

Bay Area Legal Aid

Legal Advice Line

Overview of a Legal Advice Line

Rev. 2011

OVERVIEW OF A LEGAL ADVICE LINE

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OVERVIEW OF AN ADVICE LINE

Introduction

A. Purpose of Manual

This manual is intended for new advice line attorneys or advocates. The content is drawn from various hotline manuals such as the manual produced by Carol Matthews, with Legal Counsel for the Elderly, the Legal Advice Line (LAL) staffs' experience and other advice line models. This manual is to be used in conjunction with the Bay Area Legal Aid's Advocacy Manual.

B. Definition of a Legal Advice Line:

For the purposes of this manual, a legal advice line is a service designed to provide legal advice and/or information by telephone at the time the caller contacts the program, or shortly thereafter. For eligible callers, it includes providing answers to the clients' legal questions, analysis of their legal problems, and advice on solving those problems. For ineligible callers, it includes providing only information and referrals.

C. Overview of the Legal Advice Line Delivery System

The Legal Advice Line serves as the entry-point to BayLegal's services. A potential client, located anywhere in the Bay Area, seeking legal assistance may call the LAL using any of the toll-free or local numbers listed below. The LAL is located at BayLegal's headquarters in Oakland and staffed by trained bi-cultural, multi-lingual attorneys and advocates. The LAL staff determines the caller's financial eligibility for services, runs a conflicts check, identifies the caller's legal problem and determines whether it falls within BayLegal's practice areas (if not, the caller is referred to alternative providers), and provides immediate legal counsel and advice over the phone. If the LAL staff concludes that the caller needs further assistance beyond advice and counsel and the matter meets our regional case acceptance guidelines, the LAL staff immediately schedules an appointment with an attorney at the local office in the county where the client resides. If an appointment cannot be scheduled within a reasonable time, the caller is referred to other agencies. If the matter is of an urgent nature and there are no timely appointments, staff will e-mail the local office to determine if the office can assist the client. The client is immediately referred to other agencies to avoid delays in service.

D. The Legal Advice Line Attorney

The American Bar Association, in its Standards for the Operation of Legal Hotlines, adopted by the House of Delegates, August 2001, has noted that "recent research demonstrates that people need improved resources to help them determine whether they

have a legal problem and to provide them advice on when to use a lawyer and how to proceed if they do not obtain a lawyer. Telephone advice line 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 advice line personnel”. (Introduction to American Bar Association’s Standards for the Operation of Telephone Hotlines Providing Legal Advice and Information, August 2001) (ABA Standards).

Chapter I: GETTING STARTED

The essential tools for the advice line attorney are the computer and the telephone. Advice lines are efficient because all files are computerized and most of the necessary resources can be found on line. Prime is the software package BayLegal uses for maintaining client data. The phone has a head set leaving hands free to enter data and case notes in the computer, and to access client files.

A. Incoming Calls

The LAL’s hours of operations are as follows: Mondays and Thursdays between 9:30am and 3:00pm and Tuesdays and Wednesdays between 9:30am and 1:00pm with additional hours dedicated to domestic violence survivors on Wednesdays between 1:00pm and 3:00pm. Callers are asked to choose a language and area of law. The call is then sent to the appropriate queue. The LAL receives anywhere from 100-200 calls per day. There will rarely be a lull in calls coming into the line. The LAL attorney/advocate will receive one call right after another throughout the entire shift.

B. Intake

The LAL attorney/advocate answers the call and conducts an eligibility screening of the caller. Callers who are clearly not eligible for any services are referred elsewhere. Each call must be recorded in Prime as either a Case or an Other Service record.

On the basis of the information gathered, the caller will be screened for program eligibility and for conflicts.

Eligibility Slip

Name: It is important to get the name, with the correct spelling, right away. If there are any titles (Reverend, Doctor, etc) record them as well. It is unprofessional to address a caller by their first name. If the caller is calling on behalf of someone else, then both names must be recorded. (More about Third Party Callers infra). At BayLegal, attorneys/advocates do not speak to anonymous callers. The ABA Standard 3.2 states that the attorney “should terminate the call when the caller is unwilling to identify himself or herself.”

Next, the client's name should be checked in the data base. This is to determine if the caller or the client is in the database and to do a preliminary conflicts check. Depending on the type of problem, it may be necessary to ask for additional names to complete the conflicts check. For instance, if the client is calling about a domestic relations matter it will be necessary to get the spouse's name or in a housing matter other roommates might be relevant to conflicts check. (More about conflicts infra.) It is good practice to get the spouse's name in any event. It is often worth doing a database search using alternative spellings of the client's name.

Address: It is a good idea to get a street address even if the client has a P.O. Box as a mailing address. At a minimum for eligibility purposes, the county of residence must be obtained.

Telephone Numbers: It is important to note a safe number where the caller may be reached if necessary or if the call gets cut off.

Date of Birth: Date of birth is a useful way to differentiate between clients with the same name. This is particularly important in case potential conflicts need to be cleared.

Financial Information: Eligibility will depend on the caller's income and assets. Inquiry should be made as to whether caller expects income to significantly change in the near future. (More about financial information infra).

Third Party Information: Sometimes the caller is calling on behalf of another person. It is still necessary to get their name to determine their relationship to the client. (More about Third Party callers infra).

Citizenship: Caller's immigration status should be identified. Eligibility depends on citizenship status. (More about citizenship exceptions infra.)

Problem Code: Caller's legal issue should be identified.

Household: The number of adults and children living in the household should be determined. (More about household infra).

Other Information: Gender and the last 4 digits of Social Security Number.

Many people feel awkward about asking for personal information. This information is often necessary in making reports to funding sources and client should be told this. It helps to maintain a thoroughly professional manner.

C. Identifying the Client and Third Party Callers

When the caller is not the potential client, a whole array of considerations comes into play. The first task is to decide who the client actually is: is it the person on whose behalf the call is purportedly made, or the caller?

It is very important to record information on the third party caller in the database in an organized fashion. If current case management software does not include a specific field for third party contact information, it should be customized to accommodate the information.

In general, when a person claims to be calling on behalf of another, the potential client's permission must be obtained before proceeding. If the caller is the legal agent of the client, through the court or by virtue of a power of attorney, the caller should fax a copy of the appropriate document verification. The client's verbal permission is not required only when proof of conservatorship is provided.

If it is determined that the potential client is someone other than the caller, please follow outlined protocols. These protocols are necessary to avoid problems that later may arise concerning whether the caller was the client and whether the LAL is thus bound to keep the communications between the caller and the LAL confidential. The caller will seldom have given any thought to this matter. It is up to the attorney/advocate to explain this.

In cases where more than one family member contacts the LAL on behalf of a potential client, the potential client should identify which family member will be the primary contact. Talking to more than one family member or friend about a potential client's problem may lead to confusion, repetition, possible misunderstandings, or worse: a conflict of interests.

There are, of course, exceptions to the above. Sometimes a caller will ask for information to be repeated to a family member. This may be because the caller thinks someone else will understand better. Or, they fear they will not be able to repeat the advice accurately. If the caller asks the attorney/advocate to speak with another person there is usually no problem. In other situations you may just have to play it by ear. But, if two callers, e.g., siblings, are fighting over who speaks for the client, or, contradicting each other, services should not be provided, although a referral is possible.

When a social worker calls on behalf of a client, the attorney/advocate may give legal information and advice on the same basis as permitted other third party calls. Remember that the social worker himself is not the client. In instances where the social worker is employed by an institution, such as a nursing home or hospital, keep in mind that there is a potential conflict in the interests of the client and the institution. While the social worker will declare an advocacy role on behalf of the client, she is also an employee of the institution. The attorney/advocate must not give the social worker advice about his/her own legal position or that of his/her employer. It is not uncommon for social workers to ask whether they or their institution is legally obliged to take some action. The correct response is that the attorney/advocate represents the interests of the client and the social worker should consult their own legal advisor with regard to their legal position. Note, this is not the same as telling the social worker that, on behalf of the client, you believe he is legally obliged to take action. The former is situation-specific legal advice in response to a question. The latter is advocacy on behalf of the client.

D. Case History

If a caller has called the advice line before, it is absolutely essential that the attorney/advocate review the prior case file. This should be done even if it appears that the call is about a different matter. This review often reveals issues of vital importance. Prior case notes may provide useful information about the client's legal history, and may also disclose relationships within the family, or other persons or agencies that the advice line needs to know in assessing whether there is a conflict. But case notes can reveal far more than information about possible conflicts.

For instance, if the client is calling again about the same matter it is useful to find out whether the client didn't understand the earlier advice, was unable to act on it, or has some other reason for calling again. Some clients call frequently about a variety of matters.

