

**The Center for Law &
Public Policy
on Sexual Violence**

**TOOLS FOR *PRO BONO* RECRUITMENT:
A RESOURCE GUIDE**

A project of:

**The National Crime Victim
Law Institute**

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A Word on Language

For simplicity, the terms “victim” and “survivor” are used interchangeably throughout this guide, and a victim or survivor is generally referred to in the feminine form. We recognize that both women and men are victims of sexual violence. We use the feminine form because, according to the Bureau of Justice Statistics, “[m]ost rapes and sexual assaults are committed against females. Female victims accounted for 94% of all completed rapes, 91% of all attempted rapes, and 89% of all completed and attempted sexual assaults.” BJS, 1992-2000, <http://www.ojp.usdoj.gov/bjs/pub/pdf/rsarp00.pdf> (last referenced August 30, 2005).

Disclaimer

This guide is current as of September 2005.

While there were many individuals who contributed to this resource guide, the authors and the National Crime Victim Law Institute alone remain responsible for any errors.

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INTRODUCTION

Tools for Pro Bono Recruitment: A Resource Guide is designed as a toolkit for attorneys and other legal assistance providers at sexual assault and dual coalitions considering whether – and how – to provide direct client representation through a *pro bono* legal program. While this guide focuses on representation of individual clients, the material may also be helpful to a coalition seeking to recruit and select *pro bono* volunteers to represent a specific rape crisis center or a coalition board, rather than sexual assault survivors.

A coalition staff attorney is in a very unique position within the statewide organization. In addition to the coalition board and staff, the attorney is also a legal information resource for sexual violence providers throughout the state. Indeed, for many sexual assault and dual coalitions, the staff attorney may be the *only* legal resource, and the only attorney, employed by the coalition. As such, the staff attorney has no peers at a job in which she or he is called upon to perform many roles — legal director, educator, policy analyst, lobbyist, or general counsel. Some attorneys are also responsible for delivering direct legal services to individual callers, clients, or centers (a practice which presents a host of challenging legal and ethical issues; a discussion of the specific challenges and ethical considerations of direct representation follows in Chapter 3 *below*). It may be difficult for the attorney to meet these various and wide-ranging demands for legal services due to ethical and liability concerns, in addition to time constraints, expertise, or other reasons.

One possible solution to the challenge of resource and ethics constraints is for coalitions to use *pro bono* legal services. *Pro bono* volunteers are a valuable community resource, helping clients navigate the deep and often confusing waters of the legal system. They provide legal access to clients who might otherwise find themselves without other means. They ensure that sexual assault survivors have a trained and experienced legal advocate assisting them. And, volunteers may also relieve staff attorneys of the complications or challenges posed by their unique situations while providing survivors with the legal advice and guidance they need to facilitate recovery and healing.

A successful *pro bono* program requires ongoing training and recruiting efforts, resource development, supervision, case coordination, and administration. In short, it requires significant institutional support. The challenge for any legal organization is securing and maintaining these resources.

This guide is designed to assist coalitions who are considering whether to establish or continue a *pro bono* legal assistance program. It is not a step-by-step instruction manual for planning and launching a *pro bono* program. Rather, it is intended to guide coalitions in identifying and assessing the issues to be considered before implementing such a program. Additional resources and web links are provided in the “Resource List” at the end of the guide

REASONS TO USE *PRO BONO* RECRUITS

There are a variety of reasons coalitions may consider establishing *pro bono* programs. These include the need to provide direct client representation to sexual violence survivors; represent individual programs, rape crisis centers, or their coalition boards; leverage limited resources in an under-resourced field; promote awareness of and sensitivity to sexual assault issues; provide services in a community or region where legal resources are otherwise unavailable; respond to conflict of interest issues when they arise; secure expert legal advice in specialized practice areas; or perform legal work the coalition is not funded to perform. This list is not exhaustive.

Because so many coalitions have only one attorney on staff, and the need for additional legal resources is so apparent, one common response is to consider launching a *pro bono* legal services program. This, in turn, may be directed by the coalition staff attorney or by a *pro bono* program coordinator (who may or may not be a lawyer). The *pro bono* program coordinator typically is responsible for launching or sustaining a volunteer panel of lawyers who have received training on and have an understanding of sexual violence and also survivors' legal needs.

Hiring a *pro bono* coordinator may appear to be the simplest and most cost effective solution to meeting survivors' and centers' legal needs. But, coalitions should be aware of both the benefits *and* costs associated with training and supervising volunteers.

Consider the following:

PROGRAM BENEFITS

Creates an opportunity to train lawyers and legal advocates on sexual violence issues, thereby increasing the number of lawyers to represent victims and enhancing the bench and bar's understanding of sexual violence.

Provides legal representation to victims who cannot otherwise afford to retain legal counsel.

Establishes a referral network in the event of a conflict of interest; reduces likelihood that a conflict of interest will arise for a coalition staff attorney.

Enhances program's ability to leverage limited legal resources.

Expands ability to provide population-specific services (such as lawyers for non-English speaking survivors, lawyers for elderly survivors, culturally appropriate legal services, etc.).

PROGRAM BURDENS

Coalitions are limited by funding, mandate, mission, and capacity.

Geographic isolation may pose challenges to recruiting, training, supervising, and/or supporting volunteers.

Retention can be a challenge, especially if legal assistance is provided by the same few lawyers or by law students (who tend to be unavailable during exams, school holidays, etc.).

Additional work responsibilities related to a *pro bono* program may shift the scope of a staff attorney's duties from legal advisor and educator to program manager and supervisor.

Exposes coalition to malpractice liability if a volunteer does not provide quality service. Moreover, some coalitions do not provide malpractice coverage for the staff attorney.

Limited attorney availability (both in numbers and in time to contribute).

PRACTICAL CONSIDERATIONS

- 1. Assess legal needs.** It is important to identify at the outset why the organization seeks *pro bono* legal representation. For example, will the *pro bono* attorneys be asked to represent individual survivors, individual programs and rape crisis centers, and/or the coalition as a whole? Is such representation legally and ethically permissible (and who will make this determination)? If representation will be provided to individual victims, does the coalition or center retain information on callers and services provided, and have the technological capacity to conduct conflict checks? Will all staff who interact with the client be supervised by a lawyer and thus be able to ensure that attorney-client privilege is not waived?
- 2. Assess resources.** This point is probably very obvious, but it cannot be overstated. The coalition director, staff attorney, and/or coalition board is likely to be in the best position to evaluate what resources are available to support a *pro bono* program. As stated in the introduction, launching and maintaining an effective program requires an ongoing commitment of an organization's resources. It is critical that the organization not underestimate the time and resources that are required to train and supervise staff and volunteers, both at the outset of and to maintain a *pro bono* program.

Here are some questions to consider:

- Does the organization's structure support the coordination and continuity of multiple and ongoing *pro bono* cases?
- Who will provide the services? Only *pro bono* lawyers or will the project also involve *pro bono* law students and/or *pro bono* advocates?
- Who will be responsible for the program's creation, oversight, and fiscal management? Development of policies and procedures?
- Who will be responsible for case supervision and quality assurance? Program review and evaluation? Does the organization have the capacity to conduct appropriate client service and programmatic evaluations? Is there a grievance policy and procedure appropriate to the provision of legal services? What are the coalition's legal and ethical obligations for services provided by *pro bono* providers?

- What are the priorities and scope of work that may be performed by the staff? Are there resource, technology, and program coordinators at the organization who can oversee and administer the program?
- Does the coalition have the capacity to screen cases and determine whether referral to a *pro bono* program is appropriate? Is the coalition the appropriate agency to perform the screening and referral process? (For example, some organizations may choose to contract for screening and referral services, or to provide them off-site for ethical, logistical, or other reasons.)
- Does the coalition have the physical space necessary to provide a client-based work and interview site for the legal volunteers? If not, is there an appropriate site where the services may be provided?
- Does the coalition have legal, professional, and/or technological resources that *pro bono* providers may access? This may include free access to web-based legal resources such as Lexis and Westlaw. For legal providers in rural or remote communities, on-line resources are likely to be important.
- What training will be provided to volunteers and who will provide it? Will ongoing training be provided?
- Will post-training participation in the *pro bono* program be voluntary or mandatory? How, and by whom, will participation be tracked?
- Who will provide malpractice coverage? (This is especially likely to be an issue if the coalition plans to utilize retired or inactive attorneys who are not currently practicing). Who will provide the legal supervision of non-attorneys required by statute and ethics rules?

