Ethical Violations Resulting from Excessive Workloads in Legal Aid Offices: Who Should Bear the Responsibility for Preventing Them?

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Notes

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INTRODUCTION

The Model Code of Professional Responsibility ("Model Code") encourages lawyers to make legal services available to all, including those who are unable to pay all or part of a reasonable fee. Legal aid organizations and related programs have developed because the efforts of individual lawyers proved insufficient to meet the legal needs of the poor. Since the number of indigents in need of assistance greatly exceeds the available supply of legal services for the poor, the problem of fairly allocating scarce legal resources

1. 

If there is any fundamental proposition of government on which all would agree, it is that one of the highest goals of society must be to achieve and maintain equality before the law. Yet this ideal remains an empty form of words unless the legal profession is ready to provide adequate representation for those unable to pay the usual fees.

Professional Representation: Report of the Joint Conference, 44 A.B.A. J. 1159, 1216 (1958), quoted in MODEL CODE EC 2-16 n.25. Ethical Considerations ("EC's") are provisions of the Model Code which state goals lawyers should strive to attain. Disciplinary Rules ("DR's") state the minimum level of conduct a lawyer must maintain to avoid disciplinary action. MODEL CODE Preamble.

"Men have a need for more than a system of law; they have a need for a system of law which functions, and that means they have need for lawyers." Cheatham, The Lawyer's Role and Surroundings, 25 ROCKY MTN. L. REV. 405 (1953), quoted in MODEL CODE EC 2-1 n.1.

2. For purposes of this note, the term "legal aid organization" will include all types of organizations providing civil legal assistance for the poor, including traditional legal aid societies, government-funded legal services offices, and judicare plans. See infra notes 7-8 for a discussion of the development of these various types of legal aid organizations.

Although this note focuses on civil legal assistance, the caseload problems of public defenders are used for purposes of comparison and illustration because public defenders generally carry extremely large caseloads. Further, many of the cases and articles relevant to the caseload problem focus on public defenders.

3. MODEL CODE EC 2-25.
constantly faces legal aid attorneys.\textsuperscript{4} One method of attempting to fulfill the goal of making legal services available to all is to provide minimal assistance to large numbers of clients. Organizations which follow this approach may violate certain provisions of the Model Code which state that a lawyer owes his client competent representation, undivided loyalty and zealous advocacy.\textsuperscript{5}

Given the possibility of such ethical violations, the question arises of whether the legal aid organization or the individual staff attorney should bear the primary responsibility for preventing them.\textsuperscript{6} In order to examine this question, this note first discusses the problems excessive caseloads cause for legal aid clients and attorneys. A review of past solutions to the caseload problem will follow. The note then presents two differing approaches to the issue of whether the legal aid organization or the individual staff attorney bears the responsibility for limiting caseload to prevent

\textsuperscript{4} In 1975, there were approximately 11.2 lawyers for every 10,000 persons above the federal poverty line. Even with over $100 million in federal subsidies there was less than one lawyer for every 10,000 people below the poverty line. Only about 15\% of the legal problems of the poorest segments of the population receive any kind of legal attention. L. GOODMAN & M. WALTERS, THE LEGAL SERVICES PROGRAM: RESOURCE DISTRIBUTION AND THE LOW INCOME POPULATION 11-59 (1975), quoted in Bellow & Kettleson, From Ethics to Politics: Confronting Scarcity and Fairness in Public Interest Practice, 58 B.U. L. REV. 337, 342 n.26 (1978).

\textsuperscript{5} Not surprisingly, public interest lawyers feel considerable tension between professional obligations to clients and the Code's aspirations concerning the availability of legal services and the improvement of the legal system. In attempting to accommodate these tensions, they may risk subordinating client interests to their own conceptions of the public or general good. Bellow & Kettleson, supra note 4, at 343.

The following hypothetical situation illustrates the pressures created by high workloads in legal aid offices:

Lawyers in the DEF Legal Services [a hypothetical organization] office carry seventy-five cases each. Working fifty to sixty hours per week, they handle the problems these cases raise in ways that comply — though just barely — with Canons 6 and 7. [Canons are provisions of the Model Code of Professional Responsibility which express in general terms the standards of professional conduct for lawyers. MODEL CODE Preamble.] Although the office makes only minimal efforts to publicize the availability of legal services and no effort to inform potential clients of legal rights and remedies of which they might be unaware, the office regularly receives large numbers of requests for assistance. Faced with a choice of reducing service to each client in order to increase volume, or turning clients away to maintain present case and service levels, the office decides to try to help in some way anyone who asks for and is otherwise eligible for assistance. Because there are so many people in need, and no one can say that any one group "deserves" service more than another, most of the staff and board think this is preferable to turning people away, ever [sic] if the quality of service suffers.

Bellow & Kettleson, supra note 4, at 354.

\textsuperscript{6} Mounts, Public Defender Programs, Professional Responsibility, and Competent Representation, 1982 Wis. L. REV. 473, 530.
ethical violations. The note concludes that legal aid organizations should bear the primary responsibility for limiting caseload to ensure competent representation. Finally, the note proposes the adoption of an ethical standard concerning caseload in legal aid organizations.

BACKGROUND

The Caseload Problem

The problem of excessive caseloads in legal aid offices has persisted over several decades and exists in all types of legal aid organizations. Excessive caseloads could result in violations of certain ethical standards. The note concludes that legal aid organizations should bear the primary responsibility for limiting caseload to ensure competent representation. Finally, the note proposes the adoption of an ethical standard concerning caseload in legal aid organizations.

7. The publication in 1919 of Reginald Heber Smith's landmark study of legal aid in the United States, Justice and the Poor, gave impetus to the growth of legal aid societies, financed by private contributions. These societies already existed in most major cities. Between 1920 and 1960, however, these societies employed a very small number of attorneys (only 292 in the entire country in 1959) and were overburdened by heavy caseloads. J. Katz, Poor People's Lawyers in Transition 65 (1982); Stashower, A Brief History of Legal Services: 10 on the Richter Scale, 38 NLADA BRIEFCASE 18 (1981).

8. Public defender offices are often nearly overwhelmed by heavy workloads. See, e.g., Ligda, Work Overload and Defender Burnout, 35 NLADA BRIEFCASE 5 (1977).

