


Aspirational Standards and Guardianship and Diversity

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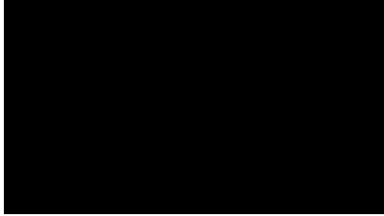
History of the Standard



Aspirational Standards-2nd Edition

- A. **HOLISTIC APPROACH**
- B. CLIENT IDENTIFICATION
- C. ENGAGEMENT AGREEMENTS AND **DRAFTING DOCUMENTS**
- D. CONFLICTS OF INTEREST
- E. CONFIDENTIALITY
- F. COMPETENT AND DILIGENT REPRESENTATION
- G. **CLIENT CAPACITY**
- H. COMMUNICATION AND ADVOCACY
- I. MARKETING AND ADVERTISING
- J. NON-LEGAL SERVICES
- K. PRO BONO REPRESENTATION AND PUBLIC SERVICE

Holistic Approach—Standard A



Standard A—New Standard

Considers the larger context, both other legal consequences, as well as the extra-legal context in which the problems exist and must be solved.

Non-legal services to accomplish the goals of the representation.

Encourages the use of family members and other third parties to support the client in the legal representation.

Explain how conflicts among family members may develop recommends harmony-enhancing measures.

Takes actions to help prevent current or future financial exploitation, abuse or neglect of the client.

Guardianship is More than Just a Court Order




Focus on "life needs" of the person whose interests are being promoted in the legal representation.

Additionally, the attorney recognizes that the client may not be knowledgeable in the variety of issues the client is facing or will be facing as they age. Therefore, the attorney is prepared to address with the client issues the client may not even be aware of that are related to the representation.

I need a Guardianship for My Mom

- ▶ Legal process
 - ▶ Service of process
 - ▶ Examinations
 - ▶ Hearing
- ▶ Non-legal Services
- ▶ Resources
- ▶ Family Dynamics/Effect on Relationships

Client Identity 

Identifies the **client** and the individuals who will assist the client at the **earliest stage** of the representation, obtains the **client's agreement** to these identifications, and **communicates** this information to the persons involved.

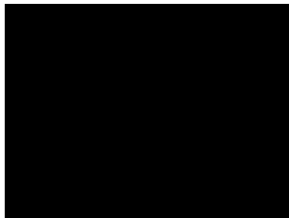
Throughout these Standards, the term “**protected individual**” refers to the individual whose personal and property interests are the subject of the representation.

Identifying the client is challenging because the individual whose welfare and interests are to be protected in the proposed representation may not be present or may be accompanied by family members, appointed fiduciaries, or other trusted third parties. **Usually, the client is the individual whose property and interests are to be protected.** Alternatively, a family member, fiduciary, or other person seeking to protect or assist another person can be the client.

Client Identification

- ▶ Intentional Methods
- ▶ Intake Forms
- ▶ Who does the Attorney think is the “client”/Who does the “client” think is the client/Who do the other people in the room think is the “client”

Fiduciary Representation



B-2 Recognizes the unique challenges of identifying the client when a fiduciary is acting on behalf of a protected individual

- ▶ When a fiduciary is involved, client identification should be clarified in the engagement agreement between the attorney and party with the authority to enter into the engagement agreement.
- ▶ When a guardian or conservator assists the ward. If the attorney is asked to represent the guardian or conservator in a court-supervised guardianship or conservatorship for a ward, the attorney will not usually privately meet with the ward.

