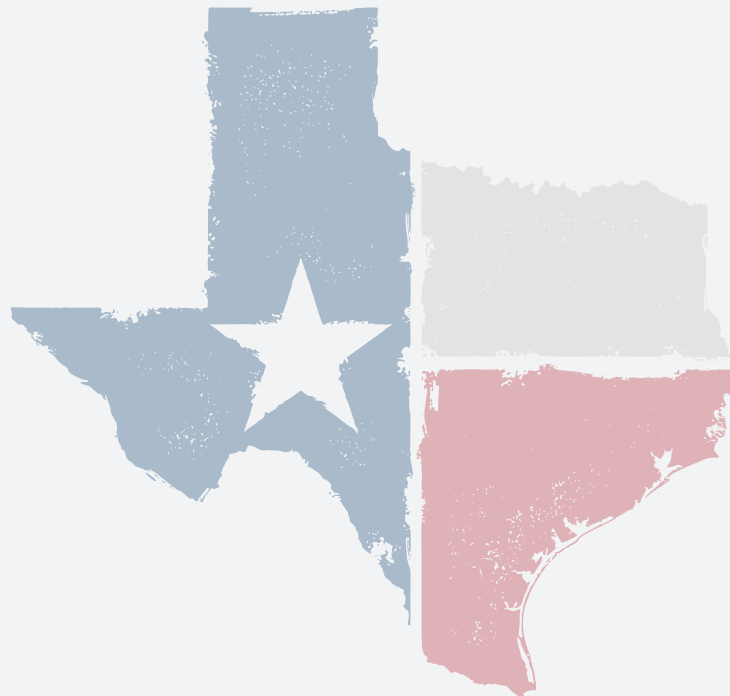


# Indigent Defense

# Attorney Mentoring in Texas:

## A GUIDE TO ESTABLISHING A MENTORSHIP PROGRAM



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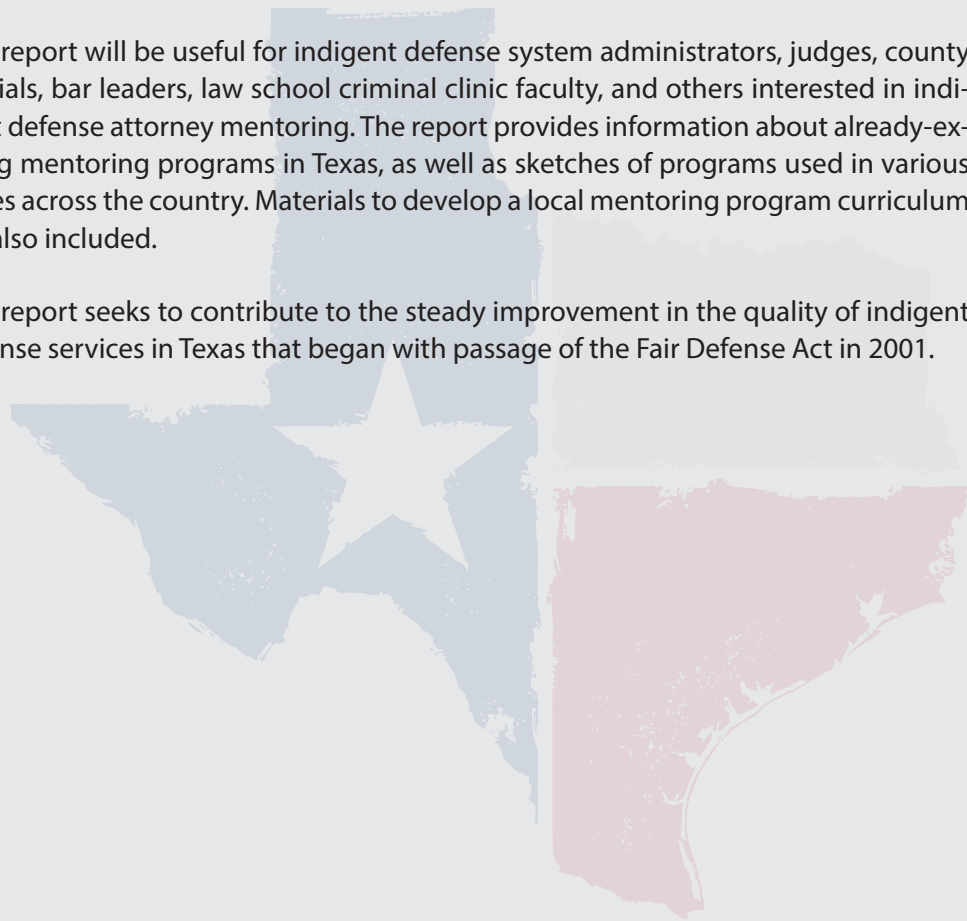
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# EXECUTIVE SUMMARY

In the summer of 2015, the Texas Indigent Defense Commission (TIDC) sought expert assistance to develop a report on mentoring programs for providers of indigent defense services in Texas. After a competitive request for proposals process, TIDC selected the National Legal Aid & Defender Association (NLADA) to produce a report to improve the qualifications and professional preparedness of indigent defense attorneys. NLADA undertook this project in partnership with Andrea Marsh, lecturer at the University of Texas School of Law.