In addition, government-funded legal services offices have had high caseloads from their inception. In a seminal article, Jean and Edgar Cahn proposed the establishment of neighborhood law offices associated with universities as a method of increasing the availability of legal services for the poor. Cahn & Cahn, The War on Poverty: A Civilian Perspective, 73 Yale L.J. 1317, 1334-52 (1964). In 1965, the Office of Economic Opportunity established government-funded but locally controlled neighborhood legal services programs. Stashower, supra note 7, at 19. Although these programs employed 1600 attorneys by 1969, they too were soon overburdened by a heavy caseload. Clark, Legal Services Programs — The Caseload Problem, or How to Avoid Becoming the New Welfare Department, 47 J. Urb. L. 797 (1970). The commentator concluded that the most serious legal problem of the poor was the excessive caseloads of legal services programs and that resolving the caseload problem should be "the highest priority of legal services programs." Id. at 798; see also Bellow, Reflections on Case-Load Limitation, 27 NLADA BRIEFCASE 195 (1969) (recommending the adoption of caseload limitation guidelines by legal aid offices); Cahn & Cahn, What Price Justice: The Civilian Perspective Revisited, 41 Notre Dame Law. 927, 928 (1966) (reviewing the progress of legal services programs since their inception); Silver, The Imminent Failure of Legal Services for the Poor: Why and How to Limit Caseload, 46 J. Urb. L. 217 (1969) (stating it is impossible for civil legal assistance programs to serve all or even a majority of the poor). But see Getzels, Legal Aid Cases Should Not Be Limited, 27 NLADA BRIEFCASE 203 (1969) (caseload problem should be solved by expanding legal services for the poor, rather than by limiting caseload).

Private bar involvement in providing legal services for the poor has not solved the caseload problem. Under judicare plans, private attorneys who choose to participate are paid by the plan to provide legal services to eligible poor persons. Amicus Curiae Brief for the Legal Services Corporation in Support of the Defendant's Motion For Summary Judgment at 1, Parsley v. West Virginia Legal Services Plan, Inc., No. 76-0181 (S.D.W. Va. filed March 11, 1976) [hereinafter cited as Amicus Curiae Brief]. The West Virginia judicare plan instituted a system of priorities in order to control its heavy caseload. Id. at 8-9; see also S.J. Brakel, Judicare: Public Funds, Private Lawyers and Poor
disciplinary rules (DR's), which are the Model Code provisions stating the minimum level of conduct a lawyer must maintain to avoid disciplinary action. First, DR 5-105(A) requires a lawyer to decline proffered employment which might adversely affect his independent judgment on behalf of existing clients. Second, DR 6-101(A)(2) requires adequate preparation. Third, DR 6-101(A)(3) prohibits an attorney's neglect of legal matters entrusted to him. An attorney with an excessively large caseload may find it impossible to prepare adequately for pressing matters without neglecting work for other clients. In addition, a lawyer with a very large workload may fail to fulfill his duty to represent each individual client zealously within the bounds of the law, thus violating DR 7-101.

Courts have recognized the problems caused by the heavy workloads of legal aid attorneys, court-appointed private attorneys, and public defenders. Two courts have observed that excessive caseloads could result in violations of ethical standards requiring adequate preparation and prohibiting neglect. In an action concerning ethical violations committed by a private attorney appointed by the court to represent criminal defendants in two criminal appeals, the District of Columbia Court of Appeals held that an attorney's heavy caseload, combined with marital and health difficulties, did not excuse neglect of matters entrusted to him. In another action, the New York Superior Court, Appellate Term, reversed a lower court's appointment of a federally funded legal services project to represent an indigent defendant in a landlord-tenant case. The court held that the order appointing the pro-

PEOPLE (1974) (advocates replacing staff attorney legal services programs with judicare programs); Dooley, Legal Services for the Poor: The Debate Between Staffed Programs and Judicare, 17 CLEARINGHOUSE REV. 193 (1983) (discusses the advantages and disadvantages of staff attorney and judicare programs).

9. MODEL CODE Preamble.
10. MODEL CODE DR 5-105(A).
14. See, e.g., Flores v. Unemployment Ins. Appeals Bd., 30 Cal. App. 3d 681, 106 Cal. Rptr. 543 (1973). The California Court of Appeal held that an unemployment compensation claimant whose appeal was not mailed until after the deadline because of the large caseload and the secretarial backlog in a legal aid office was entitled to an extension of the appeal deadline. Id. at 685, 106 Cal. Rptr. at 546; see infra notes 15-16 and accompanying text.
15. In re Whitlock, 441 A.2d 989, 990-91 (D.C. 1982); see also In re Amundson, 297 N.W.2d 433, 443 (N.D. 1980) (a heavy workload does not excuse failure to attend to matters entrusted to attorney's care).
ject to represent the tenant would compel project attorneys to violate canons of legal ethics which require adequate preparation and promptness because of their already excessive caseloads. In addition to causing ethical violations, excessive caseloads engender problems for poor persons in need of legal services.

Adverse Effects of Excessive Caseloads on Legal Aid Clients

Poor clients, unlike clients who can afford private attorneys, generally have only two alternatives: to obtain assistance from legal aid offices or to forego legal representation. Accordingly, many members of the legal profession believe that the best approach is to give some, even if inadequate, legal services to all indigents. Such an approach, however, violates certain provisions of


One commentator discussed the effects on clients of an attempt by a hypothetical legal aid attorney to serve 20 clients in one day:

But each of that twenty would be receiving diluted benefits, since the postulate of the attorney-day unit was that it was a measure of the quantity of service necessary to provide adequate, professional legal services. And although the twenty poor would each probably come away with the satisfaction that he and received legal services, only for those whose legal problems had been in fact imaginary or had required only the most minimal part of an attorney-day for complete resolution would this satisfaction be real. Most of the twenty would obtain only the illusion of legal help, rather than the actuality of adequate, effective professional legal services. Adequate, professional legal services are divisible only to the point where they are no longer adequate, professional legal services.

\[17. \text{"Those refused aid [by government-funded legal services offices] will not be helped elsewhere — by referral to an inoperative volunteer panel or a grossly overworked legal aid society. Any such resources have already been calculated, have already been counted in the assessment of available legal resources." Silver, supra note 8, at 224.}

The following quotation illustrates the legal problems which remain unsolved when poor people are denied legal services:

