CLIENT SERVICES MANUAL

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I. PREFACE

The purpose of the Client Services Manual is to provide guidance on the general principles and requirements for representing DRTx clients based on the American Bar Association Standards for the Provision of Civil Legal Aid (August 2006) and the Texas Disciplinary Rules of Professional Conduct for Lawyers.

II. DRTx's MISSION & GUIDING PRINCIPLES

DRTx's mission is to advocate for, protect and advance the legal, human and service rights of people with disabilities.

Our attorneys and advocates fulfill DRTx's mission in the following ways:

- Provide direct legal assistance to people with disabilities whose rights are threatened or violated;
- Protect the rights of individuals and groups of people with disabilities through the courts and justice system;
- Educate the public, media, lawmakers, and other concerned groups on issues and trends that affect the rights of people with disabilities;
- Inform people with disabilities and family members about their rights; and
- Make referrals to programs and services.

DRTx Guiding Principles

DRTx's vision is that people with disabilities are respected and equal members of an inclusive society. DRTx's guiding principles are as follows:

- People with disabilities are full and equal persons under the law and

are entitled to equal access to the opportunities afforded to all members of society.

- People with disabilities are entitled to be free from abuse, neglect, exploitation, discrimination, and isolation, and to be treated with respect and dignity.

- People with disabilities have the right to full access to and inclusion in all aspects of community life where they can exercise their full rights and responsibilities.

- People with disabilities have a right to legal representation and due process of law before any of their legal rights are restricted.

- People with disabilities should speak and act for themselves, be self-determining, represent their own interests, and make decisions and take risks based on their own goals and values. Anyone who would interfere with these rights to self-autonomy and personal choice must do so only after being granted legal authority, subject to judicial review, to act on behalf of that person, and only after the person considered "incapacitated" has had meaningful notice and opportunity to challenge the appointment of a substitute decision-maker.

- People with disabilities are entitled to have protection from employment discrimination and equal access to competitive employment and a fair and living wage in community integrated settings.

- People with disabilities have a right to health and human services that will meet basic needs and will provide them with the tools and supports necessary to achieve equality of opportunity, employment, independent living, economic and social self-sufficiency. These services and supports should be accessible, culturally relevant, customized to their needs, flexible to changing circumstances, and provided in their community.

- People with disabilities have the right to information in an accessible format, language and manner that is culturally relevant, and which allows them to have options and make informed choices.

- Advocacy efforts must be sensitive and responsive to the unique needs of individuals from diverse ethnic, racial, economic and cultural backgrounds, and must be accessible and reasonably available.

- When a decision or meaningful choice cannot be expressed by a person with a disability or when consent is not available from or provided by the person with the disability or legally authorized representative, the advocate will act to safeguard and advance the human, legal, and civil rights of the person with the disability in a way that does not limit the person's options for choice.

III. ISSUE TEAMS

DRTx uses an issue team model to provide legal services and representation to persons with disabilities, which means that individuals who work on similar issues work on the same teams even if they work in different offices. Each issue team has one or more supervising attorneys who are responsible for the assignment and management of cases for both attorneys and advocates assigned to the team. Supervising attorneys are also responsible for identifying training needs and opportunities for their teams as well as providing mentoring for the issue team members. The issue teams reflect the program priorities established by DRTx Board of Directors. They include: Education; Housing, Employment, Accessibility and Transportation (HEAT); Client Assistance Program/Protection and Advocacy for Beneficiaries of Social Security (CAP/PABSS); Community Integration/Health Care (CI); Institutional Rights and Civil Liberties (IRCL); and Representation of Foster Children. All case handlers including advocates and attorneys must comply with the American Bar Associations Standards for the Provision of Civil Legal Aid and the Texas Disciplinary Rules of Professional Conduct for Lawyers.

IV. INTAKE

Intake services are provided by telephone Monday through Friday from 9 a.m. to 4 p.m. CST. An online application for services is available 24 hours per day, seven days per week on DRTx's web page at www.drtx.org. Intake services are also provided in-person for individuals who schedule appointments, through email requests and by written correspondence. Intakes for persons with hearing impairments are taken through Relay Texas and two video phone lines which are directed to an intake worker who is proficient in American Sign Language (ASL). Finally, staff conduct intakes on site at: community events such as education and training sessions and health fairs; institutions, hospitals,
homeless shelters and other residential settings; and service provider locations such as community centers and sheltered workshops.

Intake specialists are trained and supervised by either the intake supervising attorney or the supervising attorney of the issue team to which a specialized intake worker has been assigned. Intake specialists are responsible for determining basic eligibility, identifying the nature of the service request, providing basic information and/or referrals, and assisting the person with self-advocacy, when appropriate. Intake specialists may only provide limited legal advice when approved by the supervising intake attorney or the supervising attorney with the team to which the intake specialist has been assigned. Further, intake specialists are trained to make abuse and neglect reports to the appropriate state agencies responsible for investigation of abuse and neglect. The supervising attorney is responsible for informing intake specialists about any possible deadlines relating to the person's problem or issue. All persons are provided services in their primary language and/or are provided accommodations for their disability. Intake specialists are responsive and respectful of cultural, linguistic, disability-related and personal situations. Each person accessing DRTx intake services is treated respectfully and professionally, and his or her information is handled in a confidential manner.

The intake specialist is responsible for obtaining sufficient information to determine the caller's eligibility, the nature of the issue, the caller's goal, and whether the issue falls within DRTx priorities. The intake specialist then inputs the intake information in DADS, which is DRTx's electronic intake data system. The intake information

in DADS is automatically imported into Legal Files, DRTx's case management system. Consequently, DRTx has paperless case files that can be accessed by case handlers and supervisors throughout our offices.

The intake supervising attorney or the supervising attorney on the team to which the intake specialist has been assigned receives the intakes electronically, reviews them for eligibility and makes an initial determination of whether the issue meets our program priorities. If the intake is not done by a specialized intake worker assigned to a particular team, the intake supervising attorney will refer the case to the appropriate issue team's supervising attorney for case assignment. Most intakes are reviewed by the intake supervising attorney or an issue team supervising attorney no later than the Monday following the intake prior to the team staffing. Case assignments to specific case handlers on the issue team are made no later than the following Monday. Intakes with short pending deadlines are identified in the screening process and selected for expedited review and assignment, as appropriate to the case.

In any case where an intake specialist believes that a routine delay in assignment will result in harm to the caller or the caller's legal rights, the intake specialist will immediately bring the case to the attention of the intake supervising attorney or the issue team's supervising attorney, who will expedite the process for determining whether DRTx can assist the caller.

If the person requesting assistance is calling from a pay phone or state hospital (or other place where he or she can't easily call again), the intake worker will handle the call as an intake at that time. If the intake worker is not available, the receptionist will briefly find out what the problem is and either put the call through to another intake specialist, take a message, or tell the person to call back. If the call is from a state hospital, the receptionist also takes his or her name, the name of the hospital, the unit on which he or she resides, and patient ID number, if available.

If an emergency call comes in when an intake specialist or the intake supervising attorney is not available, the receptionist will get a brief statement of the problem, and if it seems to be an emergency in which a person is likely to commit a criminal or fraudulent act that is likely to result in the death or substantial bodily harm to a

person, the receptionist will find a supervising attorney or manager to handle the call. If no one is immediately available, the receptionist will take the name and phone number, and tell the caller someone will return the call as soon as possible. If it is determined that the call is not an emergency, the receptionist will tell the person to leave a message and an intake specialist will return the call.

DRTx will not accept collect calls, except from jails.

An automated email is generated confirming each request for service that is received from DRTx's online intake site. The online service request will be reviewed each day by an assigned intake staff or the intake supervising attorney. If the online request is complete and determined to meet one or more of DRTx program priorities, that online service request will be assigned to the appropriate issue team and in DADS and Legal Files.

If an intake call gets through to a staff person who is not an intake specialist, the caller will typically be forwarded to an intake specialist. If the staff person decides to discuss the issue with the caller, the staff person will send an email to the intake supervising attorney or a specialized intake worker assigned to the issue team that would be handling the case providing them with information about the call and requesting that an intake specialist complete the intake. In such circumstances, the intake specialist will document the call in DADS.

If a caller calls repeatedly with the same request, an intake specialist will tell the caller that we have provided the caller with all the assistance we are able to provide on that issue and that we will not continue talking to him or her because he or she is tying up the lines and keeping others from getting through. If the caller is a client, or has in the past been represented by DRTx, the intake specialist will consult with the intake supervising attorney regarding how the caller is to be handled.

When a service request is rejected, a letter is sent promptly to the person that explains the reason why their issue was not accepted. To the extent possible, the caller is referred to other resources and provided information that may assist them in resolving his or her issue and protecting his or her rights. When appropriate, the intake supervising attorney or the specialized intake worker under the supervision

of an issue team attorney may include brief legal advice in the letter. Each applicant who has been denied services is provided with information on how to appeal that decision.

When a person who has previously talked with an intake specialist calls again and informs the intake specialist or reception that he or she has not yet been called back, the intake specialist or receptionist will transfer the call to the case handler, if one has been assigned. If a case handler has not yet been assigned, the caller's inquiry will be noted in Legal Files along with an email to the supervising attorney of the team it has been referred to with the caller's name and phone number, the date the initial intake was done, the message, and the times of day that are best for a return call.

During times that DRTx is not handling intake, the receptionist will inform callers of our intake hours or refer them to the DRTx online intake site.

V. REPORTING ABUSE AND NEGLECT

Under Texas law, all persons who have cause to believe that the physical or mental health or welfare of a child, an elderly person or person with a disability has been or may be adversely affected by abuse, neglect, or exploitation must report the abuse or neglect. Most reports of abuse or neglect are made to the Texas Department of Family and Protective Services unless another agency has been given the authority to investigate the abuse or neglect for a particular type of facility by the Legislature. If an attorney or advocate is unsure about which agency to report the abuse or neglect to, the issue team's supervising attorney should be consulted.

This obligation to report abuse and neglect applies to all DRTx staff, including attorneys, and is an exception to attorney-client privilege. The duty to report cannot be delegated to another person. When a case handler first meets with a client, he or she advises the client that we have a duty to report abuse or neglect even if the client has asked us not to report the abuse or neglect. If DRTx staff report abuse or neglect, we should take action to prevent the client from being retaliated against or injured

further as a result of our reporting the abuse or neglect.

The report must be made immediately on learning information that creates a reason to believe that a person has been abused, neglected or exploited by calling the Texas Department of Family and Protective Services at 1-800-252-5400. If the person is not in immediate danger, a report can be made on the Texas Department of Family and Protective Services website at www.txabusehotline.org. If abuse or neglect is reported on the hotline, a response from the hotline will be received within 24 hours. The Texas Department of Family and Protective Services will not receive email reports of abuse or neglect. Even though under Texas law, a professional has up to 48 hours to report abuse or neglect, DRTx requires all staff to report abuse immediately when staff suspect a person has been abused or neglected.

If a caller alleges abuse or neglect of another person, staff must advise the caller of his or her legal duty to report on his or her own. If the caller is reluctant to report, staff must advise the caller that he or she can report the abuse or neglect anonymously. Regardless of whether the caller has reported the abuse or neglect, DRTx staff must make an abuse and neglect report to the appropriate agency.

Whenever a report of abuse or neglect is made, the issue team of the staff member reporting the abuse or neglect will review the case to determine if a case should be opened for DRTx to investigate the abuse or neglect. If staff has doubts as to what constitutes abuse or neglect, the staff should consult with the team's supervising attorney.

VI. CASE-RELATED DEADLINES

Statutes of Limitations

A statute of limitations is the deadline for filing a lawsuit, administrative appeal or complaint. If the statute of limitations is missed in a case by a DRTx attorney or advocate, the client may file a grievance with the State Bar of Texas against the attorney who is handling the case or supervising the advocate. If a statute of limitations is missed, DRTx and the attorney could be sued for malpractice.

When a case is accepted and assigned to an advocate, an attorney on the issue team must identify the statute of limitations. The attorney and/or advocate handling the case must tickle the statute of limitations on his or her work electronic calendar or the client's calendar in Legal Files and the team calendar. At least six (6) months prior to the running of the statute of limitations, the case must be staffed by the supervising attorney so that the necessary steps are taken for: 1) advising the client that DRTx will not be representing the client in a lawsuit, administrative appeal or administrative complaint; or 2) timely filing the lawsuit, administrative appeal or administrative complaint.

DRTx would be required to represent a client in a lawsuit if an investigation case is closed within 45 days of the running of the statute of limitations. In most cases, the decision not to accept to litigate a case in an investigation only case should be made at least 6 months before the running of the statute of limitations. In a more complex case where it might be difficult for a client to retain counsel, the rejection of the case should be made more than 6 months before the running of the statute of limitations. In any case which has been rejected shortly before the running of the statute of limitations, the Legal Director should be notified so that the Legal Director can respond promptly to any appeal filed by the client.

Tort Claims Notice

If a client claims that he or she suffered a personal injury at a facility operated by the state, county or local government or resulting from actions by officials or employees of the state, county or local government, he or she must file a tort claims notice with the proper governmental entity within six (6) months of the date of the injury to protect his or her right to sue. There are circumstances in which the notice timeline can be extended or waived. If a claim is against a city, a city charter or ordinance provisions may require a shorter deadline for filing a tort claims notice.

An issue team attorney must be consulted whenever a client has suffered a personal injury in order to determine whether the client needs to be advised about filing a notice of tort claims. A notice of tort claims is not a lawsuit. By filing a notice, the client preserves his or her right to file a lawsuit. If DRTx is going to represent a client in a lawsuit to recover damages for the injuries suffered by a client, a DRTx attorney should draft the tort claims notice. In rare cases with the approval of the team's supervising attorney, DRTx may draft a tort claims notice for a client who lacks the capacity to do so even though DRTx is not going to represent the client in the lawsuit.

VII. ATTORNEY REFERRALS

DRTx maintains a list of attorneys who have expressed an interest in handling disability law cases. Any attorney in good standing with the Texas State Bar is eligible to be included. An attorney who wishes to be added to a referral list should contact the Legal Director, who will determine the areas of practice and the parts of the state in which the attorney will handle cases. Attorneys on the referral list are not expected to represent clients on a pro bono basis.

When an individual calls DRTx asking for a referral to an attorney, the intake specialists will give them at least three names from the referral list, if possible, and also refer them to the local private bar referral service and any pro bono referral services. When staff make a referral, they will inform the caller that DRTx cannot vouch for the quality of legal services provided by an attorney, and can only say that DRTx knows that the lawyer is interested in representing people in the listed area of practice.

VIII. CLIENT–DIRECTED ADVOCACY

People with disabilities are entitled to speak on their own behalf and to direct their own advocacy. In some cases, due to the nature of the disability, individuals with disabilities may be unable to request services or understand the implications or consequences of advocacy activities and, as a consequence, be unable to participate in a knowing manner in such activities. In other cases, the client may authorize a family member, supported decision-maker or other adult to help us understand the client's wishes. In some cases, a guardian has been appointed to represent the interest of the client.

Consultation

Whether or not an individual has a guardian, and whether or not we believe he or she is competent, staff may hear a client's complaint, provide legal rights information, determine whether the client wants representation, gather information about the situation and speak with the guardian. Once we decide the case meets our priorities and case acceptance criteria and is appropriate for representation, we need to determine whether or not the client is a minor or has a guardian and whether he or she wants our representation. If the client is a minor or has a guardian, there are restrictions on the types of cases in which we can represent the client, and there are steps we must follow before obtaining medical records or representing the client. If the client is a minor or has a guardian, refer to section Minors and Clients with Guardians below.

Staff will discern the client's desired outcome for our advocacy efforts in a nonjudgmental manner, and our advocacy efforts will be guided by those expressed preferences. Staff may need to enlist the help of individuals who know the client and his or her communication system in order to assist us to discern his or her preferences, but staff must ensure that it is the client's goals and not those of the assisting individual that have been expressed.

Staff will use interpreters, augmentative communications devices, and any other means to ensure accurate and complete communications with clients and/or potential clients. Each office will have contact information for interpreter services available in its area.

Consent

An adult who has no guardian is legally competent and shall be presumed to be both factually competent and capable of consent to our assistance. DRTx staff shall ascertain the client's wishes to the greatest extent possible and, if the matter is within DRTx priorities, shall advocate in accordance with those wishes.

Legally competent clients can consent to DRTx representation by written or oral authorization. If a client is able to indicate that our representation is desired, (whether or not they are able to express the exact goal of the representation), we may represent the client. Any verbal or nonverbal indication that the client wants assistance with his or her legal issue may serve as consent to our representation. For example, a client's response of "yes" (which could be a nod, a blink, or other communication that means "yes" to the client) to questions such as the following would be sufficient to give us consent to represent the client: Do you want to complain about X? Do you want to live in a house with other people instead of in the hospital?

More detailed questioning may be necessary to determine the client's goals for representation, but the client need not be able to express in detail what he or she wants. For example, a client may indicate that he wants to complain about being hurt, even though he may not be able to understand that the course of action we would take is a lawsuit for damages and injunctive relief.

To initiate litigation on behalf of someone unable to communicate consent, generally someone outside of DRTx must serve as the client's next friend or guardian for purposes of the suit.