This report will be useful for indigent defense system administrators, judges, county officials, bar leaders, law school criminal clinic faculty, and others interested in indigent defense attorney mentoring. The report provides information about already-existing mentoring programs in Texas, as well as sketches of programs used in various states across the country. Materials to develop a local mentoring program curriculum are also included.

This report seeks to contribute to the steady improvement in the quality of indigent defense services in Texas that began with passage of the Fair Defense Act in 2001.



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# CHAPTER 1

## WHY MENTORING

### I. INTRODUCTION

Texas has a county-based system of indigent defense in which counties are required to meet standards set by statute and the Texas Indigent Defense Commission. However, counties are given wide latitude in how they provide indigent defense services to account for the diversity among the circumstances and needs of Texas counties, from population to poverty level to the number of attorneys in the community. The majority of appointed cases in Texas are handled by private attorneys operating as solo practitioners.

Unlike states with centralized indigent defense delivery systems, such as a statewide public defender program, it is difficult in Texas for new attorneys hoping to do indigent criminal defense work to gain experience under the guidance and supervision of experienced attorneys. Concerns exist about the preparedness of attorneys in counties that permit attorneys to take cases with no prior criminal experience. In other counties, where attorneys must first try a number of cases before being permitted onto the case appointment list, some argue that too much experience is required, as trials are very uncommon.<sup>1</sup> Statewide, there are concerns that the criminal justice system incentivizes—through financial and systemic pressures—handling cases as expeditiously as possible. Such an atmosphere may undermine the effectiveness and zealotry of defense attorneys, and discourage high-quality, “client-centered” lawyering.

Mentoring is a way to equip lawyers who are interested in indigent defense with substantive skills, business acumen, and access to a network of like-minded colleagues to call upon for support. This report serves as a resource for Texas counties interested in implementing effective indigent defense attorney mentoring programs.

In the summer of 2015, the Texas Indigent Defense Commission (TIDC) contracted with the National Legal Aid & Defender Association (NLADA) to “Perform Indigent Defense Research and Professional Development Services.” The purpose of the contract was to produce a report on mentoring programs for providers of indigent

defense services that can be used by any jurisdiction in Texas to improve the qualifications and professional preparedness of attorneys. Founded in 1911 and located in Washington, DC, NLADA is America’s oldest and largest nonprofit association devoted to excellence in the delivery of legal services to those who cannot afford counsel. NLADA undertook this project in partnership with Andrea Marsh, lecturer at the University of Texas School of Law.

### II. METHODOLOGY

The three-part methodology for this report included: 1) a nationwide review of attorney mentoring programs; 2) an examination of existing indigent defense mentoring programs in Texas; and 3) the creation of a model mentoring program for Texas, which includes a modular curriculum and supporting materials. In addition, a nine-member Advisory Panel provided invaluable guidance and feedback for this report.<sup>2</sup>

For the examination of existing Texas indigent defense mentoring programs, we spoke by phone with individuals involved with developing and/or participating in programs in three Texas counties (Bell, Comal, and Lubbock counties). We also visited two jurisdictions—Harris and Travis counties—that have developed indigent defense mentoring programs. In addition to learning on-site about how these programs operate, we spoke with program participants about what was most successful and what might be replicable in other counties. We are immensely grateful to two of our Advisory Panel members, Alex Bunin and Trudy Strassburger, for organizing the interviews in Harris and Travis counties, respectively.

<sup>2</sup> The advisory panel member list appears on the Report Contributors page.

<sup>1</sup> In 2014, 3.1% of all criminal cases in Texas went to trial. See Annual Statistical Report for the Texas Judiciary: Fiscal Year 2014 at 49, available at <http://www.txcourts.gov/media/885306/Annual-Statistical-Report-FY-2014.pdf>.

In all, we spoke with 42 people in person or by phone in conducting research for this report. We appreciate the generosity of time and candor shared by all we interviewed.

