

Statement of Priorities for Blue Ridge Legal Services, Inc.

**As Adopted By the Board of Directors, May 18, 1993
and Amended December 6, 1995 and July 31, 1996**

It is the mission of Blue Ridge Legal Services, Inc. ("BRLS") to promote equal access to justice by providing high quality legal services to low-income persons residing in the Shenandoah Valley of Virginia. Recognizing that existing resources, including not only the staff of BRLS but also the services of volunteer private attorneys participating in BRLS' Pro Bono Referral Program, cannot fully meet the demand for legal assistance from eligible applicants, BRLS has adopted the following priorities as guidelines for the allocation of its available resources and the acceptance of cases and undertaking of matters (as those terms are defined in 45 CFR Parts 1635.2 and 1620.2). These priorities were developed as part of the priority-setting process required by 45 C.F.R. §1620. They shall govern the undertaking of all legal assistance provided by BRLS, including private bar referrals, except to the extent that services are funded by a funding source that requires different priorities to be utilized, and then only within the constraints of applicable statutes and regulations.

I. Types of Legal Problems to be Given Highest Priority

The following types of legal problems should be given the highest priority in the allocation of resources and the acceptance of cases and undertaking of matters:

- Access to or Retention of Shelter
- Access to Affordable Health Care
- Preservation of Income and Resources
- Access to Additional Sources of Financial Support and Public Entitlements
- Oppressive or Exploitative Practices in Familial, Economic, or Governmental Relationships

II. Other Types of Legal Problems to be Given Priority

The following types of legal problems should be allocated resources and accepted as cases or undertaken as matters to the extent possible:

- Consumer Protection
- Access to Education
- Family Disputes
- Other Housing Related Issues
- Other Debtors' Rights Issues

- Unique Legal Needs of the Elderly

III. Access to Information About Rights and Procedures

Providing eligible clients broader access to information about their rights and responsibilities, and the procedures available to enforce them, will be a separate and distinct priority for BRLS. BRLS will strive to provide, at a minimum, advice and counsel, a brief service, or an appropriate referral, to eligible clients with its priorities, even if a lack of resources prevents BRLS from undertaking full representation on behalf of these clients. BRLS will continue to develop mechanisms designed to achieve this goal in an efficient and economical manner, which may include group clinics, written literature and pamphlets, and other standardized formats for disseminating advice and/or information, in addition to the more traditional provision of individualized advice and services to individual clients.

IV. Types of Legal Problems Excluded from Legal Assistance

A. Notwithstanding the above-stated priority categories, the following kinds of cases shall not be handled on account of specific legal prohibitions (see 42 U.S.C. §2996(f) and other sources):

1. **Fee-generating.** Services shall be denied notwithstanding that a person is indigent if his or her case reasonably may be expected to generate its own fee with the private bar, either as a contingency fee or by award of statutory or discretionary attorneys fees or by award from public funds. This does not preclude the acceptance of affirmative claims where: it appears unlikely that the client will be able to retain counsel on the basis of the case's potential to generate a fee; the person has already consulted two or more attorneys who have rejected the case unless paid more than the filing fee as a prerequisite to representation; or where emergency circumstances compel eligible client before an effective referral can be made, although later referral will be made where appropriate and consistent with professional responsibility. This paragraph does not preclude the bringing of counterclaims or setoffs for an otherwise eligible client regardless of the availability of contingent or statutory attorneys fees; provided, however, that no assistance shall be provided with respect to the initiation of litigation that claims, collect, or retains attorneys fees pursuant to any federal or state law permitting or requiring the awarding of such fees (P.L. 104-134, §504 (a) (14)).
2. **Criminal.** Assistance shall not be provided with respect to any criminal proceeding, except where professional responsibility requires representation in a criminal proceeding arising out of a transaction with respect to which the client is being or has been represented by BRLS.
3. **Habeas corpus.** Assistance shall not be provided in habeas corpus proceedings collaterally attacking a criminal conviction where the action:
 - a. is brought against an officer of a court, a law enforcement official or a custodian of an institution for persons convicted of crimes; and