Client Preferences

Staff should assure that the matter for which the client seeks our assistance falls under a priority and the client's objective does not violate DRTx's stated purpose and guiding principles. The issue we will address and the objective we will seek should be stated in the representation letter or agreement with the client.

DRTx pursues the expressed wishes--not the "best interest"--of its clients. DRTx staff will advocate for the expressed wishes of the client in the matter accepted, even if staff, professional service providers, or family members believe that staff's advocacy will result in harm to the client or others. We will not, however, provide assistance that would directly enable a client to break the law or commit suicide when the client has expressed a clear and immediate intent to break the law or commit suicide.

If the client changes his objective in the case to one that is inconsistent with the representation letter or agreement and violates DRTx's stated purpose, guiding principles or program priorities, staff will withdraw from representation, consistent with the Texas Disciplinary Rules of Professional Conduct for Lawyers. The strategy and advocacy steps to be taken are determined by staff in consultation with the client. If the client insists upon a strategy which is contrary to staff's judgment, the client may be advised to seek alternate legal services and DRTx might withdraw from the case, consistent with the Texas Disciplinary Rules of Professional Conduct.

Minors and Clients with Guardians

A careful review of this section and the guardianship provisions in the federal statutes authorizing the P&A's activities is required whenever a guardian is involved. When a client is a minor or has a guardian, DRTx shall proceed as follows:

1. If there is a complaint, by the person under a guardianship or others, against the guardian, for abuse, neglect, or violation of rights, including a guardian's objection to placement or participation in the community, then staff proceed as if the guardian is a potential adversary. As part of the investigation of the complaint, staff should contact the guardian to hear his or her side of the story. If the complaint is substantiated, staff will contact the

issue team's supervising attorney for approval to proceed.

2. In all other cases, staff shall first call the parent or guardian, explain the client's expressed goal, the violation of the client's rights, or the suspected abuse or neglect, and request the parent or guardian's permission for staff to represent the client. If permission is given, we may represent the client in any case within our priorities.

3. If the parent or guardian objects to our representation and the case is one in which staff may proceed under our P&A authority because of ongoing abuse or neglect, we should so inform the parent or guardian. If the parent or guardian fails or refuses to act, staff have authority to report the alleged abuse or neglect to authorities, to obtain medical records and further investigation, and to act on behalf of the person if necessary to stop any abuse or neglect. Our authority to act on behalf of the client with a guardian despite the guardian's objection ends after the abuse or neglect is addressed. Any representation regarding past abuse or neglect, typically to seek damages, must be with the guardian's permission, by appointment as ad litem or by challenge to the guardianship.

4. If the parent or guardian objects to our representation and the case is not one involving ongoing abuse or neglect or a challenge to a guardianship, we may not represent the client unless we first seek and obtain appointment of an attorney ad litem or next friend by a court or administrative agency.

5. Finally, if the case meets our priorities for challenging a guardianship, including when it is necessary to assure community integration, we may seek a change in the guardian or a removal of the guardianship. Staff must have an indication that the client wants the guardian removed or changed, and removal or change must be supported by professional judgment.

People First and Respectful Language

People first language recognizes that individuals with disabilities are – first and foremost – people. It emphasizes each person's value, individuality, dignity and capabilities. When referring to our clients orally or in all written communications,

staff must use people first language by referring to our clients as people or individuals with disabilities instead of labels or stereotypes such as the handicapped, the disabled or the mentally ill. Even with people first language, staff should use person with intellectual disability instead of person with mental retardation. Staff should never refer to persons with intellectual disability as "retarded" or "MR."

IX. CONFIDENTIALITY

All information we have obtained from an individual who has contacted us for assistance or about that individual in the course of investigation or representation is confidential. The same is true of individuals we have learned about through our P&A access authority. Confidentiality begins with the individual's first point of contact with DRTx, and it does not matter whether or not the caller is eligible for our services or has a problem within our priorities.

Confidential information includes privileged information protected by the attorney-client privilege and unprivileged information which is any information relating to or furnished by a client during the course of representation. This includes personally identifiable information, protected health information, mental health information and educational records. It also includes emails, texts messages, audio or visual recordings, photographs, or similar materials or information of either the client or a member of his or her family by which the identity of a client can be determined directly or by reference to other publicly available information.

All DRTx staff, volunteers, co-counsel, experts, and other contractors must maintain the secrecy of confidential information, as required by the Texas Disciplinary Rules of Professional Conduct for Lawyers, Health Insurance Portability and Accountability Act and Privacy Standards, (HIPAA), and Texas Medical Privacy Act (Texas Health & Safety Code, Chapter 181 [HB 300]). All staff and volunteers must annually complete formal training on HB 300.

Client files and other confidential information must be locked in desks or file cabinets. Client information cannot be left laying out on desk tops, or on tables or copying machines in common areas where there is a risk of unauthorized disclosure.

Confidential information will not be provided to anyone outside the organization, other than the client, without written consent from the client or the client's representative. If the client is a minor or has a guardian and we have accepted representation through the parent or guardian, confidential information may be shared with the parent or guardian. Conversely, if we have accepted representation of a minor or a client with a guardian directly and potentially in opposition to the parent or guardian, no confidential information will be released to the parent or guardian. Attorney work-product will not be released to anyone outside the organization, other than the client, without the approval of the Legal Director. If DRTx obtains records under our P&A authority, these records cannot be provided to the client or anyone else, unless approved by the Legal Director.

When requesting or releasing confidential information, staff will use a standard DRTX authorization form approved by the Legal Director. This authorization is based on the Authorization to Disclose Protected Health Information adopted by the Attorney General of Texas in accordance with Texas Health & Safety Code § 181.154(d). This form is intended for use complying with the requirements of HIPAA and HB 300. A client will be informed that he or she has the right to revoke an authorization. By signing an authorization, a client will be informed that confidential information released as a result of the authorization may be re-disclosed by DRTx or any person or organization receiving the information and may no longer be protected by federal or state privacy laws. If a physician or mental health professional makes a determination that a client's access to his or her records would be harmful to the client's physical, mental or emotional health, DRTx staff will advise the client about how he or she may seek access to these records under state or federal law.

Information will be released to individuals hired by DRTx to perform an assessment, provide expert testimony, or represent the client on a pro bono basis at the discretion of the DRTx staff member responsible for the case, provided the client has signed an authorization.

In a lawsuit, once pleadings and other documents are filed with the court clerk, they become part of the public record (unless they are "sealed"). However, only the attorney handling the case, the supervising attorney, or the Legal Director, may share or permit another staff member to share any pleading or other case-related document

with anyone outside of the agency.

DRTx may disclose confidential information to comply with a court order or other law, i.e., reporting abuse, or to deter a client who is likely to commit a criminal or fraudulent act that is likely to result in death or substantial bodily injury to a person.

Confidential information remains confidential forever. It continues after the individual ceases to be a client, even after the individual dies. A staff member has an obligation to maintain the confidentiality regardless of whether or not the staff member remains employed by DRTx.

X. ELECTRONIC COMMUNICATIONS

Electronic communications such as email, text and social media messages shall not contain personally identifiable information or personal health information in the body of the message, or in an attachment not properly encrypted. Passwords or other security or encryption keys exchanged between the sender and recipient may not be transmitted by the same manner the secured message or document was transmitted. Confidential information, including client and case-level data, must be stored on network drives or within the encrypted disk area of the computer specified by IT Staff. Any questions regarding what should be stored with encryption should be directed to your supervising attorney. For information on encryption methods, staff should contact IT staff.

Texting[1]

DRTx recognizes the popularity of text messaging. Even though texting may not be secure, some clients prefer communicating with staff by text. If a client requests to communicate with staff by texting, the client must be advised that texting is not a secure mode of communication. The client should also be informed that texting does not replace, and is not a suitable replacement for, communication in person, by telephone or by video phone. The use of texting should be kept to a minimum and will primarily be used to communicate information regarding appointments and similar information. Clients should be discouraged from communicating protected health information, education information, attorney-client information or other confidential information by texting. No staff member should communicate protected health information, education information, attorney-client information or other confidential information by text message. If a client expresses a desire to request communication via texting, the client must sign the Client Request and Authorization for Text Message Communications. All communications via texting will be documented in the client's file in Legal Files.

Social Media and Social Networking

DRTx recognizes that many staff may participate in social networking activities on websites such as Facebook, LinkedIn, Twitter, Pinterest and Instagram, and participate in chat rooms, listservs, create and maintain personal websites or "blogs," and/or engage in other forms of personal internet use. DRTx does not intend to impinge on staff communication for any legitimate purpose. However, certain activities may negatively impact DRTx's reputation or its ability to effectively conduct its operations, or may expose the individual or DRTx to liability. Therefore, DRTx requires that staff observe the following when participating in social networking sites and/or engaging in other forms of internet use, regardless of whether the staff are on duty or off duty:

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1 This section is based on the Electronic Communication section of the DRTx Employee Handbook Work Rules and Policies Manual (11/2/14) and is not intended to revise, modify or change the work rules.

- Staff must adhere to all applicable DRTx policies as set forth in the Work Rules and Policies Manual and the Client Services Manual.

- Staff should ensure that their use of social media or networking during work hours is not excessive and does not interfere with job performance. Staff affiliating themselves with DRTx must clarify that they are speaking for themselves and not on behalf of the Organization. Staff should include disclaimer such as: "The views expressed in this ___ (website, blog, etc.) are my own and do not reflect the views of my employer, DRTx."

- Staff affiliating themselves with DRTx must ensure that social media activities are consistent with DRTx's high standards of professional conduct. Staff should not engage in the posting of pornography, obscenity, derogatory statements about a person's disability or any other forms of abusive conduct such as threats of violence.

- Staff should be professional, use good judgment and be accurate and honest in their communication on social networking sites. Errors, omissions or unprofessional language or behavior reflect poorly on DRTx and may result in liability for the staff or DRTx. Staff should be respectful and professional to co-workers, other advocacy groups, opposing parties and clients.

- If staff communicate on social networking sites about DRTx or disability - related matters, staff should disclose their connection with DRTx and their role with DRTx.

- DRTx strongly discourages the practice of "linking/ friending/ following/ subscribing to" any DRTx clients, Board or PAIMI Council members or persons that they supervise, on social media websites. Generally, staff should not initiate or accept friend requests from clients, Board or Council members or persons that are supervised by the Staff, on social media websites.

- DRTx strongly discourages staff from "linking/friending/following/subscribing to" an opposing party in a case.

- DRTx does not endorse people, products, services or organizations. Where a

staff member's affiliation to DRTx is known on social media websites, personal recommendations should not be given or requested.

- Staff are advised to set the security settings on personal accounts to the highest level of privacy, in order to ensure that personal comments cannot be seen by people not directly subscribed to their accounts.

- Staff must refrain from making work-related comments, particularly those that could be interpreted as divulging client- or case-related information. Clients should also be advised not to post any information about their cases, about advice provided to them by DRTx staff, or any information that they do not want the opposing counsel to use against them in a case. Posting such information could constitute a waiver of the attorney-client privilege and could be discoverable in a lawsuit or administrative proceeding.

- Staff using social media are expected to do so without infringing on the copyright laws of others.

- There is no such thing as a "private" social media site. Search engines can reveal posts years after the publication date. Comments can be forwarded or copied, and archival systems can save information even if a posting is deleted. Consequently, comments made online can always be seen by others, even by unintended parties.

- DRTx maintains a number of social media sites for DRTx. Staff are encouraged to send disability rights-related materials, including information about conferences and other events or news items, to the Communication Director for posting on DRTx social networking sites.

Nothing in this policy is intended to restrict the legitimate business use of social networking sites or staff rights under the National Labor Relations Act (NLRA).

XI. PROGRAM ELIGIBILITY

Part One: Programs

DRTx administers services under the following eight program areas.

Protection and Advocacy for Persons with Developmental Disabilities (PADD)

DRTx provides services to people with intellectual and developmental disabilities under the PADD program.

To be eligible to receive services an individual must have a disability that is:

- Severe and chronic, likely to continue indefinitely and
- A physical and/or mental impairment and
- Evident prior to the age of twenty-two (22),

and which

- Results in a substantial functional limitations in three or more of the following major life activities
  - Self-care
  - Receptive and expressive language
  - Mobility
  - Self-direction
  - Capacity for independent living
  - Economic self-sufficiency

and which

- Reflects the individual's need for a combination and sequence of special, interdisciplinary, or generic services, individualized supports, or other forms of assistance that are of lifelong or extended duration and are individually planned and coordinated.

Additionally, PADD can serve infants and young children younger than age 9 if the child has a substantial developmental delay or specific congenital or acquired condition, even without 3 functional limitations if the individual, without services and supports, has a high probability of meeting those criteria later in life.

Authority: The Developmental Disabilities Assistance and Bill of Rights Act of 2000, 42 U.S.C. § 15041 et seq., and implementing regulations at 45 CFR § 1326.1 et seq.

Protection and Advocacy for Individuals with Mental Illness (PAIMI)

DRTx provides services to people with mental illnesses under the PAIMI program. To be eligible for services under PAIMI, a client must:

- Have a significant mental illness or emotional impairment, as determined by a mental health professional qualified under the laws and regulations of the State of Texas; and
    - Who is an inpatient or resident in a facility rendering care or treatment, even if the whereabouts of such inpatient or resident are unknown; or
    - Who is in the process of being admitted to a facility rendering care or treatment, including persons being transported to such a facility; or
    - Lives in a community setting, including their own home.

  DRTx may provide protection and advocacy services for

- Individuals with mental illness as defined above including persons who report matters which occurred while they were individuals with mental illness;
- Persons who were individuals with mental illness who are residents of the State, but only with respect to matters which occur within 90 days after the date of the discharge of such individuals from a facility providing care or treatment; and
- Individuals with mental illness in Federal facilities rendering care or treatment who request representation by the eligible P&A system. Representation may be requested by an individual with mental illness, or by a legal guardian,

conservator or legal representative.

Additionally, DRTx gives priority to individuals receiving services in a facility or within 90 days of discharge from a facility.

PAIMI activities are carried out in a manner which allows program staff to:

- Interact regularly with those individuals who are current or potential recipients of protection and advocacy services;
- Interact regularly with staff providing care and treatment;
- Obtain information and review records; and
- Communicate with family members, social and community service workers and other involved in providing care or treatment.

Protection and Advocacy for Individual Rights (PAIR)

DRTx provides services to people with disabilities under the PAIR program. To be eligible to receive services an individual must have:

- A physical or mental impairment that substantially limits one or more major life activities, or
- Have a history or record of such an impairment, or
- Is perceived by others as having such an impairment, and
- Are ineligible for the PADD and PAIMI Programs and
- Seeking services beyond those authorized by CAP.

Client Assistance Program (CAP)

DRTx provides services to people with disabilities seeking or receiving services under the Rehabilitation Act through under CAP.

To be eligible for services under CAP, a person must be receiving or interested in receiving vocational rehabilitation (VR) services from Texas Workforce Solutions-Vocational Rehabilitation Services. DRTx also assists applicants and recipients of services from federally funded independent living centers (ILCs).

Protection and Advocacy for Assistive Technology (PAAT)

DRTx provides services under the PAAT program to people with disabilities who have been denied assistive technology devices and/or services that are necessary due to their disability.

To be eligible for services under PAAT, a person must be a person with a disability of any age, race or ethnicity who is or would be enabled by an assistive technology device or an assistive technology service to minimize deterioration in functioning, to maintain a level of functioning, or to achieve a greater level of functioning in any major life activity.

Protection and Advocacy for Beneficiaries of Social Security (PABSS)

DRTx provides services under the PABSS to people with a disability who receive the following benefits under the Social Security Act: Social Security Disability Insurance (SSDI) as a person with a disability, a disabled Widow(er) or a Childhood Disability Beneficiary under Title II; Supplemental Security Income (SSI) for disability or blindness under Title XVI; continued Medicaid coverage under section 1619(b); an SSI state supplementary payment based on disability or blindness; and extended Medicaid under Title XVIII after a period of disability under Title II has ended.

DRTx services under PABSS include information and referral services to beneficiaries with disabilities about work incentives and employment, including

information on the types of services and assistance that may be available to help beneficiaries to secure, maintain, or regain gainful employment including referrals to the local Work Incentives Planning and Assistance (WIPA) programs.

DRTx provides information and advice about obtaining vocational rehabilitation and employment services including providing dispute resolution services for beneficiary complaints about Employment Network (EN) services.

Additionally, DRTx can provide consultation and legal representation to beneficiaries with disabilities to secure, maintain, or regain gainful employment including youth receiving Supplemental Security Income and youth in transition.

Protection and Advocacy for Individuals with Traumatic Brain Injury (PATBI)

DRTx provides services to people who have experienced a traumatic brain injury and their families under the PATBI program.

To be eligible to receive services an individual must have a traumatic brain injury, meaning an acquired injury to the brain which does not include brain dysfunction caused by congenital or degenerative disorders, nor birth trauma, but may include brain injuries caused by anoxia due to trauma.

