service. Hotline personnel should be thoroughly familiar with the methods to expeditiously screen callers for conflicts of interest.

Comments. State-based rules of professional conduct require lawyers to avoid accepting cases that pose an inappropriate conflict of interest. See Standard 1.4. Thus, when a caller reaches the hotline, that person must be screened for the existence of any such conflict of interest. This process may include a name check between the new caller and any opposing parties mentioned by previous callers. A similar check could also be done between the new caller's stated opposing party and the names of previous callers. A further check should also be made against the hotline lawyer's past clients that may not have used the hotline.

In the event the service identifies a conflict or potential conflict in violation of the prevailing rules of professional conduct, the hotline personnel must comply with those rules.

3.4. Screening for Eligibility. Telephone hotline services providing legal advice and information should establish clear criteria for eligibility. Hotline personnel should know the criteria and determine eligibility before engaging in any detailed discussion of the caller's substantive issues. When screening potential clients for eligibility, hotline personnel should attempt to keep the intrusiveness of the process to a minimum and provide callers, upon request, with an explanation of their questions and eligibility requirements. Hotline services should

assure callers of the confidentiality of the screening process and impress upon callers the need for truthful and candid disclosures.

Comment. Virtually all telephone hotline services providing legal advice and information have limitations in the scope of services they offer. Hotlines may be limited to fields of practice and limited by geographic constraints. Commercial hotline services may not accept callers who lack the ability to pay, when, for example, the caller does not have a telephone to accept a 900 number charge or a credit card. Hotline services providing legal aid or subsidized services have restrictions as conditions of their funding such as income qualifications. The process of screening a potential client for eligibility, whatever the criteria, should not be arbitrary and should be conducted before the caller goes into details about the legal issue leading to the call. Callers may not understand the importance of screening nor its purposes. Therefore, the caller should be made aware of the purpose behind any questions asked or screening, and all personnel conducting such screening should fully understand the criteria.

Screening questions and procedures should directly pertain to eligibility and not unnecessarily inquire into a caller's personal affairs or preferences. All individual information gathered in the screening process should remain confidential and for internal use of the service only. However, aggregated information gathered during intake may be used by the hotline service for purposes of reporting to funding sources and resource development and to improve internal operations. Hotline services may conduct intake and screening through administrative staff who then route eligible callers to lawyers or other personnel to discuss the legal issues pertinent to the call. Other hotline services may use lawyers to conduct the intake directly. In either circumstance, the hotline personnel should be fully knowledgeable of and closely follow the established screening procedures for screening and eligibility determinations.

3.5. Refusal of Service. Telephone hotline services providing legal advice and information may refuse its services to callers. However, under no circumstances shall a caller be refused service because of prohibited discriminatory criteria. In denying a caller access to the hotline service, it may be appropriate for the service to advise the caller of the reason for such denial and provide the caller with an appropriate alternative, when available.

Comment. Every hotline service will have conditions under which it must refuse its services. Callers may create conflicts of interest when the lawyers represent an adverse party. Or, callers may raise issues that can not be addressed because of restrictions imposed by those who fund the hotline or the legal services provided by the hotline. For example, hotlines for the elderly may be dedicated to and funded for services specifically for those over a set age. In other situations, hotline services will not be able to accept calls because they lack the capacity to provide the legal advice, where, for example, a hotline is dedicated to a narrow field of practice or where the resources of the hotline cannot accommodate additional callers. The refusal to provide service can be particularly difficult on a person in legal need and thus should be undertaken with a high degree of sensitivity. Callers should be provided with reasons for such denial, whether it is because of their income level, geographic limitations the need for advice or information other than that which is provided by the service, or otherwise. The hotline service should also provide the caller with information on alternative services and sources of help that may be available for the caller's problem.

In some instances, hotline personnel will come to the conclusion that the hotline is not an appropriate mechanism to address the caller's legal problems and the scope of the services necessary for that caller exceeds that offered by the hotline. The caller's problem may be too complicated to be properly addressed in a relatively short call or may require the review and analyses of written material that cannot be transferred. It may be clear that the caller lacks the ability to understand the advice and information provided by the hotline service. This may be

because of language difficulties, hearing impediments or mental or other limitations. It may also be because the legal procedures and issues are too complex for those without substantial training in the area. Regardless of the reasons, hotline services and participating personnel should understand that the hotline is not a mechanism capable of providing assistance in all circumstances. When hotline personnel conclude that continuing the call would be a disservice to the caller, the personnel should inform the caller of this conclusion and take measures to terminate the call and refuse further legal services.