Standard C-1(h)

Confirm, when representing a fiduciary, the fiduciary's obligations to the protected individual, **clarify** whether the attorney may speak directly to the protected individual, and **state** that the attorney may **withdraw** if the fiduciary violates a fiduciary or other duty to the protected individual and does not timely take corrective action;

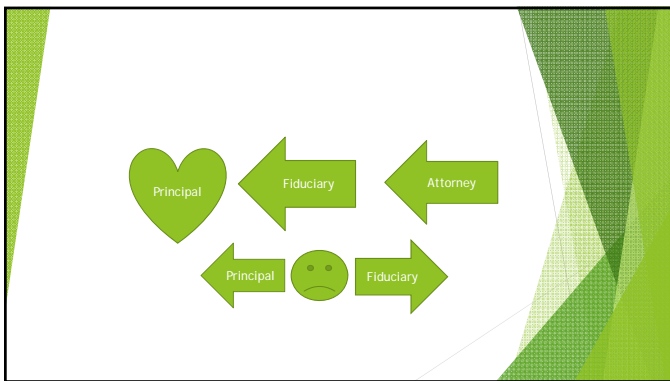
C-3 Recognizes the unique challenges in drafting documents at the request of a fiduciary.

Drafting documents at the request of fiduciary The attorney to draft documents to be signed by the fiduciary on behalf of the protected individual or to assist the fiduciary or others

- ▶ (i) **Confirm** that the fiduciary has the **authority** to act under a valid durable power of attorney, court-ordered letters of authority, or state law.
- ▶ (ii) **Confirm** that the proposed action is **consistent** with the protected individual's past estate planning documents or, if there are none, then with the individual's known goals, wishes, and best interests.
- ▶ (iii) **Consider** meeting privately with the protected individual to ensure that the individual desires the proposed action, especially if the proposed action personally benefits the fiduciary.
- ▶ (iv) **Refuse** to act on the fiduciary's request, if the proposed action represents a **change in the individual's existing documents** that is inconsistent with the individual's best interests

Confidentiality





Standard E-6

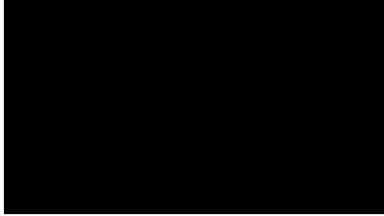
Carefully maintains client confidentiality to the extent possible while also meeting the requirements of laws, regulations or court orders imposing a duty to disclose.

Comments to Standard E-6

Disclose only enough information that is required to comply with the law,
Mandatory reporting of abuse laws of many states.
Discuss with the client how such reporting laws may affect the attorney's duty to maintain the client's confidences.
Agreement to disclose future suspected abuse without the client's express consent in order to protect the client from abuse

Takes actions to help prevent current or future financial exploitation, abuse or neglect of the client.

Capacity-Representing the Person (AIP)



Continues to respect the right to self-determination and confidentiality of a client with diminished capacity.

Adapts the interview environment, timing of meetings, communications, and decision-making process to maximize the client's ability to understand and participate in light of the client's capacity and circumstances.

Changing the time and location of the meetings;
Conducting the interview in the client's home or at a time of day the client is most alert;
Gradual counseling (a series of shorter interviews to be conducted over a period of time);
Varying communication styles;
Using appropriate visual aids and hearing enhancements;
Conducting the interview in the client's primary language or with an interpreter of that language; and
Providing other reasonable accommodations requested by the client.

Standard G-4

Takes appropriate measures to protect the client when the attorney reasonably believes that the client: (1) has diminished capacity, (2) is at risk of substantial physical, financial or other harm unless action is taken, and (3) cannot adequately act in the client's own interest.

Standard G-5

Appropriate measures to protect the client should: 1) be guided by the wishes and values of the client if known or, if not known, the client's best interests; 2) minimize intrusion into the client's decision-making autonomy; 3) respect the client's family and social connections; and 4) consider a range of supportive actions other than court proceedings and adult protective services.

**Advocating for Client's wishes
Advocating for Client's best interests.**

Balance the client's need for decision-making assistance with the client's other interests.

- client's autonomy,
- safety,
- independence,
- financial well-being,
- health care, and
- personal liberty.

The decision should not be merely what the attorney thinks is best or would do herself.

There is no bright line rule

"Lawyer's position in such cases is an unavoidably difficult one."

We listen. We invite a monologue. We establish this by our demeanor and by our questions that invite unloading- and in the process we extend the joy that elders' memories bring. And on those days, we earn the accolade- professional- one who serves others. That is our privileged role as lawyers; we can make others' lives, if even for a few moments, better than they were before.

Clifton Kruse