Protection and Advocacy for Voter Access (PAVA/HAVA)

DRTx provides services to ensure the full participation in the electoral process, including registering to vote, casting a vote, and accessing polling places, for people with disabilities under the PAVA program. Under PAVA/HAVA, DRTx monitors systems issues to ensure voting access for persons with disabilities. PAVA funds cannot be used to file lawsuits.

A particular type of client and case may satisfy the eligibility requirements for more than one funding source. Management will describe for staff how to determine the source to use. Because that choice is dictated by the relative size of federal grants that may change annually as well as what we spend from each fund, on a quarterly basis, management will periodically have to change its guidance on which source to

use. The main funding sources and particular eligibility requirements to consider are:

Foster Care

DRTx receives appointments from state courts to represent foster children with disabilities who are under the conservatorship of the Texas Department of Family and Protective Services. DRTx is typically appointed as attorney ad litem for the specific purpose of handling disability-related issues such as education, medical care, behavioral/mental health care and community integration. The courts pay DRTx's attorney's fees accrued in these cases.

Other Funding Sources

Occasionally, DRTx will receive funding from other sources besides the programs listed above. In those cases, management will provide direction on any particular rules or restrictions to be followed in working on any cases or projects funded by those additional funds. Staff may ask their manager questions about funding restriction or rules if they are ever in doubt about which funding should apply to a particular case and/or project.

Texas Access to Justice Foundation (TAJF) Programs

DRTx receives grants of funds from TAJF, primarily IOLTA/BCLS and Community ReDevelopment funding. DRTx uses such funds to provide free civil legal services only to eligible individual indigent persons with disabilities or low-income client groups, associations, and nonprofit organizations who serve persons with disabilities. DRTx utilizes TAJF's criteria relating to income, assets and liabilities in defining the indigent persons eligible to benefit from TAJF grants.

No fees may be charged to IOLTA/BCLS/ Community ReDevelopment clients. Staff will not request that IOLTA/BCLS/ Community ReDevelopment clients pay any of the expenses of litigation or for any other services.

Interest on Lawyers Trust Accounts (IOLTA)

IOLTA funds may not be used to directly fund class action lawsuits; to directly fund lawsuits against governmental entities, except by individuals to gain benefits authorized by statute or regulation (such as Medicare, Medicaid, Social Security, special education, public or subsidized housing, or other economic, shelter, or medical benefits); to support lobbying for a candidate or issue; and may not be used in matters that might reasonably be expected to result in a fee from public funds or from an opposing party unless appropriate attempts have been made to obtain representation from an attorney in private practice.

Basic Civil Legal Services (BCLS) or Community ReDevelopment

BCLS or Community ReDevelopment funds may not be used to directly or indirectly support a class action lawsuit; to directly or indirectly support a lawsuit against a governmental entity (except by groups or individuals to gain benefits authorized by statute or regulation), political party or candidate; to directly or indirectly support lobbying for or against a candidate or issue; to directly or indirectly support abortion litigation; to directly or indirectly represent an individual who is confined to jail or prison; to directly or indirectly provide legal services to an individual who is not legally in this country unless necessary to protect the physical safety of the individual; and in matters that might reasonably be expected to result in a fee from public funds or from an opposing party unless appropriate attempts have been made to obtain representation from an attorney in private practice. Funds from the Account may be used to support a lawsuit brought by an individual, solely on behalf of the individual or the individual's dependent or the person for whom they are serving as guardian, to compel a governmental entity to provide benefits that the individual or the individual's dependent or person for whom they are serving as guardian is expressly eligible to receive, by statute or regulation, including social security benefits, aid to families with dependent children, financial assistance under Chapter 31, Human Resources Code, food stamps, special education for persons with disabilities, Medicare, Medicaid, subsidized or public housing, and other economic, shelter or medical benefits provided by a government directly to an indigent individual, but not to support a claim for actual or punitive damages.

If due to these restrictions, IOLTA/BCLS or Community ReDevelopment funds may not be used for a particular case, DRTx staff may handle the case with funds from a federal program.

Choice of Funding Source

A particular type of client and case may satisfy the eligibility requirements for more than one funding source. Management will describe for staff how to determine source to use. Because that choice is dictated by the relative size of federal grants that may change annually as well as what we spend from each fund, on a quarterly basis, management will periodically have to change its guidance on which source to use.

Part Two: Income Eligibility for TAJF Programs

Our P&A services that are funded through congressional appropriations do not have income eligibility requirements for the people we serve. The following section relates to the 2018 income eligibility guidelines established by Texas Access to Justice Foundation (TAJF) maximum income levels for individuals and families eligible for assistance from TAJF-funded legal aid programs funded by IOLTA, BCLS and or Community ReDevelopment funds as well as other TAJF funding sources.

TAJF funds provide free civil legal services to individual indigent persons or low-income client groups, associations, and nonprofit organizations eligible under these guidelines and the TAJF enacting rules that outline eligibility and restrictions. TAJF updates eligibility guidelines annually. DRTx is required to adopt and utilize the TAJF criteria relating to income, assets, and liabilities defining the indigent persons eligible to benefit from TAJF grants The purpose of these income guidelines are to determine whether an individual seeking legal assistance, funded in part or whole with TAJF funds, has insufficient income and assets to make private legal assistance actually and practically available and is eligible for civil legal services funded by TAJF.

IOLTA & BCLS and Community ReDevelopment funds

Any individual with a disability whose income is125 percent of the federal poverty level or below and whose assets do not exceed the limits established in this policy, is eligible to be served with Interest on Lawyers Trust Accounts (IOLTA) and Basic Civil Legal Services (BCLS) dollars. For individuals being served with TAJF Community ReDevelopment (CRD) funds, TAJF defines low income as those who live at or below 200 percent of the federal poverty level, and their assets cannot exceed certain limits established in this policy.

Guidance for Determining IOLTA/BCLS or Community ReDevelopment Income Eligibility

In making financial eligibility determinations regarding individual applicants, DRTx will make reasonable inquiry regarding sources of the applicant's income, income prospects and assets. This will be done in a manner that promotes the development of trust between the attorney or advocate and the client. That information will be recorded in the intake application or client file. If there is substantial reason to doubt the accuracy of the financial eligibility information provided by an applicant or group, DRTx shall make appropriate inquiry to verify the information, in a manner consistent with the attorney-client relationship.

A total amount of the applicant's household income must be recorded even if it is zero. Records of TAJF client eligibility must be retained and be available for inspection in a manner consistent with attorney client confidentiality. In the event DRTx is co-counseling with or has been asked by another TAJF grantee to extend legal services or undertake representation on behalf of a client served by the other grantee, DRTx will rely upon the initial financial eligibility determination made by the other TAJF grantee and we will not review or re-determine the client's financial eligibility unless there is a change in financial eligibility status as described below or there is substantial reason to doubt the validity of the original determination, provided that the referring grantee provides DRTx a copy of the intake form documenting the financial eligibility of the client. The copy of the intake form will be retained in the client file.

If the person seeking services reports to DRTx that their total household income is

derived solely from a government program for low-income individuals or families that includes a needs-base test, then we may determine that the applicant is financially eligible based on those benefits. Examples of those who can be presumed to be IOLTA/BCLS income eligible would include:

- the person needing services currently resides in a Medicaid-funded institution (i.e., ICF-IDDs, nursing homes, SSLC);

- the person needing services is currently receiving treatment in a state psychiatric hospitals **and has been there for thirty (30) days or more**;

- the person needing services is an adult **and** a current recipient of Medicaid;

- the person needing services is a current beneficiary of the Social Security
- Income (SSI) program (of any age);

- the person needing services receives Section 8 HUD rental assistance or is a recipient of any current Texas Department of Housing and Community Affairs (TDHCA) housing program that serves persons under their criteria of "Extremely Low Income" household;

- the person needing services receives Texas Temporary Assistance for Needy Families (TANF) program or is member of a household that receives TANF;

- the person needing services is a current recipient of County Indigent Healthcare Program (CIHP).

For any client who is presumed income eligible, we must record household size, household income, and the specific identity of the government program.

For all other callers, determining IOLTA and BCLS eligibility, begins with Intake staff asking first how many individuals are in the household of the individual with a disability. Then determine whether the annual household income is below 125 percent of the poverty level by using the current income eligibility figures provided to intake specialist. The total amount of the applicant's household income must be recorded even if it is zero.

To determine monthly income, divide annual income by 12. For weekly income, divide annual income by 52, or divide monthly income by 4.2. Income received twice a month should be multiplied by 2 to establish monthly income. If the applicant is a seasonal employee, consideration can be based on previous year. Applicants shall be informed of their duty to report changes in their income should you accept their case.

If the person with a disability is living in a household with others and some of the expenses of the person with a disability are shared by the household, then all the residents of the household are counted in determining the number of individuals in the household, regardless of whether the person with a disability is an adult or a child. If the person with a disability lives with others, but handles his/her own share of expenses, then the household should be considered to have only one individual, the person with a disability, and one income, his/hers.

Group Representation

Group eligibility for TAJF-funded legal assistance must be limited to groups who have no resources for legal assistance and the assistance is to benefit the low-income individual or low-income community in which they reside. In representing a client group, association, or nonprofit organization, DRTx must comply with all of the other provisions of these rules and is subject to all of the prohibitions contained herein. A client group, association, or nonprofit organization is eligible if it provides information showing that it lacks, and has no practical means of obtaining, funds to retain private counsel and either:

i. The group, or for a non-membership group the organizing or operating body of the group, is primarily composed of individuals who would be financially eligible for this TAJF-funded legal assistance
ii. The group has as a principal activity the delivery of services, assistance or advocacy to those persons in the community who would be financially eligible for this TAJF-funded legal assistance and the legal assistance sought relates to such activity
iii. The group has as a principal activity the delivery of services, assistance

or advocacy to those persons in the community who would be financially eligible for this TAJF-funded legal assistance and the legal assistance sought relates to such activity.

2018 IOLTA/BCLS Financial Eligibility Guidelines

The purpose of the income guidelines is to determine whether an individual seeking legal assistance funded in part or whole with TAJF funds has insufficient income and assets to make private legal assistance actually and practically available and therefore is eligible under one of TAJF grant programs.

For individuals served with IOLTA, BCLS and other TAJF funds, TAJF defines low income as those who live at or below 125% of the federal poverty level, whose assets cannot exceed certain limits established in this guideline.

125 % of Poverty

Household Size	Annual Household Income
1	$15,175
2	$20,575
3	$25,975
4	$31,375
5	$36,775
6	$42,175
7	$47,575
8	$52,975
For each additional person in the household, add:	$5,400

2018 Community ReDevelopment Financial Eligibility Guidelines
In Community ReDevelopment funded cases, the client's gross income can be as high as 200% of the poverty line.

200 % of Poverty

Household Size	Annual Household Income
1	$24,280
2	$32,920
3	$41,560
4	$50,200
5	$58,840
6	$67,480
7	$76,120
8	$84,760
For each additional person in the household, add:	$8,640

Change in financial eligibility status

If, after making a determination of financial eligibility and accepting a client for service, DRTx becomes aware that a client has become financially ineligible through a change in circumstances, DRTx shall discontinue representation supported with TAJF funds if the change in circumstances is sufficient, and is likely to continue, to enable the client to afford private legal assistance, and discontinuation is not inconsistent with applicable rules of professional responsibility.

If, after making a determination of financial eligibility and accepting a client for service, DRTx later determines that the client is financially ineligible on the basis of later discovered or disclosed information, DRTx shall discontinue representation supported with TAJF funds if the discontinuation is not inconsistent with applicable rules of professional responsibility.

Asset Limitations

1. As required by TAJF, DRTx has the following asset policy as part of the income eligibility determination for individuals applying for services that are funding in whole or part by TAJF. This asset policy is reviewed and adopted by the board of directors annually or at intervals required by TAJF.

2. If the client has no countable assets, the intake specialist will report "*None*" in the appropriate area of the financial eligibility field.

3. An individual, not presumptively eligible as a beneficiary of a government program (see above), seeking assistance may not have total family assets disregarding exclusions, if in excess of the following:
    a. Liquid assets of $2,500 or non-liquid assets of $20,000.
    b. $5,000 in liquid assets or $40,000 in non-liquid assets if a member of the applicant's family is elderly, handicapped, or institutionalized.
4. An individual seeking assistance may not have total family assets, disregarding exclusions, in excess of the following:
    a. Liquid assets in excess of double, or non-liquid assets in excess of four times the estimated cost of obtaining private legal assistance for the matter on which assistance is sought.
    b. Liquid assets in excess of three times the estimated cost of obtaining private legal assistance for the matter on which assistance is sought, if a member of the applicant's family is elderly, handicapped, or institutionalized, in which case non-liquid assets may be disregarded.
5. Exclusion: The following items are to be excluded from consideration in determining whether an individual seeking assistance has assets in excess of those permitted:

a. The principal residence of an individual seeking assistance, or of any member of the applicant's family.
b. The reasonable equity value in work-related equipment which is essential to the employment or self-employment of an applicant or members of an applicant's family.
c. Any assets which are exempted from execution by Texas or Federal Law.

Definitions

1. **Family**: Includes only those persons related by blood or by law as relatives to the applicants for whom the applicant has a legal responsibility to support.

2. **Income**: Includes wages and earnings, unemployment compensation, workers' compensation, Social Security, Supplemental Security Income, public assistance, veterans' payments, survivor benefits, pension or retirement income, interest, dividends, rents, royalties, income from estates, trusts, educational assistance, alimony, child support, assistance from outside the household, and other miscellaneous sources.

- Noncash benefits (such as food stamps and housing subsidies) do not count towards income.
- Income considered before taxes.
- Income excludes capital gains or losses.
- If a person lives with a family, add income of all family members. (non-relatives, such as housemates, do not count unless they contribute regularly to help financially support the household.)
- Actual current annual total cash receipts before taxes of all persons who are resident members of and contribute to support of the family to the extent that such funds are legally and actually available to the family.

3. **Liquid Assets**: Assets that can readily and promptly be converted to cash by the individual seeking assistance, prior to the time that the assistance is required. Only net liquid assets, after subtracting all expenses of conversion and taxes, are considered.

4. **Non-Liquid Assets**: All assets other than liquid assets.
5. **Available Assets**: Assets to which the individual seeking assistance has legal and actual access without having to obtain the consent or cooperation of another person over whom the individual does not have control and who does not, in fact, consent or cooperate.

Note: There are ***no*** provisions to allow household incomes to exceed these TAJF maximum household income caps using certain deductions or expenses that could reduce the household income to meet TAJF grant income guidelines.

XII. CASE ACCEPTANCE

Definition of a Case

A "case" is a distinct legal problem or a series of closely related legal problems of a client, and legal activities or processes used in resolving those problems. Legal services involves advice, counsel and limited action as well as other types of legal representation. A case involves the provision of substantive information tailored to address a person's specific legal problem. In other words, it consists of applying legal judgment and recommending a specific course of action. Providing a person with a pamphlet or handout is legal information and not legal assistance. Intake specialists and advocates can provide legal services to clients as long as any advice or legal activities are under the supervision of an attorney. If an intake specialist or case handler assists an individual in more than one matter, each matter is a different case.

Case Acceptance Criteria

To be accepted as a case, all of the following conditions must be met.

1. Eligibility: The client must meet the eligibility criteria of the funding source(s) to be used in handling the case.

2. Priority: The matter must fall within the current annual priorities, including the special provisions in the preamble to the priorities, established by the DRTx Board of Directors. **CLICK FOR PRIORITIES.**

3. Merits: There is a reasonable likelihood of success based on the facts and law, further research is necessary to determine the merits, or the matter lacks sufficient merit but the client may benefit from advice in self- advocacy. In the latter two instances, the case may be accepted only for the limited purpose described.

4. Sufficient Resources: Staff who would be assigned the matter are able to take on an additional case and there are sufficient funds in the applicable funding source(s), as determined by management. In the absence of sufficient resources, a matter may be accepted as a case for the limited purpose of advising the client in self-advocacy.

Civil Commitment Cases

DRTX may only provide representation in civil commitment proceedings to obtain judicial review of the individual's commitment in order to appeal or otherwise challenge acts or omissions which have subjected the individual to abuse/neglect or otherwise violated the individual's rights.

Foster Care

On our Foster Care Team, DRTx only accepts cases involving foster children with disabilities upon receipt of an order appointing DRTx as attorney ad litem. DRTx does accept other cases involving foster children when it is not appointed as attorney ad litem. In such cases, the case acceptance criteria stated above apply.

Out-of-State Client and Cases

Residency in Texas is not a criterion for case acceptance. When the legal venue for a case is in Texas, we may choose to represent an individual who resides out of Texas, although the logistics of such representation must be considered and may result in rejection of the case. Conversely, a case in which the legal venue is in another state cannot be accepted unless we are co-counseling with the P&A, or other legal counsel, located in the state of legal venue. This requirement for out of state cases does not apply to ones in which DRTx is filing an amicus brief.