Reviewing the case notes gives the advice line attorney/advocate a sense of what the client's life is like, both in terms of the problems he faces and the people in his life who may be able to help if necessary. This is particularly true of elderly clients. Sometimes a review of a client's past history will suggest that the client is either incompetent or unwilling to handle his problems. Or the past cases may reveal that the client is highly competent and able to handle problems with a little guidance from the LAL. Sometimes a review will alert the LAL to inconsistencies in the client's story that require explanation.

E. Emergencies

1. Local office reception staff will email LAL Managing Attorney (MA) if there are any emergencies that require immediate call backs, such as caller has eviction notice or utility cut-off notice.
2. If the LAL is not able to help the caller it is absolutely essential that the caller be told this clearly and firmly at the outset. The caller should be referred, if possible, but the caller must not be allowed to think that help is available when it isn't.
3. The LAL has current information on how to handle typical emergency situations such as emergency medical care, shelter, food, utility cutoffs, and other essential services. While some of these problems may not constitute a legal case, they are serious situations where you can provide useful information. The ABA Standards comment that advice lines may wish to have procedures to "identify and respond to emergency matters in ways that maximize the services provided to their callers." (Comments on ABA Standard 3.7).

Chapter II: PROFESSIONAL and ETHICAL CONCERNS

The Rules of Professional Conduct apply to an advice line as well as to a more traditional law practice. In the ABA Standards for Advice Line Attorneys the focus is on three areas of practice: core values of the legal profession, scope of representation, and assuring that

clients understand what services are available from the advice line. Below is a brief discussion of some of those standards as they apply to an advice line attorney/advocate.

A. Scope of Representation

An advice line attorney/advocate will naturally provide more limited services than a full service attorney. As ABA Standard 1.2 makes clear, while it is permissible to limit services, it is essential that the client understand that this is the case. If the advice line attorney/advocate can resolve the matter on the phone, the client is happy. But when the client needs to take further action, the situation is more complicated. The core services offered by a advice line are legal advice, information, referrals, and sometimes brief services. The LAL does not provide brief services. Since the LAL is also the intake system for BayLegal, you should be careful to specify which services will be provided at the LAL level and which ones will not. The client must not be misled into thinking he will be entitled to all the services offered by a program when in fact he is only entitled to LAL services.

LAL attorneys/advocates generally know what can be done for a caller in an advice line setting. The caller usually has no idea. Indeed, frequently the caller doesn't even know he is talking to an advice line. He believes he has a legal problem and he wants a lawyer. It is very important to tell all callers that they have reached the LAL and that contact will be limited to advice, counsel, referrals and in limited circumstances further screening for possible full representation. Introduce yourself to the caller and explain what assistance is provided so that no undue expectations are raised. Only rarely does a caller absolutely refuse to discuss the matter on the phone. When this happens, refer caller to a legal service provider that does not have an advice line or that accepts walk-ins.

B. Conflict of Interest

Checking to see if BayLegal has a conflict of interest is a matter of basic legal ethics. For an advice line, the higher volume and immediacy of the response underscore the need for a quick, efficient, and accurate system for ensuring that the LAL is not providing advice to a party adverse to a current or past client of the program. Prime allows attorneys/advocates to pull up the names of current clients, those who were represented by the program in the recent past, and adverse parties. Information regarding the nature of a former relationship is also useful since a past contact need not necessarily constitute a conflict of interest and such information should be in case notes. In all cases, the spouse or partner's name must be checked for conflicts; in housing cases, it is essential to get full names and run a conflicts check on all roommates.

The ABA Standards stress compliance with state rules of professional conduct in checking for all possible conflicts of interest to ensure that procedures comport with those requirements. (See, ABA Standard. 1.6). "A telephone advice line providing legal advice and information should develop and maintain procedures addressing ethical compliance when individuals contact the advice line on behalf of someone else." The comments on this Standard note that advice line services should recognize that they have

no “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 third party calls.” It is important that the program’s policy is understood and applied uniformly by all LAL staff.

When the potential for conflict is between a present client and a new, prospective client, there is usually a clear line. Services to the new client should be declined if the interest of one client will be adverse to the other. (ABA Model Rules of Professional Conduct 1.7).

When the potential for conflict is between a prospective client and a former client, services should be declined if the new client is calling about a substantially related matter with interests materially adverse to the former client (ABA Model Rule 1.9). Unless the conflict is obvious, you should discuss the potential conflict with your manager before proceeding to advise or reject the caller. See Advocacy Manual for conflict protocol.

Occasionally, there may be a conflict between the interests of a particular client and the philosophy of the program. For instance, we only serve domestic violence survivors. We do not advise alleged batterers of their legal rights.

However obvious the conflict seems to be, the attorney/advocate will nearly always have to explain it to the client. Laymen seldom grasp this concept, particularly when it operates to deny them assistance. If possible, refer the caller to another program if a conflict exists.

C. Third Party Callers

Third party callers are common. The problem is that they raise the ethical issues of conflict of interest and confidentiality. The fact that the caller does not believe there is a conflict does not make it so. This is a determination the attorney/advocate must make in conformity with LAL protocol. That does not mean that the attorney/advocate can never talk to the caller. But if the attorney/advocate does speak to the caller, it is essential that s/he a) run a conflicts check on the third-party caller, and b) make it clear that all advice is for the benefit of the client and not the caller. In addition, the caller must understand that his communications between the LAL attorney/advocate are not strictly confidential, in other words, what he says to the attorney/advocate may be repeated to the client. Thus, if a caller prefaces his remarks by saying “Don’t tell my mother I said this, but...”, inform the client and say that as his mother is the client, you cannot undertake to honor such a request.

D. Confidentiality and Expectation of Privacy

The ABA Standard 1.5 states that all callers are “entitled to confidentiality and an expectation of privacy.” In the context of a advice line, an attorney-client relationship arises as soon as the caller begins discussing the problem, unless it is made extremely clear that this is not the case. Keep in mind that the duty of confidentiality requires that an attorney/advocate not use or reveal information learned in a consultation with a client

or prospective client. (See ABA Model Rule 1.6.) This means that everything the caller tells the attorney/advocate (except matters which are readily knowable even if the client had not spoken to you about it) must be kept confidential. That is why it is so important to recognize a potential conflict of interest before the caller starts talking. It is also a major issue when the caller is not the client. As noted above, the third party caller must be told up front that his communications may not be privileged.

The duty of confidentiality extends to every one in the law office. It is okay to discuss the client's problem with colleagues; it is not okay to discuss a client with anyone else unless the client agrees. If an attorney/advocate wants to talk to, say, a social worker about the client's problem the attorney/advocate must first ask the client's permission.

E. Professional Competence

The ABA Standards underscore the obligation of all attorneys/advocates to provide competent advice. "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." (ABA Standard 1.7).

This means that attorneys/advocates must have a good working knowledge of the law in the areas the program covers. If an attorney/advocate doesn't know the answer to a question, she must either find out or admit she doesn't know, and tell the client she will research the question if feasible.

There are numerous online legal research tools that should help attorneys/advocates get a quick answer. The state bar's website and the state's legal services programs' website should have online state and federal statutes; the National Center on Poverty Law has state-specific substantive Frequently Asked Questions (FAQs) and practice area cases and articles. State and federal agencies such as the Social Security Administration (www.ssa.gov) or the Centers for Medicare/Medicaid Services (www.cms.hhs.gov) have FAQs and links to statutes and regulations. The Social Security Administration website also contains resources such as a link to the Program Operations Manual System (POMS), a manual that provides Social Security employees with guidance on internal policies to process claims for Social Security benefits (<https://secure.ssa.gov/apps10/>). This is a useful research tool that assists attorneys/advocates in educating clients on why a particular decision was made in their application for disability benefits. California Practice Guides published by The Rutter Group also provide analysis of the practical application of California law in cited cases in various practice areas to help advocates and their clients understand how a particular issue has been litigated in the past.

Sometimes an attorney/advocate won't be able to give good advice because you lack the necessary facts. Perhaps documents need to be reviewed. The attorney/advocate must obtain enough facts before giving advice. Otherwise, advice should not be given. Professional competence also includes not giving advice about the law of any jurisdiction in which the attorney/advocate is not licensed to practice, despite the ease with which this information could be looked up online.

Chapter III: CASE HANDLING/CORE ADVICE LINE SERVICES

A. The Interview

The essence of the advice line is the interaction between a client who needs legal help and the attorney/advocate who can provide it. It is fundamentally no different than any other transaction between lawyer and client. Although the setting in which the service is provided differs from the traditional office environment, it is important to be certain that the traditional professional values are fully honored.