- b. alleges that the conviction is invalid because of any alleged acts or failures to act by an officer of a court or a law enforcement official.
4. **Abortion.** Assistance shall not be provided with respect to any litigation with respect to abortion (P.L. 104-134, §504 (a)(14).
5. **School desegregation.** Assistance shall not be provided with respect to any proceeding relating to the desegregation of any elementary or secondary school or school system, except that nothing in this paragraph shall prohibit the provision of legal advice to an otherwise eligible client with respect to that client's rights and responsibilities.
6. **Draft and military desertion.** Assistance shall not be provided with respect to any proceeding arising out of the Military Selective Service Act or of desertion from the Armed Forces.
7. **Certain non-citizens.** Current limitations imposed by any funding source on legal assistance to non-citizens shall be observed with regard to assistance provided with those funds or otherwise limited by law. (45 CFR Part 1626; prohibition extended to non-LSC funds by P.L. 104-134, §504(a)(11));
8. **Redistricting and Census.** Assistance shall not be provided with respect to advocating or opposing any plan or proposal, or representing any party or participating in any other way in litigation, that is intended to or has the effect of altering, revising, or reapportioning a legislative, judicial or elective district at any level of government, including influencing the timing or manner of the taking of a census ((45 CFR Part 1632; P.L. 104-134, §504(a) (1));
9. **Incarcerated Persons.** Assistance shall not be provided with respect to any litigation on behalf of a person incarcerated in a Federal, state, or local prison (P.L. 104-134, §504(a)(15));
10. **Welfare Reform Advocacy.** Assistance shall not be provided with respect to initiating legal representation or participating in any other way, in litigation, lobbying or rulemaking, involving an effort to reform a Federal or State welfare system, except that this paragraph shall not be construed to preclude representation of an individual eligible client who is seeking specific relief from a welfare agency if such relief does not involve an effort to amend or otherwise challenge existing law in effect on the date of the initiation of the representation (P.L. 104-134, §504(a)(16));
11. **Drug-related Public Housing Evictions.** Assistance shall not be provided with respect to defending a person in a proceeding to evict the person from a public housing project if:
1. the person has been charged with the illegal sale or distribution of a controlled substance; and

2. the eviction proceeding is brought by a public housing agency because the illegal drug activity of the person threatens the health or safety of another tenant residing in the public housing project or employee of the public housing agency (45 CFR Part 1633; P.L. 104-134, §504(a)(17)).

12. **Class Actions.** Assistance shall not be provided with respect to initiating or participating in a class action suit (P.L. 104-134, §504(a)(7)).

13. **Other prohibited cases.** No other legal assistance specifically prohibited by law shall be provided.

B. Other Non-priority Cases

Notwithstanding the above-stated priority categories, the following kinds of cases and matters shall not be accepted for full representation (i.e., assistance beyond advice and counsel, brief service, or referral), having been determined in BRLS' priority-setting process to be non-priority activities that should be excluded, except as approved in accordance with the policy and procedure set forth in Section VI.6 regarding the acceptance of emergency cases or matters:

- Name changes
- Property line disputes
- Driver's license restoration petitions
- Divorces involving prisoners
- Bankruptcies for collection-proof debtors
- Contesting adoptions
- Immigration/naturalization proceedings
- Drafting wills for those who are neither elderly nor terminally ill
- Affirmative divorces requesting equitable distribution of marital property
- Probate of wills and administration of estates
- Tort actions (affirmative or defensive)
- Opposing spousal support claims
- Opposing child support claims against private parties
- Petty claims against neighbors, former friends, etc.
- Juvenile delinquency proceedings
- Mental commitment proceedings
- Workers' Compensation claims
- Annulments
- Income and estate tax problems
- Real estate transactions (when unrelated to priority representation)
- Affirmative fault-based divorces (when unrelated to priority representation)