Cases DRTx Does NOT Accept

Although the priorities established by DRTx Board of Directors specify the type of cases we may accept and, by omission, those we may not accept, some of those priorities necessarily contain language that might be misinterpreted to encompass cases which they are not intended to include. The following types of cases are not within the priorities because the primary issue is typically not disability rights and/or they are commonly accepted by legal aid providers, the private bar, and court-appointed counsel:

- Social Security Determinations or Appeals
- Bankruptcy
- Criminal Law
- Family Law (divorce, child custody, etc.)
- Identity Theft
- Malpractice
- Mortgage Foreclosures
- Personal Injury
- Probate
- Wills

Parties DRTx Does Not Oppose & Parties DRTx Does Not Represent

Even when the subject matter is within our priorities, DRTx will not accept a case in which:

- The opposing party is a person with a disability – DRTx will not represent a person with a disability in an action against another person with a disability or the action where another party may have a disability and whose interest in the case may be adverse to a person with a disability requesting representation from DRTx. In cases where the conduct of one person with a disability adversely affects another, we may address the issue as a systemic problem and seek a remedy from the service provider without actually representing a person with a disability. In cases involving the Texas Department of Family and Protective Services, DRTx may represent a parent with a disability who is seeking to be reunited with their child with a disability who has been removed from the home is placed in foster care. This is based on the federal mandate that the Texas

Department of Family and Protective Services must make reasonable efforts to reunite the child with his or her family. Therefore, it deemed to be in the child's best interest to be reunited with his or her family.

- The proposed client does NOT have a disability - Portions of the Americans with Disabilities Act prohibit discrimination not only against people with disabilities, but also against persons who have a relationship or association with the person with the disability (i.e., caretaker, roommate, family member). Despite this coverage by the ADA, DRTx cannot represent these individuals who are subject to discrimination by association unless they too have a disability and meet the criteria for representation under one of DRTx programs.

- The proposed client is a care provider – DRTx will not represent care providers even if they share the interest of a person with a disability. Instead, we will seek representation of the person with the disability, his guardian, or next friend, or will proceed in DRTx's own name.

- The proposed client's claims are against a current or former employer and either (a) the employer's defense involves allegations that the client served people with disabilities poorly or engaged in misconduct in misconduct against a person with a disability, or (b) the client's allegations are critical of a person with a disability or of the obligation to serve persons with disabilities.

- The proposed client is on DRTx staff or is an immediate family member of a person on DRTx staff. Because of the complications presented in combining an employment relationship with an attorney-client relationship, DRTx will not represent current staff members unless the Legal Director approves it in writing.

Representing DRTX Board Members

DRTx Board members or their immediate family members may become clients of DRTx, but only pursuant to the same rules affecting eligibility, priorities and other selection criteria applied to all other prospective clients. In such circumstances, the Board member shall not use his or her board position to influence the services provided by DRTx staff but must disclose their membership on the Board of Directors when applying for services. Immediate family member includes the board member's spouse, children, parents, grandchildren, grandparents or siblings.

Case Rejection

Ineligible and Non-Priority

A request for case representation by someone who is not eligible under any of our programs or on a matter that clearly does not meet our priorities may be rejected by an intake specialist. When the caller questions the eligibility determination or the interpretation of our priorities, an intake specialist shall advise the caller of his or her right to appeal to the Legal Director and shall offer to send the caller a copy of the client appeal handout.

Priority

A request for case representation that appears to fall or may fall within DRTx priorities shall be rejected only at staffing or between staffings with the approval of the issue team's supervising attorney or the Legal Director.

Staffing

Before a case is assigned to an attorney or advocate, the case will be reviewed by the issue team's supervising attorney and then staffed by the issue team. An inquiry should be made by intake to determine whether the client is being represented on another issue by another issue team. Intake will also conduct a conflicts check to determine if DRTx has represented the opposing party on the same or similar matter.

When a case is assigned to an advocate or specialized intake worker, the client must be informed that the advocate or specialized intake worker is not an attorney and that the advice and legal services provided to the client has been approved by an attorney. When a case is assigned to an attorney or advocate, there must be a plan of action

and/or objectives for each case. The plan of action and/or objectives must be documented in Legal Files. For cases assigned to an advocate, the plan of action and/or objectives must be approved by the attorney supervising the advocate. Every case must have an acceptance letter or representation agreement. The acceptance letter or representation agreement must clearly specify the exact legal services that will be provided to the client. The client must sign the acceptance letter or representation agreement. The acceptance letter or representation agreement must be filed in the client's file in Legal Files.

Denial Letters

When a case is denied at intake or by an issue team, staff will send a denial letter which explains that the case was rejected because of non-priority, lack of merit, conflict, lack of resources or a combination of those reasons. Every denial letter shall notify the client of the right to appeal. Staff will attempt to refer the caller to other resources such as attorneys on the DRTx referral list who handle that type of case, legal aid programs, pro bono organizations, or lawyer referral services. An attorney should determine if the person requesting our assistance needs to be advised of an applicable statute of limitations or other deadline and any tort claims notices.

XIII. LOBBYING

DRTx is an IRS 501(c)(3) non-profit organization which receives various types of funding to support and operate its services. To preserve its tax exempt status and comply with conditions set by various funding sources, DRTx must adhere to certain prohibitions or limitations on activities that are considered to be lobbying. DRTX may use non-federal or other non-restricted funds for a certain amount of lobbying without jeopardizing its status as an IRS 501(c)(3) organization.

No federal funds or other funds with specific lobbying restrictions may be used to support lobbying activities to influence proposed or pending Federal or State legislation or appropriations. No federal funds or other funds with specific lobbying restrictions may be used to produce or distribute written, audio, or visual materials or publicity intended or designed to support or defeat any candidate for public office.

These restriction do not affect the right of DRTx to petition Congress or any other Government body or official using other nonfederal or other resources.

Lobbying includes “grass roots lobbying” and “direct lobbying.”

Direct lobbying refers to actions designed to influence a legislative body via direct communication with a member or employee of that legislative body or with a government official involved in the legislative process, including State legislation and promulgation of regulations by administrative agencies whether Federal, state or local.

Grassroots lobbying refers to actions designed to influence legislation via communications with the public that aim to alter public opinion vis-à-vis the legislation and encourage the audience to “take action” on the legislation.

There are several allowable activities that fall outside of the scope of direct and grassroots lobbying, such as educational campaigns; education, advise or support to policy makers presented in a balanced, non-partisan manner; objective communication and outreach on issues unrelated to pending legislation. DRTx may respond to public information inquiries, and may communicate with the public and with legislative bodies and other governmental agency decision-makers regarding the impact its current or proposed laws, practices, policies and activities on persons with disabilities. Federal funds may be used for these activities that are not direct or grassroots lobbying.

DRTx may (1) make available the results of non-partisan analysis, study, or research; (2) provide technical advice or assistance (where such advice would otherwise constitute the influencing of legislation) to a governmental body or committee; (3) appear before or communicate to any legislative body with respect to a possible decision that might affect the organization or persons with disabilities; and (4) communicate between the organization and its members with respect to legislation or proposed legislation of direct interest to the organization or persons with disabilities (so long as it does not constitute a direct appeal).

Any analysis, study, or research conducted by DRTx should contain a balanced, objective exposition of the facts to enable the public or an individual to form an

independent opinion or conclusion. DRTx may use Federal funds to submit a research report to a legislator on a given policy topic, so long as sharing the report falls within the purposes of the Federal grant and does not make a direct appeal to for action.

DRTx may use Federal funds to conduct educational campaigns that explain both the advantages and disadvantages of certain public policies or that demonstrate the efficiency and possible inefficiency of certain measures, so long as the communications are widely distributed.

DRTx may monitor, evaluate and comment on the development and implementation of Federal, State, and local laws, regulations, plans, budgets, levies, projects, policies and hearings affecting individuals with disabilities.

DRTx may provide technical advice or assistance to a governmental body or committee; or broadly disseminate evidence on options or alternatives for legislative or executive actions to achieve a given policy outcome, but such communications cannot refer to specific legislation or state a point of view on the action. Such activities are not lobbying.

Any non-policy staff member contemplating lobbying activity must provide a written proposal to Legal Director, or Deputy Director for approval. The proposal must set forth the entity to be lobbied, the staff members who will be engaged in the activity, the anticipated time to be devoted to the effort, and any proposed expenditures beyond staff time.

XIV. OUTREACH AND COMMUNITY RELATIONS

Outreach serves the purpose of informing the public about DRTx services and providing brief information about the legal rights of individuals with disabilities. DRTX has an outreach plan that is reviewed on a continuing basis.

Outreach is an activity that provides targeted information to specific populations regarding DRTX's activities and programs. Training is an activity that builds skills and knowledge of target populations. Training may be provided to people with disabilities and others.

DRTx may support or provide training, including related travel expenses, for people with mental illness, family members of such people, and other persons who are not program staff, contractors, or Board or council members, to increase knowledge about protection and advocacy issues, to enhance leadership capabilities, or to promote Federal-State and intra-State cooperation on matters related to mental health system improvement. The selection of individuals to receive this training will be made in accordance with the criteria and process established by DRTx for the training, and the priorities of the P&A programs.

XV. CASE MANAGEMENT

Attorney Review

The intake supervising attorney weekly reviews all intakes that are not assigned to an issue team which has its own specialized intake worker. For those intakes being handled by an issue team with a specialized intake worker, the issue team's supervising attorney will review the intakes on a weekly basis. When intakes are being handled as short term assistance cases by the specialized intake worker, the supervising attorney for the issue team will review the intakes to ensure that accurate and appropriate information has been given and that the intake forms and case data forms are completed correctly.

Acceptance Letters and Representation Agreements

Staff should draft a case acceptance letter for all cases within a week after the case is assigned and the client interviewed. It should state the client's issue and the nature and extent of DRTx's agreement to provide assistance. If the case handler is an advocate, the advocate will state in the acceptance letter that he or she is not an attorney and any legal work provided by the advocate is supervised by an attorney. In the acceptance letter, an advocate will also provide the name of the issue team's supervising attorney and inform the client that any complaints about the advocate's handling of the case should be sent to the issue team's supervising attorney. If the case requires further factual investigation or legal research, then the letter should limit the commitment to investigation and research. In an acceptance letter where a

client had been seeking representation in a lawsuit or administrative appeal or administrative complaint and the case was accepted only for investigation, the client will be advised that DRTx is only investigating the case and is not agreeing to file any lawsuit, administrative appeal or administrative complaint on behalf of the client. The acceptance letters for investigation only cases will also state that if a client wants to file a lawsuit, administrative appeal or administrative complaint before DRTx completes its investigation, the client should be advised in writing to retain another attorney. If such a case is determined to be of sufficient merit to proceed after the completion of the investigation, the case handler should send a second letter stating what he or she will do for the client. In the acceptance letter, the client will also be advised about all relevant statutes of limitation. A case acceptance letter must be signed by the client.

Staff must send a case acceptance letter before taking any specific advocacy steps on behalf of the client, unless immediate action is needed in order to preserve the client's claims and the client has consented to the specific advocacy steps proposed. In such situations, staff should document in the case file in Legal Files that the client verbally consented to taking action before sending an acceptance letter.

In cases heading to litigation, administrative hearings or an administrative complaint, the case handler will complete a representation agreement. A representation agreement must be signed by the client.

In cases in which DRTx has been appointed as the attorney ad litem for a foster child, the order appointing DRTx as attorney ad litem establishes the attorney-client relationship between DRTx and the child. In such cases, an acceptance letter and representation agreement are not required.

Initial Contact

Staff shall vigorously advocate for each client by performing casework in a timely and thorough manner. The attorney or an advocate assigned to investigate or handle the case shall initiate contact with the caller by phone, email or in-person the same week the case is assigned or transferred to the case handler unless a supervising attorney or advocate supervisor specifies an earlier or later date. If a case handler cannot contact a client during the same week the case is initially assigned or transferred to him or her, the case handler will ask the administrative staff person

assigned to his or her team to notify the client about when the case handler will be able to contact the client.

If the case handler is unsuccessful in reaching the client by phone, email or in person during the week assigned, the case handler should send a letter advising the client that his or her case will be closed if the client does not contact the case handler within ten (10) days of the receipt of the letter. Unsuccessful attempts to reach the caller by telephone, email or in person shall be documented in the case file in Legal Files.

Case-Related Investigations

Investigation cases may only be opened for a limited period of time. During the case staffing, a projected time period for completing the investigation should be established. The supervising attorney must approve any extensions for the completion of the investigation. If a statute of limitations is running in an investigation only case, please refer to the statutes of limitations in Part VI. Case-Related Deadlines.

Regular Contact

Attorneys and advocates should make contact by phone, email or correspondence with each client at least every 30 days, updating the client on the status of the case. If a client attempts to contact the case handler by telephone or email, the case handler should return the call or respond to the email within 24 hours. If the case handler is unable to contact the client within 24 hours, the case handler's legal assistant should notify the client that the case handler is not available and will respond to the call or email by a certain time. In those instances in which the nature of the case calls for no activity during an extended period, the case handler may, instead of monthly contact, advise the client that the case handler will not contact the client again until a specified date or event. The case handler will document the decision for not contacting the client monthly as a note in Legal Files. Staff should also send copies of all correspondence and key pleadings to the client. In addition to keeping the client reasonably informed about the status of the case, the case handler must promptly comply with a client's request for information about the case.

In cases in which DRTx is appointed as attorney ad litem for the child, state law

requires that DRTx meet in person with the child at least once prior to any court hearing which are typically set every 3 to 6 months. DRTx however maintains contact with the foster child on a regular basis by telephone or in person meetings prior to any treatment team meetings, ARD meetings or court hearings.

Supervision of Advocates

The legal work of an advocate and non-attorney supervisor will be supervised by an attorney. Any written advice given to a client by an advocate will be copied to the attorney supervising the advocate. The attorney supervising the advocate and/or the non-attorney supervisor are responsible for the quality and monitoring of the legal work provided by an advocate. In the acceptance letter, the advocate will provide the name of the team's supervising attorney and inform the client that any complaints about the advocate's handling of the case should be sent to the team's supervising attorney. Any complaint will be brought to the attention of the attorney supervising the advocate's casework.

The attorney supervising an advocate will have regular interactions with the advocate through formal conferences or informal discussions whenever the need arises. This can be done in person, by telephone or via email. These informal discussions and formal conferences must be documented in Legal Files. The documentation must be sufficient to record the issues addressed and the advice given.

During the weekly issue team meetings, the supervising attorney may be informed about the status of individual cases or any issues which may be addressed in cases. In addition to staffing intakes, the weekly issue team meetings will allow team members to exchange ideas and discuss recurring legal issues under the direction of the team's supervising attorney. It will also provide team members with an opportunity to re-staff cases. An attorney supervising an advocate or a non-attorney supervisor may attend treatment team meetings or other meetings where they have the opportunity to train or mentor an advocate. Before an advocate's case can be closed, the team's supervising attorney or an attorney supervising the advocate must approve the case for closure.

Caseloads

The caseload for an advocate is typically 30 to 40. The caseload for an issue team attorney is typically 25 to 35; for a senior litigation attorney, 20 to 25. Supervisors whose job descriptions include direct casework for clients should also maintain an active caseload, which could include co-counseling cases with team members, though the number of cases may vary between them due to the differences between teams and the supervisory duties they may or may not share with others.

For attorneys, developing and maintaining cases in litigation (including requests for administrative hearings) is a priority. The attorney's supervising attorney will determine how many cases in litigation is appropriate at any given time, considering the nature of the cases in litigation (e.g. class action, level of complexity), the extent of participation by co-counsel, and the experience of the attorney. For senior litigation attorneys, their caseload should include co-counseling cases with team members, systemic or complex lawsuits, amicus briefs, appeals and projects involving systemic issues. In conjunction with the issue team's policy specialist, the senior litigation attorneys also conduct outreach to other disability groups to find clients to develop new systemic cases.

All staff are expected to assure that their cases progress to completion in a reasonable period of time.

Media Contacts Concerning Cases

The Communications Director is primarily in charge of media communications and building media relations for DRTx. The Communications Director is a resource for DRTx staff to optimize DRTx media relations, provide consultation and advice to staff regarding all types of media use including social media, and is responsible for maintaining a record of all media contacts. If a staff member is considering using media as a strategy to support a client's case, the staff member should contact the Communications Director to discuss media strategy at least 5 business days (if feasible) prior to the date he or she would like to release information to the media. If a staff member is working in partnership with another organization and media is being considered, the staff member must inform the Communications Director of any press materials, press contacts, etc… as soon as media relations are being considered.

When a member of the media contacts DRTx through a Supervising Attorney, the Supervising Attorney will assess the need, decide how to respond and who will respond. If a DRTx staff member is contacted by the media, the staff member should inform the Communications Director and contact his/her Supervising Attorney for a decision on how to proceed. However, the Supervising Attorney will inform the Communications Director of all media contacts at all times. If the Supervising Attorney or a DRTx staff member needs information, counsel and/or advice from the Communications Director they should feel free to seek it.

Often times a response to the media is time-sensitive. DRTx may be asked to respond as quickly as possible to ongoing developments including developments during the legislative session. Should such a situation arise, DRTx staff will be responsive to media requests while at all times maintaining their Supervising Attorney and the Communications Director informed of the substance of the communication and any further steps needing to be taken.