The report is divided into four chapters. The balance of Chapter 1 provides background and context for why indigent defense mentoring is needed in Texas. Chapter 2 profiles several existing Texas mentoring programs that we examined. Chapter 3 sets out considerations that should go into the creation of any new mentoring program. Finally, Chapter 4 sets out a model mentoring program, complete with a suggested curriculum and multiple supporting resources. The report concludes with a six-point checklist for developing and implementing a mentoring program. Many of the supporting materials referenced in this report can be downloaded from the Texas Indigent Defense Commission's indigent defense attorney mentoring resources page.<sup>3</sup>

### III. BACKGROUND

The Sixth Amendment of the U.S. Constitution guarantees the right to assistance of counsel for defendants in criminal matters. In 1963, the Supreme Court decision *Gideon v. Wainwright* clarified that this right extends to people who are unable to afford an attorney in state felony cases. Subsequent opinions extended the right to counsel to misdemeanors which carry a possible punishment of incarceration and to juvenile delinquency matters. The burden of carrying out this mandate falls on states and localities, and states have responded to *Gideon* and its progeny in various ways. In Texas, indigent defense services are organized and delivered at the county level and funded primarily by the counties.<sup>4</sup>

Under the Fair Defense Act, each of the state's 254 counties is required to prepare a plan for how it delivers indigent defense.<sup>5</sup> Counties may choose from several delivery systems. The most commonly used method is the ad hoc assigned counsel system, through which eligible attorneys selected from a list maintained by the court are paid a per-case fee or hourly rate for each case handled.<sup>6</sup>

3 <http://www.tidc.texas.gov/resources/publications/reports/special-reports/indigent-defense-attorney-mentoring-in-texas>

4 In 2014, \$229,943,369 was spent on indigent defense statewide, which included state formula grants of \$36,752,937 (16.0%) and state discretionary grants totaling \$6,924,255 (3%). See <http://tidc.tamu.edu/Public.Net/>.

5 The "Fair Defense Act" is the popular name for all of the 2001 revisions to state statutes governing indigent defense. Texas Fair Defense Act, 77th Leg., R.S., ch. 906.

6 The Texas Indigent Defense Commission reports that in 2014, of all indigent defense case appointments, public defender cases composed 12% of felony cases and 15% of misdemeanor cases statewide; contract cases composed 11% of non-capital felony cases and 0.8% of misdemeanor cases; and MAC cases composed 3% of felony cases and 2% of misdemeanor cases. The balance of cases were assigned counsel cases, composing 74% of felony cases and 82% of misdemeanor cases.

Another option, used by roughly two dozen counties, is to use a contract defender program to handle all of the cases assigned for an agreed-upon amount. Yet another option is to use an organized public defender office. Fourteen counties use a county public defender office for some portion of the non-capital indigent client caseload, and four counties participate in a regional public defender office.<sup>7</sup> Finally, three counties use a managed assigned counsel program (known as a MAC). In a MAC, the administration of indigent defense appointments and payments is handled by a county department or nonprofit entity that is separate from the courts. Many counties use more than one type of indigent defense delivery system.<sup>8</sup>

### IV. WHY MENTORING?

In any professional context, mentoring develops confidence and competence and allows experienced professionals to pass their wisdom, good practices, and support onto those new to the field. In the legal field, the concept of mentoring is as old as the profession itself. Years ago, entry to the field was much more of a practical endeavor. New lawyers learned their trade by apprenticing for practicing lawyers. Over time, legal education moved away from on-the-job training to the academic enterprise it is today.<sup>9</sup> However, the recent growth in law school clinical programs and increased encouragement of law student experiential learning signal the need for more of a balance between academic and practical instruction nationally.<sup>10</sup> In somewhat of a return to the past, a growing number of states are establishing mentoring programs for new attorneys. For example, both Georgia and Utah mandate mentoring for new lawyers.

Traditional law school training, with its emphasis on teaching legal doctrine and analysis, does little to give new attorneys practical lawyering skills. Not all law students are able to participate in legal clinics or internships that build practical skills. Even more experienced attorneys may need mentoring if they change the focus

7 A regional public defender program that handles only capital cases operates in 162 counties. See Regional Public Defender for Capital Cases, *Capital Public Defender's Office Mission Statement*, <http://rpdo.org/>.

8 For information on each county's system, see Texas Indigent Defense Commission Public site, <http://tidc.tamu.edu/public.net/Reports/ID-PlanNarrative.aspx>.

9 See Mark A. Fogg & Richard L. Gabriel & Margrit Lent Parker, *The Mentoring Relationship: How to Make it Work and Why it Matters*, 42 *The Colorado Lawyer* 53 (October 2013), available at [http://coloradomentoring.org/wp-content/uploads/2013/09/10-2013\\_FoggGabrielParker.pdf](http://coloradomentoring.org/wp-content/uploads/2013/09/10-2013_FoggGabrielParker.pdf).

10 For example, Standard 303 of the ABA Standards and Rules of Procedure for Approval of Law Schools 2014-2015 mandates that law students take "one or more experiential course(s) totaling at least six credit hours. An experiential course must be a simulation course, a law clinic, or a field placement." American Bar Association, ABA Standards and Rules of Procedure for Approval of Law Schools 2014-2015, available at <http://goo.gl/hpLXS9>.

of their law practice after starting out in one area. Mentoring, along with training, is a way to gain the confidence, skills, and network that equip lawyers to enter a new practice area.