Like any legal service provider, hotline personnel should recognize that those in need of legal help are likely to be under stress, anxious and confused. However, a hotline service is under no obligation to assist callers who are or become rude, offensive, threatening or abusive. Terminating a call in such circumstances is appropriate.

Under no circumstances shall a caller be refused service by a telephone hotline service providing legal advice and information because of prohibited discriminatory criteria.

3.6. Minimizing Hold Time Delays. A telephone hotline service should answer and route calls in ways that avoid undue delays. When hotline personnel put callers on hold, they should tell them the purpose of the hold and, if possible, give a reasonable expectation of the duration of the hold.

Comments. As discussed on Standard 2.3, back logs may be an inevitable aspect of telephone hotline services providing legal advice and information. Because of the necessity to screen callers and, in many cases route them to specific personnel, callers will frequently be placed on hold during the course of their hotline usage. Compared to waiting periods imposed on clients in waiting rooms of law offices, hold times are likely to be very modest. However, placing a caller on hold for a long time will often anger the caller and thus demean the service in the user's eyes.

Long hold times may also cause the caller to cease attempting to obtain service. Efforts should be made to keep any caller hold time, be it before the initial processing or during the routing of the call, to a minimum. Hotline personnel or an automated system should inform callers of the purpose of being put on hold and should provide some reasonable expectation about the duration of the hold time if at all possible. Several approaches to avoid or minimize the impact of long hold times include: (1) taking caller's information and offering to return the call; (2) scheduling a specific appointment time for the caller to call back; and (3) providing callers on hold with periodic reports or updates of current hold times.

3.7. Emergency Matters. A telephone hotline service may wish to develop a procedure to specifically address emergency matters, but has no obligation to do so.

Comment. Some telephone hotline services providing legal advice and information target areas of practice such as domestic violence, elder abuse or housing that periodically involve emergency situations that require immediate or short-term action. Such services should provide procedures for handling emergencies because they may be essential to the safety of the caller. Other hotline services may not provide services that focus on these types of areas, but will nonetheless receive calls from callers who need immediate attention. Callers may not realize the emergency status of their situation, or may have contributed to it, by putting off any action until shortly or immediately before a deadline. Consequently, hotline services may wish to establish procedures to identify and respond to emergency matters in ways that maximize the services provided to their callers. Personnel performing intake should be trained to identify emergencies. Special handling and streamlined procedures enabling the caller to obtain further assistance and representation should be considered. However, when a hotline service lacks the staffing and/or resources to address emergency matters competently, the hotline may decline to provide any services to those with emergency situations, but should provide appropriate referral information

to victims of domestic violence and abuse for handling emergency situations through other resources.

3.8. Handling Call Overloads. When discussing a legal matter with a caller, hotline personnel should not unnecessarily limit the discussion simply because other callers may be subjected to delays.

Comment. Frequently hotline services will experience an overload of calls during certain time periods. Procedures to address overloads and schedule return calls are addressed in Standard 2.3. Overloads are systematic concerns that must be addressed by procedures. Hotline personnel staffing calls should not adjust, conform or compromise the legal information and advice provided because other callers are waiting for their services.

3.9. Promptness of Advice. Telephone hotline personnel should endeavor to provide quick responses to caller inquiries and have the resources to do so readily available. When callers present unusual legal circumstances or request information that is not within the ready access of the personnel handling the call, the hotline personnel should either terminate the call after informing the caller that the issue is beyond the scope of the service or conclude the call, research the issue and arrange for a return call to provide the appropriate advice or information. Procedures for returning calls should comply with Standard 2.3.

Comment. A hotline service should provide hotline personnel with current and readily accessible information that is necessary to address routine legal issues. Some matters are likely to be either too uncommon or too complex to address immediately, even with access to appropriate resources. In these circumstances, the hotline personnel should inform the caller of the situation. If a procedure for returning calls is in place, the hotline personnel should inform the caller of the procedure and take the information necessary to call back after the matter has

been researched. If no procedure for returning calls is in place, the hotline personnel should inform the caller and provide alternative resources or referrals, if possible. Hotline personnel should not unduly extend the length of the call and should not allow the caller to do so. This is especially true for, but not limited to, situations where the caller is charged for the call based on its length of time.

Extending the length of a call or allowing a caller to do so, reduces the value of the service, may create confusion and may harm other callers by delaying their access to assistance. At all times, hotline personnel should avoid unrelated small talk and other forms of non-relevant conversation during a service call.