Resolving Disputes

Disputes should be resolved whenever possible through a non-adversarial process involving negotiation, mediation and conciliation. Consistent with state and federal laws and the code of professional responsibility, family members should be involved in this process, as appropriate, where the client is:

1) a minor;
2) legally competent and chooses to involve the family member; or
3) legally incompetent and the legal guardian, conservator or other legal representative is a family member or the legal guardian, conservator or other legal representative chose to involve the family member.

DRTx staff must exhaust in a timely manner all administrative remedies, where appropriate, prior to initiating legal action in a federal or state court. This does not apply if the legal action is instituted to prevent or eliminate imminent serious harm to the client nor does it apply in circumstances where administrative procedures do not exist. If in pursing administrative remedies, DRTx staff determines that any matter with respect to the client will not be resolved within a reasonable time, DRTx staff may pursue alternative remedies, including initiating legal action.

CAP Negotiation Policy

CAP staff will attempt to obtain a favorable resolution for each client through the informal appeals process, using advocacy and good faith negotiation before resorting to an administrative hearing or litigation. When advocacy and negotiation are unsuccessful, the non-attorney supervisor, in consultation with the advocate and the supervising attorney, considers whether a fair hearing should be requested. When a fair hearing is requested, the client is advised of the option to resolve the dispute through mediation. CAP informs each client of both the appeals process and mediation options offered by the Texas Workforce Solutions-Vocational Rehabilitation Services, TWS-VRS.

Transfers

No case may be transferred to or from an attorney outside of DRTx without the approval of the Legal Director. Cases transferred within or between issue teams must be approved by the supervising attorney. The change in case handler should be documented in DADS and Legal Files. Also, the person whose case is being transferred should prepare a transfer memo or email apprising the new case handler about the status of the case including any deadlines, upcoming dates for hearings, meetings or other activities and any tasks that need to be completed. When a case handler is leaving employment with DRTx, file and case reviews must be conducted on all open cases that will be transferred to a new case handler. The new case handler must contact the client by phone, email or in-person the same week the case is transferred to the case handler unless a supervising attorney specifies an earlier or later date. If the case handler cannot contact the client during the same week the case is transferred to him or her, the case handler should ask the administrative staff person assigned to his or her team to notify the client about when the case handler would be able to contact the client.

Closure

A case handler shall close a case promptly (within 14 days) when the original goal for representation, as stated in the representation agreement or acceptance letter, has been met; when the client no longer wishes to pursue the stated goal; when the steps agreed to be taken have been taken; and no further activity by DRTx is planned on the matter in the agreement. The issue team's supervising attorney or the attorney

supervising an advocate must approve the closure of the case within 14 days from the receipt of the case handler's request to close the case. A case handler should not wait for a case review for approval to close a case.

If the client has a new, different problem and requests assistance with that problem, it should generally be treated as a new case and the old case should still be closed.

If the only activity planned is to monitor the case, it will be considered for closure at each case review. If problems might arise at some indeterminate point in the future, the case should be closed with the closure letter advising the client that he or she may return and request that the case be reopened if necessary. A case should not be left open simply because some assistance might be needed in the future.

Cases opened and closed at intake will be reviewed and approved for closure by the intake supervising attorney for a regular intake specialist or an issue team's supervising attorney for a specialized intake worker assigned to the issue team. The rationale for closure should be documented in Legal Files and DADS.

Cases opened under a priority that are later determined not to fall under any priority are closed as "non-priority" cases, if there was actual work done, such as an investigation or review of records. If no substantial work was conducted, the service request will be closed in DADS as an I&R, with the reason for closure noted as non-priority, lost contact, etc.

When a case is ready to close, the case handler, with the assistance from his or her legal secretary or administrative assistant, if available, will make sure that all relevant documents (i.e. acceptance letter and representation agreement, correspondence, release of information authorizations, notes and records) are saved in Legal Files. The case handler is also responsible for completing all relevant entries in File Set-Up in Legal Files. The case handler will also add a note entitled "Closing Summary" in Legal Files which briefly states: 1) the services provided; 2) outcome of services; and 3) status of the case. The closing summary should clearly state the reasons for closing the case.

The case handler must send a closing letter to the client. The rationale for closing the case must also be clearly stated in the closing letter. Whenever a case is closed

(even successful cases), the closure letter must include information about the appeal process and a client survey.

Advocates' case closures are reviewed by the issue team's supervising attorney or the attorney supervising the advocate. For issue teams with non-attorney supervisors, the non-attorney supervisor may recommend the closure of an advocate's case, and the supervising attorney or the attorney supervising the advocate reviews the recommendation. Attorneys' closures are reviewed by the supervising attorney. Supervising attorneys' closures are reviewed by the Legal Director.

A case should not be approved for closure unless the rationale for closing the case is clear from the closure letter to the client, and there is documentation in the file that demonstrates the priority issues in the case were appropriately addressed or that premature closure was necessary. If a case is not approved for closure, the supervising attorney will instruct the case handler what he or she must do before closure will be approved. If the case objective has been reached but has been insufficiently documented, additional documentation may be all that is required. If the case objective has not been reached and premature closure was not justified, the case handler will generally be required to reopen the case and complete the work.

At the discretion of the case handler's supervising attorney, cases may be presented for closure as they are completed or at other periodic times. In addition, however, at each case review, the supervising attorney or the non-attorney supervisor will determine if there are any cases which should be closed and will make a notation in the case review section of Legal Files. The case handler then must send the client a closure letter by the date specified in the case review, prepare a closing summary, and submit a request to the supervising attorney or the attorney supervising the advocate for approval to close the case. The person authorized to approve closure then has 14 days to review the case file in Legal Files to determine whether the case was properly handled and approve the closure in Legal Files and DADS. Case handlers and supervising attorneys should plan ahead by scheduling whatever time will be necessary to complete those tasks after each case review, within the time specified.

In cases in which DRTx is appointed as attorney ad litem for a foster child, the case is closed when the court dismisses DRTx as the attorney ad litem or dismisses the

case. The attorney handling the case will document in the case file a closing note that states that DRTx has been dismissed as attorney ad litem or that the case has been dismissed. DRTx will inform the foster child that he or she will no longer be represented by DRTx. No closure letter is sent to the foster child.

Client Surveys

As stated above, client surveys will be sent to clients with their closure letters in every case.

Client surveys may be returned by mail or completed electronically. The completed surveys are stored in an electronic database. Copies of the surveys are given to the case handler and the supervising attorney. Any unfavorable surveys are provided to the Legal Director who discusses the survey with the case handler and the supervising attorney. Client surveys will be considered in the case handler's annual performance evaluation.

Withdrawal of Client Services

With approval of the issue team's supervising attorney, staff may withdraw from providing case services in the following instances upon notice to the client if:

- the client is found to be ineligible subsequent to acceptance of the case;
- the client is dishonest or engages in serious misconduct toward DRTx or the opposing party;
- continued services appear clearly to be futile;
- in the ordinary practice of law, the Texas Disciplinary Rules of Professional Conduct for Lawyers would justify withdrawal; or
- a conflict arises because the opposing party has a disability.

XVI. LITIGATION

Litigation & Appeals

The supervising attorney for an issue team must approve all routine litigation that is being filed by the attorneys and senior litigation attorneys on the issue team. In addition to state and federal court lawsuits, all administrative hearings, including special education due process hearings, DARS fair hearings, and Medicaid fair hearings are considered "litigation." Formal mediation is also considered litigation for these purposes.

More complex litigation which involves a considerable expenditure of staff time or agency resources must be approved by the Legal Director prior to the initiation of litigation. If the Legal Director does not believe that an attorney has the skills to litigate the case, the Legal Director will confer with the supervising attorney about co-assigning the case with a senior litigation attorney or a more experienced attorney on the issue team. All appeals must be approved by the Legal Director.

Litigation budgets over $2,000 must be approved by the Legal Director before the litigation is initiated. In such cases, a litigation budget must be submitted to the Legal Director. The litigation budget should include: 1) a brief summary of the facts of the case; 2) a brief description of the legal claims being litigated in the case; and 3) proposed expenditures, including filing fees, experts, depositions and any other significant costs such as interpreters, etc. The approved litigation budget should be filed in the case file in Legal Files. For litigation budgets under $2,000, the attorney should submit the budget to the supervising attorney. If a client is indigent, an affidavit of inability to waive costs should be used to waive filing fees and other court costs.

Consultant agreements must be used for experts. The consultant agreements must be approved by the supervising attorney, Legal Director and Finance Director. Only the Executive Director, Legal Director and the Deputy Director have the authority to enter into contracts on behalf of DRTx, and as such the consultant agreements must be signed by one of them.

When a case is approved for litigation, the attorney handling the case should draft a brief description of the case and send it to the Legal Director's legal secretary for inclusion in the Board of Director's litigation report and the PAIMI Council's litigation report, if applicable. When the litigation is completed, a brief summary of the case should be sent to the Legal Director's secretary for the board litigation report. For PAIMI litigation only, quarterly updates must be sent to the Legal Director's legal secretary until the completion of the case.

In every litigated case, the attorney should use both formal and informal discovery when appropriate to obtain necessary information in a timely manner and useful format. When litigation is approved or shortly after litigation is initiated, the supervising attorney or the senior litigation attorney will confer with the attorney to consider evidence needed to successfully litigate the case, where the evidence is likely to be available (i.e. witnesses, documents etc.) and the least costly method for obtaining the necessary evidence. Instead of generating a separate discovery plan, the attorney should utilize the steps taken and next steps sections of the case review function in Legal Files to provide a brief summary of the discovery plan as well as any other action taken in the case.

The attorney should present a client's case at trial or on appeal in a manner that is appropriate to the rules, procedures and practices of the court, exhibit full understanding of the facts and law in the case and reflect thorough preparation. Until an attorney has demonstrated competency in handling a particular type of case at trial or on appeal, the supervising attorney will assign the senior litigation attorney or a more experienced attorney to co-counsel the case.

Co-Counseling

Co-counseling with private attorneys and other public interest advocacy groups enables DRTx to handle more litigation and to litigate cases requiring legal expertise outside of our usual areas of practice. DRTx attorneys may discuss with private attorneys or other public interest advocacy groups the possibility of co-counseling, on their own initiative or when asked by the private attorneys or public interest advocacy groups. Prior to reaching an agreement, however, the supervising attorney or the Legal Director must approve the arrangement. DRTx and any co-counsel must have a written co-counseling agreement which delineates the roles and responsibilities of each party. The co-counseling agreement must specify who will be lead counsel, how costs will be paid, and how costs and fees will be sought and divided between counsel and the client upon settlement or judgment. The co-counseling arrangement must be approved by the client in a joint representation agreement or by separate, complementary representation agreements.

If disagreements develop between DRTx and outside co-counsel, the supervising attorney who approved the arrangement should be consulted, and, if necessary, the Legal Director.

DRTx does not co-counsel cases with lay advocates even when lay advocacy is, by itself, permissible. As a legal office, all of our staff - advocates as well as attorneys – is held to a higher standard of representation that may be compromised by sharing responsibility with a lay advocate.

Joint Representation

DRTx may represent more than one client with similar claims as a group in a single lawsuit. In such cases, the attorney must advise the clients individually of the advantages and disadvantages of joint representation so that the individual clients can decide whether or not to allow DRTx to represent themselves and other clients as a group in a joint representation or to continue to represent the individual clients alone. The clients must individually sign joint representation agreements which: 1) confirm that DRTx does not believe a conflict of interest exists between the clients with similar claims; 2) explain the advantages and disadvantages of joint representation; and 3) allow the individual clients to decide whether to permit joint representation with other clients. Individual clients do not have to agree to allow joint representation.

Attorneys' Fees and Costs

Typically lawyers receive money from clients for the work they do on a case (known as "attorneys' fees") and for the money the lawyers spend while working on the case (known as "expenses and costs"). Unlike many law firms, DRTx is a non-profit legal services organization and in many cases DRTx does not require clients to pay any fees or costs associated with their cases. Much of the legal work done by DRTx is free and is provided at no cost to the clients. However, if a client can afford to pay some or all of DRTx's costs or attorneys' fees, the client may be asked to do so. The representation agreement between DRTx and the client will address how much attorneys' fees and costs will be paid by the client.

The representation agreement will specifically state whether DRTx will be paid attorneys' fees if: 1) the court awards attorneys' fees; or 2) DRTx obtains money for the client through either a court judgment or a settlement. If a client can obtain attorneys' fees as part of his or her legal claims, the client will assign this right to DRTx and authorize DRTx to seek attorneys' fees from the other party in the case. Even if a court does not award attorneys' fees in a case, a client can agree to pay DRTx's attorneys' fees if client obtains money through a court judgment or settlement. In the representation agreement, the client will agree upon the percentage of the judgment or settlement which will be paid to DRTx. If a court does not award attorneys' fees and if DRTx does not obtain any money for the client through a court judgment or settlement, the client does not owe any attorneys' fees to DRTx.

In addition to spending time working on a case, DRTx may also spend money litigating a case. Expenses could include costs of copies of client's records, court fees for filing or serving the lawsuit, court reporter fees for depositions, expert witness fees or court-ordered evaluations. As part of the representation agreement, the client will agree to reimburse DRTx for all of the expenses and costs if the client recovers enough money as part of a settlement, judgment or award of costs from the court to cover the costs. On the other hand, the client could agree to reimburse DRTx for all of the expenses and costs DRTx spends on the case but only up to an agreed upon amount. If the client cannot pay for all of DRTx's expenses and costs and the client subsequently recovers enough money as part of a settlement, judgment or award from the court to cover the remaining, unpaid expenses and costs, the client will pay DRTx the remaining expenses and costs from the settlement, judgment or award of costs. Even though the representation agreement specifies how much

DRTx can recover in attorneys' fees and costs, the Legal Director has the discretion of reducing the amount of attorneys' fees and costs collected by DRTx.

DRTx attorneys are required to keep accurate time sheets with time being recorded by the tenth of the hour. Attorneys' fees are an important source of revenue for DRTx. In cases where fees may be recovered, attorneys are required to maintain contemporaneous time records meeting the requirements of the courts.

In addition, when significant and/or numerous expenses and costs are anticipated in a case, the attorney shall request, by email to the Legal Director, that the expenses of a case be tracked before the lawsuit is filed.

When any settlement, judgment or award of attorneys' fees or costs are received in a case, DRTx will calculate and discuss with the client how much of the money will be divided between the client and DRTx as per the representation agreement. If DRTx is paid attorneys' fees as a percentage of a settlement or judgment, the percentage will be calculated before expenses and court costs are deducted.

DRTx will receive its attorneys' fees, expenses and costs before or at the same time the client receives any money from the case. This is often accomplished most easily when the opposing party in the case writes separate checks to DRTx and the client. If the opposing party does not agree to write separate checks to DRTx and the client, the payment should be made jointly to DRTx and the client, and the client will endorse the check so that DRTx can then immediately deposit the check and issue a separate check to the client for his or her share.

Settlements or receipt of any money from a case could have significant consequences for the client, such as the amount of taxes the client owes or the benefits the client is eligible to receive. DRTx staff are not tax or benefits professionals and cannot advise the client about such consequences. If a client receives a settlement, judgment or award of attorneys' fees or costs, DRTx will encourage the client to obtain advice on these issues and to report amounts received by the client to appropriate government authorities.

Pro Bono Representation

DRTx fully recognizes the legal profession as a valuable resource in addressing the needs of our clients with disabilities. DRTx seeks to expand its resources by involving pro bono attorneys and law students in representing our clients. The DRTx pro bono coordinator will be responsible for recruiting pro bono attorneys and law students and working with the issue teams to identify cases that could be assigned to the pro bono attorney and law students. Each pro bono attorney and law student must complete the DRTx volunteer forms and use DRTx electronic timesheet for volunteers to record the time spent working on a case.

DRTx offers the following pro bono opportunities for attorneys and law students:

- Limited Representation: A pro bono attorney or law student who is trained by DRTx will provide short term assistance to a client in a clinic sponsored by DRTx or through an issue team. In a clinic, an attorney or a law student can give advice to pro se litigants and help them evaluate their cases and prepare appropriate pleadings. A pro bono attorney or law student can also conduct intake and an initial assessment and offer preliminary advice to clients through an issue team.

- Individual Representation: A pro bono attorney will provide full representation to a client in an individual case on his or her own or as a co- counsel with DRTx. DRTx will recruit attorneys to handle these cases on a pro bono basis. Law students will also be offered the opportunity to work on cases under the supervision of a DRTx attorney or a pro bono attorney. Both pro bono attorneys and law students will be provided proper training and an opportunity to be mentored by DRTx attorneys.
- Systemic Legal Work: DRTx will offer opportunities to pro bono attorneys who prefer more complex legal work and are willing to engage in advocacy that involves multiple clients and systemic legal issues. These pro bono attorneys will serve as co-counsel with DRTx. Law students will also be afforded the opportunity to work on complex cases.

- Special Project: A pro bono attorney or law student may also assist in projects where his or her special expertise may be helpful. This could include researching and writing a white paper on issues that impact persons with disabilities or developing education and training materials for attorneys or persons with disabilities.