In addition to these general factors, mentoring for attorneys who wish to work in indigent defense in Texas is particularly needed for a number of reasons detailed in the following sections.

## V. SUPPORT FOR SOLO AND SMALL FIRM PRACTITIONERS

The highly autonomous defense bar structure in Texas offers few paths to gaining experience as a competent, client-centered indigent defense practitioner.<sup>11</sup> This contrasts with the experience of new prosecutors, who join a department of county government under the supervision of experienced attorneys. Unlike in many other states, in Texas there are few opportunities to enter the practice as a public defender and learn under the supervision of more experienced attorneys. Instead, after passing the bar many attorneys simply “hang a shingle” and begin as a solo practitioner, learning on whatever cases they manage to land. Alternately, some new attorneys seek work with a prosecutor’s office to gain experience, even though they prefer criminal defense work.

Informal apprenticeship is an accepted, if not expected, path for criminal defense attorneys in Texas. New attorneys learn from shadowing more experienced attorneys or by sitting as second chair on cases that are going to trial. While this arrangement has trained many criminal defense lawyers in Texas, it depends on both the availability and willingness of experienced attorneys to serve as mentors.

To succeed as a solo practitioner, one needs a host of abilities. A lawyer needs to develop basic business skills, learn the do’s and don’ts of local court culture, master the different skill sets of both pre-trial and trial advocacy, and develop client relations capacity. Experienced attorneys who have successfully managed their own solo business are the best source of first-hand knowledge on how to balance indigent defense cases with retained cases to produce an adequate living.

## VI. IMPACT OF THE FAIR DEFENSE ACT

By increasing access to mentors, inexperienced attorneys will be better able to gain the knowledge and skills required to practice criminal defense in Texas. To the extent that mentoring is structured to address an established set of knowledge and skills, it could make it easier for new lawyers committed to criminal defense practice to enter the field without compromising the quality of representation available to indigent defendants.

<sup>11</sup> For a discussion of “client-centered” practice, see *infra* Section X.

Prior to 2001, Texas law specified that “only licensed individuals may be appointed as counsel” but did not require lawyers to possess any other qualifications to be eligible to receive court appointments in criminal cases, no matter how serious the charges.<sup>12</sup> The 2000 Texas Applesseed “Fair Defense Report” documented that, while a few counties had established local attorney qualifications, many more assigned cases to any lawyer engaged in criminal defense practice, and some deemed any lawyer in the county eligible for appointment—including lawyers with no criminal law experience whatsoever.<sup>13</sup> New attorneys often started handling felony cases right away because in many counties misdemeanor appointments were rare, and most misdemeanor defendants pleaded guilty without any legal representation.<sup>14</sup> These practices fed the perception that lawyers who represented indigent defendants were inexperienced,<sup>15</sup> and the absence of transparent attorney qualification standards for indigent defense cases also created the appearance of judicial favoritism or cronyism in the allocation of appointments.<sup>16</sup>

In response to public concern about the quality of representation provided to indigent defendants, in 2001 the Texas Legislature passed the Fair Defense Act. Among other provisions, it requires Texas counties to create public appointment lists that contain the names of attorneys who meet “objective qualifications” for receiving court appointments.<sup>17</sup> County response to this mandate has been the creation of various eligibility requirements. More experience is required to accept more serious cases, and separate lists are maintained for appointments in capital felonies, non-capital felonies, misdemeanors, and juvenile delinquency cases. In some counties, the criteria developed make it challenging for lawyers who want to practice criminal defense to enter the field or to gain experience needed to advance to handling more serious cases. There is a risk in some counties that the lists will not be adequately replenished as attorneys age and stop taking on case appointments, thereby over-burdening those attorneys remaining on the lists. In summary, while implementing eligibility requirements addressed a real problem with attorney screening that

<sup>12</sup> See Texas Applesseed, The Fair Defense Report: Analysis of Indigent Defense Practices in Texas 24 (2000), available at <https://www.texas-applesseed.org/sites/default/files/184-FairDefenseAct-ApplesseedAnalysisReport.pdf> (citing *Ex parte Engle*, 418 S.W.2d 671, 673 (Tex. Crim. App. 1967)).

<sup>13</sup> *Id.* at 15-16, 24.

<sup>14</sup> *Id.* at 44.

<sup>15</sup> See Allan K. Butcher & Michael K. Moore, Muting Gideon’s Trumpet: The Crisis in Indigent Criminal Defense in Texas, A Report Received by the State Bar of Texas from the Committee on Legal Services to the Poor in Criminal Matters 6 (2000), available at <http://www.prisonpolicy.org/scans/last.pdf>.