A family of four with an income under $3,000 per year is more likely than not to have several debts, far in excess of the family’s ability to pay, for grossly overpriced items purchased on credit, in some cases as the result of shady selling practices or with illegal hidden charges. For this there are legal remedies. If the family lives in private rental housing, or even in a city or state housing development, their housing is more probably than not substandard and not in compliance with relevant health and building codes. For this there are legal remedies. If they are receiving welfare, they probably have not been told about “special needs” allocations which they are entitled to receive or vocational training which may be available, and their budget may well have been figured incorrectly. For these problems there are legal remedies. Children may attend racially segregated schools which are likely to be substantially inferior to those attended by middle-class children in the same community. For this, too, there are legal remedies.

\[18. \text{See Bellow & Kettleson, supra note 4, at 354-55. But see also ABA Comm. on} \]
the Model Code, which require zealous advocacy and adequate preparation and prohibit neglect.\textsuperscript{19}

On the other hand, organizations may decide to focus their efforts on a particular problem, such as housing, and reject clients with other types of problems.\textsuperscript{20} Thus, certain clients will be denied legal assistance because their problems do not fall into areas with which the legal aid organization has chosen to deal. Although many members of the bar have expressed serious ethical reservations about this method of controlling caseload, the Model Code permits such selectivity.\textsuperscript{21}

\textit{Adverse Effects of Excessive Workload on Legal Aid Attorneys}

Excessive workloads also have adverse effects on legal aid attorneys. Overloading legal aid attorneys may cause them to treat all cases alike, thus failing to recognize unusual legal issues.\textsuperscript{22} On the
other hand, they may be tempted to narrowly define legal issues in order to keep time commitments to a minimum.\textsuperscript{23} They may also cut off a client interview as soon as they discover an easily resolved legal problem, ignoring possible related issues.\textsuperscript{24} Moreover, attorneys who are consistently unable to do their best because of excessive workloads may lose confidence in their own effectiveness.\textsuperscript{25}

Courts have recognized the difficulties faced by public defenders, who often handle extremely large caseloads. In 1970, a public defender who had been discharged after he complained about, inter alia, his excessive caseload, brought a wrongful discharge action against the New York Legal Aid Society.\textsuperscript{26} A federal court dismissed the action because the attorney failed to demonstrate that

\begin{quote}
In 1911, 15 legal aid programs founded a national organization to ensure that America did not ration justice.

Since then, the National Legal Aid & Defender Association (NLADA) has fought for the right of poor persons in America to equal justice and their right to legal help in seeking that justice. NLADA advocates these rights before the courts, the public, the private bar, Congress and other governmental bodies.

Currently, NLADA represents more than 2,300 civil legal aid and public defender offices nationwide. Within these programs, over 25,000 professionals benefit from NLADA membership. In addition, NLADA's membership includes private attorneys, legal services attorneys, bar associations, judges, private law firms, clients, law students, paralegals, social workers, defense investigators, and members of the general public who support our goals.

The Association's goal is to ensure that poor persons receive high quality legal assistance when needed.

\textit{National Legal Aid & Defender Ass'n, Thou Shalt Not Ration Justice.}
\end{quote}

\textsuperscript{23} "To keep time commitments to a minimum, they [legal service advocates] may be tempted to define narrowly both the legal issues in new cases and the potential relief to be sought." NLADA Standards at 3.7.

\textsuperscript{24} Id.

\textsuperscript{25} Id.

\textsuperscript{26} Lefcourt v. Legal Aid Society, 312 F. Supp. 1105 (1970), aff'd, 445 F.2d 1150 (2d Cir. 1971). In 1968, the year Lefcourt complained about his workload, the Annual Report of the Legal Aid Society of New York indicated that public defenders in the Society's Criminal Division handled 1006 cases per attorney. Mounts, supra note 5, at 523 n.224. Attorneys at the New York Legal Aid Society later formed a union and thus had some job protection. Nevertheless, the caseload problems continued after unionization and were a contributing cause to a bitter and devastating strike. See infra notes 29-31 and accompanying text.
the society had violated his first amendment rights. However, the
court noted that the case illustrated the agonizing difficulties faced
by public defenders "in the appallingly overcrowded metropolitan
courts of the country."\(^{27}\)

In 1982, another public defender in New York was terminated
after he complained to his superiors about his excessive caseload.\(^{28}\)
In the same year, the Legal Aid Society of New York experienced
a devastating ten-week strike in which workload was a major issue,
which left a residue of bitterness and animosity.\(^{29}\) The new chair-
man of the board of the Legal Aid Society, who had been elected
less than a month after the end of the strike, noted that the strike
was not about money but self-respect and recognition.\(^{30}\) Further,
he stated that caseload and working conditions of staff attorneys
had to be changed.\(^{31}\) In attempting to prevent problems such as
those experienced by the New York Legal Aid Society, legal aid
organizations have tried to reduce their caseloads by several
methods.\(^{32}\)

**Attempted Solutions to the Caseload Problems**

One method is refusing to take certain types of cases, such as
divorces.\(^{33}\) In one action, an appellate court found that a lower
court's appointment to a divorce case of a legal assistance corpora-

\(^{27}\) Lefcourt, 312 F. Supp. at 1106.

\(^{28}\) The termination was submitted to arbitration. *In re Weldon Brewer*, No. 1330-
1379-82 [pending before the American Arbitration Ass'n]. The New York Times carried
the following story concerning Mr. Brewer's termination:
An arbitrator began taking testimony yesterday to determine whether the Legal
Aid Society acted properly when it discharged a senior lawyer last October.
The ouster of the lawyer, Weldon Brewer, was one of the factors that triggered
a 10-week strike by 550 of the society's lawyers. The lawyers' union, the Association
of Legal Aid Attorneys, said Mr. Brewer was dismissed because of his
complaints about unmanageable workloads. But the executive director of the
society, Archibald R. Murray, said Mr. Brewer had been discharged because he
had mishandled two cases. Mr. Brewer had been employed by the society for
10 years.


\(^{29}\) See Fox, *Healing Strike Wounds Aim of New Legal Aid Chairman*, 189 N.Y. L.J.
1 (1983).

*Legal Assistance Foundation of Chicago also experienced a strike in the spring of

\(^{28}\) Fox, *supra* note 29, at 2.

\(^{30}\) *Id.*

\(^{32}\) See *infra* notes 33-36 and accompanying text.