Pro bono attorneys and law students will be integrated into the DRTx issue team model. Each pro bono attorney and law student will be affiliated with an issue team and be supervised by an issue team attorney. DRTx will ensure that the client has a clear understanding of the role of the pro bono attorney or law student. Even though a pro bono attorney may be representing a client, DRTx will retain an attorney-client relationship with the client. The existence of the attorney-client relationship between DRTx and the client will allow DRTx to receive confidential information about the client so that DRTx can provide support to the pro bono attorney, oversee the representation and intervene if a problem arises between the client and the pro bono attorney. Pro bono attorneys and law students must complete DRTx's HB 300 training and comply with confidentiality requirements in section VI. Even though a client is represented by a pro bono attorney or law student, DRTx will maintain an electronic file in Legal Files for the client. All case documentation prepared or generated by the pro bono attorney or law student such as letters, pleadings and notes will be filed in the client's case in Legal Files.

A client represented by pro bono counsel will be advised on how to contact his or her pro bono attorney and informed that he or she will not be charged a fee for the pro bono representation. The client will also be told to contact the issue team's supervising attorney if the client has a complaint about representation by the pro bono attorney.

DRTx and the pro bono attorney will enter an agreement regarding: 1) who is responsible for the costs that may be incurred in the case; 2) the extent of involvement of DRTx staff in strategic decision making during the course of representation; 3) the level of back-up and support that DRTx will offer to the pro bono counsel in the case; and 4) the procedures that will be followed in the event of a complaint by the client regarding the representation.

The pro bono attorney or law student will record the time that he or she spends on a case. When a case is closed, the pro bono attorney or law student will provide a closing summary indicating that the case has been terminated and whether the client's objective was achieved.

XVII. INVESTIGATIONS OF REPORTS OF ABUSE AND NEGLECT

When DRTx receives a report or allegation of abuse or neglect, whoever receives the allegation shall:

- Determine whether the matter is actually a report or allegation of abuse or neglect and follow the procedures below. If it is not an allegation of abuse or neglect, the matter should be handled as a new intake.

- Speak promptly (if possible) with the contact to determine if the person may be in immediate jeopardy, and advising the contact that they may:

    - Call Texas Department of Family and Protective Services to report the abuse or neglect.

    - Call any other appropriate referrals under the circumstances, such as Texas Juvenile Justice Department Texas Commission on Jail Standards or Texas Health and Human Services Commission.

- Texas state law makes advocates and attorneys mandatory reporters of abuse or neglect. If you have reasonable cause to believe abuse or neglect, inform the individual that you must report the allegation and then make a report to the appropriate agency.

- In the case of reports or allegations of abuse or neglect received from an incarcerated person by letter, DRTX will promptly respond in writing to the person.

- Take appropriate steps to notify persons or entities with the authority to protect persons who may still be at risk.

- Write up the allegations as a new intake.

- Document the above in Legal Files.

Obtaining Records & Access to Facilities

Access to Records

Access to records shall be extended promptly to all authorized agents of DRTx. DRTx shall have access to the records of any of the following individuals with disabilities:

- An individual who is a client of DRTx if authorized by that individual or the legal guardian, conservator or other legal representative.
- An individual, including an individual who has died or whose whereabouts is unknown to whom all of the following conditions apply:

  o The individual, due to his or her mental or physical condition, is unable to authorize DRTx to have access.

  o The individual does not have a legal guardian, conservator or other legal representative, or the individual's guardian is the State or one of its political subdivisions; and

  o A complaint or report has been received and DRTx has determined that there is probable cause to believe that the individual has been or may be subject to abuse or neglect.

- An individual who has a legal guardian, conservator, or other legal representative, with respect to whom a complaint or report has been received by DRTx and with respect to whom DRTx has determined that there is probable cause to believe that the health or safety of the individual is in serious and immediate jeopardy, whenever all of the following conditions exists:

  o DRTx has made a good faith effort to contact the representative upon prompt receipt of the representative's name and address;

  o DRTx has made a good faith effort to offer assistance to the representative to resolve the situation; and

  o The representative has failed or refused to act on behalf of the individual.

The records to which DRTx must have (whether written or in another medium, draft, preliminary or final, including handwritten notes, electronic files, photographs or video or audiotape records) shall include, but shall not be limited to:

- Information and individual records, obtained in the course of providing intake, assessment, evaluation, supportive and other services, including medical records, financial records, and reports prepared or received by a member of the staff of a facility or program rendering care or treatment. This includes records stored or maintained in locations other than the facility or program as long as the system has obtained appropriate consent consistent with section 105(a)(4) of the PAIMI Act. The system shall request of facilities that in requesting records from service providers or other facilities on residents that they indicate in the release form the records may be subject to review by a system.

- Reports prepared by an agency charged with investigating abuse neglect, or injury occurring at a facility rendering care or treatment, or by or for the facility itself, that describe any or all of the following:

  o Abuse, neglect, or injury occurring at the facility;

  o The steps taken to investigate the incidents;

  o Reports and records, including personnel records, prepared or maintained by the facility, in connection with such reports of incidents; or

  o Supporting information that was relied upon in creating a report, including all information and records used or reviewed in preparing reports of abuse, neglect or injury such as records which describe persons who were interviewed, physical and documentary evidence that was reviewed, and the related investigative findings.

  o Discharge planning records.

- Reports prepared by individuals and entities performing certification or licensure reviews, or by professional accreditation organizations, as well as related assessments prepared for the facility by its staff, contractors or related entities, except that nothing in this section is intended to preempt State law protecting records produced by medical care evaluation or peer review committees.

- Professional, performance, building or other safety standards, demographic and statistical information relating to the facility.

DRTx shall have reasonable access and authority to interview and examine all relevant records of any facility service recipient (consistent with the provisions of section of this section) or employee. DRTx shall be permitted to inspect and copy

records, subject to a reasonable charge to offset duplicating costs, unless such costs are prohibited by State or Federal law.

The time period in which DRTx must be given access to records of individuals with disabilities varies depending on the following circumstances:

- If DRTx determines that there is probable cause to believe that the health or safety of the individual with a disability is in serious and immediate jeopardy, or in any case of the death of an individual with a disability, access to the records of the individual with a disability, shall be provided (including the right to inspect and copy records) to DRTx within 24 hours of receipt of DRTx's written request for the records without the consent of another party.
- In all other cases, access to records of individuals with disabilities shall be provided to DRTx within three business days after the receipt of such a written request from DRTx.

DRTx shall be permitted to inspect and copy information and records, subject to a reasonable charge to offset duplicating costs, unless such cost is prohibited by State and Federal law. If the service provider or its agents copy the records for DRTx, it may not charge DRTx an amount that would exceed the amount customarily charged other non–profit or State government agencies for reproducing documents. At its option, DRTx may make written notes when inspecting information and records, and may use its own photocopying equipment to obtain copies. If a party other than DRTx performs the photocopying or other reproduction of records, it shall provide the photocopies or reproductions to DRTx within the above time frames. In addition, where records are kept or maintained electronically they shall be provided to DRTx electronically.

The Health Insurance Portability and Accountability Act Privacy Rule permits the disclosure of protected health information (PHI) without the authorization of the individual to a P&A system to the extent that such disclosure is required by law and the disclosure complies with the requirements of that law.

Educational agencies, including public, private, and charter schools, as well as, public and private residential and non–residential schools, must provide DRTx with the name of and contact information for the parent or guardian of a student for whom DRTx has probable cause to obtain records under the DD Act.

If DRTx's access is denied or delayed beyond the deadlines above, DRTx shall be provided, within one business day after the expiration of such deadline, with a

written statement of reasons for the denial or delay. In the case of a denial for alleged lack of authorization, the name, address and telephone number of individuals with disabilities and legal guardians, conservators, or other legal representative will be included in the aforementioned response. All of the above information shall be provided whether or not DRTx has probable cause to suspect abuse or neglect, or has received a complaint.

When client confidential documents are necessary for an investigation or representation of the client, the case handler will obtain a signed authorization from, when required by this subsection, the client or the client's legally authorized representative, i.e. a parent if the client is under 18 or the client has a legal guardian. The case handler should not ask for an authorization if it is not needed to obtain records or to speak with someone who has confidential information about the client. Unnecessary requests for authorizations waste time and delay casework.

If a facility denies a case handler access to the individual who is the subject of the abuse or neglect investigation, the case handler will consult with the issue team's supervising attorney. When DRTx accesses records through a client's authorization, the case handler should use the DRTx authorization which complies with HB 300 and HIPAA. If the facility objects to the form of the DRTx authorization, the case handler should use the facility's form to expedite obtaining copies of the records and notify his or her supervising attorney. HB 300 and HIPAA have no effect on our P&A authority to access records when we have probable cause to believe that there has been abuse or neglect.

If psychiatric records obtained are marked by the doctor to indicate that they should not be shown to the client, staff shall not give the records or relay their contents to the client, as required by federal law. The case handler should tell the client to ask the doctor directly for the records. If the client persists in demanding the records from the case handler, he or she should immediately notify the Legal Director.

Unless otherwise approved by the issue team's supervising attorney, an advocate should not request records under our P&A authority unless the attorney supervising the advocate approves and reviews the request. The attorney supervising the advocate must advise the advocate about any deadlines for the entity responding to the request for records under our P&A authority. The advocate must tickle any response deadline on the advocate's and the team's electronic calendar. Any response to the request under the P&A authority must be given to the attorney

supervising the advocate. If an attorney representing the entity calls the advocate regarding the request under our P&A authority, the advocate should notify the attorney supervising the advocate immediately. If any records are received under our P&A authority, these records should be marked and segregated from any other records in the file to ensure that these records received under our P&A authority are not improperly disclosed to the client or any other person. If there is a request from our client or any other party for any records obtained under our P&A authority, the case handler should notify the team's supervising attorney immediately. It is our duty to protect the confidentiality of records obtained under our P&A authority.

An advocate should not request any records from a governmental entity under the Public Information Act a.k.a. Open Records Act unless the issue team's supervising attorney or the attorney supervising the advocate reviews and approves the request. The supervising attorney or the attorney supervising the advocate must advise the advocate about the date by which the governmental entity must respond to the Public Information Act request. The advocate must tickle the response date on the advocate's and the team's electronic calendar. If the governmental entity does not respond to the Public Information Act request by the deadline, the advocate must notify the attorney immediately. The advocate must provide the attorney with a copy of any response to the Public Information Act request upon receipt of the response.

In cases in which DRTx is appointed as attorney ad litem for a foster child, the order appointing DRTx as attorney ad litem authorizes DRTx's access to all of the child's records.

Access to Service Providers and Individuals with Disabilities

DRTx shall have reasonable unaccompanied access to service providers for routine circumstances. This includes areas which are used by individuals with disabilities and are accessible to individuals with disabilities at reasonable times, which at a minimum shall include normal working hours and visiting hours. DRTx also shall be permitted to attend treatment planning meetings concerning individuals with disabilities with the consent of the individual or his or her guardian, conservator or other legal representative, except that no consent is required if the individual, due to his or mental or physical condition, is unable to authorize the system to have access to a treatment planning meeting; and the individual does not have a legal guardian, conservator or other legal representative, or the individual's guardian is the State (or

one of its political subdivisions).

Access to service providers shall be afforded immediately upon an oral or written request by DRTx. Except where complying with DRTx's request would interfere with treatment or therapy to be provided, service providers shall provide access to individuals. If DRTx's access to an individual must be delayed beyond 24 hours to allow for the provision of treatment or therapy, DRTx shall receive access as soon as possible thereafter. In cases where a service provider denies DRTx access to an individual with a disability on the grounds that such access would interfere with the individual's treatment or therapy, the service provider shall, no later than 24 hours of DRTx's request, provide DRTx with a written statement from a physician stating that DRTx access to the individual will interfere with the individual's treatment and therapy, and the time and circumstances under which DRTx can interview the individual. If the physician states that the individual cannot be interviewed in the next 24 hours, DRTx and the service provider shall engage in a good faith interactive process to determine when and under what circumstances DRTx can interview the individual. If DRTx and the service provider are unable to agree upon the time and circumstance, they shall select a mutually agreeable independent physician who will determine when and under what circumstances the individual may be interviewed. The expense of the independent physician's services shall be paid for by the service provider. Individuals with disabilities subject to the requirements in this paragraph include adults and minors who have legal guardians or conservators.

DRTx's activities shall be conducted so as to minimize interference with service provider programs, respect individuals with disabilities' privacy interest, and honor a recipient's request to terminate an interview.

DRTx may provide information, training, and referral for programs addressing the needs of individuals with disabilities, information and training about individual rights, and the protection and advocacy services available from DRTx, including the name, address, and telephone number of DRTx. DRTx shall be permitted to post, in an area which individuals with disabilities receive services, a poster which states the protection and advocacy services available from DRTx, including the name, address and telephone number of DRTx.

DRTx may monitor to ensure compliance with the rights and safety of individuals with disabilities.

DRTx is authorized to access including, but is not limited to inspecting, viewing, photographing, and video recording all areas of a service provider's premises or under the service provider's supervision or control which are used by individuals

with disabilities or are accessible to them. This authority does not include photographing or video recording individuals with disabilities unless they consent or State laws allow such activities.

DRTx must be provided unaccompanied access to individuals with disabilities including, but not limited to, the opportunity to meet and communicate privately with individuals regularly, both formally and informally, by telephone, mail and in person. This authority shall also include the opportunity to meet, communicate with, or interview any individual with a disability, including a person thought to be the subject of abuse, who might be reasonably believed by DRTx to have knowledge of an incident under investigation or non-compliance with respect to the rights and safety of individuals with disabilities. DRTx shall not be required to provide the name or other identifying information regarding the individual with a disability with whom it plans to meet; neither may DRTx be required to justify or explain its interaction with such persons.

The right of access shall apply despite the existence of any State or local laws or regulations which restrict informal access to minors and adults with legal guardians or conservators. When DRTx monitors a facility with PAIMI eligible minors or PAIMI eligible individuals with guardians, DRTx will make every effort to ensure that the parents of minors or guardians of individuals in the care of a facility are informed that DRTx will be monitoring activities at the facility and may in the course of such monitoring have access to the minor or adult with a legal guardian. DRTx will not engage in an attorney/client or advocate/client relationship without appropriate consent, except in emergency situations where there is probable cause to believe that the health or safety of the individual is in serious and immediate jeopardy.

When DRTx is providing representation to individuals with mental illness in Federal facilities, DRTx shall have all the rights and authority accorded other representatives of residents of such facilities pursuant to State and Federal laws.

Selection of Facilities or Service Providers

Monitoring

DRTX monitors facilities where people with disabilities live or receive services to ensure safety, prevent instances of abuse or neglect, maximize independence, and assess community integration. Monitoring may involve using P&A access authority to visit, or seek information including: conducting interviews, observing and evaluating the physical conditions of the setting, and accessing and reviewing

facility records in accordance with federal and state law.

During monitoring activities, DRTx will:

- Identify and address incidents of abuse and neglect.
- Survey facility for environmental safety.
- Educate people with disabilities about their rights within facilities.
- Ensure appropriate services are provided.
- Confirm opportunities to participate in community activities.
- Identify people who could live in the community with support.

In compliance with federal mandates, DRTx monitors facilities licensed or operated by Texas Health and Human Services Commission. Whenever possible, DRTx has an ongoing presence in residential mental health care or treatment facilities and relevant hospital units.

When DRTx priorities and resources allow, additional monitoring activities may be conducted at community living and day service locations including those licensed or operated by the local mental health authority or Texas Health and Human Services Commission. Efforts are made to ensure monitoring in rural and other underserved areas.

Scheduling

When setting up time to monitor, efforts are made to ensure that residents will be at the facility during the visit. Monitoring visits are conducted at random times and may include nights or weekends as necessary to meet monitoring goals.

Barriers to Scheduling Monitoring

If a service provider or facility does not respond to a request for monitoring, DRTx contacts the administrator to educate regarding DRTx's responsibility as the P&A system. Should a service provider or facility refuse to allow monitoring, the Institutional Rights and Civil Liberties (IRCL) Supervising Attorney must be notified.

Attire/Administrative

For monitoring, the following should be considered.

- Dress comfortably and professionally.
- Wear comfortable, close-toed shoes.
- Keep in mind that long distance walking may be required.
- Remember some of the monitoring may be outdoors.
- Dangling earrings, necklaces, bracelets, may be distracting or a danger.
- A cell phone should be available at all times in case of an emergency.
- Turn off the ringer.
- DRTx identification card should be carried at all times.
- Other identification required by the facility, such as a driver's license or Department of Motor Vehicles (DMV) ID.

Visit to the Facility

An orientation tour of the service provider or facility should be scheduled for the first visit. The purpose of the tour is to also allow additional time to discuss P&A access authority, plan future monitoring, and orient to the service provider or facility operations. The DRTx Abuse and Neglect Facility Poster shall be posted during the first visit. When planning future monitoring visits consider:

- The onsite contact.
- Whether the administrator issued a memorandum to their staff about DRTx's presence in the facility, and request a copy.
- A location to meet privately with residents or service recipients.

First and foremost, pay attention to surroundings for safety. If at any time DRTx staff feel unsafe, contact the person in charge or leave the premises.

DRTx always follows the sign-in procedure of the service provider or facility. If there is refusal by the service provider or facility to allow DRTx staff in, do not force entry. If the administrator provided a memorandum, show that to the person who is objecting. If there is no memorandum; ask to speak to the contact person or administrator. If DRTx is still refused entry, leave the premises and contact the IRCL Supervising Attorney.