V. Other Factors to be weighed in Allocating Resources and Undertaking Cases and Matters

The following factors shall be weighed in decisions regarding the allocation of resources, the acceptance of cases and undertaking of matters, and the level of services to be provided, for both highest priority and lower priority legal problems:

- Whether free or affordable legal assistance is available from other sources;
- Whether any real benefit will inure to the client;
- Whether the case can be pursued by the client without full representation because it does not involve complicated legal analysis or procedure and/or because the opposing party is unrepresented;
- Whether the case has any real likelihood of success;
- Whether the case involves less than \$300, if there is no apparent pattern of frequent repetition involving other poor persons;
- Whether the problem is susceptible to successful mediation, if free or affordable mediation assistance is available;
- If the case is being appealed upon an pre-existing record, whether BRLS was involved in the client's representation when the record was established (if not, there will be a presumption against accepting the case);
- Whether it is likely that full representation will resolve in an efficient and economical manner a problem which is prevalent among or important to other potential clients; and
- Whether BRLS has sufficient resources and the relevant expertise necessary to handle the case properly.

VI. Implementation and Application of These Priorities

A. Case Acceptance Policies. To channel BRLS resources into the priorities identified above, case acceptance policies have been developed which provide general guidelines for individual case intake and acceptance decisions made by BRLS staff. These case acceptance policies incorporate and weigh the factors identified above for the various types of legal problems falling within the adopted priorities, to the extent such generalized decisions can be made. The goal of these policies is to achieve uniformity in the level of services provided in the various types of cases covered, and to allocate types of cases between BRLS staff and the Pro Bono Referral Program's volunteer attorneys.

These case acceptance policies shall be used in determining the level of services, if any, which should be provided once an assessment of a client's legal problem has been made. Such services may include: advice provided through individual or group conferences or through pamphlets and other literature; referral to an outside source of legal assistance or advocacy, or other agency or organization which can assist the client in resolving the problem; a brief service of some sort; or the full range of legal assistance provided by BRLS (including both

BRLS staff as well as volunteer attorneys), including negotiation with opposing parties, representation and advocacy in the courts, in administrative hearings and appeals, before legislative bodies, etc. BRLS staff may also undertake special initiatives and projects, within the constraints of applicable law, to further the priorities set forth above.

B. Case Acceptance Decisions. Decisions to provide legal assistance beyond advice or referral shall be made with the approval of the Executive Director or the Managing Attorney, either through group case acceptance meetings or individually, in order to achieve consistency and insure compliance with the established priorities. Notwithstanding the priorities set forth in this policy or the guidance provided in any case acceptance policies implementing them, exceptions can be made in accordance with the policy and procedure set forth in Section C. below regarding the acceptance of emergency cases or matters, or if a lack of sufficient available resources (i.e., BRLS legal staff has reached caseload limitations, and the case is either inappropriate for the Pro Bono Referral Program or cannot be successfully referred) requires rejection of the case for full representation. In such circumstances, priority must be given to those legal problems identified as having highest priority, and lower priority cases must be rejected first. When temporary conditions further restrict the program's resources, the Executive Director or the Managing Attorney, in consultation with the Executive Director, may authorize temporary suspension or limitation on services in one or more categories of cases. Of course, all cases with insufficient merit should be rejected for full representation if consistent with professional responsibility.