3. Identifying clients and their legal needs. In order to develop a *pro bono* program responsive to clients' needs, it is important to conduct a thoughtful assessment of the client community to be served. For example, what language(s) does the target population speak? Does the coalition have, or can it attain, the resources to provide culturally and linguistically appropriate services? Are there funding restrictions that will limit the client population that may be served (*e.g.*, minors, non-citizens, undocumented survivors)?

Are there certain requests or common procedures that seem to come up again and again for the coalition's clients? What is the ease and efficiency of clients' access to services? For example, where do the clients live and where will they be served? Are they isolated, either geographically or culturally, from towns and cities where services are located? If so, how may such barriers be addressed? This information may be

gleaned from the centers themselves as well as from other social service providers. A needs assessment can be a useful tool, not only for gathering information about the challenges to legal assistance for members of a targeted community, but also as a method of reaching out to clients.

4. Develop a comprehensive plan for delivery of services. Once a coalition has identified the most common and pressing legal problems, it must then determine the scope of services to be provided, the criteria for taking cases and/or clients, and how and when services will be delivered.

- What is the range of services the coalition wants to offer? Will it offer a full-service clinic model or provide limited assistance to *pro se* litigants, or create a program that falls somewhere in between these two models?
- How will the program decide which clients to serve? Will case priorities be determined by subject matter (*e.g.*, privacy and confidentiality cases; representation in rape shield matters; sexual assault crime victim rights issues)? How will priorities be set and by whom: On a statewide basis? By program(s)? By the board? Other community providers and allies? Coalition staff?
- Within established case priorities, how will the *pro bono* program choose clients? If direct representation will be provided, will there be income eligibility restrictions? How will financial eligibility be determined (*e.g.*, federal poverty guidelines)?
- How will the coalition deliver services? On-site, at attorneys' individual offices, or at a third location? What tasks can be performed in house and what can be handed off to the direct provider?
- Who will conduct case screening? Case follow-up? Who will measure client and volunteer satisfaction? By what method?

Whether a coalition plans to directly represent clients or is seeking volunteers to take on some or all aspects of a client's case, it is necessary to prioritize legal procedures and develop a schedule for delivery of *all* the services that are set forth in the coalition's comprehensive plan. Planning must proceed carefully, from screening a case to assigning the case to performing the legal work to the case's conclusion — including training, supervision and follow-up. The schedule should anticipate the amount of time required to perform each task, which is important information to disclose to program staff and prospective volunteers. It may be best to launch a new program incrementally to allow time to work through any kinks in the system.

5. Identify the type of help and level of responsibility you require from volunteers and from coalition staff. Once a coalition outlines the steps in its delivery model, it will be able to determine the most efficient use of a volunteer's time.

A *pro bono* program may be more successful if it includes opportunities for the volunteer lawyer to provide a range of legal services. While some attorneys may be willing to perform the full spectrum of legal services a client's case requires, others will have only limited time to devote to their assignments. Asking a *pro bono* attorney to commit to discrete, manageable and compartmentalized tasks may increase both the number of volunteers and the scope of *pro bono* legal services available to clients. (Some ideas for managing this type of arrangement are outlined in the section titled "Establishing and Sustaining Pro Bono Relationships" in Chapter 6.)

If legal services will be provided on a limited representation basis, it is critical that the volunteer's responsibilities (and time commitment) be clearly defined. The coalition, the volunteer, and the client all need to have an accurate understanding of the nature of the relationship and the scope of services to be provided. It is important to check with your state bar to determine which, if any, ethical rules and obligations are implicated by limited scope representation.

There may be instances in which the attorney and the client or case are not well matched. This may be due to personality, the client's or lawyer's needs, the complexity of the case, or other personal or professional reasons. Even if a volunteer has the legal training and expertise to provide representation, case assignment hinges on other factors. For example, how flexible is a volunteer? Is it easy for the volunteer to adjust schedules easily, or is the volunteer's availability limited? If the latter, it is best not to request assistance the volunteer is unable to provide. If too few volunteers are available in a region or practice area, consider whether other volunteers may be willing to travel to another area to help a client.

6. Assess costs associated with maintaining a *pro bono* program (training, materials, forms, computer programs, staff training, etc.). The amount of money it will cost to run a *pro bono* program depends on the model of legal services delivery a coalition chooses. With limited funds and resources, a coalition may decide that the most it can offer clients is summary legal advice and referrals. This may or may not include the development and distribution of legal materials. Another model is to provide *pro bono* classes for groups of clients. Such classes require careful case client and case screening, informed client consent, and should be conducted by legal providers experienced both in serving sexual assault survivors and the area(s) of law to be addressed.

If the *pro bono* delivery plan includes elements of assisted self-representation or utilizes court-based programs, such as courthouse facilitator services, then programmatic costs may be offset. In addition, some jurisdictions waive filing fees, witness fees, costs of court reporting and transcription, and other expenses associated with representing low-income clients. If these fees are not waived, it is important to determine at the outset how they will be paid and by whom. (**Note:** Legal ethics rules in a particular state may prohibit a lawyer from assuming financial responsibility for certain litigation costs. Be sure to check your state rules regarding this issue.) Consider who will bear other costs that may arise, such as fees for an interpreter for a non-English speaking or disabled client – the *pro bono* attorney or the coalition? (**Note:** Programs or organizations may have equal access obligations under programmatic, local, state, or federal requirements, including but not limited to the Americans with Disabilities Act.)

Of course, securing a volunteer to provide client representation may not be necessary if the case can be settled or diverted; above all, examine early intervention strategies. This is an arena where developing form letters or *pro se* materials may be especially helpful. For example, securing local or statewide implementation of court-provided forms for stalking, sexual assault, and other protective orders may reduce or eliminate the need for legal assistance at the *ex parte* level. Similarly, “Know Your Rights” booklets for sexual assault survivors that set out civil legal remedies such as housing and employment rights of survivors, and include a sample letter to a landlord, may help survivors who are well-suited to advocate effectively for their own rights.

Additionally, it is important to factor in the cost of support services for volunteers. This includes training and mentoring sessions, secretarial and paralegal services, research tools, etc. For example, as noted above, a coalition should determine whether and how it will provide access to online legal research services such as Westlaw or Lexis. For some individual attorneys or coalitions, this cost may prove prohibitive. What alternatives may exist? For example, is it possible to partner with a legal services agency, local bar association, or educational institution in order to reduce the fees for such research? Law firms in the area may be willing to donate such services and it may be possible to secure volunteer secretaries or paralegals.

Malpractice or insurance coverage is another potentially unaffordable program issue. Some coalitions have been able to provide alternative coverage through non-profit legal organizations such as the National Legal Aid and Defender Association or insurance companies specializing in coverage for non-profits. Local or state bar associations may also have special rates for lawyers providing services through bar-sponsored *pro bono* programs. If the local or state bar association provides malpractice coverage for qualifying *pro bono* activities, eligibility for such services may influence the type or scope of services a coalition can afford to provide on a *pro bono* basis. Another alternative is to partner with other legal professionals and organizations that offer some of the necessary services.

LEGAL CONSIDERATIONS

1. Ethical Issues: Unbundled Representation

An increasing number of attorneys are providing limited scope legal representation to their clients. Unbundling services to clients, also known as discrete task representation, limits the scope of legal work that an attorney will perform. Tasks can range from general legal counseling to court appearances to document preparation or *pro se* coaching.