During monitoring, DRTx will:

- Visit the service recipients and survey the service provider or facility.
- Not interrupt programming.
- Communicate clearly.
- Treat everyone with respect and dignity.

- Introduce yourself to service recipients or residents and briefly explain why you are visiting.
- If a person does not want to speak with you be respectful of that choice and consider waiting until another time to talk with them.
- If a resident asks to speak with you, ask if they would like to talk privately. If so, take them to a space where you can communicate confidentially.
- Before leaving the facility, speak with the contact person and as appropriate provide an overview of your immediate concerns and determine what the facility plans to do in response.

Addressing Identified Issues/Concerns

If a problem is identified, alert the contact person to resolve the issue immediately if possible.

Other steps:

- Assist the person with self-advocacy skills.
- Refer the person to the patient rights advocate.
- Refer the person to the appropriate State Department licensure office or ombudsman.
- Submit the issue to intake.

Remember, in monitoring DRTx is seeking to take care of things that need to be addressed while at the facility or service provider. If something more needs to happen, submit an intake.

Systemic Monitoring

DRTx uses information acquired from state oversight agencies, quality assurance groups and internal data to identify trends, which are then used to guide selection of monitoring sites.

Death Reviews

One of our most important investigative functions is to determine whether the death of an individual with a disability resulted from abuse or neglect. The Institutional Rights and Civil Liberties (IRCL) team typically conducts the death investigations unless the facility in which the individual died is within scope of another issue team. If another issue team investigates a death, the investigation should be done in consultation with the IRCL team. Incidents of deaths involving persons with

disabilities are staffed and treated like any other cases handled by the issue team, including investigations under our P&A authority. The purpose of conducting death reviews is: 1) to investigate and consider filing a wrongful death claim on behalf of the decedent's estate; or 2) to identify and pursue any systemic changes necessary to prevent the death or injury of other persons with disabilities.

Abuse and Neglect Investigations

DRTx has broad authority under federal law to investigate incidents of abuse and neglect of persons with mental illness (42 U.S.C. § 10805), developmental disabilities (42 U.S.C. § 15043), traumatic brain injury (42 U.S.C. § 300D-53), and other disabilities (29 U.S.C. § 794e), if incidents are reported to DRTx, or if there is probable cause to believe that the incidents occurred.

If the health or safety of the individual is in serious and immediate jeopardy, DRTx will take steps to assure the client's immediate safety.

Abuse and Neglect Investigation Priorities

In order to effectively allocate DRTx's resources, these are the types of cases where DRTx may conduct an investigation.

- Death of a person with a disability which may have been as a result of abuse or neglect.
- Serious physical or emotional harm to a person with a disability which may have been caused by abuse or neglect.
- Serious rights violations of a person with a disability which may have been caused by abuse or neglect.
- Inappropriate, excessive or unlawful seclusion and/or restraint of a person with a disability which may have been caused by abuse or neglect.
- Sexual abuse of a person with a disability residing in a facility.
- Any other allegations of abuse or neglect that in the discretion of the Executive Director warrants an investigation.

PUBLIC REPORTS

- DRTx may issue a public report of its investigation, findings and recommendations. All public reports are approved by the Executive Director before the report is made public. DRTx may provide the subject (e.g. facility, service provider, state agency) of the public report an opportunity to review and comment on the report prior to its public release. DRTx may

include the written comments as an appendix to the public report.

- DRTx's public reports will maintain the confidentiality of clients, individuals who have been provided general information or technical assistance, and individuals who reported incidents of abuse or neglect or furnished information that formed the basis of a determination that probable cause existed and individuals who are residents and provided information for the report. In the event an investigation reveals information concerning a facility, its staff, or employees which warrants possible sanctions or corrective action, DRTx may report to the appropriate investigative or enforcement agency the investigation results while maintaining confidentiality of individual service recipients. This information may be reported to agencies responsible for facility licensing or accreditation, employee discipline, employee licensing or certification, or criminal prosecution.

- A copy of the public report is provided to the Board of Directors and PADD and PAIMI Advisory Councils.

PAIMI Definitions

Abuse: Any act or failure to act by an employee of a facility rendering care or treatment which was performed, or which was failed to be performed, knowingly, recklessly, or intentionally, and which caused, or may have caused, injury or death to an individual, and includes acts such as: (a) rape or sexual assault; (b) striking of an individual; (c) use of excessive force when placing an individual in bodily restraints; or, (d) use of bodily or chemical restraints on an individual which is not in compliance with federal and state laws and regulations.

Care or Treatment: Care or Treatment means services provided to prevent, identify, reduce or stabilize mental illness or emotional impairment such as mental health screening, evaluation, counseling, biomedical, behavioral and psychotherapies, supportive or other adjunctive therapies, medication supervision, special education and rehabilitation, even if only "as needed" or under a contractual arrangement.

Complaint: Complaint includes, but is not limited to any report or communication, whether formal or informal, written or oral, received by DRTX, including media accounts, newspaper articles, telephone calls (including anonymous calls) from any source alleging abuse or neglect of an individual with mental illness.

Facility: Facility includes any public or private residential setting that provides overnight care accompanied by treatment services. Facilities include, but are not limited to the following: general and psychiatric hospitals, nursing homes, board and care homes, community housing, juvenile detention facilities, homeless shelters, and jails and prisons, including all general areas as well as special mental health or forensic units.

Full Investigation:
Full Investigation is based upon a complaint or a determination of probable cause and means the access to facilities, clients and records authorized under this part that is necessary for DRTX to make a determination about whether an allegation of abuse or neglect is taking place or has taken place. Full investigations may be conducted independently or in cooperation with other agencies authorized to conduct similar investigations.

Legal Guardian, Conservator, and Legal Representative: Legal Guardian, Conservator, and Legal Representative all mean an individual whose appointment is made and regularly reviewed by a State court or agency empowered under State law to appoint and review such officers, and having authority to consent to health/mental health care or treatment of an individual with mental illness. It does not include persons acting only as a representative payee, persons acting only to handle financial payments, attorneys or persons acting on behalf of an individual with mental illness only in individual legal matters, or officials responsible for the provision of health or mental health services to an individual with mental illness, or their designees.

Neglect: Means a negligent act or omission by any individual responsible for providing services in a facility rendering care or treatment which causes or may have caused injury or death to an individual with mental illness or which placed an individual at risk of increased symptoms, compounding the illness, (decompensating), injury or death, and includes an act or omission such as the failure to establish or carry out an appropriate individual program plan or treatment plan, the failure to provide adequate nutrition, clothing, or health care, or the failure to provide a safe environment including the failure to maintain adequate numbers of appropriate trained staff.

Probable Cause: Probable cause means reasonable grounds for belief that an individual with mental illness has been, or may be at significant risk of being subject to abuse or neglect. The individual making such determination may base the decision on reasonable inferences drawn from his or her experience or training regarding similar incidents, conditions or problems that are usually associated with abuse or neglect.

Determination of "Probable Cause" may result from DRTx monitoring or other activities, including observation by DRTx staff, and reviews of monitoring and other reports prepared by others whether pertaining to people with mental illness or to general conditions affecting their health or safety.

XVIII. CASE FILES

Files & Documentation

Each service request for a client begins with collecting and placing information about the client and his or her case in DADS and then opening a case in Legal Files. Case documentation will be electronically filed in Legal Files. The official file for a client will be the electronic file in Legal Files and not a paper file. Case handlers may keep paper copies of case documents but legal assistants will not assist the case handler in organizing and maintaining the case handler's personal paper file.

Contact information for clients, collateral contacts and opposing parties must be completed in the People Section of the Navigation Menu in Legal Files. Case documentation should be recorded in Legal Files as soon as possible after the contact, activity or occurrence (preferably on the same day) so that notes are current to enable a person covering the case for the case handler to know the exact status of the case. Case documentation may be recorded in Legal Files as notes, emails or scanned copies of handwritten notes. Phone calls, facility visits, office visits, staffings, client services meetings such as treatment team or ARD meetings and hearings must be documented in Legal Files. Each note should document the date, time and location, people present at the visit, meeting or hearing and a short narrative of what transpired. Each note should be self-explanatory. If efforts to contact a client or other party are unsuccessful, each attempt should be noted in Legal Files. All correspondence, emails, voice messages, text messages and documents should be filed in Legal Files. Documents should be briefly and meaningfully identified.

It should be noted that a client has a right to obtain a copy of all of his or her case file and case-related documents except for documents obtained under our P&A authority. Case handlers must not include derogatory or negative statements about a client in the case notes or elsewhere because the client may obtain a copy of his or her records. If a client requests his or her records, the case handler should notify the

issue team's supervising attorney immediately.

Documentation Retention Guidelines

All records must be retained for at least the minimum period required by state or federal law or regulation. Any questions about specific legal retention requirements should be addressed to the issue team's supervising attorney or the Legal Director. Records related to any pending litigation, contemplated litigation or other dispute must, at a minimum, be preserved until the litigation or dispute is resolved. Any document destruction shall stop immediately upon the first indication of any litigation, contemplated litigation, dispute, investigation, or other inquiry relating to the subject matter of those records. No documents should be destroyed in relation to or in contemplation of an investigation or proper administration of any federal or state matter. Electronic records are treated as if they were regular "hard copy" documents.

In most circumstances, retaining a record for five years adequately balances the business benefits and burdens of collecting and maintaining records. Where no specific legal or other retention period applies to a document, the document should be retained for at least five years from the date of its making or last use, whichever is later. This is a general rule. Before destroying a specific document that has been retained pursuant to this five year rule, the Legal Director should be consulted.

The statute of limitations for bringing a legal malpractice claim is two years. A new client service request or file number and file shall be opened in Legal Files with each new client or matter. All client files should be closed immediately upon conclusion of the representation. All files should be reviewed by the case handler when they are closed to ensure the inclusion of any necessary documents. As stated above, the standard client file retention period will be five years from the date the matter was closed except for files that are the subject of any investigation, subpoena, discovery or claims against DRTx.

Materials included in the client file in Legal Files include the following: 1) client intake forms; 2) all papers and property furnished by or on behalf of the client, including, for example, health records, investigative reports from other agencies and other materials received during the course of the representation; 3) all items related to any litigation matters on behalf of the client, including, for example, depositions,

expert opinions and statements, witness statements and other materials which may have evidentiary value; 4) all pleadings, motions, discovery, memoranda and other litigation materials which have been executed and served or filed; 5) all internal notes or memoranda, including electronic communication generated during the course of representation; and 6) all correspondence, including electronic communication, with the client or third parties regarding the client, including copies of all enclosures or attachments, emails, text messages and voice messages.

Upon closing the client's file, the attorney handling the client file or supervising the advocate handling the client file shall designate whether the attorney should be notified that the client files are designated for destruction. The electronic file will be retained in Legal Files with any original paper documents such as will, trusts or any documents that have intrinsic value being returned to client or retained permanently.

Annually, with respect to all files that have become eligible for destruction, the Operations Manager will notify in writing each attorney responsible for such matter that the listed files are eligible for destruction. If the attorney has reason to believe the file still contains documents that the client is required by law to retain or that the client would foreseeably need to establish personal or property rights, the attorney should review the file before allowing the file to be destroyed. The file will be saved, but it should only contain those items that the attorney has identified as necessary to save. If the attorney requests continued retention of the files or documents, he or she should specify the number of additional years and the reason for continued retention to the Operations Manager and the Legal Director.

XIX. CASE REVIEWS AND FILE REVIEWS

File reviews and case reviews are conducted to learn the status of each case, to guide the case handler in determining next steps, to develop an understanding of best practices in both file and case management, to judge the quality and quantity of the case handler's current performance in direct client services, and to identify areas of improvement needed, if any.

A file review refers to the review and evaluation of the electronic case file in Legal Files. File reviews are conducted by the non-attorney supervisor for advocates or the supervising attorney.

A case review refers to the review and evaluation of the overall caseload--cases opened, ongoing, or closed since the last review--through discussion between the case handler and the reviewer. All case reviews will be documented in Legal Files. The case reviews for attorneys will be conducted by the supervising attorney. If an issue team has staff attorneys, the non-attorney supervisor and an attorney shall conduct case reviews of the advocates' cases. If the issue team only has a supervising attorney on its team, the non-attorney supervisor will prepare a summary of the case reviews of the advocates with sufficient detail to identify any changes in the plan of action and/or objectives in cases and to signal any need for further inquiry by the supervising attorney if a case is not proceeding properly. If a plan of action or objective for a case needs to be changed, the supervising attorney must approve the changes. The changes in the plan of action and/or objectives must be documented in Legal Files. The summary prepared by the non-attorney supervisor should include progress, problems and deadlines in the case. The non-attorney supervisor will send the summary of the case review to the supervising attorney.

Due dates for next steps will be tickled on the electronic calendar for the case handler. For every case review, a random sample of at least 10 cases will be reviewed in Legal Files to satisfy the file review requirement.

Case handler's cases should be reviewed on a periodic basis. The frequency of case reviews will be based on the experience and skill level of the case handler and could range from every three to six months. For newly hired staff, the reviews will be

more frequent, typically monthly. For senior litigation attorneys and supervising attorneys, case reviews could be conducted annually if these more experienced attorneys have demonstrated a consistent pattern of meeting standards. For case handlers who are inexperienced or are performing below standards, the supervising attorney will participate in each case review, review a larger sample of cases or conduct case reviews more frequently. If a file review does not meet standards, the supervising attorney will meet with the case handler to discuss the results of the review and any unacceptable patterns of practice identified in the file review. In addition when a staff member is leaving employment with DRTx, file and case reviews are conducted for all open cases that will be transferred to other staff members. Before a staff member's last day of employment, he or she should prepare a note in Legal Files which provides an update on the status of the case which identifies any upcoming dates for hearings, meetings and other activities and any tasks that need to be completed.

The Case Review

Case reviews should be scheduled well in advance. Case reviews are an important component of quality client services and are not to be canceled without simultaneously rescheduling to another date in the near future.

In reviewing each case, the person conducting the case review should determine whether the case handler:

1. handled any matter outside the scope of the case handler's issue team or any nonpriority matter without prior approval;
2. for cases opened since the last case review, made timely initial contact with the client in the manner required under the Case Acceptance and Regular Contact sections;
3. clearly described the plan of action and objectives in Legal Files;
4. took appropriate and timely action since the last case review or documented an acceptable reason for no action; and
5. closed the case in a timely manner if it was slated for closure at last case review unless closure is no longer appropriate.

The reviewer should document any deadlines, strategies or progress in the Reviewer's Comments in the Case Review section in Legal Files.

Case Review Outcome

Each case review will be judged satisfactory or unsatisfactory.

A case review will be considered satisfactory if any deficiencies in case management are minimal, considering the size of the caseload, the overall quality of the services provided - as evidenced by the case handler's analysis of the cases and actions taken, and the successful outcomes achieved for clients.

If either the non-attorney supervisor or the attorney conducting the case reviews believes there are significant deficiencies in case management, the supervising attorney will be briefed on the case review and the supervising attorney will evaluate the case handler's performance. If the supervising attorney believes there are significant deficiencies, the case review will be judged unsatisfactory.

The supervising attorney will discuss the outcome of each case review with the case handler. A copy of the completed case review, including the outcome, is sent to all participants in the case review within five working days after the review.

If a case review is determined to be unsatisfactory, the supervising attorney shall discuss the outcome with the case handler and the case handler's immediate supervisor and shall give him or her a memo which states:

- The deficiencies
- Extenuating circumstances that account for the deficiencies, if any
- Need for training and/or how the deficiencies can be remedied
- Whether future case reviews will be held more frequently and, if so, then
- Expectations for the next case review (i.e., corrections to be made, number of cases to be served, etc.).

If the outcome is unsatisfactory, the supervising attorney shall, in consultation with the Human Resources Director and the Legal Director, determine whether to initiate Corrective Action. This determination is based on the seriousness of the deficiencies

and whether a previous case review was unsatisfactory. Any time two case reviews are unsatisfactory within a year, corrective action must be taken. The supervising attorney will conduct subsequent case reviews after a Corrective Action is taken.

File Review

At the time of each case review or within one work week of it, the non-attorney supervisor or the supervising attorney will conduct a routine file review of at least ten cases of the case handler. However, depending upon the status of the case review or the files, the supervising attorney may decide that more extensive or frequent reviews should be conducted.

The file will be reviewed for compliance with the requirements stated above in the File and Documentation section in Part XV. Case Files.

File Review Outcome

If the non-attorney supervisor or supervising attorney observes a pattern of deficiency or high number of errors, missing documentation, incomplete or inappropriate documentation, the entire file review is unsatisfactory. The supervising attorney will then conduct a file review of all open, active cases and will discuss the findings of the file review with the case handler, followed by a memo which lists:

- The deficiencies;
- The corrections needed;
- The date and time for the next file review;
- The expectations for that file review; and
- Any training or technical assistance needed and to be provided to correct the errors.

Depending on the seriousness of the deficiencies and whether a previous file review was unsatisfactory, the supervising attorney may initiate Corrective Action after consulting with the Human Resources Director and the Legal Director.