\(^{33}\) See, e.g., Jenkins v. Neighborhood Legal Serv. Ass'n, 523 F. Supp. 376, 377-78
(W.D. Pa. 1981). In this case, taxpayers alleged that the legal services organization's
recently adopted policy not to accept divorce cases and related matters was an ultra vires
act. *Id.* at 377. The district court dismissed this claim because plaintiffs were barred
tion which had adopted a policy of refusing divorce cases in order to reduce its heavy workload was an improvident exercise of discretion. Legal aid offices have also adopted priority systems for case acceptance and instituted weekly meetings at which attorneys can discuss client interviews and decide which cases to accept.

In addition to the caseload control efforts employed by legal aid offices themselves, one court attempted to solve the caseload problem in a public defender office by setting a numerical caseload limitation. A civil rights action was brought before the court on behalf of incarcerated criminal defendants alleging that detainees were denied effective assistance of counsel because of the excessive caseload of the Legal Aid Society. In this action, the district court issued an injunction limiting the average caseload of each public defender to forty felony indictments. The court of appeals

under applicable state law from bringing such an action because they were not shareholders of the organization. Id. at 378.

34. Cerami v. Cerami, 44 A.D. 2d 890, 355 N.Y.S.2d (1974); see also Amicus Curiae Brief, supra note 8, at 10 (West Virginia judicare plan decided not to accept uncontested divorce cases in which child custody was not an issue).

35. See, e.g., Amicus Curiae Brief, supra note 8, at 8-10 (West Virginia judicare plan instituted a system of priorities in order to control its caseload.)


37. Wallace v. Kern, 392 F. Supp. 834 (E.D.N.Y.), rev'd and vacated, 481 F.2d 621 (2d Cir. 1973). The United States Court of Appeals for the Second Circuit held that the district court had no jurisdiction under 42 U.S.C. § 1983 because the Legal Aid Society was not acting under color of state law. On remand, the district court held that incarceration for a long period of time without trial violates prisoners' sixth amendment rights. 371 F. Supp. 1384, 1389 (E.D.N.Y. 1974), rev'd and vacated, 499 F.2d 1345 (2d Cir. 1974) cert. denied, 414 U.S. 1135 (1974). The Second Circuit then held that the sixth amendment does not require states to bring criminal defendants to trial within a specific time period.

38. See supra note 37. During the trial, the Deputy Director of Operations of the Legal Aid Society testified that "the system isn't working." 392 F. Supp. at 835. The average caseload of Legal Aid attorneys assigned to the Kings County Supreme Court in March 1973 was 94. A private attorney testified that he would not try to handle more than 25 to 35 cases. Id. at 836. A report by the then Chairman of the Board of Corrections of the City of New York, dated March 25, 1973, stated that:

As long as their caseloads remain at the present staggering levels, it is impossible for Legal Aid attorneys to form productive relationships with their clients, thoroughly investigate and prepare their cases, counsel their clients, and take an active role in the sentencing process. In short, an attorney with an active caseload of 100 felony cases cannot provide effective representation to his clients.

392 F. Supp. at 843.

39. The court is convinced, and finds, that an average caseload of 40 felony indictments pending in a trial Part [section of the criminal courts] strains the utmost capacity of a Legal Aid attorney under existing conditions, that the present average caseload is substantially in excess of that number, and that ac-
reversed this decision on procedural grounds. 40

One commentator has criticized the setting of such strict numerical caseload limitation standards for legal aid organizations. 41 He contended that an overly rigorous application of written policies limiting caseload could be counterproductive to the achievement of the organization's purposes. 42 A strict numerical limit could result in the refusal of service to clients because an attorney's caseload has reached the limit, even though the attorney could serve these clients adequately since most of his other cases require relatively little time and effort. 43 In other words, this result would defeat the organization's purpose of providing legal services to as many poor persons as possible. 44 On the other hand, an organization's insistence that a staff attorney carry the full caseload permitted could result in poor quality service, if most of his cases were difficult and time-consuming. 45

Congress has also recognized the possibility of ethical violations resulting from excessive caseloads. In enacting the Legal Services Corporation Act, 46 Congress tried to prevent such ethical violations by setting professional standards for government-funded legal services offices. 47 This legislation was designed to ensure full freedom for staff attorneys to protect the best interests of their clients in keeping with ethical standards. 48 The Act established a non-
profit corporation chartered by Congress to ensure the maintenance of the highest quality professional standards.49

**Ethical Standards Concerning Workload**

In addition to this standard set by Congress, the ABA and similar organizations have promulgated ethical guidelines concerning workload. One such set of standards, the Model Code, does not specifically address the workload question, although several of its provisions indirectly relate to this issue.50 The commentary to one of the provisions of another set of ethical standards, the proposed Model Rules of Professional Conduct ("Model Rules"), states that an attorney's workload should be controlled so that the attorney can handle each matter adequately.51

The ABA Standards for Criminal Justice provide that public defender organizations should not accept excessive workloads which interfere with quality representation or lead to ethical violations.52 Further, the National Legal Aid and Defender Association's ("NLADA") draft of proposed standards for providers of legal assistance to the poor53 includes a caseload limitation provision.54 Despite these various guidelines, the problems caused by heavy

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50. See, e.g., MODEL CODE DR 6-101(A)(2), (3), which provides:
   "(A) A lawyer shall not:. . . . (2) Handle a legal matter without preparation ade-
   quate in the circumstances[,] (3) Neglect a legal matter entrusted to him." See supra
   notes 11-12 and accompanying text.
51. "A Lawyer's workload should be controlled so that each matter can be handled
   adequately." MODEL RULES OF PROFESSIONAL CONDUCT ("MODEL RULES") Rule 1.3
   comment 1 (1983).
52. "Neither defender organizations nor assigned counsel should accept workloads
   that, by reason of their excessive size, interfere with the rendering of quality representa-
   tion or lead to the breach of professional obligations." STANDARDS FOR CRIMINAL JUS-
   TICE, DEFENSE FUNCTION Standard 5-4.3 (1980) ("CRIMINAL JUSTICE STANDARDS").
53. "The [NLADA] Standards are designed to guide organizations providing civil
workloads still exist because of the great number of poor persons in need of legal services. Furthermore, these guidelines fail to resolve the issue of whether the legal aid organization or the individual attorney is responsible for limiting caseload to prevent ethical violations.