Before a coalition determines which services it will provide, it will be important to check whether a state bar association has issued an opinion on limited scope legal representation. The State Bar of California Committee on Professional Responsibility and Conduct issued an article entitled, “An Ethics Primer on Limited Scope Representation,” which is available online (the web address is provided in the “Resource List” on page 31). The article poses questions for attorneys who are considering establishing a limited representation relationship with clients and discusses issues such as providing competent representation, avoiding prejudice, withdrawal of representation, and the duties of loyalty and confidentiality.

Depending on the volunteers’ legal experience and skill level, limited representation tasks assigned may include any or all of the following tasks:

- **Legal Research** – general legal resource development, specific case research. Perhaps a paralegal or law student can perform this function.
- **Client Interaction** – client intake, legal consultation, notification, case tracking, record keeping, follow up, evaluation.
- **Pro Se Document Review** – review and organization of paperwork, answering discrete questions, ensuring that forms comply with all state and local rules.
- **Drafting/Legal Writing** (at the trial and/or appellate level) – briefs, motions, memos.
- **Pro Se Coaching** – helping a client prepare for a court appearance or mediation session or other court-related hearing; reviewing the client’s presentation and providing practical and/or legal advice.
- **Litigation/Direct Representation** (on a specific issues or set of issues).

Although bar organizations may differ in their comfort with and support for attorneys providing unbundled legal services, many state bars are recognizing the economic and political necessity of such services. Your state bar can be an invaluable source of guidance and expertise if your coalition chooses to recruit attorneys to provide clients with discrete task representation.

Another possible approach to serving clients is referring them to practitioners who perform “low *bono*” legal work. The services performed under a low *bono* agreement might compare to those listed above, the difference being that they are provided for a reduced fee. In choosing this option, a coalition would need to spend time finding attorneys who understand the legal issues facing sexual assault survivors and are willing to provide low *bono* legal services to them.

Some states have created programs to provide legal information and assistance to people with limited means. Arizona and California, for example, have established law information centers and self-help service programs across the state to assist *pro se* litigants. Indeed, California law mandates that courts establish a court facilitation program.¹ California law requires that the facilitator be a lawyer. Oregon has no such requirement; in 1999 the Oregon State Bar and Oregon Supreme Court revised Oregon’s lawyer discipline rules to provide that, as a matter of law, non-attorney courthouse facilitators are not engaged in the unauthorized practice of law. *See* Or. Rev. Stat. § 3.428 (4).² Programs such as these may be utilized in conjunction with unbundled services that a *pro bono* attorney provides. This not only involves clients in the legal process, but also eases the pressure on a coalition’s resources.

There are a number of helpful online and print resources that describe these and other legal services models. Some of these resources are identified in the “Resource List” on page 31.

2. Ethical Issues: Direct Client Representation by the Coalition Staff Attorney

When assessing how best to meet the legal needs of sexual assault survivors, it may be tempting to consider hiring a coalition staff attorney to represent survivors directly in lieu of dedicating staff resources to launching or maintaining a *pro bono* program. Hiring an attorney to provide direct representation ensures that at least some clients will have legal counsel, that the coalition can provide attorney oversight, and that the lawyer providing representation is someone sensitive to the social, cultural, and legal issues faced by survivors.

¹ *See, e.g.*, Rule 5.35. Minimum standards for the Office of Family Law Facilitator.

² ORS § 3.428(4) provides, “An employee or other person providing services to litigants through a family law facilitation program as provided in this section is not engaged in the practice of law for the purposes of ORS 9.160.”

However, utilizing a coalition staff attorney in this manner presents a number of complex issues and potential problems for the survivor, the coalition, and the staff attorney unless certain protections and procedures are in place. Whether and how to use a staff attorney to represent sexual assault survivors requires a careful analysis of your coalitions' mission and goals, funding sources, and organizational structure, as well as your state's statutes, ethical rules, cases, and other regulations or opinions governing attorney representation. Consideration also must be given to coalition funding sources.

Rape crisis centers and hotlines often serve a variety of clients, including adult and minor victims. Some funders, however, restrict legal representation to adults only. Other funders exclude will not fund certain types of cases (such as dissolution). As with any other services provided, it will be important for the coalition to clarify at the outset what funds may be used for what types of services, the eligibility requirements for representation by the coalition, and to ensure that the provision of legal services is consistent with coalition policy. The coalition also must recognize that it is possible that the coalition's interest may, on occasion, conflict with a client's wishes and the lawyer's obligation to represent those wishes. (One example of this conflict is the client who chooses to disclose her records rather than fight a records subpoena, whereas the coalition or center may have a strong interest in maintaining the absolute confidentiality of all center records.)

Following is a list of issues to consider when evaluating whether a coalition staff attorney should provide direct legal representation to survivors. The possible risks to the survivor include compromised confidentiality, under-resourced legal representation, and the loss of dedicated legal representation (due to insecure funding sources).

A. Loss of confidentiality: Having a coalition staff attorney provide or coordinate direct representation may result in the unintended compromise of survivor confidentiality. This loss of confidentiality could result from a variety of circumstances, including but not limited to client communications to coalition staff, communications to a coalition employee who is not within the scope of attorney-client and/or advocate-client privilege, or mandatory reporting obligations. A breach of confidentiality may have multiple unintended consequences, including safety concerns for the survivor, liability for the coalition and its staff, loss of control over private information by the survivor, and loss of community trust and respect for the coalition.

Breach of confidentiality or the waiver of a privilege may occur more easily than staff may realize, and training on this issue is critical, especially if a coalition is new to providing or coordinating direct legal services to survivors. For example, in order for the attorney-client privilege not to be waived, communications must occur in a private location in which the client has an expectation of privacy and

confidentiality. Legal records must be segregated from other records. Client information – including the name of a client – should not be disclosed by the attorney unless the client signs a release of information (secured only by informed consent). Even if communications between the legal staff and the advocates are protected by privilege laws, the communications should be authorized by the client.

Thus, for the staff attorney sited at a coalition office, it may be all too easy for a breach of privilege to occur. For example, this lack or loss of confidentiality could result from the inability of the attorney to maintain a professional, privileged relationship with the client distinct from other professional relationships between the client and the coalition or member program. Because the attorney-client relationship in most states has a greater level of confidentiality (*i.e.*, is less easily pierced) than advocate-client relationship, housing an attorney within a non-legal setting has the potential to compromise certain information depending on who has access to it. For example, if intake workers, support staff, advocates or other coalition employees with whom the survivor/client communicates are not supervised by a lawyer, those communications may not be subject to the elevated confidentiality protections typically afforded to the attorney-client relationship. Also, if the attorney does not have complete control over and access to records, privileged information may be disclosed and confidentiality compromised. It would be possible that an opposing attorney could subpoena coalition staff to testify against the survivor. It could also expose the attorney to malpractice liability and/or a lawyer discipline proceeding.

Supervision of the coalition attorney may also be an issue. Typically, staff attorneys are supervised by an Executive Director (ED). The ED, who is usually not an attorney, will have access to client information for the clients the attorney is representing. Again, this may result in an inadvertent breach of attorney-client privilege.

B. Under-resourced legal representation: Many state coalitions have only one or two attorneys on staff. It is unrealistic and unwise to expect such a limited resource to respond to the legal needs of an entire state.

An informal survey of staff attorneys conducted by the Center for Law & Public Policy on Sexual Violence in 2004 indicated that the typical staff attorney's duties may include: public policy expertise, legislative advocacy, in-house legal representation, supervision of legal advocates, general counsel to the Board, provider of direct representation, author of legal manuals and training materials, grant writer, and legal trainer. Finding any one person to perform all of these functions may be challenging. The challenge is exacerbated when a coalition (typically because of limited funding) hires a newer attorney or an attorney inexperienced in meeting the needs of sexual violence survivors, coalitions, centers, and a board of directors.

It is not possible for one or two attorneys to serve an entire state's sexual assault survivors' legal needs. Even when cases are prioritized based on income, impact, and need, the staff attorney(s) will be able to accept only a few cases at a time, and many potential clients will have to be turned away.

Coalitions whose borders include Indian country, and Tribal Courts, may be further challenged in their ability to meet survivors' legal needs, as tribal law and tribal court procedures differ from state law. (For an overview of Tribal Law issues, see Chapter Six ("Tribal Law") of the Center for Law & Public Policy on Sexual Violence's civil guide, *Rights and Remedies: Meeting the Civil Legal Needs of Sexual Violence Survivors*.)