The interview is a conversation with another person, but one with a purpose. Thus, when the attorney/advocate first speaks to the client/caller it is important to get off to a good start. By now the attorney/advocate probably knows quite a lot about the client but he doesn't know much about the attorney/advocate, who should identify herself by name and position (attorney or advocate). The caller should be informed that he has reached the legal advice line and that to the attorney/advocate is available talk to him about his problem. Many clients believe the purpose of their call is to make an appointment for an office visit. The attorney/advocate must clarify what the procedure is before addressing the problem itself. Remember, the procedure is familiar to the attorney/advocate but not to the client. In addition, beware of using office jargon that is meaningless to the client. For instance, an attorney/advocate can schedule a client for brief services but would not tell the client that he was being referred to a brief service unit. The client isn't interested in a brief service; he wants what he needs no matter how long it takes. He should not be expected to learn Bay Legal's office terminology. It is more appropriate to tell the client that they are being scheduled with an attorney or advocate for further evaluation of their case and that there is no guarantee of representation.

The attorney/advocate's tone should always be friendly but professional. The attorney/advocate must listen to the caller carefully and be sure that each can be heard by the other. If there is noise in the background it may be necessary to ask that the radio or TV be turned off. Increasingly, people want to be called on their cell phone. This is fine if the connection is clear. If it is not clear, the attorney/advocate should not try to give advice which may not be getting through coherently.

Initially, the attorney/advocate should encourage the client to briefly describe the problem in his own words. This allows the attorney/advocate to listen for both the legal issues and what results the client is hoping to obtain. In the process, the attorney/advocate will undoubtedly pick up information about the client's general knowledge and abilities. It is helpful to stop from time to time to paraphrase what the attorney/advocate has heard so far in order to be sure the caller is being understood correctly and to reassure the client that the attorney/advocate is paying attention. After the general issue has been identified, the attorney/advocate should ask more direct questions to pin down facts and to separate the legal issues from the non-legal issues. If the client feels that he has had his say he will be comfortable with the more specific questions because it is an indication that the attorney/advocate is paying attention. You must never let the client define the legal issue.

He is not the lawyer, you are. Some questions will seem natural but others may seem irrelevant or insensitive. In such cases it may help to explain the reason behind the question.

There are some questions that should usually be asked early on. *When* something happened should be established as soon as possible, e.g., if the incident happened many years ago, the statute of limitations may have run out. *Where* something happened can be important. Attorneys/advocates can't give advice about the laws of another state. Some issues are best approached by asking open-ended questions, for example when a client is describing a domestic violence situation.

Once all the facts have been gathered, it is time to determine what services are appropriate. If the matter is something that our program can't help with, tell the client as soon as possible and tell him why. If help might be available elsewhere make the referral. If the problem can't be handled on the phone but can be scheduled for a full service appointment, do that, and spend only the time necessary to document the facts the next attorney expects to get and give any urgent piece of advice.

B. Advice Line Services

1. Advice

a. General Advice. The basic premise of an advice line is that many legal problems can be resolved by giving advice over the telephone. If the caller has a problem that can be handled with advice, then do that. Often all that is needed is some legal information. If necessary, and time permits, the attorney/advocate can research the issue using whatever resources are available. The most valuable resource is often another advice line attorney.

b. Advice to Supplement Publications. BayLegal has publications and other materials that can be sent to the caller, as appropriate. Such materials can provide valuable guidance on step-by-step problem-solving procedures for those capable of using them. They can also reduce the multiple call backs to the program that may result from the client's confusion or inability to retain more complex information given on the telephone.

Attorneys/advocates should be familiar with the available materials. In 2002, The Project for the Future of Equal Justice published its findings from an in-depth client outcome study conducted with various low-income advice lines. The study found that clients who had received some sort of written follow-up to the call, whether it was an advice letter or brochure, were more likely to take the action recommended by the advice line.

c. Advice in Cases Requiring Document Review. Although the advice line can be very effective in cases where callers need information, advice, or referral, sometimes there are documents that must be reviewed before advice can be proffered. If the document is a simple or standard one, the caller may be able to read or describe it over the phone. In rare instances on the LALA, we have clients send us documents for clarification, for example, notices of action in public benefits or health access cases. We do not provide advice about documents or filings. A matter that involves review of a substantial number of documents is best handled by scheduling a face-to-face interview with a staff attorney

or referring the client to a program that can provide the needed services. The ABA Standards caution that rules of professional conduct concerning competent legal representation could be transgressed by advice line attorneys attempting to address “complex issues in a limited time frame or without a thorough review of applicable documents....” (Comments on ABA Standard 1.7).

d. Advice on Pro Se Materials. The LAL does not provide pro se services and does not comment on such documents. The LAL does not advise on how to fill out forms. We can only advise on the underlying legal issue.

2. Brief Services

The LAL does not provide brief services to callers. The ABA Standards state: “Scope of Services: A telephone advice line providing legal advice and/or information should clearly define the scope of services it provides to its callers” (ABA Standard 2.1). Clearly explain to the caller that attorneys/advocates only provide legal advice over the phone. We do not call third parties on client’s behalf, we do not prepare or review documents, and we do not assist with pleadings.

C. Documenting LAL Services

1. Case notes. While talking with the client, attorneys/advocates must enter notes in Prime that state the legal problem, the facts elicited, and the advice or other service performed. How much detail to put in the case notes is a function of why they are being written. First and foremost, the case notes document the fact that an attorney/advocate spoke to this client on this date, and that a specific issue was addressed, and the matter handled in a particular manner. This is very useful if the client calls up the next day complaining that no one ever talked to him.

Secondly, the case notes should provide a record of the information and advice given to the client in sufficient detail that a reviewing attorney can determine whether the matter was handled appropriately. Case notes are also an excellent teaching device, helping to develop the advocate’s knowledge in subject areas where he may be less experienced. A good set of case notes can also be used as a model for staff of how to handle a particular situation.

A third reason for including some detail is to give a particular case or client sufficient individuality to support the chosen legal approach or to make the case or client easily remembered in the future.

It is not necessary to record everything the client says. Clients seldom know just what facts are relevant and will often tell the advocate/attorney more than necessary. If the attorney/advocate is entering case notes as the client is speaking it may be unavoidable to include irrelevant material, but it is important to try to sort out the needless detail. (See Case note Considerations and sample case notes, Appendix A).

2. Disposition and Referral. If the client is referred for services not provided by the LAL, it is necessary to open an “other service” record.

3. Tickle and Follow up. Follow-up or call backs to provide further advice should be kept to a minimum. We do not want to give the impression that we are providing continued representation.

4. Completing and Closing the Case. After completing the case notes, the final task is to fill in the required blanks in the case file and send the case for review. Cases should be closed by the end of the week.

Chapter IV: QUALITY CONTROL

A. Review of Case notes

Experienced attorneys who have been on the line over 2 years, will close their own cases without needing to send the case for review. These cases will be periodically reviewed by the Managing Attorney. All advocates and new attorneys (under 2 years) must send their cases for review. This is actually a big help because, if the client was given the wrong advice, the mistake probably will be caught in time to correct it. It may feel more like criticism but that is not the purpose. The attorney/advocate can insert little questions into case notes to alert the reviewer about an uncertainty and request help.

B. Regular Staff Meetings

The Legal Advice Line has a weekly mandatory staff meeting and cases or questions may also be brought up for group discussion. This is a time to discuss problems, exchange information, and resolve issues. We will often have continuing legal education during staff meetings as well.

C. Continuing Legal Education

It is really, really important to keep up to date on the issues that affect clients. The ABA Standards recognize this: "Advice line 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." (Comments on ABA Standard 4.2) Attorneys/advocates should take advantage of every opportunity to attend lectures, workshops, seminars, etc. on topics pertaining to our clients. It is our ethical duty to stay abreast of the laws that affect our clients.

D. Grievance Procedures

If the attorney/advocate cannot resolve an issue with the client, the attorney/advocate should inform the caller or client that the Managing Attorney will call them as soon as possible. Email the person's name and number to MA with a description of the grievance.

E. Client Satisfaction Surveys

Client satisfaction surveys will be conducted over the phone by interns. Interns will forward clients who may need follow-up advice to the MA. Those requests will be distributed among staff as appropriate.

F. Program Evaluations

There are numerous reports that the MA runs to evaluate the LAL's performance. Deliberate thinking about our processes will inevitably lead to changes and innovations that will facilitate our work and make it more effective and efficient. At the LAL things are constantly changing, and attorneys/advocates must always remain flexible and open to change.

Chapter V: PROBLEMS AFFECTING ABILITY to SERVE CLIENTS

Some clients are difficult to help by phone for a variety of reasons. They may have physical impairments such as speech or hearing loss. They may speak a foreign language. They may have mental impairments that limit their comprehension or ability to rationally communicate with others (i.e. abusive comments towards the attorney or delusional/paranoid thinking that makes the client accuse the attorney of working with the opposing party, etc.). Refer to local office intake procedures for further details on protocols for handling these types of clients.