<sup>16</sup> Texas Applesseed, *supra* note 13 at 44; see also Butcher & Moore, *supra* note 16 at 12-13.

<sup>17</sup> Tex. Code Crim. Proc. art. 26.04 (d), (f), (g).

existed prior to adoption of the Fair Defense Act, it has produced some unintended consequences. Providing more training and oversight to new criminal defense lawyers in Texas could help address those consequences, while also assuring that qualified attorneys are taking criminal appointments.

## VII. PATH TO APPOINTMENT LISTS

In an effort to assess the differing eligibility requirements for attorneys to begin taking court appointed cases across Texas, we examined all 254 county plans.<sup>18</sup> Broadly speaking, there are three identifiable categories that encompass the range of requirements (from minimal to rigorous) to accept misdemeanor cases, the entry-tier for court appointments. Ninety-nine counties require no prior experience but seek some minor indicators of law practice, such as having a working fax/phone and no disciplinary problems in the recent past.<sup>19</sup> One hundred and twenty-seven counties require some specified period of generalized criminal law experience (usually one to two years). Finally, 28 counties require a specific amount of trial experience, the most rigorous requirement for entry-level criminal appointment work in the state.

As mentioned, in many states new lawyers dedicated to representing indigent defendants can obtain experience in a public defender's office, under the supervision and with the support of more experienced criminal defense lawyers in the same office. In Texas, many new lawyers obtain the experience required to represent indigent defendants either by working for a few years in a prosecutor's office or by opening a solo practice without any formal training or supervision.<sup>20</sup> Each path creates challenges to effectively representing indigent clients.

Among former prosecutors, a lawyer can leave the prosecutor's office with experience satisfying most counties' "objective qualifications" for very serious cases based on the number of cases he or she tried as a prosecutor. However, he or she will likely have no training or experience in, for example, working with defense clients and their families, conducting an investigation independent of the police, or defense counsel's obligations to the client at the end of the case.

When new lawyers committed to representing indigent defendants open a solo practice, they can gain the required trial experience by representing retained or appointed clients in counties that require less experience for appointed cases. However, this "trial by fire" method provides no guarantee that the lawyer learned "the right way." The low trial rate in misdemeanor court makes

18 All are available at <http://tidc.tamu.edu/public.net/Reports/IDPlan-Narrative.aspx>.

19 The Texas Administrative Code sets out one requirement - completion of 6 hours of CLE per year - that applies to all attorneys statewide.

20 Very few new attorneys with no experience are taken on as associates in private law firms, where they can learn criminal law under the supervision of more senior attorneys.

gaining the necessary trial experience difficult, as it could take years to meet the minimum trial requirement for some counties' appointment lists. This could force an attorney to move into different practice areas in order to build a business and may prove challenging to professional growth.

Mentoring programs can better equip attorneys in both scenarios. Structured mentoring programs that include a training component, as in Travis County, can offer an accelerated path to becoming an indigent defense attorney for those who wish to take criminal defense appointments but struggle to gain the requisite trial experience.

## VIII. WORKING WITH INDIGENT CLIENTS

Many indigent clients face life challenges—such as homelessness, untreated mental health or substance abuse issues, or poor access to transportation—that complicate effective attorney-client communication. Other dilemmas arise when clients are detained pre-trial simply because they are unable to afford bond. Some clients will be eager to plead guilty quickly—even in cases in which there is a very good chance of acquittal, reduced charges, or diversion—just to resolve their cases so they can return home sooner. Clients may also fail to meet the requirements for certain diversion programs due to their inability to pay the requisite fees. Mentoring from other experienced indigent defense lawyers may provide alternative solutions and can help address issues that arise in representing low-income clients.

## IX. WHAT IS MENTORING AND HOW DOES IT DIFFER FROM TRAINING?

While mentoring and training are related, they are also distinct. Both are vital for the new lawyer. Training includes continuing legal education (CLE), in which attorneys attend a lecture on a particular topic; specialty sessions involving substantive legal material and on-your-feet practice, such as those from the Texas Criminal Defense Lawyers Association (TCDLA) or the Center for American and International Law (CAIL); and case simulation, such as mock trials. Trial advocacy courses are perhaps the most identifiable type of attorney training, with their emphasis on all aspects of practice that come into play once a case is going to trial, such as voir dire, opening statements, direct and cross examination, entering evidence, and closing statements.



While these types of training are crucial for new attorneys, trainings alone are often not enough.<sup>21</sup> Mentoring involves individualized sharing of advice and follow-up support, which has proven effective for adult learners. Adult learning principles indicate that adults tend to prefer learning experientially and learn best when they can use their past experiences as a basis for learning. Adult learners seek information that is directly relevant to their work.<sup>22</sup> Mentoring provides individualized attention to address a new attorney's specific needs.