C. Emergency Exceptions to Priorities. Notwithstanding the priorities established herein, exceptions can be made in the acceptance of cases or the undertaking of matters in the following emergency situations: (1) where there is a need for immediate legal action to protect the applicant/client's rights; (2) circumstances involving the necessities of life; (3) where there exists a significant risk to the health and safety of the client/applicant or immediate family members for which no other legal assistance is available; or (3) where issues arise because of new and unforeseen circumstances, such as natural disasters, unanticipated changes in the law affecting large numbers of prospective clients and other emerging legal issues not anticipated when these priorities were set. In such emergency situations, a written request shall be submitted to the Executive Director or the Managing Attorney for approval prior to undertaking the case or matter. The request shall sufficiently identify the circumstances that constitute the emergency situation justifying an exception to the priorities. The decision whether to approve the exception shall be based on the following considerations: The time period in which action must be taken to protect the client's interests; the severity of the consequences to the client if no action is taken; the likelihood of success if urgent legal action is taken; the capacity of another source of free or low-cost legal assistance to undertake the particular case; the effect the problem presented by the emergency case or matter will have on the client community; and whether services can be competently provided in the individual case without an undue diversion of resources from other priority cases and matters. The Executive Director or Managing Attorney shall promptly act on the request and give the approval or

disapproval in writing. A copy of any approved request shall be kept in the case file. A copy of any such request, whether approved or disapproved, shall be forwarded to and/or retained by the Executive Director in a separate file for reporting purposes.

D. Adherence to Priorities. All BRLS staff who handle cases or matters, or are authorized to make decisions about case acceptance, including attorneys, casehandling paralegals, intake paralegals, and referral coordinators, shall sign a simple written agreement developed by the Executive Director, indicating that the signatory: (1) has read and is familiar with the priorities of BRLS; (2) has read and is familiar with the definition of an emergency situation and the procedure for dealing with an emergency; and (3) will not undertake any case or matter as a BRLS employee that is not a priority nor an approved emergency. The signed agreements shall be maintained in a separate file by the Executive Director or designee. The Executive Director shall report to the BRLS Board of Directors all cases or matters that are undertaken outside of priorities, including emergencies situations, on a quarterly basis; such report shall include the number of cases or matters undertaken that were not in accordance with the priorities, including emergencies, the types of cases or matters, and the reasons they were undertaken. It shall be the responsibility of the Executive Director to review periodically the services provided by the program to determine whether they are being provided consistently with these established priorities. Revisions to the case acceptance policies should be approved by the Board of Directors. Caseloads should be monitored to insure that no particular category of case consumes the program's resources in a manner that defeats the established priorities, and that those cases identified as having highest priority are in fact being assured of that priority. The Executive Director shall report to the Board of Directors annually and more frequently if possible, on the correlation between the established priority system and the services actually provided, the accessibility of the program throughout BRLS' service area, and the distribution of services provided in different geographical portions of the service area.

VII. Training and Support Services

The program recognizes the importance of job-related training for professional and support staff, pro bono attorneys, and Board members. The program's ongoing training program includes training events sponsored by the Virginia Poverty Law Center, state bar organizations, and national support centers. The program likewise recognizes the importance of support services. Internal support for litigation shall include the maintenance of law libraries, including materials on poverty law issues, word processing systems, and resource files. A continuing effort should be made to provide computers for every staff person, with a goal of eventually networking each office and taking advantage of electronic communications, computerized research, and similar technological systems that would enhance the efficiency of the offices. Computer training should be provided as appropriate. External support shall include continued reliance on the Virginia Poverty Law Center, national support centers, the Clearinghouse for Legal Services, and other legal services organizations.

VIII. Outreach Efforts and Accessibility of Services

The program places a high priority on outreach and accessibility within the constraints of its limited resources. Accordingly, it will continue to maintain its full time offices in Winchester and Harrisonburg and its outreach office in Staunton. The Winchester and Staunton offices should be relocated, if economically feasible and readily achievable, in order to provide improved accessibility for the disabled. BRLS will provide toll-free telephone access in both full time offices. It will continue its outreach efforts for the elderly and incapacitated by visiting various senior centers and by conducting home visits as needed. The program will strive to provide an approximate equality of services in each of its primary service areas, viz., Staunton area, Harrisonburg area, and the Winchester area, relative to the poverty population in each area. Should significant additional resources become available, the program should consider additional outreach efforts in the rural areas farthest from its offices, viz., Shenandoah County, Highland County, Page County, Clarke County, and Warren County.