

# Thoughts about an Agency Expert Witness Policy

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## Steps in Developing an Agency Expert Witness Policy

1. Gather information regarding needs of battered women in the community to gauge need and how to best help; balancing all issues.
2. Hold a staff discussion regarding the ethical considerations and pros and cons of providing expert testimony to ensure the policy is congruent with the agency's mission.
3. Solicit input from Board members, criminal defense attorneys, family law attorneys, judges and others likely to have good ideas on the policy.
4. Draft, with the help and support of at least one Board member, and submit a policy to the Board of Directors for formal adoption.
5. Once policy is adopted, provide to employees and develop agreement with attorney to serve as staff advisor – get Board approval for this arrangement.

## Recommended Checklist – An Agency Policy Should Address

- ✓ May staff testify? If so, when and how? Or, is it conditional depending on the case? Can staff make agreements on their own and what that means for them, such as taking time off?
- ✓ Fees: yes? No? Negotiable?
- ✓ If yes, who keeps the fee? How is that decided? Generally speaking, if the person is acting as a representative of an agency, that agency gets the fee; if she or he is doing it outside the agency and on their own, the fee is theirs and they are taking vacation time from the agency.
- ✓ Procedure for accepting or rejecting cases; how to determine.
- ✓ A contract or Letter of Understanding is wise – who drafts it? If it's a criminal case, a court order indicates the outlined agreement of what is expected and any fees.
- ✓ Training requirements for the staff who will serve as Expert Witnesses and the approval process of supervisors must be clear.
- ✓ Procedure for dealing with subpoenas
- ✓ Confidentiality issues, how does the staff Expert Witness ensure compliance with the policy governing confidentiality while also providing support to the victim?

- ✓ Types of cases
  - ▶ “Internal” – people dealt with by the agency – very important to consider if the case potentially opens the agency to probing
  - ▶ “External” – people *not* dealt with by the agency
  - ▶ Generic
  - ▶ Specific
  - ▶ Civil, criminal, personal injury, licensing boards, immigration
- ✓ Record keeping “Rule of Thumb”: Do not record anything in the files of shelter residents or victims receiving services that you would not say directly to her or you would be uncomfortable being quoted on the front page of the newspaper.
- ✓ Agreement is with whom? Individual? Her Attorney?
- ✓ Agency attorney to advise and raise issues of potential trouble; get approval of Board of Directors to consult with this person(s) in advance.
- ✓ Decision about working with victims / survivors who are incarcerated / jailed.
- ✓ Decision about working with batterers.
- ✓ As issues not covered in the policy surface, be sure to address them.
- ✓ Describe the resolution process.
- ✓ Regularly review the policy, perhaps annually for needed updates, preferably with a Board member to assist.
- ✓ Consider bringing in advisors from the community to discuss the experiences over the last year.