3.10. Collateral Legal Services. A telephone service hotline providing legal advice and information may provide collateral legal services or products. When it does, hotline personnel should maintain their independence of professional judgment when providing callers with legal advice. Advice and information should in no way be based on the ability to sell products or obtain revenue from additional services. Any collateral services provided by a hotline should be provided with full disclosure of the scope of the service to be performed and any costs involved.

Comment. Telephone hotline services providing legal advice and information frequently function as part of a broader legal services system. Hotlines may, from time to time, provide additional services that prevent legal problems or advance the resolution of legal problems and are related to the legal advice and information provided over the telephone. When collateral products or services are offered, hotline personnel should maintain their independence of judgment at all times and avoid the opportunity to promote or advance the products or services unless it is clear that the caller can benefit from them. The availability of the collateral products or services should not influence the advice or information given. In addition, the caller should be provided with a full disclosure of the scope of the products or services and any costs involved.

Examples of collateral services include the sale of forms, guidebooks or how-to-do-it manuals, form and document preparation and mediation services.

3.11. Follow Up. A telephone hotline service providing legal advice and information should not have an obligation to follow up with callers, unless arrangements are made with any particular caller to do so. Hotline personnel should maintain records that clearly indicate any arrangements for follow-ups and should do so as arranged.

Comment. In most circumstances, the services provided by a telephone hotline providing legal advice and information begin and end with a single telephone conversation during which all necessary information and advice is provided. Unless arrangements have been made for a call back, no obligation exists for an on-going relationship between the hotline personnel and the caller as long as the caller has given informed consent to the limited representation.

Arrangements may be made between a hotline service and a caller for a follow up call.

Examples of these circumstances include: 1) when information regarding the caller's question needs to be researched before it can be competently addressed and the hotline personnel does not have immediate access to the resources for the necessary research, or 2) when the caller needs to take certain actions, such as retrieving pertinent documents, before appropriate advice can be given. In such cases, the hotline service should follow up with the caller as agreed in a timely manner.

3.12. Recording Calls. A telephone hotline providing legal advice and information may find it advantageous to record calls with callers. If it does, the service should obtain permission from the caller before recording any conversation. The service must also comply with all applicable

state and federal laws limiting the lawful recording of telephone conversations. All recordings must be kept confidential, to be used only in ways that are legal and ethical.

Comment. Recording hotline conversations may be beneficial in training and in the resolution of any disputes that may arise between the hotline service and its callers. If a hotline service records calls, it should inform callers that it does so before or at the beginning of the recording.

Some state rules of professional conduct permit lawyers to reveal information that is otherwise confidential for specific purposes, such as collecting fees or defending against complaints of ethics violations or impropriety. If a hotline service anticipates doing so, the service should not lead callers to believe the recording is absolutely confidential.

3.13. Charging for Services. A telephone hotline service providing legal advice and information that charges for its services should inform callers of those charges prior to the time the caller incurs any charges. Hotline services should develop and implement systems of addressing and resolving fee disputes.

Comment. While some telephone hotline services providing legal advice and information do not charge callers for their services, other hotlines do charge. Both non-profit and for-profit services may charge fees. Hotline services use different methods to charge and collect fees. For example, a caller may be charged a flat rate for a call or the charge may be based on time increments. Callers may be billed through credit cards, pre-payment or charges to a telephone bill.

Explanations of fees and charging arrangements may be made during a recorded preamble or in the screening and intake process. However, callers should be informed of fees and charging arrangements prior to incurring any expense. Callers should have an opportunity to terminate the

call without any financial obligation if fee arrangements are not acceptable. For callers who proceed with the service, when possible, the hotline should inform callers of the charges they have incurred upon request.

As with any legal practice setting, clients may be mischarged from time to time. A hotline service should take steps to minimize errors and develop and implement procedures to resolve fee disputes that come to its attention.

IV. Quality Standards

4.1 Selection and Retention Standards. Telephone hotline services providing legal advice and information should establish nondiscriminatory standards for the selection and retention of staff and affiliated individuals. Selection and retention standards should include: 1) personal attributes such as patience, empathy and concern, 2) professional skills and technical proficiencies, and 3) knowledge of the substantive legal areas addressed by the service. Standards should apply to all employed staff, including those involved in administration of the service, paralegals, lawyers who staff the telephones and supervisory lawyers; all those who volunteer to participate in the hotline service, including law students and pro bono lawyers; and all those who have any formal affiliation with the hotline service, such as lawyers who are assigned cases resulting from hotline calls. See Standard 1.7 for competency requirements.