New attorneys can also benefit enormously from shadowing an experienced attorney as he or she goes through the multiple functions involved in indigent defense cases: conducting an initial client interview, meeting with the client's family, working with an investigator, seeking approval for an expert, preparing and arguing pretrial motions, seeking and reviewing discovery, and other case activities. In the process, a mentor can explain why particular actions are undertaken and the rationale behind specific choices. This type of instruction complements second chairing, in which a more junior attorney agrees to sit with and help an experienced attorney in a trial case and learns by direct observation. With second chair arrangements during trial, there is little time for detailed explanation of what goes into particular decisions.

Mentors can help new attorneys understand criminal practice particularities in their county. Each courthouse has its own sets of procedures, forms, quirks, and processes. Additionally, mentors can introduce a new attorney to key criminal justice players in one's jurisdiction, e.g., the bailiff, pretrial services staff, clerks, prosecutors, and judges. Attorneys also need to learn what social and medical services are available in their county to assist clients (for example, services related to mental health).

Mentor-mentee relationships create a "safe space" where attorneys feel comfortable asking questions, especially those that could potentially make them appear "stupid," as we were told in our interviews. When attorneys have designated mentors they know they can call upon, they need not worry about imposing on busy attorneys who may lack the time or desire to help them. Perhaps most crucially, by accessing important information early on, new attorneys are less likely to develop bad habits and make mistakes that could have easily been avoided if they had simply asked for guidance.

21 In fact, some of the training may over-emphasize trial skills, considering that only about three percent of all cases go to trial in Texas. See *supra* note 1. This low trial rate is consistent with national averages. In 2006, the most recent year for which national data are available, 94% of felony convictions in state courts were the result of guilty pleas. See U.S. Department of Justice, Bureau of Justice Statistics, *Felony Sentences in State Courts 2006 - Statistical Tables 25 (Table 4.1)* (2009), available at <http://bjs.ojp.usdoj.gov/content/pub/pdf/fssc06st.pdf>.

22 See Renee Sherman et al., Pelavin Research Institute, *Adult Educators' Guide to Designing Instructor Mentoring 4-6*. (April 2000), available at <http://www.calpro-online.org/pubs/mentoring%20Guide.pdf>.

## X. WHY THE EMPHASIS ON CLIENT-CENTERED REPRESENTATION?

Although popular culture portrays the criminal justice system as one in which cases are adjudicated with prosecutors and defense attorneys squaring off in days-long trials, the overwhelming majority of criminal cases are resolved through negotiated pleas or diversion programs. Criminal courts are fast-paced and high-volume. Indigent defense cases make up a substantial portion of all criminal cases. In Texas in 2014, over 70 percent of felony cases and over 40 percent of misdemeanor cases were defended by appointed counsel. Private practice attorneys who represent indigent clients are typically paid far less than they earn with retained clients and are provided with few resources to adequately investigate and develop each case. Whether private assigned counsel or public defender, there are undeniable pressures to conclude cases as quickly as possible without compromising professional and ethical responsibilities. In such an atmosphere, the attorney-client relationship can become frayed, with a lack of trust from clients in what their attorneys are really doing for them.

Client-centered representation helps attorneys resist systemic forces that discourage quality representation. It stresses the importance of treating each client with respect, listening to the client, and working to achieve the client's goals from their attorney-client relationship. Client-centered representation is in stark contrast to some attorney conduct described during our site interviews, including yelling at clients, teaching them who is in control by exerting dominance, and "meeting and pleading" clients out to make a living.

Ethical and professional responsibilities of indigent defense counsel require competent and effective representation of clients.<sup>23</sup> Effective representation requires building an attorney-client relationship that allows attorneys to obtain the necessary information for the case, information that clients may not reveal if they do not trust their attorneys.

Client-centered representation acknowledges that, particularly when working with low-income people, the client's criminal case may not be his or her primary concern but a manifestation of other concerns. For example, a client may need connection to mental health resources or be concerned with avoiding deportation resulting from a criminal sentence. Additionally, poor clients often face life challenges such as homelessness, untreated mental health or substance abuse issues, or poor access to transportation that complicate effective attorney-client

23 For example, *United States v. Cronin*, 466 U.S. 648 (1984), requires indigent defense counsel to be proactive, providing zealous and meaningful opposition to the prosecutor's case. For a discussion of *Cronin*, see Public Policy Research Institute, *Guidelines for Indigent Defense Caseloads: A Report to the Texas Indigent Defense Commission 2* (2015), available at <http://www.tidc.texas.gov/resources/publications/reports/special-reports/weightedcaseloadstudy.aspx>.

communication.