A. Physical Impairments

If the client is hard of hearing it may be difficult to advise him by phone. If the impairment is not too great it may be possible to communicate by speaking a tiny bit louder and very clearly. Usually the hearing-impaired client will initiate the call with the relay service and the relay service will call the advice line. Many times, agencies that assist hearing-impaired clients will contact the MA directly. The MA will then coordinate a callback using a relay service. Clients may have physical problems that prevent them from leaving home. The advice line is especially useful for them but if the solution to their problem requires travel, additional help will be necessary. Bring these issues to the MA's attention to strategize on possible solutions.

B. Mental Impairments

Sometimes it may be difficult to determine if a caller is delusional or is just having a difficult time processing information. If the client is delusional, there is little an attorney can do. If the client doesn't understand what his problem is, and if he can't communicate rationally with the attorney/advocate, then there is no basis for an attorney/client relationship. The attorney/advocate will need to terminate the conversation by telling client that we are not the appropriate agency for them or that we are unable to assist them with their current issue.

C. Language Problems

If a Spanish- or Chinese-speaking caller reaches an attorney/advocate, please ask the caller for their name and phone number and immediately go to an advocate fluent in that language so that they can do the call back. Callers with any other language need will require that you contact an interpreting service such as Ethnic Bridges, Language 411 or Language Line.

D. Problems Involving the Law of Other Jurisdictions

Most clients are not aware of the differences in state laws and even fewer are aware that it is improper for an attorney to give advice about the laws of another jurisdiction. This has to be carefully explained to the client. The client needs to be told how to get the advice he needs from the other jurisdiction. This may be a matter of referring client to a legal aid office, advice line, or bar referral service for that state. Check the Directory of Legal Advice lines at www.legalhotlines.org or Legal Services Corporation's map of programs at www.LSC.org.

E. Client Has an Attorney

Clients who already are represented by an attorney will sometimes call the LAL just to double check their attorney's advice. Sometimes they do it because they didn't understand the advice they were given but were embarrassed to say so. Sometimes they call because they are unhappy with their current attorney and want to replace him, particularly if they can get a free attorney. If the client wants to talk about a matter already in litigation, or seems clearly headed that way, it is advisable to ask if they have an attorney. It is Bay Area Legal Aid's practice not to give legal advice to another lawyer's client. Refer to other self-help services, and never schedule an appointment for a caller who is represented by an attorney.

CHAPTER VI: TIPS and PITFALLS

Client who wants a list of every service: Occasionally, a client may call with a genuine curiosity about the program and what it offers. Such an inquiry can be handled fairly quickly and, if available, program literature can be mailed. More, typically, this request is made after the client has been advised that the advice line/program does not handle his type of case. (For instance, we do not handle fee-generating cases or criminal matters.) What the client wants is for the attorney to recite a list of every type of issue that the program handles until the client is able to identify a topic that might apply to her. There is seldom a real problem and usually it seems to be a bid for attention. The prudent course is to respond with some general description and assure the client that she is welcome to call back if she has a problem in the future.

Client who wants to challenge credentials: This is the client who asks whether the "attorney" actually went to law school. The tone of voice usually will indicate whether this is intended as an insult, which it usually is. The only dignified response is a polite

assurance that all the staff attorneys are law school graduates and members of the bar. If you are an advocate, the client should clearly understand that. If he insists on speaking to an attorney, you should tell the client that your case will be reviewed by an attorney but that an attorney is not available at this time. They are welcome to call back and get in queue and they might get an attorney the next time but it's not guaranteed.

Client who wants the law changed: There are different ways to respond to such a client. One can sympathize with the client who thinks a particular law is silly while assuring him that it is still in effect and must be complied with. Another tack is to suggest what the client might do to advocate for a different law by contacting his congressman, or other appropriate figure, or joining with others to advocate for change.

Client who wants to speak to your supervisor: The client has a right to speak to the supervisor or otherwise make use of the program's grievance procedure. Get the caller's name and number and email it to the supervisor.

Client who is abusive: No one has to tolerate being yelled at or called names. However, because such behavior usually stems from the client's frustration, it may be possible to ratchet down the level of hostility or abuse by assuring the client that you are listening to him and that the situation merits attention. If that doesn't work, the attorney should politely and firmly ask the client to lower his voice and use other language so that you can deal with his problem. If the client is unable to control himself tell him that he should call back when he is calmer and hang up. Difficult callers are documented in Prime so that if they do call back, the attorney can pull up that record and can more appropriately determine how to best approach and assist that client.

Client who wants too much time: How much time is too much time to spend on any given client is very subjective but there are clients who just want to chat even after their legal issue is resolved. Such clients need to be kept focused on the legal issue. One way to do this is by asking very specific questions instead of open-ended ones. Another tactic is to say how nice it is to chat but that before hanging up you will just review the legal advice. Do that and say goodbye. It is rude to suggest that the client has wasted the attorney's time but the attorney can apologize for wasting the client's time and then say goodbye.

Client who does not have a legal problem: Some clients call because they want money and have confused the advice line with a social service agency. They should be referred to the appropriate place. Some call because they want some sort of help not normally provided by lawyers, such making them a doctor's appointment, trimming their shrubs, or giving them a ride somewhere. If possible, steer them in the right direction for help. Otherwise explain that you cannot provide the requested service.

Client who has a legal problem but refuses to recognize it: This can be really scary. You may know from what the client has said that she is about to lose her house in a foreclosure sale, but all she will talk about is the mess the plumber made. If I can't get the client to focus on the looming disaster I will sometimes ask if there is anyone else in the

family I can speak to. If not, there may not be much to do except beg her to call if a certain event happens.

Caller who wants you to advise someone else: Do not make a call to someone that hasn't said they wanted to talk with you. It can be viewed as soliciting business. If caller says that the potential client requested that he/she call us, then it's ok to call the potential client.

Client who refuses solutions: Occasionally you may encounter a client who rejects every solution you suggest. This client raises obstacles to every course of action. Such clients may prefer a grievance to success. I generally repeat the list of options and say goodbye. Sometimes the imminent loss of an audience will trigger some reconsideration of your suggestions. If not, end the call unless you want to become part of their hobby.

Resources

www.legalhotlines.org

www.povertylaw.org

www.lsc.gov

www.nlada.org

ABA Standards for the Operation of Legal Hotlines at www.legalhotlines.org

Appendix A

Telephone Communication Skills, LHQ Summer 1999

Call Handling 101

EFFECTIVELY MANAGING CLIENT CALLS

By: Megan McLaughlin, Senior Program Manager, Customer Care Institute

What do your clients want when they call? They could be calling about any number of issues, but all callers want someone to listen to them, to understand and to remember their situation. They want a courteous, dependable, solution-oriented response. Most importantly, they want to know that you care about them. In fact, they don't care what you know until they know you care. So how do you let them know that you care, while providing solutions that will satisfy their needs?

There are six steps to successfully handling a call. They are:

1. Setting the appropriate tone
2. Listening effectively
3. Asking questions
4. Interpreting the information
5. Offering a solution
6. Closing the call

1. Setting the Appropriate Tone

Just as when you meet someone for the first time in person, callers also form opinions about you within the first few seconds of a call. Therefore, it is critical that the appropriate tone is set in the first seconds of the call.

Each client has a different style of communication, and it is important to adjust your communication style to deal most effectively with the caller. If the caller is assertive and direct, it would be ineffective for you to chat about the weather. Some callers, however, would prefer a little small talk before getting down to business.

Listen to yourself. Your telephone voice is a substantial part of your message when you are delivering Client Care via the telephone. Your voice is you. While it is not important that you sound like a professional recording artist, it is important to understand how you sound to callers so that you may further refine your telephone voice.

Generally, people find it easier to listen to a lower-pitched voice so it helps to be aware of the volume and pitch of your voice. Also notice your rate of speech. 120 to 150 words per

minute is an effective rate. If you speak too quickly, your client will feel rushed and miss key points of the discussion.

2. Listening Effectively

In dealing with clients over the telephone, it is important to listen for the central idea – to listen between the lines. Without the advantage of reading body language and facial expressions, it can be more difficult to discern the meaning behind a caller’s words. It is important to listen to the nuance of voice and expression in order to understand the caller’s emotion and to find the appropriate resolution to the situation.

An important aspect of communicating via the telephone is conveying the fact that you are listening. Since your client cannot see what you are doing, it is important to reassure them verbally that you are paying attention. Ask questions and use short messages such as “yes” and “I see” to let them know that you are listening.