States whose boundaries include large geographic areas are further burdened when trying to meet survivors' legal needs. The time spent traveling to screen, meet with, and represent survivors located significant distances from the coalition office may readily consume significant attorney resources. At the same time, rural communities located far from urban centers often are in the most dire need of expert legal representation.

Further compounding the challenges is the fact that coalitions often have difficulty hiring legal counsel experienced in the practice of law, or in the area of sexual violence. Because staff attorneys have few, if any, peers in-state, the legal resources in place to assist them are typically extremely limited. For newer attorneys especially, it is critical to have adequate legal supervision and consultation. A newer attorney cannot (and should not be expected to) have the skill and expertise of a more experienced attorney.

While the challenges, alone, do not justify a decision not to try and address at least some survivors' legal needs, a coalition must realistically assess its capacity to meet survivors' legal needs, especially on a statewide basis. A realistic assessment of the challenges, and the inevitable tension between demand and capacity for services, as well as the role of the lawyer versus the role of the sexual assault advocate, should be considered at the outset.

C. Loss of representation: Coalition staff attorneys often are funded through grants or tentative funding streams, which often expire with little or no time for advance planning. This may result in clients being left without legal representation. This could be especially detrimental for a survivor if funding runs out midway through a complex and lengthy case. While it is difficult and challenging to lose legal representation in any circumstance, it is especially burdensome for sexual assault survivors, who have shared the intimate details of their assault with their legal counsel.

D. Loss of independent legal judgment: Sexual assault advocates, and most coalitions, make it a priority to foster an atmosphere of belief and support for the survivor. An attorney, on the other hand, has a duty to bring advance only legally valid claims and to help a client properly assess a case. A staff attorney may be unable to proceed with a case because of her or his ethical obligation not to file a lawsuit that is not grounded in law.³ The coalition lawyer’s inability to share client and case information with her colleagues (absent a waiver given only with informed consent) may create conflict. It is difficult (and disheartening) for staff who are dedicated to serving survivors and trained to advocate on their behalf to be obliged to deny survivors’ pleas for free, experienced, legal assistance. Sometimes there may be no legal remedy available to a client, yet the advocate pursues this avenue because legal redress appears to be the only remedy left to pursue.

3. Risks of Direct Representation by Coalition Staff Attorneys

A. Risks to the Coalition

- ❖ **Lawsuits for malpractice.** As discussed above, there are numerous opportunities for the inexperienced attorney or inadequately organized office to compromise inadvertently a survivor’s legal status. Such compromises may result in a malpractice claim against the attorney and/or civil claims against the coalition brought by survivors who are unsatisfied with their legal representation. Given the types of risks to survivors discussed above, including overcommitted attorneys attempting to meet the needs of survivors throughout an entire state, it is quite likely that survivors may become dissatisfied with their services. This will expose the coalition to the potential risk of malpractice suits.
- ❖ **Charges of practicing law without a license.** The individual staff attorney and the coalition may be liable for the unauthorized practice of law. This can happen when non-attorneys are either not properly supervised doing legal work, or when a supervisor (such as a coalition’s Executive Director) is not a lawyer but nevertheless has supervisory responsibility for and control over making decisions about an attorney’s legal work.
- ❖ **Loss of funding.** Any ethical or legal challenge may result in a coalition losing its funding.

³ According to the ABA Model Rules of Professional Conduct, lawyers must have ‘independent professional judgment.’ (Rule 5.4) In fact, a lawyer may not allow any person to “direct or regulate” this independent judgment. Many states have similar rules. This requires a careful look at what Executive Directors and Boards can do and how staff attorneys are supervised in regards to client representation.

- ❖ **Change or dilution of the coalition mission for public policy, educational, and community-building purposes.** This could also affect a coalition’s funding.
- ❖ **Loss of attorney time for important training and cross-disciplinary education as a result of the dedication to legal representation.** A careful assessment of the implications of resource reallocation is important to ensure such a decision is consistent with the coalition’s mission and goals.
- ❖ **Expensive and time-consuming changes to personnel policies, office organization and staff training.**

B. Risks to Coalition Staff Attorneys

- ❖ Inability to adequately counsel and respond to clients’ needs.
- ❖ Professional discipline, including possible suspension or disbarment.
- ❖ Malpractice lawsuits.

4. Important Considerations Regarding Direct Representation by Coalition Staff Attorneys

A coalition must evaluate several factors when deciding whether to use a coalition staff attorney to provide direct legal representation for sexual assault clients out of a coalition office site. For example:

- Would individual representation of sexual assault survivors be consistent with the coalition’s mission?
- What is the source of funding for the legal position? Is it a stable source of funding? Is it likely to end or is it uncertain whether it will be renewed?
- Is the budget adequate to handle the extra expenses that arise when an attorney represents clients (for example, travel, case tracking and legal software, including (costly) legal research subscriptions, filing and expert witness fees, and other litigation costs such as transcription services, interpreter fees, as well as case software, intake worker or additional support staff, separate bank accounts and other mechanisms for client resources, rate bank accounts, private client meeting space, extra office space)?

- Is it realistic for one (or two) attorneys to cover the entire state's needs? Is it an effective use of the attorney's time? Is there legal support staff? How many centers would be making referrals to the attorney(s)?
- What is the composition of the coalition's office? Is there currently in place, and if not is it possible to create, a system to handle numerous phone calls from clients with wide and varying legal needs? This will include the ability to screen clients and cases to determine how to best use limited resources.
- Is there private office space to meet with clients? Can legal files be stored in a secure location, with only the appropriate staff having access to the confidential legal files? Is there an appropriate plan in place for separating information that is privileged (pursuant to the attorney-client privilege) from other non-legal coalition staff?
- Who supervises the attorney? Is the coalition willing to change the supervisory structure as necessary to comply with legal ethics requirements? If needed, are there funds to hire adequate legal supervision for an inexperienced attorney?
- Has the coalition fully considered the implications of diverting attorney time from current projects to legal representation? (For example, it may be more beneficial to leverage limited legal resources and have the staff attorney organize and maintain a diverse *pro bono* network that has the ability to reach many more people, than to represent clients directly). Is the coalition realistic about the resources that must be dedicated in order to provide effective legal representation, and supervision of legal work?
- Has the coalition developed a referral network of lawyers experienced in serving sexual assault survivors to whom case conflicts or others who cannot be served will be referred? Turning down clients in desperate need of assistance is discouraging. Is the coalition staff prepared to respond to the disappointment and/or frustration from individual survivors when clients must be turned away or otherwise denied services? What internal mechanisms are in place to respond? What if the frustration comes from a referring center who also participates in the coalition Board of Directors in some way?
- Are there any conflicts of interest that exist within the organization? Are center staff part of the coalition's Board of Directors? How about police officers or other attorneys? How might this affect confidentiality or partiality of case selection during intake for client referrals coming from that center?

- Is the coalition prepared to work with the attorney in seeking guidance from the state bar overseers if these ethical responsibilities are unclear or undecided?
- Is the coalition prepared to provide the staff attorney with separate accommodations or other space considerations as required by the state bar overseers? These may include a separate work space, telephone lines, meeting rooms, supervision of support staff or intake worker by the staff attorney rather than the Executive Director, and no shared organizational knowledge as to the identity of clients or actions on a client's behalf either by the Executive Director or the Board.
- Will the coalition be able to hire an attorney who has the necessary experience, training, and background to handle various and sometimes complex legal matters? If not, is the coalition able to secure experienced and qualified legal supervision for the staff attorney?