Comment. Telephone hotline services providing legal advice and information staff their services in a variety of ways. Some use administrative personnel to process intake and route calls to those who provide the substantive legal information and advice. Some services use experienced paralegals to handle calls in specific subject areas. Some hotline services involve volunteers providing pro bono services, who may or may not have substantial legal experience. Some services use a cadre of lawyers with substantive specialties in various fields of practice who accept calls only in their fields of expertise. Regardless of the staffing arrangement, hotline services should develop standards for selection and retention of personnel that assure the services they provide are of reasonable quality.

Selection and retention standards should foster dedication to assisting with the needs of callers and incorporate fundamental attributes that are likely to result in a successful hotline service. All hotline personnel should understand their role in helping people who are frequently facing stressful personal crises.

Hotline services should recognize the value of legal experience and expertise for those providing advice and information to callers. Those with substantive expertise may be able to contribute more with less training and supervision. Experience is the best means by which to understand any field of practice. A person with experience in handling a type of legal matter is in the best position to provide quality insight and highly competent advice on that type of legal matter. Because the value of experience is sometimes more important than admission to the bar, hotline services can benefit by staffing calls with highly competent paralegals, who are appropriately supervised by lawyers.

Too often there are not enough experienced personnel to meet the needs of the service and less experienced, or inexperienced, personnel will participate in the hotline. Training and supervision must be adequate to compensate for any lack of experience or expertise.

When using volunteers, whether they are lawyers, law students, paralegals or members of the public (who may provide administrative support), hotline services should continue to apply standards in their selection to assure that those who participate will have the requisite training and skills to serve callers with quality.

All decisions about selection and retention and the development of standards to govern these functions must be made without regard to discriminatory factors.

4.2. Orientation and Training. A telephone hotline service providing legal advice and information should provide comprehensive and thorough orientation and on-going training to all personnel. Hotline services that operate as part of a broader system delivering legal services should provide orientation to all personnel within the delivery system. Hotline services or their sponsoring entities should allocate sufficient resources to provide necessary training and provide staff with the time to attend a reasonable level of training on an on-going basis.

Comment. Orientation and training are critically important to the successful operation of a hotline and should be provided to all staff and volunteer personnel.

Those responsible for caller intake and screening have a vital role and should be thoroughly oriented to the operations and scope of the hotline service, the service provided and not provided, and the availability of alternative resources that may benefit callers. Intake personnel should be trained to understand they are the first contact with callers, who are often confused about the nature of their problems and the availability, or limits on availability, of services. Therefore, intake personnel should be provided with adequate orientation and training that explains the nature and scope of the hotline services, the identification of the caller's legal needs, the availability of resources, including the immediate availability of hotline lawyers, and the methods of routing callers to the most appropriate resources. Training should focus on interpersonal skills and problem solving.

Prior to assuming their duties, those persons responsible for providing advice over the telephone should be given adequate orientation including the role of the hotline within the delivery of legal services, particularly if the hotline is not a stand-alone service. Personnel should thoroughly understand the technological abilities and limitations of their particular equipment and systems, including transferring, routing, conferencing and call holding. They should be familiar with all in-house support resources available to advise callers and help resolve problems. They should be aware of the nature and scope of all outside entities and resources to which callers may be referred. They should be trained to efficiently gather information, identify problems and craft appropriate advice to result in the best possible outcome. Personnel should understand the limits of hotline services and be given direction and practical examples of situations in which hotlines are not the best alternative for callers. Orientation and training for hotline personnel should stress the distinctions between providing legal advice and information over the telephone and

doing so in a more traditional practice setting. Training should involve frequent peer discussion and information-sharing sessions. Training should also focus on interpersonal skills, problem solving and legal expertise in the fields of practice that the personnel address. Lawyers should comply with mandatory continuing legal education requirements in effect in their jurisdictions.

Orientation for volunteers at all levels is just as important as it is for staff. When a hotline considers the use of volunteers, it should consider its ability to provide adequate orientation and training. Hotline services should consider the value of accepting volunteers as a group, so that all incoming volunteers can attend a single orientation program. Ultimately, volunteers should be a resource that benefits the service rather than burdens it.

Supervisory staff should be familiar with resources of information about hotlines and use these materials to assure the quality of their services. Occasionally, a new hotline service may employ supervisory staff who have not had experience with a hotline. Staff in this circumstance should seek out other hotlines in comparable settings and obtain peer advice and direction.