**DISCUSSION**

**Relative Responsibility**

The Model Code and the Model Rules do not directly address the question of responsibility for limiting caseload. DR 1-102(A)(2) does state, however, that a lawyer may not circumvent disciplinary rules through the actions of another. Rule 5.1(b) of the Model Rules provides that a supervising lawyer should make reasonable efforts to ensure that subordinates conform to the Model Rules. Rule 5.2(a) of the Model Rules states that a lawyer

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54. NLADA STANDARDS at 3-6.
55. See Mounts, supra note 6, at 530.
56. MODEL CODE DR 1-102(A)(2); see also ABA Comm. on Professional Ethics and Grievances, Formal Op. 95 (1933) (finding that a municipal attorney was responsible for the acts of police officers under his supervision); MODEL CODE DR 7-107(J) (a lawyer should exercise reasonable care to prevent subordinates from making extra-judicial statements prohibited by the Model Code).
57. MODEL RULES Rule 5.1(b). Failure to limit caseload could result in violations of the following Model Rules: Rule 1.1, which states that "[a] lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation," and Rule 1.3, which states that "[a] lawyer shall act with reasonable diligence and promptness in representing a client." MODEL RULES Rules 1.1, 1.3. Courts have held that "[a] lawyer is not liable in a disciplinary proceeding for the misconduct of a partner, associate or employee on the basis of imputed liability. However, a lawyer is chargeable with violations resulting from the conduct of a partner, associate or employee if the lawyer authorizes it or has knowledge of the misconduct and continues to participate in transactions or profits that stem from it." MODEL RULES Rule 5.1 legal background of rule. See, e.g., In re Corace, 390 Mich. 419, 213 N.W.2d 124 (1973) (a lawyer is not subject to discipline for the wrongful acts of an employee, where there is no evidence that the lawyer should have been aware of the wrongful acts); State v. Breslin, 169 P. 897 (Okla. 1917) (attorney not subject to disbarment or suspension because of a partner's wrongful retention of a client's funds, where attorney had no connection with partner's wrongful act); In re Brown, 389 Ill. 561, 59 N.E.2d 855 (1945) (attorney who knew of senior partner's bribes to public officials suspended from the practice of law for six months, even though attorney did not participate in the bribery scheme); In re Fata, 22 A.D.2d 116, 254 N.Y.S.2d 289 (1964) (attorney had duty to know what was taking place in his law firm, and was therefore responsible for partner's acts, even though he denied knowledge of them); see also People v. Betts, 26 Colo. 521, 58 P. 1091 (1899) (partner's knowledge that firm wrongly retained client's funds sufficient to warrant disciplinary action, regardless of which partner actually retained the funds); In re Rosenberg, 413 Ill. 567, 110 N.E.2d 186 (1953) (holding that partner's knowledge of misappropriation of trust funds was sufficient
is bound by those rules even though he acts at the direction of another attorney. In addition, Rule 5.2(b) states that a subordinate lawyer does not violate the Model Rules if he acts in accordance with a supervisor's reasonable resolution of an arguable ethical question.

The comment to Rule 5.2(b) states that a supervisor may ordinarily make professional judgments concerning ethical duties to ensure that the firm or association takes a consistent position. If there is only one reasonable answer to an ethical question, the duty of both the supervisor and subordinate is clear and both are equally responsible for fulfilling it. However, if the issue is reasonably arguable, the authority to resolve the question ordinarily resides in the supervisor and the subordinate may follow the supervisor's guidance. In addition to the indirect guidance provided by the Model Code and the Model Rules, a commentator and the NLADA have suggested two different approaches.

### Placing the Responsibility on the Individual Attorney

One commentator, writing in the context of public defender programs, has proposed revising Model Rule 5.2(b) specifically to place the responsibility for resolving ethical questions on the individual attorney. Criticizing the Model Rule as it is presently to warrant disciplinary action, in the absence of any attempt to prevent or correct the misconduct; In re Kiley, 22 A.D.2d 527, 256 N.Y.S.2d 848 (1965) (partner subject to disciplinary action because of negligence in failing to uncover misconduct, although he was not knowingly guilty); In re Weitz, 11 A.D.2d 76, 202 N.Y.S.2d 393 (1960) (attorney subject to discipline for misconduct of partner because the evidence showed a pattern of misconduct on the part of both partners).

58. **Model Rules** Rule 5.2(a).  
“A subordinate lawyer is liable for misconduct occurring at the direction of a supervisor or resulting from fear of loss of employment.” **Model Rules** Rule 5.2(a) legal background of rule. See, e.g., In re Mogel, 18 A.D.2d 203, 238 N.Y.S.2d 683 (1963) (junior partner's participation in arrangement initiated by senior partner, whereby the firm represented defendants in Gambler's Court pursuant to a retainer from defendants' employers who conducted a policy operation, warranted disciplinary action); In re Knight, 281 A.2d 46 (Vt. 1971) (inexperienced attorney's participation in a scheme to obtain evidence of adulterous acts by entrapment warranted a suspension from the practice of law even though he acted under the domination of his employer and in fear of losing his employment).

59. **Model Rules** Rule 5.2(b).  
“The proposition stated in (b) [Rule 5.2(b)] has not been squarely presented to a court.” **Model Rules** Rule 5.2(b) legal background to rule.

60. **Model Rules** Rule 5.2(b) comment 2.

61. *Id.*

62. *Id.*

63. Mounts, *supra* note 6, at 532. In effect, this proposal would eliminate Model Rule 5.2(b) and replace it with the commentator's alternative rule.
written, she noted that a staff attorney's deferral to a supervisor's reasonable resolution of ethical questions could result in the attorney resolving ethical dilemmas so as to avoid conflict with his supervisors. She noted that this is particularly true if the attorney has no job protection. In such a situation, the fear of losing his job would become a highly influential factor in the individual attorney's decision whether to follow the superior's unreasonable resolution.

The commentator's proposal would require a supervisor to defer to an individual staff attorney's reasonable resolution of an arguable ethical question. This alternative rule allows a supervisor to override the individual attorney's ethical decision if it is unreasonable. The author noted that this rule has the potential to cause some disruption in the administration of defender programs. She asserted, however, that such disruption is preferable to violations of ethical rules. In addition, the author noted that this alternative rule would strengthen the individual attorney-client relationship.

The commentator contended that the courts and the legal profession should recognize the issue of relative responsibility and de-

64. Mounts reasons that:

   The deputy defender is the attorney who most directly experiences the compromises in the quality of representation and is as a result more likely to feel the ethical pressures created by the knowledge that one is violating the rules of professional conduct. Thus to the extent that rules of professional conduct create any loopholes in the deputy's ethical responsibility, any self-enforcing power of those rules is undermined. The proposed Model Rules may create just such a loophole in explicitly allowing the deputy to defer to the opinions of his supervisors. Were the Rules to be enforced externally, then the deputy would still have to make an assessment of whether the supervisor's opinion was "a reasonable resolution of an arguable question of professional duty" in order to avoid possible professional discipline. 