For many small and solo practitioners in Texas, legal practice will not strictly focus on criminal defense work. Whether because of economics (such as in regions where there are fewer criminal cases filed) or because of an interest-based choice by an attorney, many lawyers will handle criminal cases plus other matters (frequently family law or immigration). The general needs of the poor in Texas are similar whether the subject matter of legal action is civil or criminal: access to support services, access to health care, homelessness, poor life and communication skills, lack of job training or meaningful employment opportunities, and so on. Attorneys who will practice “across” disciplines need to have a holistic view of client needs and goals. In the event of a conviction, particularly in misdemeanor cases, sentences may contain a form of probation or community supervision. Successful completion of these sanctions can turn on the presence of collateral support and the resolution of seemingly unconnected civil issues.

Abundant materials exist that describe differences in client-centered representation from “traditional” representation.<sup>24</sup> Any type of mentoring for indigent defense attorneys should incorporate client-centered values and build awareness around the differences in approach between representing retained clients and indigent clients.

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24 See, e.g., Cait Clarke & James Neuhard, “From Day One”: *Who’s in Control as Problem Solving and Client-Centered Sentencing Take Center Stage?*, 29 N.Y.U. Rev. L. & Soc. Change 11 (2004-2005), available at <http://goo.gl/JKJJ14>; Melanca Clark & Emily Savner, Brennan Center for Justice at New York University of Law, *Community Oriented Defense: Stronger Public Defenders*, available at <http://goo.gl/yHbKsp>.

# CHAPTER 2

## EXISTING MENTORING MODELS IN TEXAS

This chapter describes indigent defense mentoring programs that have been undertaken in Bell, Comal, Harris, Lubbock, and Travis counties in Texas. The programs are different but all demonstrate a great deal of creativity in striving to serve local needs, often with very little funding available. Chapter 3 draws from these existing models in setting out issues to think about when developing additional mentoring programs in Texas. Chapter 4 provides a mentoring curriculum and tools to adapt it to different jurisdictions' individual needs. The accompanying mentoring curriculum builds on what has been developed in these initial, ad hoc efforts to assist new attorneys seeking to improve their indigent defense practices through mentoring and training.

### I. BELL COUNTY

All indigent defense representation in Bell County is provided by court-appointed attorneys. Two different mentoring options are available for attorneys seeking to accelerate their eligibility to join appointment lists: a one-on-one option for County Court at Law cases and a group option incorporating CLE for attorneys seeking to advance up the list.



#### A. COUNTY COURT AT LAW, MISDEMEANOR WHEEL

To accept misdemeanors, attorneys may join the misdemeanor case list if they have one year of experience or have a mentor with three years of experience. Attorneys must apply with the county court to join the appointment list and obtain a mentor. Once assigned a mentor, new attorneys can begin accepting case appointments. Mentors, experienced attorneys from the area who offer to serve, will be matched with mentees on the basis of where their law offices are located and whether they share similar practice interests.

Court officials estimate that three or four attorneys request misdemeanor mentors each year. The mentor has to agree to work with his or her mentee for a year by assisting with various aspects of cases, such as with plea negotiations or in trials. Mentees are restricted to a limited number of case appointments (up to five at once). Mentors can have up to two or three mentees at one time. Most of the same attorneys who mentor attorneys

in misdemeanor cases mentor attorneys in the District Court mentorship program. Mentee attorneys from both programs attend the same CLE sessions. Mentors receive payment for their time in training sessions (\$50 per hour) but are not paid for one-on-one mentorship work.

#### B. MOVING UP THE LIST

Bell County established a group mentoring program for attorneys who want to get on the list or move up the list from one case type level to the next. Created with assistance from a TIDC grant, the requirements are written into the county indigent defense plan.<sup>25</sup> The program was developed by district court judges in conjunction with six to eight mentors selected by the judges and representatives from Pre-Trial Services, which administers indigent defense. To attract participants, information about the program was sent to all attorneys currently on the appointment list ("the wheel," which currently

<sup>25</sup> "Attorneys who do not meet the criteria for placement on a particular level of appointment . . . may qualify for placement on the list of attorneys for appointment at a particular level if they successfully complete the Bell County Mentoring Program. The Program shall include participation in CLE activities offered through the program, assignment and use of a mentor attorney approved by the judges hearing criminal cases, and assignment of cases as 2nd chair for cases above their current skill level. An attorney must participate in the program for a minimum of 12 months. Eligibility for placement on the attorney list at a level above current placement shall be determined by the judges hearing criminal cases after completion of the 12 month program. Completion of the program will not guarantee placement at the next level as that determination will be made at the sole discretion of the judges hearing criminal cases." *Bell County District and County Courts Indigent Defense Plan*, <http://tidc.tamu.edu/IDPlan/ViewPlan.aspx?PlanID=271>.

has about 75 attorneys) or who had expressed interest in getting on the wheel.