Hotline services should view orientation and training as an essential investment in providing quality legal services and should bear the expenses of appropriate training designed to improve the skills of staff at all levels and keep staff current on developments in their fields of expertise.

4.3. Supervision and Evaluation. Telephone hotline services providing legal advice and information should develop and maintain systems of supervision and evaluation. Supervisory staff should review the work of those providing legal advice and information. Individual performance should be evaluated on a regular basis and systems of screening, intake, routing and referral should be analyzed in an effort to improve the services provided.

Comment. Supervision of the staff of telephone hotline services is often considerably different than the supervision of staff in a more traditional law office setting. A periodic, or even daily, review of the exchange of information between hotline personnel and callers will not only help assure a level of quality, but also allow the service to identify aspects of the hotline system to be improved. Close supervision results in greater accuracy in the advice given to callers, consistency among the hotline personnel, procedural compliance and the opportunity to take corrective action if information may be confusing, misleading or inaccurate.

Supervision and evaluation should also allow the hotline service to identify the usefulness of information resources, such as deskbooks, and system management tools, such as software and forms.

A system for regular evaluation of hotline service staff and personnel should be established and implemented. Hotline personnel should understand the value of supervision and regular evaluation and use them as methods to improve the quality of services provided and enhance their ability to perform their duties and assist those in need of legal advice and information.

4.4. Termination. A telephone hotline service providing legal advice and information should create and adhere to appropriate and lawful procedures to evaluate and terminate hotline personnel who demonstrate ineffectual or incompetent levels of service.

Comment. Staffing a telephone hotline service is frequently a demanding and emotionally difficult position that requires uncommon skills and personal traits. Occasionally, staff are hired for or placed in positions that are unsuited for them. As with any legal service, unsatisfactory staff performance can undermine the value and reputation of the service making it necessary for the hotline to reassign or terminate individuals. Hotlines should develop and implement procedures to assess, evaluate, discipline and terminate staff. When developing these

procedures, hotline services should recognize legal constraints, such as those that may apply to legal aid lawyers who are members of unions or military reservists who are redeployed. The procedures should be developed and carried out in a non-discriminatory manner.

4.5. Program Assessment. A telephone hotline service providing legal advice and information should formally assess its operational systems, management and staffing structure, scope of services and inter-relations with other systems delivering legal services on an on-going basis with established periodic reviews.

Comment. Periodic assessment of the effectiveness of the operation of a hotline is necessary to ensure quality service. This includes a regular review of operational systems, such as screening, intake, routing of calls, use of equipment and available resources, call handling, management structure, use of staff, the scope of the hotline's services and its relationship to any overseeing entity or sources of referral. The assessment should consider whether the scope of services appropriately balances the resources of the service with the needs of the hotline callers. The scope of services including areas of law in which services are provided, as well as the support services offered, are key in this assessment. Periodic review of the systems, services and hotline personnel, performed in a thorough and systematic manner may help insure that services are efficient and effective.

4.6. Processing Service-Related Complaints. A telephone hotline service providing legal advice and information should develop and maintain procedures for handling complaints about its services.

Comment. Virtually all legal service providers have unsatisfied clients from time to time. Callers or clients may be unsatisfied with delays in the system, costs of time or money, the advice given them, the ultimate outcome of their disputes or other factors. A hotline service

should, therefore, develop and employ a method of regular recordation and assessment to determine the frequency of complaints and to determine any pattern and the merit of any complaints in order to take corrective action where appropriate.

4.7. Development of Reference Material. A telephone hotline service providing legal advice and information should maintain procedures for updating its legal library and desk references, broadening its access to legal information available through alternative sources and identifying referral services for its callers.

Comment. Quick access to legal information and sources is essential to the operations of a hotline service providing legal advice and information. Moreover, because of the nature of the law and legal services, information and referrals once current can fast become out of date. Thus, a service should create procedures for updating its database of legal information and referrals as well as identifying new sources of information and help for its callers.

4.8. Technological Resources and Support. Telephone hotline services providing legal advice and information should be aware of technological advances that may benefit their services as they become available and should utilize those technologies to enhance the services they provide, as resources allow.

Comment. Because the nature of a hotline service is centered around providing fast, efficient and cost effective service, it should always seek to use technology to the extent possible to provide high quality services. This will usually entail experimenting and staying open to new technology and technological resources that enhance a client's ability to obtain needed legal information or advice. Procedures should be developed to test, evaluate and implement new or existing technologies or resources that may offer such client benefits.

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