   Id. at 531-32.

65. Id.
66. Id.
67. The proposed alternative rule states that "[t]he individual attorney has the primary responsibility for questions of professional responsibility and a supervising attorney shall defer to the subordinate attorney if the subordinate's conduct is a reasonable resolution of an arguable question of professional duty." Id. at 532.
68. Id. at 532-33.
69. Id.
70. "But if the previous smooth-functioning of the [public defender] program was based on substantial compromises in the quality of representation being provided and concomitant violations of professional conduct, then the disruption is essential." Id.
71. Id. at 533. The proposed rule would strengthen the individual attorney-client relationship by allowing the individual attorney to make ethical decisions affecting that relationship, such as the decision whether or not to accept additional cases which could interfere with the attorney's ability to adequately represent the existing client.
vise a means of resolving ethical differences between attorneys in a manner that allows organizations to function but also encourages individual responsibility. She concluded that placing the professional obligation for ensuring competent representation on the individual attorney and supporting him in meeting that obligation was the best means of ensuring competent representation in public defender offices.

Placing the Responsibility on the Legal Aid Organization

The NLADA Standards, which set forth goals for the operation of legal aid organizations, state that organizations, as well as individual attorneys, should provide high quality representation. It is the organization, however, not the individual staff attorney, which holds the ultimate responsibility for limiting caseload to ensure the quality of the organization's legal work. The standards contain a case assignment and caseload limitation standard which recommends that organizations providing legal services to the poor assign cases and limit individual caseloads according to certain criteria.

These criteria include the status and complexity of an attorney's existing caseload and his other work responsibilities. Moreover,

72. Id. at 530.
73. Id. at 533. The commentator's conclusion that the individual attorney should bear the primary responsibility for resolving ethical questions is based, in part, on her assertion that directors of defender programs are subject to political pressures which may prevent them from setting program-wide standards. Id. at 508.
74. NLADA STANDARDS Introduction; see also Tull, The Development of Standards for Legal Services: The Continuing Search for Quality, 38 NLADA BRIEFCASE 83 (1981). These standards for providers of legal services for the poor have been developed by the NLADA beginning in 1969. During the ensuing years the NLADA has endeavored to refine and improve these standards. The current draft of the standards has been circulated among legal services providers and other interested persons for review and comment. Id. at 83-84.
75. NLADA STANDARDS Introduction.
76. The NLADA Caseload Standards use the term "legal services provider" to include both staff attorney and other types of programs. Id.
77. The NLADA Standards state that:

A legal services provider should assign cases and limit individual caseloads according to established criteria including the following:
1. the attorneys' or paralegals' specific level of experience, training, and expertise,
2. the status and complexity of their existing caseload,
3. their other work responsibilities,
4. the provider's capacity to support and supervise the performance of the attorney or paralegal, and
5. unique logistical problems facing the legal service provider or its clients which directly affect the legal work.
the comment to the caseload standard states that, in assigning cases, the provider should take into consideration the time needed for high quality work and the time the attorney has available. The comment concludes that organizations should limit caseloads for offices and individual attorneys to ensure that both the organization and the attorney meet their ethical responsibilities.

ANALYSIS

The Failure of the Individual Approach

The individual approach, placing the responsibility for limiting caseload to avoid ethical violations on the individual staff attorney, has certain advantages. The individual approach emphasizes the importance of the individual lawyer's ethical responsibility, in keeping with the provisions of the Model Code. This approach also encourages the individual lawyer to exercise his professional judgment for the benefit of his client, and not to further the interests of the legal aid organization, which may conflict with the client's best interests.

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NLADA Standards at 3.6.
78. NLADA Standards comment at 3.6.
79. Id. at 3.6-3.7. The Comment to the NLADA Caseload Standard also contains the following statement concerning the ethical implications of excessive caseloads:
   Professional ethics recognize [sic] the need to ensure adequate time for preparation of a case and for acquiring sufficient knowledge and skill to handle every accepted case with professional competence. (See Model Rules of Professional Conduct, Rules 1.1 and 1.3) Ethical Considerations suggest that advocates have a further responsibility to reject cases unless they are certain they can provide service at least at the minimal level of professional responsibility. Legal Services advocates and offices are ethically required to limit the matters in which they provide representation to avoid giving substandard assistance to people they represent.

Id.
80. Regarding the individual lawyer's ethical responsibility, see MODEL CODE EC 5-1:
   The professional judgment of a lawyer should be exercised, within the bounds of the law, solely for the benefit of his client and free of compromising influences and loyalties. Neither his personal interests, the interests of other clients, nor the desires of third persons should be permitted to dilute his loyalty to his client.


A person or organization that pays or furnishes lawyers to represent others possesses a potential power to exert strong pressures against the independent judgment of those lawyers. Some employers may be interested in furthering their own economic, political or social goals without regard to the professional responsibility of the lawyer to his individual client. Others may be far more concerned with establishment or extension of legal principles than in the immediate protection of the rights of the lawyer's individual client. On some occa-
The individual approach is, however, potentially disruptive to the smooth functioning of legal aid organizations. An attorney without job protection faces the possibility of losing his position if he protests his employer's caseload policy. Moreover, even an attorney with job protection may have difficulty in his relationships with supervisors and colleagues if he complains about his excessive caseload. A brief review of the history of the caseload problem in the Legal Aid Society of New York illustrates that placing the responsibility on the individual attorney does not solve the problem. In 1970, the District Court for the Southern District of New York dismissed a wrongful discharge action brought by a public defender who had been terminated after he complained to his supervisors about his excessive workload. Three years later, the Eastern District of New York set a numerical caseload limit for Legal Aid Society attorneys, but the court's decision was reversed on jurisdictional grounds. In 1981, another public defender in New York was terminated after making complaints about excessive workload. Shortly thereafter, the Legal Aid Society of New York experienced a bitter strike in which caseload was a major issue.