XX. CLIENT APPEALS & CASE-RELATED AND SYSTEMIC COMPLAINTS

Appeals

A person who is dissatisfied with a DRTx denial or termination of client services may appeal the decision to the Legal Director within twenty (20) calendar days of the action or decision. The appeal may be made in writing to:

Legal Director Disability Rights Texas
2222 West Braker Lane
Austin, Texas 78758-1014
(512) 454-4816
Appeals@DisabilityRightsTx.org

Upon receiving the appeal, the Legal Director will investigate the action or decision and examine any additional information submitted with the appeal. The Legal Director will issue a written decision in response to the appeal within fourteen (14) calendar days of receiving the appeal. A person who is dissatisfied with the Legal Director's decision may seek review by the Executive Director within fourteen (14) calendar days of receipt of the Legal Director's decision. The request for review may be made by writing to:

Executive Director Disability Rights Texas
2222 West Braker Lane
Austin, Texas 78758
Appeals@DisabilityRightsTx.org

Upon receipt of a request for review, the Executive Director will investigate the decision and examine any additional information submitted with the request for review. The Executive Director will issue a written decision within fourteen (14) calendar days of receipt of the request for review. A person who is dissatisfied with the Executive Director's decision may seek review by the Board of Directors within fourteen (14) calendar days of receipt of the Legal Director's decision. The request for review may be made by writing to:

Grievance Committee of the Board of Directors Disability Rights Texas
2222 West Braker Lane
Austin, Texas 78758
Appeals@DisabilityRightsTx.org

The Grievance Committee will investigate the decision and examine any additional information submitted with the request for review. The Committee will issue a written decision within thirty (30) calendar days of receipt of the request for review. The decision of the Committee is final.

The Client Appeal and Case-Related and Systemic Complaints Policy will be posted on the DRTx website. Intake staff and case handlers shall make callers and clients aware of the right to appeal and shall provide them with copies of the appeal policy:

- orally, at intake, to a caller who disagrees with a determination that he or she is not eligible under our programs or that his or her case is not within priorities;
- in the denial letter;
- in the representation agreement or acceptance letter; and
- in case closure letter.

Case-Related Complaints

When a client expresses dissatisfaction with the manner or quality of our representation, as opposed to the denial of our services, he or she should be directed to the case handler's supervising attorney. If, after discussion with the supervising attorney, he or she remains unsatisfied, the supervising attorney will direct him or her to the Legal Director.

Callers or clients who request a list of board members or DRTx's funding sources will be advised of the internal procedures for client appeals and client complaints. If the caller or client still wishes to have the list of board members or funding sources, intake staff will send them a copy of each with the client appeal policy attached.

Systemic Complaints

A person who expresses dissatisfaction with DRTx's compliance with its federal mandates may file a complaint with the Legal Director. The complaint may be made in writing to:

Legal Director Disability Rights Texas
2222 West Braker Lane
Austin, Texas 78758-1014
(512) 454-4816
Appeals@DisabilityRightsTx.org

Upon receiving the appeal, the Legal Director will investigate the complaint and examine any additional information submitted with the complaint. The Legal Director will issue a written decision in response to the complaint within fourteen (14) calendar days after completing his or her investigation. A person who is dissatisfied with the Legal Director's decision may seek review by the Executive Director within fourteen (14) calendar days of receipt of the Legal Director's decision. The request for review may be made by writing to:

Executive Director Disability Rights Texas
2222 West Braker Lane
Austin, Texas 78758
Appeals@DisabilityRightsTx.org

Upon receipt of a request for review, the Executive Director will investigate the decision and examine any additional information submitted with the request for review. The Executive Director will issue a written decision within fourteen (14) calendar days of receipt of the request for review. A person who is dissatisfied with the Executive Director's decision may seek review by the Board of Directors within fourteen (14) calendar days of receipt of the Legal Director's decision. The request for review may be made by writing to:

Grievance Committee of the Board of Directors Disability Rights Texas
2222 West Braker Lane
Austin, Texas 78758
Appeals@DisabilityRightsTx.org

The Grievance Committee will investigate the decision and examine any additional information submitted with the request for review. The Committee will issue a written decision within thirty (30) calendar days of receipt of the request for review. The decision of the Committee is final.

The Client Appeal and Case-Related and Systemic Complaints Policy will be posted on the DRTx website. If a caller or client has concerns about DRTx's compliance with its federal mandates, intake staff and case handlers shall make callers and clients aware of the right to file a systemic complaint and shall provide them with copies of the Client Appeal and Case-Related or Systemic Complaint Policy.

XXI. POLICY SERVICES

Policy services are provided by policy specialists who serve as the content experts on issue teams and engage in systemic, legislative and regulatory policy advocacy aimed at improving the lives of persons with disabilities. The policy specialists support case handlers on issue teams with training and technical assistance and collaborating with team members to identify opportunities for policy advocacy that are well coordinated with other efforts of the issue team. The policy specialists conduct research, writes policy reports, and provides internal and external training in issues within the scope of the issue team. The policy specialists represent DRTx during the legislative session and interim, monitor and report on legislative and administrative agency actions, respond to requests for information, provide public testimony, and prepare and disseminate policy analysis to stakeholders. The policy specialist regularly address interested parties through oral presentations, written communications and active participation and leadership on various workgroups, advisory board, task forces and committees.

DRTx does not use any federal or state funds for lobbying or any activity designed to influence the enactment of legislation, appropriations, regulation, administrative action or executive order proposed or before Congress or any state government, or state or local legislative body. Federal funding may be used to inform, educate or advise policy makers on issues impacting persons with disabilities by providing a non-partisan, even-handed analysis of an issue, policy or legislation which provides a full and fair exposition of the pertinent facts to enable a policymaker to form an

independent opinion or conclusion. Unrestricted funding must be used whenever a policy specialist engages in any lobbying activity, including drafting legislation and any amendments to legislation or testifying or registering a position for or against a bill. Policy specialists must register as a lobbyist and comply with the reporting requirements for lobbyists under Texas law. Each policy specialist will be allocated a percentage of unrestricted funding for lobbying and will require the approval from the Legal Director or Deputy Director if he or she anticipates exceeding his or her unrestricted funding allocation. The policy specialist's time sheet must document the time spent on lobbying activities.

Policy specialists shall maintain project files in Legal Files for the legislative and regulatory work in which he or she engages. Such files should include any documents related to the legislative or regulatory activities including formal and informal comments on proposed regulations, written testimony on, for or against a bill, and any emails or other communications with legislative or agency staff regarding a bill or regulation.

XXII. SUICIDE CALLS, THREATS & SAFETY

Suicide Calls

Although calls from individuals in distress, including persons who are suicidal, elicit compassion and concern, DRTx staff members should not attempt to act as therapeutic counselors or serve as an "understanding friend" to these individuals. The reasons we should not are: (a) we are not licensed as counselors; (b) we would do the caller a serious injustice to try to talk him or her through these feelings without our first having appropriate training; and (c) we expose DRTx to liability if someone who contacts us harms himself or commits suicide after we have attempted to counsel him.

As with all calls, ask the caller for his or her name, address and phone number. If, after the call, a decision is made to report the threatened suicide, that information will be essential. Also take notes on whatever the caller says because it may be useful in deciding whether to report.

Inform the caller that we are sorry that he or she is so distressed, that we are a legal services organization and not a crisis-intervention service, and that we would encourage him or her to contact the local mental health authority's crisis intervention staff or other local suicide hotline number. Give the caller those numbers and tell him or her that DRTx cannot provide any further assistance regarding his or her feelings or psychological needs. Tell the caller we would be willing to try to help him or her with a legal issue.

Terminate the conversation as soon as possible and then immediately contact your supervising attorney or the Legal Director. Whether or not to report a client's expression of his or her intent to commit suicide is a question that requires consideration of our professional responsibility as a law office.

If the supervising attorney and the Legal Director are both unavailable, the staff member should talk to another issue team's supervising attorney when the staff member is able to reach. It is then the supervising attorney or Legal Director's responsibility to make the decision to contact anyone outside of DRTx concerning the threatened suicide. The staff member should contact no one outside of DRTx unless instructed to do so by a supervising attorney or the Legal Director or unless the threat of suicide is so immediate that an attempt is about to occur. In the event of this rare exception, if the caller is in the community, the staff member should call the police at 911. If the person is in a facility and that phone number can be readily obtained, the staff member should call the facility; if not, call the police at 911. The staff member shall report the disclosure immediately thereafter, orally and in writing, to the Legal Director.

DRTx is committed to a policy of developing and maintaining a relationship of trust with its clients and those seeking services from DRTx and, in furtherance of that basic objective, encourages and requires that its attorneys and advocates respect the autonomy and privacy of all its callers and clients. In addition, the Texas Rules of Professional Conduct for Lawyers imposes a duty upon attorneys not to reveal the confidential information of a client except in certain limited circumstances. Confidential information includes both privileged information under the rules of evidence, as well as non-privileged information, which is all information a person gives about himself or herself and his or her circumstances when that person contacts a law office for help.

DRTx believes that it is permissible under both the Texas Disciplinary Rules of Professional Conduct for Lawyers for an attorney or advocate acting under the supervision of an attorney under certain circumstances to reveal confidential information that a client intends to commit suicide to someone in a position to try to prevent the suicide. A decision to disclose such information must be made on a case-by-case basis consistent with the guidelines below and only when the facts clearly establish that the client is likely to attempt suicide.

In making a decision, which will almost always be the decision of a supervising attorney or the Legal Director about whether the facts clearly establish that a client is likely to attempt suicide, all of the factors described below shall be considered with respect to the particular client and circumstances. Obviously, with a first time caller, the only facts we will have will be what the caller said. With a current client, we will have more information on which to base a decision. Verbalization of the desire or intent to attempt suicide by itself will not be sufficient to satisfy the required standard, but any one of the other factors or a combination of any two or more of the factors listed below may be sufficient. The factors are:

- verbalization of desire or intent by the client to attempt suicide;
- any plan by the client to commit suicide that creates a reasonable belief that the client is likely to attempt suicide;
- whether means or methods are available for the client to attempt suicide;
- whether the client has previously attempted suicide;
- means or methods used during any previous suicide attempt; and
- willingness and capacity of the client to comply with an existing suicide contract with the medical treatment facility.

If a decision is made (again, almost always by a supervising attorney or the Legal Director) to reveal confidential information to a third party about a potential suicide attempt by a client, the confidential information disclosed shall be limited to the information helpful in preventing the potential suicide. No other confidential information shall be disclosed.

Following any such disclosure of confidential information about a client's potential attempt to commit suicide, the supervising attorney or the Legal Director shall inform the client in writing about the disclosure and the reasons for making such decision.

Threatening Callers and Clients

Callers and current clients may, at times, say something or behave in a way that a staff member believes is threatening or abusive to someone working for DRTx or to a third party. These situations present similar considerations to those occasioned by a threat of suicide, but, obviously, they present the additional consideration of harm to someone other than the caller. As with suicidal callers, and for similar reasons, immediately contact your supervising attorney or the Legal Director, if possible, while the caller is still on the line.

Under the Texas Disciplinary Rules of Professional Conduct for Lawyers, a law office may not reveal a caller's admission of a past, wrongful act and may not reveal a caller's threatened act except to the extent necessary to prevent a crime or fraud. A law office has a duty to report threats only when it has information establishing that a client is "likely to commit a criminal or fraudulent act that is likely to result in death or substantial bodily harm to a person." This means, for example, that we must keep confidential a caller's admission that he murdered someone. Our duty to report that a caller intends to hurt someone turns on whether the expected bodily harm is likely to be "substantial."

In making a decision (which will almost always be the decision of a supervising attorney or the Legal Director), the primary question is whether the person is likely to cause bodily harm to someone. If the person making the threat is a current client, a secondary consideration is whether there is a way that would be more appropriate for handling the situation than a report to law enforcement.

If the threat is against someone employed by DRTx or DRTx more generally, a supervising attorney or the Legal Director will inform all those believed to be at risk and will meet with the issue team's supervising attorney and office manager to determine what preventive measures will be taken. Whether or not we will continue to provide services to a current client who has made threats will be decided by the Legal Director after consultation with the issue team's supervising attorney, office manager and the case handler.

Abusive Callers and Clients

If a caller or client is abusive on the phone, warn the caller that you will end the call if he or she doesn't stop the verbal abuse, which includes the use of loud, coarse, derogatory or abusive language directed at DRTx staff. If he or she doesn't stop, you may hang up on the caller. Then report the incident to your supervising attorney.

In the event that a caller or client begins a pattern of making abusive calls, you should advise the caller or client that the use of abusive calls directed towards you or other DRTx staff cannot be tolerated and that such behavior should be discontinued. You should report the incident to your supervising attorney. If the caller or client ignores the warning to stop making abusive calls, you should notify your supervising attorney. Your supervising attorney, after consultation with the Legal Director and/or Executive Director, can take steps to place the caller or client on notice that he or she may be subject to immediate discontinuation of representation by DRTx or the ability to call DRTx and a possible bar to contact DRTx for an extended period of time.

Similarly, unwelcome calls to a staff member's home or cell phones should also be reported to the staff member's supervising attorney.

Insistent Visitors

If a visitor is insistent upon seeing someone without an appointment, but is not threatening violence and is not verbally abusive, notify the staff member requested of the visitor's desire to meet with him or her. Staff must not expect support staff to deal with these situations alone. If the staff member is available, he or she should meet with the client, at least to arrange an appointment. If the staff member is unavailable or fearful of meeting with the client alone, he or she should notify his or

her supervising attorney or the Legal Director if the supervising attorney is unavailable. Any meeting with the visitor shall be in an open area or open office.

Verbally Abusive Visitors

Visitors who are yelling at staff, cursing at staff, or making other loud and hostile noise towards staff will be told that they will have to leave unless they cease these behaviors. If they continue with the behaviors, staff should summon other staff. Once a second staff person is present, the visitor should be asked to leave. If they still refuse to quiet down or leave, the police should be called at 911. If they quiet down, staff should exercise discretion about whether they should be allowed to continue with what they came for, or asked to come back another time. If it seems that the behaviors could easily escalate again, they should be asked to come back another time.

If this is a client we know, we may make exceptions to the above policy. Staff who have a client who gets loud or abusive verbally as part of his or her disability, but is not actually harmful, should discuss the client with his or her supervising attorney. If an exception is to be made, the receptionist should be notified and prepared on how to deal with that particular client. When the client comes in, the receptionist should attempt to handle the client, and staff who works with the client should immediately be summoned.

If the visitor is loud and emotional, but not directing his or her emotion at staff in any kind of threatening way, he or she may be requested to be quiet or to leave. Such a visitor should not be treated as a threat.

Please be aware that some people, due to deafness or symptoms of a disability, use loud sounds in attempting to communicate. Some people increase their volume when frustrated; others for whom English is not their native language may lapse into another language with or without increased volume. None of these presentations by itself should be considered a threat.

Potentially Violent Visitors or Clients

It is difficult to predict who will or will not be violent. We must deal with people based only upon the behaviors they are exhibiting. We all come to this work with

fears and stereotypes about who may be violent, but we cannot allow those feelings to influence how we treat members of the public and our clients. If you have a client whom you believe to be violent or abusive, inform your supervising attorney.

If a visitor refuses to stop at reception, the receptionist will use the phone system's paging feature and request that the visitor return to reception. The page will also serve to alert other staff, who should both look out for their own safety and come to the assistance of the receptionist. Obviously, if the visitor is physically aggressive, has a weapon, or appears intent on harming someone, staff should see first to their own safety, alert other staff, and call the police at 911.

If the visitor makes a threat of bodily harm but does not attempt to assault staff, immediately call other staff and a manager, if available, for assistance. The manager will make an assessment of the seriousness of the threat and take appropriate action, which may include asking the individual to leave, calling in additional help, or calling the police at 911.

If, before meeting with someone, you suspect the person may become violent, alert your supervising attorney and the manager in your office regarding your suspicions. If a decision is made to meet nonetheless, arrange to meet with the individual in a conference room, leave the door open, and have another member of staff present or nearby.

If you have any reason to suspect that a client (or family member or anyone else in the home) may become violent, do not do a home visit. Meet in a public place. If a home visit seems necessary, discuss it with your supervising attorney. You may be directed not to go, to take someone with you, and/or to call the office from the client's residence and in the client's presence when you have arrived and to state how long you will be there. Do this as a routine, not in a confrontational manner.

If an assault occurs, management will meet with every staff member who was involved or witnessed any of the incident as soon as reasonably possible and discuss what happened. The supervising attorney must prepare and provide to the Executive Director a detailed incident report within twenty-four (24) hours of the incident.

When the assailant is a client, the report must also be submitted to the Legal Director. The Legal Director will review the situation with the Executive Director and will determine whether services will be immediately discontinued or will continue and, if so, under what circumstances and with what protections against future assaults. The Legal Director will notify the client in writing of the discontinuation of services or conditions of continued services. If a decision is made to ban the client from the office, staff will be notified to call the police if the client returns to the office.

Transporting Clients

Staff may not transport clients except in very limited circumstances as defined in the Organization's Work Rules and Policies / Employee Handbook.