There are a number of avenues that a coalition may pursue to protect client information and preserve confidentiality and privilege, lessen the risk of legal liability, and provide an environment thoughtful about legal ethics. For example:

- Work with an attorney as an independent contractor instead of having an attorney on staff who does direct representation.
- Purchase malpractice insurance for each attorney.
- Retain independent legal counsel for dealing with confidentiality of legal information, including case files, phone calls, and computer communication and systems.
- Create an attorney-written or approved system for handling intake and conflict checking for potential clients.
- Ensure that legal staff has work and meeting spaces that comport with the attorney's ethical obligations regarding client privacy and protection of confidential information. Note that this may be especially challenging for some physical sites, because even the fact that an individual calls or comes on site seeking services may be deemed confidential, given the nature of survivor/clients' legal needs. (Consider, too, specifically who has access to phones, fax, e-mail, and computers.)
- The coalition may need separate legal stationery/letterhead for attorney(s). This should be explored with the governing bar association.

- Have realistic program expectations for attorney caseload and geographic issues.
- If the coalition chooses to use a staff attorney to provide direct representation, set clear priorities on what types of cases or issues the attorney will handle, such as protective order hearings, victim representation in criminal proceedings, employment matters, etc.
- Maintain separation of attorneys and case files as well as meeting space and phone lines.
- Maintain case coverage in the event of illness, vacation, or other extended attorney absence.
- Budget appropriately well ahead of client intake to include mileage and travel expenses, legal malpractice coverage, legal research costs, hiring of appropriate support staff or intake workers, and for office supplies or re-organization of space and resources.

RECRUITMENT AND TRAINING

Recruiting specific individuals or groups for a *pro bono* program is easier once a model for a program, including the scope of services and potential client population, has been developed. A survey of attorneys and law firms can provide information on legal professionals who are capable of delivering services for a specific type of program. Attorneys with expertise in the areas of civil rights, crime victim law, criminal defense, employment, domestic relations, housing, immigration, personal injury, police misconduct, or public benefits may have specific expertise that could benefit a coalition's program. The survey tool may also be useful in recruiting non-lawyer volunteers as well, such as paralegals, legal office managers, legal secretaries, transcription services, and administrative support providers.

It might be tempting to rush ahead with recruitment in anticipation of an upcoming project or case. We advise you to proceed cautiously, as creating and running a successful program takes time. It is critical to develop a long-term plan that includes recruiting, training, and retaining a stable pool of volunteers, mentors, and trainers. Locating volunteers with a desirable skill set or level of experience, particularly in the area of sexual assault, might prove more difficult than anticipated. Further slowing the process is the need to allocate sufficient time to provide volunteers with training on sexual violence issues, the dynamics of sexual assault, the psychological effects on a victim, services available to survivors, etc. It may be appropriate to coordinate some or all of the *pro bono* lawyer trainings with trainings sponsored by local centers. By providing training to its recruits, a coalition ensures that every *pro bono* attorney has an appropriate and thorough understanding of the clients who will be served. It also helps integrate the volunteer lawyers into the larger organization – offering continuing education credits may help encourage attendance at trainings. Ask your state bar association about how to do this.

Coalitions have to decide how and when to provide training to their volunteers. Will volunteers be required to complete a counselor training program? Will coalitions provide regular training sessions to volunteers on an ongoing or as-needed basis? Regular volunteer training is a huge time commitment, and recruiting numbers may be affected if coalition staff attorneys can only offer limited training opportunities to volunteers. Additionally, a *pro bono* attorney might become frustrated if required to attend a training that is not designed to meet the volunteer's training needs. At the same time, the information provided at such trainings may be an important tool for providing volunteers with the necessary understanding of sexual violence issues. Coalitions need to find the proper balance between recruiting the volunteers who will best serve their clients and being able to offer support and training to their volunteers so that they can perform their work effectively.

REACHING OUT TO POTENTIAL RECRUITS

Getting attorneys to volunteer their time may be difficult if the offer does not have a tangible reward, such as providing continuing legal education credits or satisfying *pro bono* obligations if a state has a mandatory *pro bono* system. For large law firms, employees who provide *pro bono* services bring recognition and a positive public image to their organizations. Some law firms credit attorneys' *pro bono* hours toward the employees' billable hour requirements.

1. Appealing to an audience. Beyond the obvious marks and recognition for *pro bono* hours, the work a coalition hopes to assign recruits should have some personal and professional appeal:

- Training sessions and roundtable discussions about the nature of the coalition's work and the needs of its clients are valuable opportunities for learning new skills.
- For newer attorneys, valuable legal and court experience, and the opportunity to be mentored by an experienced attorney, may be an effective draw. Timing may also be an important; newer attorneys recently in practice may have both the time and the need to gain experience through *pro bono* activities.
- Client interaction and court time might appeal to attorneys practicing in a field of law that does not require either of these tasks.
- Specific population needs might draw members of minority bar associations to represent minority clients. Women's bar associations may be particularly ___ for help.
- Witnessing the impact that direct representation has on a client can renew an individual's sense of professional responsibility.

2. Getting out the word. No matter how a coalition decides to advertise its *pro bono* program, it should clearly state the scope of services it is able (and not able) to provide. Prospective volunteers, as well as clients, potential referrals, and any partner organization, will need to hear this message clearly.

- A survey tool is a useful method for learning about the existing pool of recruits in a community (who is doing *pro bono* work, what are the volunteers' work preferences, what aspects of their current volunteer activities are most and least rewarding, what could the program do to maintain their participation in the volunteer program, etc.). It may be possible to distribute the survey

through local bar associations, to relevant substantive sections of the state bar (Family Law Section, Criminal Law Section, Litigation Section, etc.), or through specialty bar associations, such as a women's or *pro bono* bar association.

- Submit a story to the newsletters of state and local bar associations profiling *pro bono* opportunities and the coalition's need for volunteers. Include a volunteer sign-up form. Be sure to indicate whether continuing legal education credits, *pro bono* credit, or other benefits will be awarded.
- Request assistance from existing partnerships and personal contacts.
- Network with local resources, such as community legal organizations and government agencies that have already established volunteer attorney programs. Consider using paralegals or retired/inactive attorneys.
- Identify *pro bono* coordinators at large firms. Some firms also have *pro bono* clinics. Find out what the protocol is for inclusion on their list of approved *pro bono* activities. Make the time to establish personal relationships.
- Internet search engines and email make the search for, and communication with, potential recruits relatively easy. Consider using other organizations' databases, websites, and other advertising tools to broadcast your request for assistance. Email blasts are an efficient way of targeting large numbers of people. This approach is more likely to be effective if combined with a more personal or directed follow-up contact.
- Advertise through law school career services offices. Explore the possibility of partnering with a law school's clinical or externship program through which law students work on cases under the supervision of a clinic or coalition staff attorney.
- Launch a letter writing campaign (perhaps a prominent figure in your legal community can lend his/her name to the organization's communication efforts).
- Host brown bag lunches and other informal presentations to bring potential volunteers together and to share information about your work and *pro bono* needs.
- Talk to local leaders, such as the boards of legal associations and law firm managers, about encouraging *pro bono* work. Some firms may even be willing to adopt or sponsor a *pro bono* legal clinic by providing funding and / or attorneys to the clinic, on a one-time or ongoing basis.

ESTABLISHING AND SUSTAINING *PRO BONO* RELATIONSHIPS

Coalitions should proceed cautiously before taking on significant case and client commitments until they have a pool of trained, experienced, and reliable attorneys to draw upon. Absent such a safety cushion, the coalition or staff attorney may end up responsible for more cases, or more complex cases, than is reasonable, appropriate, or ethical. Also, if a case is not resolved as quickly as initially anticipated due to continuances or delays, or if a volunteer must withdraw from the case or *pro bono* pool, it will be easier to find a replacement if a coalition has cultivated a strong group of volunteers. In addition, a coalition should have a strategic plan for how cases will be disposed of in the event that a critical attorney or legal support staff position is terminated. It is best if a coalition has a plan for how to complete representation of pending clients in the event of discontinued funding or staffing. Finally, when identifying program needs and sustainability, it is important to have realistic goals, and to plan for the attrition of *pro bono* volunteers. Volunteer staffing may fluctuate unpredictably as to the number of lawyers in the *pro bono* program at any one time, ability to accept cases, type of representation to be provided, and location of that representation. A coalition will need to balance carefully survivors' unmet legal needs and program capacity to meet those needs, with sufficient safeguards in place to prevent overextending either the coalition or the *pro bono* staff.