Available statistics indicate that caseloads of legal aid attorneys are already high and increasing. In 1973, the average criminal defense lawyer in the Legal Aid Society handled thirty-seven cases at one time. By 1983, the average caseload was fifty-three. For staff attorneys in government-funded legal service offices, a

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82. A simple, unqualified conclusion that the deputy [individual public defender] has professional obligations to his clients and thus has the ultimate control of each of his cases would create serious problems. It would be impossible for the Defender [supervising public defender] to run a program if one deputy decided he could competently represent 200 cases per year, a second decided he could represent only 100 cases per year and a third decided he could represent 400 cases per year. But the alternative of giving the Defender ultimate and complete control is equally unworkable. As noted, this could mean that the director of the Legal Aid Society of New York would have the ultimate say in nearly 200,000 cases per year.

Mounts, supra note 6, at 530.

83. See supra notes 26-27 and accompanying text.
84. See supra notes 37-40 and accompanying text.
85. See supra note 28 and accompanying text.
86. See supra notes 29-31 and accompanying text.
88. Id.
caseload of seventy-five is common. Such heavy caseloads create
the potential for future strikes, discharges, and resignations.

Furthermore, statistics for the Solano County, California Public
Defender’s Office indicate that excessive caseloads lead to in-
creased staff turnover, as well as highly publicized strikes and dis-
charges. From 1969 to 1972, the office’s pending caseload
averaged sixty cases per attorney. During that period, the resig-
nation rate averaged 10% per year. From 1973 to 1976, the aver-
age caseload was 107 cases per attorney. During this period, the
average resignation rate was 32.5%. These statistics illustrate the
failure of the individual approach since they show an apparent cor-
relation between excessive caseloads and increased resignations.

In addition, these statistics and the history of the caseload
problems in the New York Legal Aid Society show that a rule re-
quiring a supervisor to defer to a subordinate’s reasonable resolu-
tion of an ethical question is unworkable. If followed, this rule
would also cause disruption. Moreover, faced with the possibility
of discharge, attorneys may be unwilling to even present their reso-

89. Counsel to the Poor, Newsweek, Jan. 14, 1980, at 89.
90. Ligda, supra note 8, at 6. The Other Face of Justice, a 1973 survey of public
defender offices by the NLADA, obtained the following statistics about the average
caseload in these offices:

Sixty-eight percent of the respondents to the same survey indicated that their
lawyers handled more than 100 felonies per attorney per year, with an average
of 173 per attorney. In the misdemeanor area, 45 percent of the reporting of-
fices handled over 400 misdemeanors per full-time attorney, with the average
being 483.

NLADA, THE OTHER FACE OF JUSTICE 29 (1973), quoted in R. Wilson, Public De-
defender Caseloads and Common Sense 6 (1974). This paper presents a casework-
ing system by which caseload, the number of cases a lawyer handles, can be translated
into workload, the amount of time it takes a lawyer to complete work on the caseload.
Id. at 14.

There are no more recent, nationwide statistics on the caseload problem and its effects.
91. “Our [the Solano County public defender’s office] resignation rate increased from
10% to 32.5% between the 1969-72 four year period when our pending caseload aver-
aged 60 clients per attorney and the 1973-76 four-year period when our pending caseload
averaged 107 clients per attorney.” Ligda, supra note 8, at 5.

92. Id.
93. Id.
94. Id.
95. No external market factors seem to provide an explanation [of the increased
resignation rate]. When our resignation experience is compared to the overall
county rate, we find our increase contrasted to an overall decreasing rate.
When we look to the district attorney’s experience, we find an increasing rate
compared with a steady rate on an even larger staff. Indeed, it is inescapable
that internal factors produced an environment which does not encourage attor-
neys to stay. They are getting tired. We have “burnout.”

96. See supra note 67 and accompanying text.
lution of the caseload question to their supervisors, preferring either to ignore the problem or to resign. Not only is the individual approach ineffective in solving the caseload problem, but existing ABA ethical opinions support the organizational approach.

**ABA Ethical Opinions and the Legal Services Corporation Act Support the Organizational Approach**

In a formal opinion, the ABA Standing Committee on Ethics and Professional Responsibility stated that legal aid programs have an ethical and moral obligation to determine broad policy matters. These matters include client eligibility criteria, selection of the types of services the program will offer, setting priorities in the allocation of resources, and determining the types of cases attorneys may handle and the types of clients they may represent.

In another formal opinion, the committee stated that an indigent person seeking assistance from a legal aid office has a lawyer-client relationship with the entire staff of attorneys, not merely the individual lawyer who handles the case. The committee found the relationship the same as that between a paying client and a law firm. The client retains the firm, not merely an individual attorney. Further, the committee stated that staff lawyers in a legal aid office are subject to the direction of supervising attorneys, just as associates in a law firm are subject to the control of senior partners.

In an informal opinion, the ABA Committee on Ethics and Professional Responsibility found that the refusal of directors of legal aid organizations to set priorities for case acceptance was improper if it caused inadequate preparation or neglect. Moreover, the committee stated that legal aid organizations could establish priority systems or other caseload limitation guidelines if these systems or guidelines were fair and not inconsistent with the Model

97. See *supra* notes 26-28 and accompanying text.
99. *Id.*
100. ABA Comm. on Ethics and Professional Responsibility, Formal Op. 334, at 7 (1974); *see also* Lefcourt v. Legal Aid Society, 445 F.2d 1150, 1152 (2d Cir. 1971) (client is the client of the Legal Aid Society, not just of the individual attorney).
102. *Id.*
103. *Id.*
Thus, the opinion permits but does not require legal aid organizations to set caseload limitations.\textsuperscript{106}

In addition to these ABA opinions, the Legal Services Corporation Act requires the LSC to ensure that organizations founded by the LSC maintain the highest quality professional standards.\textsuperscript{107} These organizations' failure to set organizational caseload limitation standards, if it results in ethical violations, thus arguably violates the Act.\textsuperscript{108} Moreover, the legislative history of the Act indicates that Congress recognized the caseload problem\textsuperscript{109} by recommending that organizations control their caseload by establishing a priority system.\textsuperscript{110}

**Recommendations For Ethical Rules Concerning Caseload In Legal Aid Offices**

**A Proposed Caseload Limitation Standard**

In order to assist legal aid organizations in setting caseload limits, the ABA should adopt a workload standard for providers of civil legal assistance for the poor. The following proposed rule, similar to the workload provision in the Defense Function section of the ABA Standards for Criminal Justice,\textsuperscript{111} will set forth an eth-