Barriers to Listening

Just as it is important to be aware of effective listening techniques, it is equally important to recognize barriers to listening before they become a problem.

Environmental distractions are a fact of life in any office, so it is important to maintain a strong focus on the client. In some cases, it is possible to arrange the immediate workspace to be more conducive to concentration.

The “Third Ear” syndrome occurs when one is engaged in conversation but has a “third ear” on another conversation. Most callers can sense when they do not have someone’s full attention and view it as a lack of respect for them and a lack of interest in assisting with their issue.

A frequent trap that many of us fall into is the tendency to assume or jump ahead because we already know everything that the client is going to say. Letting the caller finish what he or she has to say without interrupting is simply a matter of common courtesy.

Although we may hear the same scenario ten times a day, each situation has different circumstances and a unique client who deserves to be treated as such. This is why effective listening skills are so important in providing good client care.

3. Asking questions

The most effective method of gathering information and controlling a call is by asking questions. Of course, the question must be effective in order to elicit the necessary information. Understanding how to ask a question can help expedite the information gathering process and expedite a resolution.

For example, open questions that use how, why, when, what or where should be used to get a client to explain or discuss a situation: “What happened next?” or “Why did you think that?” Open questions have many answers and are useful for understanding the bigger picture. Closed questions that use did, can, have, do, will or would will elicit a

yes/no answer or a factual response. Closed questions are used to obtain facts or agreement, for example: “Did you cancel the credit card?” or “Have you got a copy of the letter?”

Open questions should be used at the beginning of a call to gain a broad understanding of the situation and to allow the caller to express what is on his or her mind. As the focus of the call narrows to a discussion of priority issues and actions to be taken, closed questions should be used to ensure that both parties have a clear understanding of the situation or the resolution.

4. Interpreting the Information

Paraphrasing and summarizing information back to the client helps confirm the accuracy of the information and it also helps you to process the information more effectively. Even if you are confident that both parties understand the issues, it can only help to repeat the information. This can be accomplished tactfully by telling the caller that you want to be sure that you understand the situation.

5. Offering a Solution

Once you have obtained and interpreted all of the information required to make a decision, you must then offer a solution for the caller. It could be a matter of providing information that is easily available or you may have to conduct further research before responding. In either case, create an action contract with the client and obtain agreement. Tell the caller what you are empowered to do, how you will do it, and what results he or she should expect. Then obtain agreement from the client about what his or her obligations are.

6. Closing the Call

The way you end the call makes a lasting impression on the caller. Once the action contract has been reviewed and the outcomes of the call have been summarized, it is time to ask the closing question: “Is there anything else I can do?” or “Have I answered all your questions?” To set a positive tone for the end of the call, it is always good to thank the caller. Invite the client to call back if they have additional questions, but firmly state that you must move on to the next call.

This information should help you in your day-to-day telephone interactions with clients. The advice offered here is not groundbreaking. These are familiar lessons for all of us who deal with clients over the telephone. The value of this advice comes in its application. If you can successfully apply these techniques in your work each day, it can make the job of satisfying your clients a productive and rewarding experience for all involved.

Working with Assertive Callers

In some instances, we project our emotions and believe the caller to be angry when he or she is not. This can happen if the caller is more assertive than you, impatient, rushed, or

cold. Assertive or demanding clients are quick to get to the point, show authority, and demand action.

To deal effectively with assertive or demanding callers:

1. You may need to raise your own assertiveness level, but keep your assertiveness level just below the caller's to prevent escalation.
2. If your voice is soft, raise it slightly.
3. Be direct and to the point in your statements.
4. Keep the non-business conversation to a minimum.
5. Adjust your posture by sitting taller in your chair or by standing.
6. Do not be offended by a lack of rapport with assertive clients - remember, they are focused on taking care of business.

Working with Angry Callers

Some people are angry with every person and every situation. However, most people do not behave that way unless they feel that they have no other choice. Remember that anger is usually born out of fear, and behind every angry voice there is a human being that needs your help.

To deal effectively with angry callers:

1. Depersonalize the emotion. Although it may seem that the client is angry with you, remember that he or she is actually angry about a situation.
2. Let the caller vent to diffuse the emotion.
3. Empathize without committing to agreement by using phrases such as "I understand that you are frustrated," or "I can see that this has upset you."
4. Avoid becoming defensive - it will only escalate the situation. Avoid such phrases as "I never said..." "You're wrong about that..." "You have to understand that..."
5. Use positive phrases to correct misinformation: "I can see why you think so. Our records show..." "Our information does not agree with yours. Perhaps we misunderstood you..."
6. Use the word situation instead of the word problem.
7. Use the word I instead of you. "I need you to check your policy" is less confrontational than saying "you need to check your policy."
8. Take responsibility for doing all that you can. That does not mean that you should make commitments that you are unable to fulfill simply to please the client. It does mean that you should pledge to do whatever you can as quickly as possible.
9. Take care of yourself. If you've had a particularly upsetting call, take the time to work the emotion out of your system. Evaluate the call; understand what you did well and what you will do differently next time. Take the time to reflect, go for a short walk, breathe deeply. Do what you need to do to put yourself back on track for the next call. You should do everything in your power to control the call and make it a productive experience. However, if the caller becomes abusive and is unwilling to work toward a

solution, politely inform him or her that you are going to terminate the call and will be ready when he or she is willing to work with you.

- “I understand that you are upset. I would like to help you, but I cannot do so if you use that kind of language.”
- “Mr. Jones, it’s very important that we work as a team to resolve this situation.”
- “I’m sorry, but I am unable to help you at this time. Please call back when you are ready to discuss the situation.” or “I will call you back in a couple of hours when you have had a chance to calm down.”

When you speak with your client again, resist the urge to retaliate.

Working with Talkative Callers

The talkative client is sometimes harder to handle than the angry client. We are often sympathetic to the talkative client’s need to have someone (or anyone) with whom to talk. Delivering effective Client Care means handling the talkative client with care, freeing you to help other clients.

To deal effectively with talkative callers:

1. Ask closed questions that require a short yes/no or factual answer
2. Shorten pauses between statements
3. Provide minimal responses to non-business conversation and always guide the conversation back to the matter at hand.

The following are some examples of effective closes when working with talkative callers:

- “I know you are busy, so I’ll let you go.”
- “I would like to begin working on this right away, so I’m going to say goodbye now.”
- “Have I answered all your questions?”
- “You understood and I’m sure you’ll do well.”
- “May I call you tomorrow after I’ve done a little research?”

TELEPHONE EFFECTIVENESS CHECKLIST

Greeting:

- .. Did you use a salutation?
- .. Did you use a clear and appropriate identification statement?
- .. Did you ask how you could help?
- .. Did your tone establish rapport?

Hold Techniques

- .. Was hold appropriate?
- .. Did you ask the caller’s permission?

- .. Did you estimate time?
- .. Did you check back regularly? (every 30 secs)
- .. Did you thank the caller for holding?

Establishing Rapport

- .. Did you use the caller's name?
- .. Did you listen to the caller and ask appropriate questions?
- .. Did you acknowledge the caller's concern?
- .. Were you courteous and respectful?

Controlling the Call

- .. Were you able to keep the conversation on track?
- .. Were you able to deal effectively with angry or talkative clients?
- .. Did you educate the client?

Job Knowledge

- .. Were you able to help the caller during this call?
- .. Did you offer the appropriate solutions and/or alternatives?

Closing

- .. Did you summarize actions and set clear expectations?
- .. Did you confirm the client's understanding?
- .. Did you execute appropriate follow up?

Appendix B

Case note Considerations

Adapted from an article by Alan Herman* and Shoshanna Ehrlich
LHQ Spring 1998

Legal advice lines are constantly looking for ways to cut operating costs and increase productivity. One of the major innovations of legal advice lines was the elimination of paper client files.

The original senior advice line model provided for case management software where all client information, case notes and case activities could be recorded, stored and instantly retrieved. The amount and quality of case notes is one cost/productivity variable most easily within the advice line staff's control.

Balancing Case notes vs. Costs

The functions of Case notes include:

- (1) Providing the quality control reviewer with sufficient information to evaluate the propriety and completeness of the advice;
 - (2) Providing an adequate record to respond to malpractice claims or client complaints;
 - (3) Informing subsequent call handlers and referral attorneys of the facts and activities in the case;
 - (4) Supporting the time reports some advice lines must send to their funding agencies.
- The threat of malpractice claims, though an important concern, is minimal. There is no known instance of a claim being filed against any of the senior legal advice lines in the 12 years since they began operating. Complaints from clients do occur from time to time and it is necessary for the supervisor to be able to respond to them knowledgeably.

Those programs which use the case notes as an intake or referral sheet for a full-service program will usually need to have more extensive notes in those specific cases to satisfy the full service attorneys, whether in-house or referral, who receive them.