1. The screening process is an opportunity to explore the capabilities of potential recruits and propose a range of tasks they may be willing to perform. A coalition will be matching its needs with those of its volunteers, so it is important to be very clear about the scope of work volunteers are willing and able to handle, the type of support the coalition can offer, expectations for delivery of services and products, and plans for handling emergencies or last-minute changes.

The process of screening and assessing volunteer attorneys and law students involves checking references and determining whether an individual is in good standing. One potential challenge is keeping current on volunteers' status with regard to bar membership and any pending disciplinary issues. Consider having an agreement with volunteers that they must provide notification of disciplinary proceedings. This is also the appropriate time to examine whether a volunteer is a suitable referral for sexual assault clients and whether a volunteer has a conflict of interest. (For example, if the survivor has an employment or credit-related legal need, a conflict check will have to be conducted with the *pro bono* attorney's firm to ensure the firm does not represent the business at issue).

Attorneys employed by a state or local government are often reluctant or forbidden to provide *pro bono* representation due to conflicts of interest. This may make recruitment difficult in communities where the government is the largest legal employer.

2. Assignment of cases and tasks. At this point in the recruitment process, it should be clear how the coalition plans to use volunteers, whether that means the transfer of a case or the assignment of one or more specific duties. The process for assigning cases or tasks related to a case needs to be fully explained (for instance, whether the volunteer can refuse an assignment; defining the relationship between the program and the volunteer; and what procedures are in place in case a volunteer returns the case to the coalition before completion of the assignment).

- a. Case transfer** – This is a “hands-off” approach. By turning the case over to another attorney, the coalition gives up any responsibility/oversight as to the quality of the legal service and does not assume any liability. However, the coalition must decide whether the work is done under the name of the volunteer attorney handling the matter or whether it is performed under the name of the organization.
- b. Joint retainer** – This is a collaboration between the coalition and the attorney, with the coalition overseeing the work of the attorney assigned to the case. While quality control is possible, the coalition has no influence on the decisions made between the attorney and the client.
- c. Limited representation** – The *pro bono* volunteer oversees specific tasks, limiting the amount of time spent on a particular case. The scope of work to be performed on behalf of the client is clearly stated in a retainer agreement. A sample retainer agreement is provided in the Appendix on page 43.

3. The attorney-client relationship. No matter how carefully a coalition’s program plans for screening volunteers, conducting training sessions, determining clients’ needs, and matching clients with volunteers, there is no guarantee of a successful attorney-client relationship. A service agreement is a helpful tool for managing expectations on both sides of the relationship.

If a volunteer is assigned to work on some aspect of a case which involves client interaction, a coalition must be prepared to clearly define the parameters of that relationship. This is best done through a limited representation agreement, a document signed by both the representing attorney and the client, which spells out the services that will (and will not) be provided. Additionally, the client should understand her responsibility to the relationship, such as keeping appointments and providing documentation or evidence.

During the course of the volunteer’s term, the nature of the attorney-client relationship may change (*e.g.*, the scope of legal services is expanded), and therefore, the agreement must be amended.

Besides working to match a client's legal needs with the skills and interests of a volunteer, what can be done to cultivate a good working relationship between volunteers and clients and ensure both volunteer and client satisfaction? Inviting feedback through an ongoing interview process (either face-to-face, on the phone, or in writing) or by using a volunteer case update form can be valuable in gaining a sense of how the relationship is working and whether a *pro bono* attorney is performing in a way that meets a coalition's standards. These strategies can also provide a method of collecting information on the progress and outcome of a case for record keeping purposes.

A coalition needs to prepare for several different outcomes, including instances when:

- A client wants to fire the attorney.
- The attorney wants to fire the client.
- The coalition wants to discharge the attorney.

If the attorney-client relationship fails, who will continue the work that has been started? If the *pro bono* attorney is not fulfilling his/her responsibilities to the client in a way that satisfies the coalition, either from the outset or midway through the volunteer's term, who will step in to serve the client? Perhaps these situations can be laid out in the contract a coalition maintains with its volunteers and in the service agreement that the attorney and client sign.

4. Giving support to volunteers lets them know that they are important to the organization. One way to do this is by giving them a forum in which to voice their concerns and ask for the support they need during their service. Setting up check-ins with volunteers on a regular basis gives a coalition the means for monitoring the progress and quality of their work and learning from attorneys about how the program is running and how it can be improved.

Although coalitions are often limited in their resources, offering volunteers access to legal resources, supplies, and other materials and equipment (even through partner organizations) can help volunteers feel organized and prepared to address their clients' needs.

At the very least, a coalition needs to provide its volunteers with an orientation and training period. How much time can the organization devote to training and mentoring? What if an individual requires support beyond the initial orientation and training session? Are there individuals within the organization or other *pro bono* attorneys who can act as mentors or co-counsel to new recruits?

When volunteers step down, go on “leave,” or otherwise stop volunteering, conduct the equivalent of an exit interview to solicit feedback on their experience with the program. Provide letters of support and recommendations for volunteers who have successfully participated in the program and are moving on to other work situations or projects.

5. Recognizing volunteers for their service can be done in a variety of ways and only requires some thought and creativity:

- Award ceremony;
- Thank you note from the coalition or letter from a prominent public official (*e.g.*, state bar president, governor, chief justice);
- Token gifts of appreciation;
- Plaques;
- Annual event, such as a dinner, picnic, or other volunteer-focused gathering; and
- Announcement of their contributions on your web site or in bar newsletters or other publications.

The decision of whether to launch a *pro bono* volunteer lawyer (or law student) program is one that should be made with sufficient thought, planning, and preparation. Hopefully, coalition staff attorneys now have a sense for what is required to create and manage a *pro bono* program and will initiate such programs only when they have fully and realistically assessed their capacity to do so.

There are many benefits to a *pro bono* program, both direct and indirect. Clients receive legal assistance from attorneys sensitive to their experiences and to the legal needs of sexual assault survivors, and the legal profession’s understanding of sexual assault is enhanced. Perhaps future programs will be able to provide expert and affordable legal assistance to sexual assault survivors as needed.

RESOURCE LIST

- **American Bar Association** (www.abanet.org). The ABA's Center for Pro Bono is a great online resource. The "Standards for Programs Providing Civil Pro Bono Legal Services to Persons of Limited Means" link under the Information and Resources section is particularly helpful. The ABA publishes *Rural Pro Bono Delivery: A Guide to Pro Bono Legal Services in Rural Areas*.

- **The California Courts Online Self-Help Center**, while California-specific, is a well-designed web site and a source of guidance and materials for attorneys working with *pro se* litigants. An article published by the State Bar of California Committee on Professional Responsibility and Conduct, *An Ethics Primer on Limited Scope Representation*, is available in pdf format.

http://calbar.ca.gov/calbar/pdfs/ethics/COPRAC/COPRAC_02-0005_11-17-04.pdf

- **The Center for Court Solutions**, a joint initiative of the State Justice Institute, the National Center for State Courts and the Center for Effective Public, offers strategies for working with *pro se* litigants and provides links to many state self-help programs. A section of the web page listed below discusses *pro bono* services and limited scope representation.

http://solutions.ncsconline.org/org_site/key_topics/step3_PSPB.htm

- **Lawhelp.org** lists non-profit legal providers by state. Each state link provides information about the state's legal system by topic and practice areas, as well as self-help information, forms, instructions, and referrals.
- **National Center for State Courts**, an organization focused on improving court operations around the country, offers a resource guide – which has links to other legal web sites and lists print resources as well – and *pro se* litigation state links. Both documents are available in pdf format at the following web addresses:

http://www.ncsconline.org/WC/Education/KIS_ProBonoGuide.pdf

http://www.ncsconline.org/WC/Publications/KIS_ProSeStLnks.pdf

- **Unbundledlaw.org** provides state and national updates on unbundled legal services, program profiles and sample retainer agreements. The web site is sponsored by the Maryland Legal Assistance Network.