\textsuperscript{105} Id. at 2.
\textsuperscript{106} Id. "The Opinion [ABA Comm. on Ethics and Professional Responsibility Formal Op. 334 (1974)] indicates that the refusal to set restrictions [in case acceptance] is entirely proper." Id. at 1.
\textsuperscript{107} See supra note 49 and accompanying text.
\textsuperscript{108} See supra note 49 and accompanying text. The courts have not interpreted this section of the Act.
\textsuperscript{109} See supra note 48 and accompanying text.
\textsuperscript{110} "Every [legal services] program has found it necessary to control its caseload, and the most appropriate way of doing so is by establishing priorities as to the categories or kinds of cases which the office will undertake." H.R. Rep. No. 310, 95th Cong., 1st Sess. 11, reprinted in 1977 U.S. CODE CONG. & AD. NEWS 4503, 4512-13.
\textsuperscript{111} The ABA Standards for Criminal Justice, Defense Function, contain the following workload provision:

Standard 5-4.3 Workload

Neither defender organization nor assigned counsel should accept workloads that, by reason of their excessive size, interfere with the rendering of quality representation or lead to the breach of professional obligations. Whenever defender organizations or assigned counsel determine, in the exercise of their best professional judgment, that the acceptance of additional cases or continued representation in previously accepted cases will lead to the furnishing of representation lacking in quality or to the breach of professional obligations, the defender organization or assigned counsel must take such steps as may be appropriate to reduce their pending or projected workloads.

**Criminal Justice Standards 5-4.3.**

The proposed workload standard for legal aid organizations, which is an adaptation of
A legal standard concerning caseload which will provide guidance for legal aid organizations:

Legal aid organizations should not accept excessive workloads which interfere with the rendering of high quality representation to their clients or result in violations of ethical standards. Whenever such organizations determine, in the best exercise of their professional judgment, that acceptance of additional cases or continued representation in existing cases will result in inadequate representation or violations of ethical standards, the organizations must reduce their pending or projected workloads.

Under this standard, the legal aid organization should bear the primary responsibility for limiting caseload. The NLADA Caseload Standard or similar rules would provide additional guidance to legal aid organizations in determining whether their workload is excessive. If the ABA adopts the proposed standard, organizations, particularly those governed by a board composed of both lawyers and laypersons, would not be permitted to apply the standard in ways which interfere with the individual staff attorney's exercise of independent professional judgment on behalf of the client. The organization should set and enforce policy guidelines. Individual attorneys should make decisions on a case-by-case basis, but if it appears that workload is excessive, the

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112. Cf. 42 U.S.C. §§ 2996, 2996f(a) (1) (the Legal Services Corporation is required to ensure the maintenance of the "highest quality" professional standards).
113. See DR 6-101(A) (2), (3), DR 2-110(B) (2).
114. See supra note 77 and accompanying text; see also CRIMINAL JUSTICE STANDARDS Standard 5-4.3 commentary at 5.48 n.4 and accompanying text.
115. ABA Comm. on Ethics and Professional Responsibility, Formal Op. 324, at 7 (1970); see also MODEL CODE EC 5-24 (a lawyer should not accept employment with a legal aid organization administered by a board of lawyers and laymen, unless the board sets only broad guidelines and does not interfere in the individual attorney-client relationship); MODEL CODE DR 5-107(B) (a lawyer should not permit a person who employs him to interfere with his professional judgment).

An organization could, for example, set a numerical limit of 50 cases per attorney. This limit should not be applied rigidly. The attorney should make the decision to accept new legal matters on a case-by-case basis, within that limit. An attorney who handles complex litigation, such as class actions, or who has additional administrative duties, should carry less than that limit. An attorney who handles routine matters which are easily disposed of, however, could possibly handle more than 50 cases. An attorney's caseload would be reviewed by his supervisor, using the 50-case limit as a guideline rather than a strict rule. The attorney and his supervisor would meet periodically, for example, once a month, to discuss the attorney's caseload and any resulting problems and possible solutions. In addition, each attorney's caseload could be discussed with the other attorneys in the office at weekly case acceptance meetings. See supra note 36. Staff attorneys
organization has the responsibility to make corrections. Furthermore, supervising attorneys should encourage staff attorneys to express their concerns regarding their workload. 117 Regular meetings should be scheduled at which caseload problems can be discussed and resolved. 118 If a caseload standard is adopted, standards for assigning relative ethical responsibility between supervisor and subordinate in legal aid organizations, similar to those contained in the Model Rules of Professional Conduct, should also be adopted. 119

A caseload limitation standard, coupled with standards for assigning relative ethical responsibility in legal aid organizations, would provide guidance for courts and disciplinary commissions in resolving ethical questions resulting from excessive caseloads. 120 Furthermore, such a standard would provide a basis for an individual attorney's workload complaints or grievances. 121 In addition, this standard, coupled with more specific guidelines suitable to a given organization, could benefit resolution of workload disputes between attorneys within the organization. 122 Finally, such standards would also prove useful to arbitrators in resolving labor disputes over workload. 123

CONCLUSION

For decades, legal aid organizations of all types have experienced problems resulting from excessive caseloads. 124 Commentators, courts, Congress, and the ABA Committee on Ethics and Professional Responsibility have recognized the caseload problems. A caseload standard which places the primary responsibility for limiting caseload to ensure compliance with ethical rules on the legal aid organization is preferable to a standard which places the primary responsibility on the individual attorney. The individual

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117. See CRIMINAL JUSTICE STANDARDS Standard 5-4.3 commentary at 5.48.
118. See Williamson, supra note 36, at 1075-81.
119. See supra notes 57-62 and accompanying text.
121. See Lefcourt v. Legal Aid Society, 312 F. Supp. at 1105. The Lefcourt court did not consider the plaintiff's ethical obligations as an attorney. His complaints may have been motivated by ethical considerations. Mounts, supra note 6, at 527.
122. CRIMINAL JUSTICE STANDARDS Standard 5-4.3 commentary at 5.48.
123. See supra note 28 and accompanying text.
124. See supra notes 7-8 and accompanying text.
approach has proven ineffective and ABA ethical opinions support a shift to the organizational approach. Accordingly, the ABA should adopt a workload standard for legal aid organizations similar to the standard for public defenders contained in the ABA Standards for Criminal Justice. Such a standard would provide guidance for legal aid organizations, but the organizations should apply this standard in a manner which does not interfere with the independent professional judgment of the individual staff attorney. In addition, a workload standard would provide guidance for courts and disciplinary commissions in resolving ethical questions related to excessive caseload.

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