To achieve optimal case note efficiency, the case note functions must be balanced against the increased cost-per-case and decreased productivity each additional line of case notes creates.

Most advice line managers have experience with call-handlers whose case notes include almost every word of the phone call. Attorneys sometimes add irrelevant narratives of the client's history, impressions of the client's motives, tangential issues, and elements of humor in the call. These case notes may make for a most interesting read, but they may not be worth the cost of the attorney's time, and the resulting decrease in the number of calls he can handle. On the other hand, notes where the facts and advice are sketchy may create future problems for successor attorneys.

Excessive or irrelevant case notes may indicate to the quality control reviewer that the case-handler is spending too much time on a particular case. Not only do unnecessary case notes decrease the productivity of the advice line attorney, they also take more of the quality control reviewer's time and slow down productivity of subsequent call-handlers who must wade through the notes again before advising the client.

Al Herman reviewed 119 cases opened during a random three weeks period. Only case notes from first-time calls were included in his review. He found that the average number of lines per case was 10.4 and the median number of lines was 8.7, with about 10% of the cases having more than 23 lines. While Al did not find a large problem with overly lengthy or too short case notes, he did find some room for improvement in both directions.

A cursory review by Project Staff of random case notes at two other advice lines showed that the 10.4 line average at LCE was the shortest case note average. Even though the problem may not be pervasive, a saving of five minutes per case can easily result in an increase in productivity of 500 cases per year per Full-Time-Equivalent. Alternatively, if the attorney hours are not needed to handle call volume, the advice line can save \$4000 per year per Full-Time-Equivalent in hourly attorney costs. (Please contact the Project for a detailed calculation)

Recommendations and Examples

Create Case note Criteria

The Quality Control Reviewer is in the best position to affect the length, quality, and costs related to case notes. Toward this end, he should develop clear goals and parameters for what essential elements he requires the case notes to contain, and which information is extraneous and wasteful. The criteria should reflect the advice line's goals and result from the management's decisions as to the depth of service the program will render.

Examples of the kinds of case note criteria a program may choose to set:

- a. Case notes should include the statute of limitations for any cause of action or administrative procedure discussed with the client;
- b. Case notes should include an evaluation of the merits of client's position;
- c. Case notes should include the procedural steps the client needs to take to resolve his problem.
- d. Case notes may refer to a specific FAQ in the advice line's manual, after relevant facts have been input.
- e. Case notes should reference a specific statute if it controls the client's situation.
- f. Case notes should exclude irrelevant facts, but the attorney's assessment that a client is disoriented or intoxicated should be noted.

Compose Content Formula

Adequate, but not excessive, case notes can usually consist of (a) 1-3 sentence recitation of relevant facts; (b) a 1-3 sentence statement of the law applicable to the facts, as told to the client, and (c) a concise summary sentence containing the advice given the client.

Example: (a) Client called to find out how to get visitation for a grandchild living with both parents who are still married. (b) I told client that pursuant to our state's law, a grandparent has no legal right to ask a court for visitation in that situation. (c) I suggested that a family member, family counselor, clergyman, etc. help the family to work out the matter and gave the number to Family Counseling Services.

Promote Case note Clarity

Case notes should clearly identify what the attorney/advocate told the client.

Example (ambiguous): "Client would have to check to see if the judgment was recorded."

This example leaves the reader wondering if the call-handler gave the information to the client or just entered his thoughts in the case notes. The same advice is more clearly noted:

Example (clear): "I told the client to call the Clerk of Court's office and ask if the judgment against him had been recorded. "

Eliminate Extraneous Facts

Most excessive case notes result from the case-handler's inclusion of the caller's recitation of his story. While clients cannot be expected to limit themselves to relevant facts, attorneys are trained to do so.

Here are some typical examples from routine case notes and their suggested remedies:

Example: "Client and his wife moved here from out of state. They had a will drafted about ten years ago leaving everything to their daughter and son equally. They have a home and about \$100,000 in savings and bonds. Their son passed away and they do not want to leave anything to his daughter because she is on drugs, but his son, their grandson, is a nice boy and they want to include him in the will. I made an appointment for client with a referral attorney."

Time could be saved and quality preserved as follows:

"Client and spouse need to change their will provisions since one child passed away and another has a drug problem. I arranged an appointment with a referral attorney."

A typical example from landlord/tenant:

Example: “Client has lived in her apartment for many years. At first it was a nice building but many of her friends have died or moved and she doesn't know whether she wants to stay there anymore. Now her landlord has told her he will raise her rent by \$100.00 per month when her lease ends in the summer. She has been looking around but doesn't feel like moving although she thinks she may be able to get a better place for that price. Client thinks there may be a special rent control law that keeps the landlord from raising the rent more than a certain percentage. There is no such law. The client must decide whether she will pay the increase or move.”

Efficiency can be achieved by limiting narrative to relevant facts:

“Client has a written lease which is expiring. Landlord intends to raise the rent from \$700 to \$800. Client wants to know if landlord may do that. I told client there is no rent control law and the landlord may raise the rent any amount after the lease ends. I suggested she negotiate with the landlord for a smaller increase. Failing that, I told her she will have to choose whether to pay the increase or move”.

Communicate Case note Criteria

Train new advice line attorneys to adhere to your advice line's case note parameters from the beginning to avoid the difficult task of breaking bad habits later on. It may be useful to have the "case note criteria" in writing, plus some good examples, for new attorneys to study during their training period.

The quality control reviewer should be able to maximize quality and minimize costs by routinely communicating with the case-handlers. For most effective results, the quality control reviewer should give feedback not only when the case notes are deficient or excessive, but also, when they conform well to the case note criteria.

Sample Case Notes

Case 1 – an example from Public Benefits law

Example:” Client has six children. Three children live with their father in Texas. Two of the children that live with client are 23 and 24 yrs old, respectively. Client recently received a notice of action (NOA) that stated that CalWORKS for the household would be terminated because of client’s purported income. Client doesn’t work at this time, and she suspects that her social worker is just trying to give her a hard time because they don’t get along very well. Client should appeal the termination.”

Once again, efficiency can be achieved by limiting the narrative to the relative facts:

ISSUE: CW Termination.

FACTS: Client has CW for family of 2 (client and one child). She received NOA on (date): “CW will be terminated b/c of income of \$4000/mo.” Client doesn’t work at this time. ADVICE: Advised client to appeal ASAP (she has 90 days from date of NOA to do

so) and gather proof that she is not working. Client may also receive aid paid pending, if she requests it before the effective date of the county action.

Case 2 – an example from Health law

Example 1: Client applied for SSI back in 1995. He was granted the benefit until 1997, when he voluntarily got off the benefit because he went back to work. He then re-applied for SSI in 2002. He was denied, but he didn't appeal. He applied again in January 2010. He received a denial notice because SSA says he is able to work. Client has back and leg pains, as well as mental health issues. It might be too late for client to appeal the denial. He should gather evidence of his disability and re-apply.

The information above could be organized to make it easier to read and faster for a reader to find pertinent information:

FACTS: Latest SSI application was in Jan 2010. NOA: received March 2010. Reason for denial: not disabled enough. – Clt has not appealed.

Disability: back/leg pains, mental health

ADVICE: Told clt there was a 60 day time limit to appeal his SSI denial. Since that time has already lapsed, clt can try to appeal and include a letter stating good cause for late filing, or he can re-apply for SSI. Explained the value of appealing a denial in a timely fashion.

Case 3 – an example from Family law

Example 1: Clt is very worried and distressed. She continually cries because she feels that she was tricked by the person she loved the most. She is very upset that her husband ran off with a co-worker and left clt to care for their 2 children. She mentioned that before he left they had a big fight and he ended up slapping clt in the face. This was not the first time he had struck her. She wants to know what will happen with the cars they purchased together. They were both purchased during the marriage. This is probably community property. She should request an RO for protection and file for custody.

In this case, more facts are actually necessary, while other unnecessary pieces of information should be excluded:

Example 2: Clt and OP(Opposing Party) were married and had 2 children w/in wedlock. DV: OP slapped clt on 11/1/2010. Police were called and EPO issued.

In May 2009 OP had also slapped and kicked clt in front of their children. The police were not called during that incident.

Property: 2 cars, both purchased during marriage. Paid off. Title under both names.

ADVICE: Went over safety planning w/ clt. Explained the protections he can receive from a family law RO. Directed her to our DVRO clinics. She can include her children as protected parties, or apply separately for custody. Went over the mediation process. Explained CP and SP. Told her that the cars are CP and they should be divided 50/50.