- **Unbundled Legal Services**

<http://www.zorza.net/resources/Ethics/mosten-borden.htm>

A brief article that discusses the practice of discrete task representation and provides a model for those considering this practice.

APPENDIX

The following documents are provided as examples of the types of agreements that a coalition can use for its *pro bono* program. These examples include language on fees, monetary awards, and client eligibility, which may or may not pertain to the relationship between a coalition, its volunteers, and clients. These documents should be adapted according to each coalition's particular program, jurisdictional rules, and state laws.

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Appendix A

Letter to *Pro Bono* Volunteer

Dear [*Attorney's Name*]:

On behalf of the staff, administration, and victims of the [*Coalition Name*], I would like to express our tremendous gratitude for your service to sexual violence survivors. We greatly appreciate that you have agreed to represent _____ on _____ .

Enclosed please find a Memorandum of Evaluation prepared by the Legal Services staff, which details the issues of the case and the scope of representation. Let me know if you have any additional questions about the case or the details of the representation agreement. I'm also enclosing a sample *Pro Bono* Retainer Agreement. You may wish to use this retainer agreement or you may wish to use your own specialized retainer agreement. We do encourage you to execute a written retainer agreement with _____ detailing the scope of your representation.

In addition, I am enclosing a sample Attorney Case Update Form. We send this form to our *pro bono* attorneys who have current cases in order to check on the update of this case. When you receive this form, please fax, email, or mail it back to us at your earliest convenience, but no later than 30 days from today.

I hope that you find your experience rewarding. If, at any time, during the case you are in need of assistance, please do not hesitate to [*Name of Staff Member or Program Coordinator*] for assistance.

Sincerely,

cc: file

Appendix B

Sample *Pro Bono* Agreement

PRO BONO AGREEMENT

_____ (hereinafter called “the Client”) has asked the [*Coalition Name*] for legal assistance. The below named Attorney has agreed to supply legal services free of charge to the client because the client has indicated that his/her income and assets are within the published guidelines of the program.

NOW THIS AGREEMENT is the understanding between the client and (the Attorney) with respect to those legal services.

1. The Client hereby engages _____ to represent the Client in connection with _____

2. Subject to the limitations set forth in paragraphs 3, 4, and 5 below, it is understood that no professional fees will be charged to the Client for services rendered in connection with the matters described in paragraph (1) above EXCEPT THAT THE ATTORNEY RESERVES THE RIGHT TO SEEK AN AWARD OF ATTORNEY'S FEES FROM AN AGENCY, BOARD, OR COURT IF APPROPRIATE AND TO CHARGE THE CLIENT THE AMOUNT OF ANY SUCH FEE ACTUALLY RECOVERED.

3. IT IS FURTHER UNDERSTOOD THAT THE CLIENT IS RESPONSIBLE FOR PAYING ALL COSTS AND DISBURSEMENTS INCURRED BY THE ATTORNEY IN CONNECTION WITH THIS MATTER, THAT THE CLIENT IS RESPONSIBLE UNDER THE GUIDELINES GOVERNING VOLUNTEER LEGAL SERVICES REIMBURSEMENT OF EXPENSES, such disbursements to be billed to the Client on a regular basis as they become due, and the Client hereby authorizes the attorney to withhold from any award recovered in connection with this matter and amount equal to any unpaid costs or disbursements. IT IS FURTHER UNDERSTOOD THAT THE ATTORNEY IS NOT REQUIRED TO ADVANCE ANY COSTS WHICH ARE THE CLIENTS RESPONSIBILITY UNDER STATE GUIDELINES AND MAY DEFER ANY ACTION ON THE MATTER UNTIL SUCH TIME AS THE CLIENT ADVANCES NECESSARY COSTS. THE ATTORNEY ESTIMATESTHAT COSTS WILL BE APPROXIMATELY \$ _____. THERE IS NO GUARANTEE THAT THE ESTIMATE OF COSTS IS ACCURATE. Examples of such costs include filing fees, transcript fees . . .

4. SHOULD THE CLIENT'S FINANCIAL CONDITION CHANGE DURING THE COURSE OF THE ATTORNEY'S REPRESENTATION OF THE CLIENT SO THAT THE CLIENT IS NO LONGER WITHIN THE GUIDELINES OF THE PROGRAM, THE CLIENT MUST ADVISE THE ATTORNEY OF THE CLIENT'S NEW FINANCIAL CONDITION. AND THEN THAT PORTION OF THIS AGREEMENT RELATING TO FREE LEGAL SERVICES IS NO LONGER OF ANY FORCE AND EFFECT AND IS THEREAFTER NULL AND VOID, AND THE ATTORNEY MAY CHARGE TO THE CLIENT A REASONABLE FEE FOR ANY SERVICES PERFORMED THEREAFTER BY AGREEMENT BETWEEN THE PARTIES. IF THE CLIENT DOES NOT AGREE TO ANY PROPOSED FEE FOR ANY SERVICES TO BE RENDERED IN THE FUTURE, THIS ENTIRE AGREEMENT IS NULL AND VOID AND OF NO FURTHER FORCE AND EFFECT AND THE CLIENT MAY SEEK LEGAL ASSISTANCE FROM ANY OTHER SOURCE. IF THE CLIENT DOES NOT AGREE TO THE REASONABLENESS OF ANY FEE CHARGED HEREUNDER, THEN THE CLIENT AND ATTORNEY AGREE TO SUBMIT SUCH FEE DISPUTE TO A BAR ASSOCIATION ARBITRATION COMMITTEE.

5. IN THE EVENT THAT IT SHOULD BE DETERMINED THAT THE CLIENT SUPPLIED THE PROGRAM OR TO THE ATTORNEY FALSE OR MISLEADING FINANCIAL INFORMATION WITH REFERENCE TO HIS ENTITLEMENT TO FEE FOR LEGAL SERVICES, THAN THIS AGREEMENT IS OF NO FURTHER FORCE AND EFFECT AND IS NULL AND VOID AT THE OPTION OF THE ATTORNEY.

I, the undersigned, in applying for legal services, do hereby affirm that the information furnished by me as to my financial status is true and correct as of this date. I UNDERSTAND THAT WILLFUL FALSIFICATION OF ANY STATEMENTS WILL BE GROUNDS FOR WITHDRAWING REPRESENTATION OR ASSESSING A STANDARD FEE IN THIS CASE. I AGREE TO REPORT ANY CHANGE IN MY FINANCIAL STATUS PRIOR TO THE TERMINATION OF THIS MATTER AND I UNDERSTAND THAT IN THE EVENT OF SUCH A CHANGE, I MAY THEN BE REQUIRED TO CHOOSE BETWEEN CONTINUED REPRESENTATION AT A PRO RATA CHARGE OR SEEKING OTHER REPRESENTATION. It is understood that the Attorney's representation is limited to the matters described above in Paragraph 1 and does not include appeals. Any appeal must be the subject of a new agreement.

CLIENT

ATTORNEY

DATE

DATE

Appendix C

Sample Co-counsel Agreement

CO-COUNSELING AGREEMENT

THIS AGREEMENT is between [*Coalition Name*], and _____
[*the parties*] concerning

[*Attorney Name*]

1. Each of the parties herein agrees to co-counsel in the representation of:
_____ [*Parties Represented*].
2. This Agreement's purpose is to state the parties' rights and responsibilities concerning (a) allocation of costs, (b) litigation budget limits, (c) designation of lead counsel, (d) time-keeping, (e) decision-making procedures, (f) dispute resolution procedures, (g) preparation and filing of motion for attorney's fees, (h) apportionment of attorney's fees, and (i) withdrawal of counsel.
3. The parties agree that _____ shall pay all costs and expenses of the litigation, including but not limited to, filing fees; fees in connection with depositions and service of process; consultant fees; travel costs; computer time; witness fees: postage and delivery; photocopying; and payments to expert witnesses. All costs and expenses shall be subject to approval by the lead counsel.
4. The parties anticipate that the out-of-pocket costs and expenses to be paid by the parties collectively will not exceed \$_____ for the entire litigation. The parties shall make every effort to stay within that budget. Expenditures beyond that amount will be permitted only if a majority of the parties to this agreement determine that such expenses or costs are necessary to represent the plaintiffs effectively in this litigation. Lead counsel shall be responsible for polling the parties in order to authorize expenditures beyond the \$ _____ in the event that such expenditures are deemed necessary by at least one of the parties.
5. Each party is responsible for keeping records of expenditures and for submitting requests for reimbursement to a designee of plaintiff's lead counsel. Payments shall be made periodically as determined by lead counsel or her designee. The designee shall prepare a plan for regular collection of expenditure records and distribution of payments.
6. The parties agree that [*Attorney Name*] of _____ will serve as plaintiff's lead counsel in this litigation.
7. Each party is responsible for keeping its own contemporaneous written record of hours spent by attorneys and all workers on the case, including the date, hours spent, and kind of work performed.