**BAY AREA LEGAL AID
LEGAL ADVICE LINE
POLICIES AND PROCEDURES
REV. 2011**

POLICIES AND PROCEDURES

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POLICIES AND PROCEDURES

I. Eligibility

A. Determination of LSC eligibility

1. Legal issue is within BayLegal priorities and not prohibited by LSC
 - LSC prohibited legal assistance includes criminal proceedings, challenging criminal convictions, prisoner litigation, class actions, organizing activities, abortion related litigation, school desegregation, military desertion
2. Case or applicant is within the following BayLegal service counties:
 - Alameda, Contra Costa, Marin, Napa, San Francisco, San Mateo, Santa Clara
 - Case already filed in one of these counties (use court address in client address field and list client address in case notes or contacts)
3. Applicant is citizen or fits within noncitizen exception (CFR 1626)
 - Noncitizen has been battered or subjected to extreme cruelty
 - Can be act or threatened act of violence or isolation that may lead to mental or physical harm
 - May include acts that in and of themselves may not initially appear violent but are part of a pattern of violence
 - A “battered/subjected to extreme cruelty” client must have a legal issue that has a nexus between the abuse and the type of legal assistance offered
 - Meets U-visa or T-visa criteria
 - Application need not be pending
 - A “U-Visa” client must have a legal issue that has a nexus between the abuse and the type of legal assistance offered
 - Noncitizen is a legal permanent resident (LPR)
 - Noncitizen has a citizen spouse or child and has filed an application for adjustment of status to LPR and application has not been rejected.

- Noncitizen is under 21, unmarried, has a citizen parent and has applied for LPR status (and hasn't been rejected and no further appeals)
- Noncitizen is a current refugee (status granted and passport stamped refugee)
- Noncitizen is a current asylee (asylum has been granted and passport stamped asylee)
- Noncitizen has lawful conditional entry because of persecution or natural disaster and was granted this status before 4/1/1980
- Noncitizen is lawfully present as a result of withholding of deportation status
- Noncitizen is from Mariana, Palau, Micronesia or Marshall Islands
- Noncitizen is an H-2 visa agricultural worker (can only assist with housing issue)
- Other related issues
 - We may provide assistance that will help victims escape the abusive situation, ameliorate the current effects of the abuse or protect against future abuse (i.e. for battered and extreme cruelty exception that isn't T-visa situation there must be a nexus between abuse and type of legal assistance offered).
 - Intake and referral for ineligible noncitizens is ok as "other service"

4. Financially eligible applicants (1611) - "sufficient questions" is standard to determine following info p/CSR handbook

- Definitions
 - Assets
 - Cash or other resources of applicant or applicant's household that are readily convertible to cash and are actually available to applicant, not exceeding \$10,000 per person (plus \$5,000 for each additional family member)
 - Exclude principal residence, vehicles used for work, assets used in producing income, assets exempt from

attachment under state or federal law (e.g. retirement and pension plans)

- In calculating the total value of a client's assets, first exclude the principal residence, work tools, retirement/pension plans and one vehicle. Take all of the remaining assets and determine their equity value (fair market value – monies owed and being paid on assets).

○ Income

- Household is defined by BayLegal policies as those persons legally responsible for each other (e.g. parents and minor children; spouse or registered domestic partners; guardian/conservator)
- Actual current annual total cash receipts before taxes of resident members of household, who contribute support and are legally obligated to contribute support.
- If adult applicant is living with parents, you would NOT include parents' income but you would impute as income the fair rental value of room.
- If applicant is self employed, then it would be income minus expense.
- Income includes training stipends, alimony, child support, and any other regular and recurring sources of financial support currently and actually available to applicant (CV to check on how student loans are counted)
- Value of food and rent in lieu of wages is not income

● Financial Eligibility Policies

- Annual income may not exceed 125% of Federal Poverty Guidelines
- DV applicant (do not consider the income or assets of the alleged perpetrator)

- LSC does not preclude us from assisting applicants over our income and asset limits as long as we serve them with non-LSC funds
- If the applicant's income is derived solely from a governmental program for low-income individuals or families, you don't need to make an independent determination of income or assets (you must note this in Form 1611).
- Exceptions to the annual income ceiling
 - If applicant does not exceed asset limit, and
 - The applicant is seeking assistance to maintain benefits provided by a government program for the poor, or
 - The applicant's income is primarily committed to medical or nursing home expenses and if you don't count that amount, they would qualify, or
 - The applicant's income does not exceed 200% of the applicable federal Poverty Guidelines amount, and
 - The applicant is seeking legal assistance obtaining government benefits for the poor, or
 - The applicant is seeking to obtain or maintain government benefits for the disabled
 - The applicant's income does not exceed 200% of the applicable federal Poverty Guidelines amount, and you determine they should qualify for services when you consider:
 - Current income prospects (seasonal work), and/or
 - Unreimbursed medical expenses and medical insurance premiums, and/or
 - Fixed debts and obligations, and/or
 - Expenses such as dependent care, transportation, clothing and equipment expenses necessary for employment, job training, or

educational activities in preparation for employment and/or

- Non-medical expenses associated with age or disability, and/or
- Current taxes, and/or
- Other significant factors that the recipient has determined affect applicant's ability to afford legal assistance

B. Opening LSC eligible case by hitting “save/send”

1. When you hit save/send you are "accepting" the case for service. Acceptance occurs when a staff member determines applicant qualifies and indicates acceptance of case through assignment of case number. For LAL purposes, it's at point you hit save/send. Case is now LSC eligible.

2. If case cannot be opened because client is ineligible, you must open an “Other Service” record to memorialize the referral and completing the following information on the OS record: persons helped, service provided (121-123, 129), county, problem code and hours spent.

C. Case Now Open

1. Intake Page 1

- Confirm with client that phone number listed and address are safe contacts. If so, check the “safe” boxes next to each category. If not, leave boxes unchecked and explain in the Case Notes section.
- Include the full name of any additional opposing parties to the client. In housing cases, for example, this would include client’s roommates.
- If the Opposing Party is a person, include an identifier under the “User Adverse ID” category. This is usually the date of birth or SSN for family cases, or a title (i.e. “Landlord”) for housing cases.
- Select marital status from the options given. If client is married, include non adverse spouse’s full name in the appropriate section. If client is a minor or receiving advocacy assistance, list the parent/assistant’s name in this section as well.

2. Intake Page 2

- Check the “Unduplicated Service” box.
- Check the “Disabled” and “Domestic Violence” boxes if appropriate (clts should be self-identifying).
- Select the appropriate choices for Living Arrangements, Speak English, Language, Race, and Race 2. If client refuses to state race, leave as “X” (not filled out) and include an explanation under Case Notes.
- Select the problem code and special problem code (“Special Pcode”). You might have to finish the intake before knowing what special problem code to choose.
- After phone intake is completed, come back to Intake Page 2 to fill out the appropriate Funds (funding code) section, as well as the Advocate and Office sections (see section on Closing Cases).

3. Intake Page 3

- Check the CSR-Eligible box once advice is given.
- Add time to case and click on Sum Time to display total time spent on the case (see section on Closing Cases).

D. CSR Eligibility

1. Legal advice

- Consists of legal assistance specific to client's unique circumstances and involves legal analysis tailored to client's factual situation.
- Applying legal judgment in interpreting facts and applying law to those facts.
- Must be actually provided to client by phone or follow-up letter (if letter is undeliverable then not CSR eligible)

2. Time record

- At least one time record is required per case

3. De-selecting a case as non-CSR-eligible

- LSC-eligible cases that are not reportable as CSR-eligible cases must be deselected. The CSR-box must be unchecked and a reason for deselecting indicated:
- More common reasons to de-select
 - Case properly opened and client withdrew before legal assistance could be given
 - Client gave the program erroneous information at intake and the correction showed that the client was ineligible (However, if the client was ineligible at the time of intake, the case may not be counted.
 - Administrative or computer error caused a case to be opened
 - Duplicate case files

E. Scheduling

1. Scheduling a Case

- Once a case has been opened and advice given, you will need to determine if the client fits within BayLegal's Case Acceptance Guidelines (CAGS) for scheduling purposes. The Case Acceptance Guidelines may vary by County because they are based on client-centered needs within a county, alternative resources, local office expertise and staffing constraints. At present, BayLegal has drafted CAGS for all priority areas of law specifically, family, immigration, housing, public benefits, health and consumer. If a case falls within CAGS, immediately schedule client in appropriate outlook calendar and provide client with appointment details. It is imperative that you reiterate to the client that the appointment is NOT a promise of full representation, but merely a further evaluation of their case. Inform the client of any documents they may need to bring with them to the appointment.

2. Outlook Calendar

- Each office has dedicated calendars in Outlook with appointments for all of the areas of law that the LAL may schedule. The calendars contain relevant information for the client: location of appointment, directions, contact information for changes to appointment, documents to bring to appointment etc. The calendars will reflect the number of intake appointments available for that week. Do not schedule clients more than four weeks out because it increases the likelihood of no

shows. If there are no appointments available, please speak to LAL MA for possible stealthing.

F. Various illustrative scenarios after case opened and advice provided:

1. Conflict is discovered after the fact. Case remains LSC and CSR eligible but further services should cease.
2. OP makes more than \$75,000. Case remains LSC- and CSR-eligible unless:
 - The parties continue to live together and there's no DV because then the \$75K would put household over income. If this is the case, you must de-select.
 - This is a "fee-generating" case question which, as indicated below, does not apply when we are just providing a client advice and counsel
3. Upon follow-up callback, client tells us that they are represented by counsel. Case is still LSC- and CSR-eligible. It is not an ethical violation to give a represented client advice, but we cannot schedule. However, given limited resources, represented clients should not be served.

II. Fee-generating cases

A. Definition

1. A case which, if undertaken on behalf of an eligible client by a private attorney, may reasonably be expected to result in a fee for legal services from an award to the client from public funds or opposing party.
2. Fee-generating cases are those where OP's income exceeds \$75,000 per year or the community assets (excluding home) exceeds \$100,000 in value. The San Francisco Bar Association has provided written instructions that raise the OP income limit to \$125,000.
3. This section does not apply to advice and counsel on the legal advice line. It only applies when BayLegal is trying to determine whether to offer the client full representation.

B. General requirements

1. BayLegal may not provide legal assistance in a fee-generating case unless:

- The case has been rejected by the local lawyer referral service or two private attorneys, or
 - The local lawyer referral service or two private attorneys won't consider without a consultation fee
2. BayLegal may provide assistance without referring if:
- Applicant is seeking certain benefits under 42USC401, 42USC1381, SSI etc.
 - BayLegal receives letter from private bar that attorneys won't take these types of cases
 - MA determines that referral to private bar is not possible because:
 - Documented attempts to refer have been futile
 - Emergency circumstances compel immediate action before referral can be made, but the client is advised that referral will be attempted at a later time (e.g. DV advice on safety planning and RO; UD advice after client receives 3 day notice or is served with Summons and Compliant for Unlawful Detainer)
 - Recovery of damages is not the principal object of the recipient's case and statutory attorneys fees not likely

III. Stealthing Cases

A. Type of cases appropriate for stealth

1. A compelling case that is within the local office case acceptance guidelines (CAGS) but there are no appointments.

B. Stealth process

1. LAL will provide advice and counsel and close case.
2. LAL will email LO attorneys (as identified by LO MA) with relevant expertise and offer case as stealth (include pitch and compelling facts in body of email). LAL should carbon copy (cc:) LO MA. Review will occur within 1 week and if LO attorney decides to take case, LO attorney will re-open case, contact client and put case in own office and staff number.
 - LO Attorneys/Designees to receive stealth requests:

- SF
 - Family – Minouche Kandel and Staci Martin
 - Health – Mike Keys
 - Housing – John Carella and Phil Morgan
 - Public benefits – Chantal Tien and Don Medearis
- AL
 - Family – Ariella Hyman
 - Health – Ariella Hyman
 - Housing – attorney of the week
 - Public Benefits – Ariella Hyman
- SC
 - All categories – Julie Patiño and attorney that practices in substantive area
- SM
 - Family – Tulin Acikalin
- CCC
 - All categories - Susun Kim and attorney that practices in substantive area

2. If case is not within CAGS, but it addresses a systemic issue:

- LAL will provide advice and counsel and close case
- LAL will email LAL MA and LO MA re case, identifying the perceived systemic issue in body of email.

IV. No-shows

A. When LAL schedules a client, the case must be transferred to the LO number and the LO appropriate staff number.

B. If the client does not show up, LO should leave case open, transfer the case back to office 90, change staff number (SNUM) to same as intake worker number and make note in case notes that client was a no-show.

C. LO should also note if client should NOT be re-scheduled (e.g. client no-showed too many times).

D. LAL should close case and check “No Show” box on Intake Page 3.

V. LAL processes

A. When to open more than 1 case in same calendar year for same client:

1. Legal issues fall into different problem categories

- Consumer (00+)
- Education (10+)
- Employment (20+)
- Family (30+)
- Juvenile (40+)
- Health (50+)
- Housing (60+)
- Income Maintenance (70+)
- Individual Rights (80+)
- Miscellaneous (90+)

2. Legal issues involve different potentially adverse parties even if same problem code or category

3. Legal issues relate to substantially differing underlying facts

4. Legal issues are in different forums or different court case numbers

B. Duplicating an existing case

1. In duplicating a case, the most important thing to remember is that most of the information from the client’s record does NOT get transferred over to the new record. You must manually enter all of the data that is missing on the eligibility slip and the case. You may need to connect the cases using the master case designation, if appropriate.

C. Reopening an existing case

1. When re-opening an existing case, please note in case notes the original date the case was closed, the date it was re-opened and the reason for re-opening. If new advice is given or additional facts collected, please note in case notes. Close case with highest level of service. You do not need to re-open case if you are just adding or correcting information like a phone number that does not require you to give new legal advice.

D. Sufficiency of notes

1. LSC requires that case notes be sufficient to support the level of assistance selected by the program to close the case.
2. Since we close cases to advice and counsel, all case notes should state a concise statement of the legal issue / relevant facts / the advice given based on the facts.

E. Life of an advice-only case

1. At end of call or soon thereafter, LALAS should finish notes and transfer case to SNUM 9100 which will be a temporary holding spot for cases that need to be reviewed for closing. Appropriate cases should also at this time be exported as follows.
 - LAV and CHAP databases – export and close
2. The case will be reviewed for substantive legal advice and technical accuracy
 - If, after review, a call back to the client is required or a correction must be made, the case will be placed back into intake worker's SNUM, "reviewed" box will be checked and instructions will be entered in case notes. Intake worker will make corrections or call client back, indicate in case notes that this has been done and then transfer back to 9100.
 - If after review, no corrections are required, the case will be closed to intake worker's SNUM.
3. For LAL advice-only cases, closed cases will ultimately rest in the intake worker's SNUM.

F. Life of a scheduled case

1. All cases should have at a minimum some legal advice in order to mark as a CSR eligible case.
2. Note in case notes date and time of appointment
3. Transfer case to local office number
4. Change SNUM to local office designation
5. Case remains open

6. Exporting to databases:

- LAV – exported by LAL, but not closed
- CHAP – exported by LO staff, not LAL

G. Closing cases: to close your own case after it is reviewed

1. Go to Intake Page 3

- Click on "Close Date" button
- Select "Reason Closed" - usually "A" for advice and counsel on LAL
- Select "Main Benefit"
- Click on "Sum Time" button

2. Go to Intake Page 2

- Confirm it is under your SNUM and LAL office number 90

H. Duplicate cases

1. If you open a case, provide advice and counsel and later realize there was already a case with same issues in same calendar year, then it may be a duplicate case. If there is already time in both cases and one may be brief service case, then keep both cases. The case with the highest level of service should be marked as unduplicated and CSR. It's ok to leave the LSC box checked. The other should be marked as duplicated and have a reason for non-csr added on pg 3. Finally, join the cases by making the CSR case the Master case on intake page 1, and then associating the other case with it.

I. PHONE OUTAGE

1. Contact LAL MA immediately

2. If LAL MA is unavailable, contact Tony White first and if no response within 15 minutes contact Tony Curoso

- Tony White
agwhite@baylegal.org
510.387.5055 cell
- Tony Curoso

tcuroso@ATI-CTI.com
510.923.9205 cell

3. Before contacting either Tony, please have a detailed description of the problem (dropped calls, queues etc).

J. PRIME OUTAGE

1. Contact LAL MA immediately

2. If LAL MA is unavailable, contact Tony White

- Tony White
agwhite@baylegal.org
510.387.5055 cell
- Before contacting Tony White, please have a detailed description of the problem.

3. If Prime is completely nonfunctional, then continue to take calls following the guidelines stated below:

- Family law calls
 - All family law calls are to be referred out or the caller can be invited to call back the following intake day. The chance of a conflict of interest is high.
- Housing calls
 - All non-emergency cases are to be referred out
 - All UD or notice cases
 - If public or section 8 housing, do intake and give advice, collecting information in a word document
 - If private housing, refer out or invite client to call back the following intake day
 - Public Benefit / Health Access calls
 - All non-emergency cases are to be referred out
 - All emergency cases, do intake and give advice, collecting information in word document

4. Once Prime is operational, please record all “other service” and case information in Prime.

5. Call backs are not recommended but may be appropriate in some compelling instances. Please use your discretion.