8. All decisions concerning the conduct of the litigation shall be made by consensus. Absent consensus, decisions respecting the litigation shall be made by lead counsel. Parties shall be notified of all such decisions on a regular basis.

9. In the event of an irresolvable difference of opinion between the parties regarding costs, fees, or any issue not addressed by this agreement, the difference shall be resolved with the assistance of a third party mediator agreed upon by the majority of the parties.

10. The parties shall attempt in good faith to prepare and file a unified attorneys' fees motion. The parties shall seek those fees allowed by applicable statutory and case law. Fees shall be based upon the reasonable number of hours devoted to the litigation by each of the attorneys, multiplied by a reasonable hourly rate for each attorney. The reasonable hourly rate may vary based upon experience level the attorney. In the event that the parties are unable to agree on a unified fee motion, each party shall be responsible for preparing its own motion.

11. In the event that attorney's fees are awarded in favor of the plaintiffs by order or decision of the court, the fees shall be divided among the parties in accordance with the fact and calculations on which the court's order is based, including the number of hours per attorney or legal worker, the value of each individual's time, and the multipliers, if any, used by the court.

12. In the event that attorneys' fees are obtained in connection with this litigation as a result of settlement with defendants, those fees shall be divided among each party to this agreement proportionally to the percentage of time that each party worked on the case, at the reasonable hourly rate for an attorney with that level of experience. This formula for dividing fees will control even if the parties' claims for fees are reduced in the course of settlement negotiations.

13. Any costs that are awarded by the court or paid by the defendants pursuant to an agreement shall be paid to the party that incurred costs. In the event that reimbursement for costs is in an amount less than the total amount expended, each organization shall be reimbursed in an amount that represents its proportional share of the total costs expended. All costs shall be reimbursed in full or to the fullest extent possible on a proportionate basis before any attorney fees are distributed to the parties.

14. Nothing in this agreement shall be interpreted to abrogate the right of each party in its sole discretion to withdraw as counsel by giving reasonable notice to the other parties. Such parties shall only be responsible for those costs which accrue up to and including the date of notice of withdrawal.

15. Any modifications made to this agreement shall be made in writing with the consent of the parties hereto.

16. The parties agree that _____ [*Attorney Name*] is providing pro bono services by accepting a reduced fee for his/her legal services.

DATE

COALITION REP

DATE

PRO BONO ATTORNEY

DATE

CLIENT

Appendix D

Eligible Client Retainer Agreement

**ELIGIBLE CLIENT RETAINER
AGREEMENT**

This agreement is between _____,
Client, and _____ Attorney *[or Coalition]*.

1. Subject of Representation. Client hereby engages Attorney *[or Coalition]* to provide one 45-minute consultation to Client in connection with the following matter:

2. Scope of Representation. Attorney *[or Coalition]* will provide “limited” representation in the matter.

Client understands that a limited root representation differs from traditional “full service” representation. “Full service,” in most cases, would include full investigation of the facts relevant to the case, legal research, analysis of the issues, advice and counsel on all issues, negotiations with third parties, and documentation of action taken. If litigation is involved, full service representation generally includes preparation, filing and service of legal documents investigation and discovery, preparation for and representation, at hearings and trial, and preparation and filing of final legal documents. A “limited representation” includes only the services specifically requested by Client and agreed to by Attorney *[or Coalition]*, as indicated below. Client agrees that the scope of the representation shall be limited to the 45-minute pro bono consultation.

3. Services to be Provided. The services to be provided by Attorney *[or Coalition]* in this matter will be limited to those indicated below. Attorney *[or Coalition]* will not provide any other services except by separate written agreement with Client.

a. _____ General information and advice about the legal issues presented and the legal procedures available for resolution of the matter.

b. _____ Review of documents prepared by client to assure conformance with local court requirements.

c. _____ Preparation of legal documents to be filed by client prose.

d. Other:

4. **Payment for Services.** Client shall pay Attorney [*or Coalition*] for services on the basis indicated below.

a. _____ Attorney agrees to provide Client with limited representation services on a pro bono basis, and Client will not be charged for these legal services.

b. _____ Client shall be responsible for all costs and expenses. Examples of such costs include fees for: filing, expert witnesses, transcript production, service, etc.

c. _____ Nothing in this agreement precludes Attorney or Client from continuing an attorney-client relationship in this case for a fee after the completion of the 45-minute consultation. Attorney [*or Coalition*] and Client will need to enter into a new written agreement outlining the fee arrangement.

5. **Termination of Representation.** The Attorney [*or Coalition*] agrees to provide client with a 45-minute pro bono consultation. The attorney-client relationship shall terminate at the conclusion of that appointment, unless the parties enter into a separate written agreement.

6. **Confidentiality of Information.** All information Client gives to Attorney [*or Coalition*] shall remain confidential.

7. **Statement of Client's Understanding.** Client has read this agreement carefully and understands all of its provisions, as shown by Client's initials next to each of the following statements:

_____ The nature of my case is accurately described in paragraph 1.

_____ The only services that I want or expect Attorney [*or Coalition*] to perform in my case are identified by checkmark in paragraph 3. I understand that Attorney [*or Coalition*] will not provide services other than those identified by checkmark, and that I will be responsible for all other aspects of my case not handled by Attorney [*or Coalition*].

_____ Attorney will provide Client with free legal services. I will pay any costs and expenses as set forth in paragraph.

_____ I understand that if I wish to engage Attorney [*or Coalition*] to provide additional services, a written amendment to this agreement will be required before those services are performed.

CLIENT

ATTORNEY

DATE

DATE

Appendix E

Sexual Violence Project Retainer

SEXUAL VIOLENCE PROJECT RETAINER

This agreement represents the understanding between the Client and the Attorney about the Client's request for help at a hearing on a _____ order. This agreement is based on the information on the intake form signed by the Client.

1. The Attorney agrees to represent the Client on the following contested restraining order matter:

This does not include representation on any criminal or domestic sections issues or representation on an appeal.

2. The Attorney will not charge the Client for is or her time or legal services. However, the Attorney may ask for attorney fees and costs from an opposing party. The Attorney can keep any fees or costs advanced by the Attorney that are awarded by the court or agreed to by an opposing party.

3. The Client agrees to pay any filing fees and court costs by the date that they are due.

4. The Attorney may charge the Client far reasonable out-of-pocket copying, long distance telephone calls and postage.

5. The Client agrees to:

a. Provide the Attorney with complete and honest information;

b. Attend and be on time for all appointments and court dates;

c. Inform the Attorney of any change in the Client's address or telephone number;

d. Inform the Attorney of any change in the Client's income or financial situation.

6. The Attorney agrees to:

- a. Inform the Client of the status of his or her case;
- b. Keep all sensitive information about the client confidential unless the Client agrees that the information can be given out, or unless the Attorney needs to use the information to represent the Client;
- c. Check with the Client before making important decisions about the Client's case; and
- d. Not settle the case without the client's permission.

7. The Client may end this Agreement at any time for any reason by informing the Attorney.

8. The Attorney may end this Agreement if the Client does not do what he or she has agreed to in this Agreement. The attorney will inform the Client of the reason in writing before ending this Agreement.

CLIENT

ATTORNEY

DATE

DATE