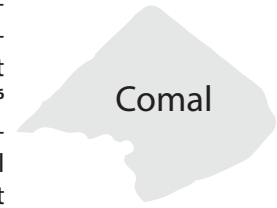
To date, two classes totaling about 30 attorneys have started the mentoring program. Some of the mentees were right out of law school and not on any panel; others had more experience. After the first year's session concluded, the group that designed the program evaluated it and made some changes for the second session. In both years, the core activity was monthly meetings that brought mentees together for presentations and skills development. Less time was spent in one-on-one mentorship.

In the first year, outside speakers were brought in to speak on topics such as *voir dire* and immigration. In the second year, the monthly sessions focused on a case study, from initial stages of getting the police report to what pre-trial motions to file through to specific trial skills. These sessions were led by the mentors.

In addition to training, mentees were encouraged to call upon any of the participating mentors for help or to answer questions. Also, one mentor prepared monthly updates of Criminal Court of Appeals decisions. Another mentor set up a listserv, so mentees could post questions about their cases and receive responses from the mentor panel. The program was free for mentees, who received free CLE credit. As with the misdemeanor program, mentors were paid for time attending training, but not for one-on-one mentoring. Mentors reportedly were eager to devote time out of a sense of duty to help younger lawyers. Judges identified mentors but remained hands-off beyond that. Pre-trial services staff circulated reminders about the monthly meetings. The local bar arranged for CLE approvals.

The effectiveness of the program appeared to vary according to mentee commitment. Attorneys who completed the program were very complimentary of it. Bell County District Court Judge Fancy Jezek estimates that five or six participants have been moved up on the wheel. Judges relied on mentors to tell them what kind of progress each mentee makes. Engagement from mentees was uneven. The listserv was actively used at the beginning of program, then interest dwindled. Mentors offered various times to meet with mentees, but some mentees said they did not have time to meet. It was felt that mentees did not always recognize the value of the program. When asked what was lacking, Judge Jezek replied: "I wish they had a passion for what they're doing; criminal defense needs that. It's concerning when it just becomes routine."

## II. COMAL COUNTY



Comal County is implementing a unique "client choice" indigent defense pilot project supported by a TIDC grant.<sup>26</sup> Defendants determined eligible for appointed counsel select their attorney from a list of 30 to 50 attorneys qualified by the courts to represent indigent defendants. The grant included funds for a six-month mentoring program from May to October 2015. The grant covered the cost of providing CLE for members of the local defense bar, paying stipends to mentors for time spent with mentees, and funding the costs of second chair appointments for mentees. Judges selected six experienced attorneys to serve as mentors to six mentees, all of whom were on the misdemeanor list. Judges also nominated the mentees who were relatively new to criminal defense practice and who they believed would benefit from working with more experienced colleagues. Completion of the mentoring program was not an explicit ladder to handling more serious cases but was expected to enhance professional development of the group. Mentors and mentees were expected to meet at least twice a month, and TIDC offered subject areas for discussion at these sessions.<sup>27</sup> Mentors were to engage mentees as second chair counsel in any case that went to trial in this time. In addition, all attorneys on the appointment list were required to attend a one-day day CLE training.

Mentors were offered compensation for time spent with mentees (up to four hours per month at \$75 per hour). Mentors were required to submit vouchers that provided a brief description of the subjects discussed in order to receive compensation. Interestingly, none of the mentors requested payment. Mentees could seek reimbursement for time spent as second chair counsel in court (\$50 per hour, up to 24 hours per mentee). One mentee was able to take advantage of this second chair program during the pilot project.

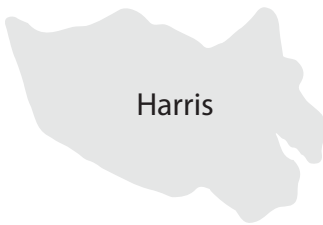
Similar to Bell County, there was no on-site administrator of the program, and unlike Harris or Lubbock counties, there is not an active criminal bar association. TIDC staff feel in hindsight that the mentoring program was too informal and unstructured to be as effective as hoped. One suggestion for improvement was to consider formalizing the commitment of the participants through a contract spelling out expectations for both mentors and mentees.

<sup>26</sup> Thought to be the only program of its kind operating in the U.S., the program is modeled on the delivery system for indigent defense used in the U.K. See Client Choice Implementation Plan in the Comal County District Court (Jan. 9, 2015), available at <http://goo.gl/lxaaXq>.

<sup>27</sup> The Comal County Indigent Defense Attorneys Mentoring Program Manual is available at the TIDC Mentoring Resources page.

### III. HARRIS COUNTY

The majority of indigent client cases in Harris County are assigned to private appointed counsel. The Harris County Public Defender Office handles a small portion



(roughly eight percent) of indigent defense cases, including non-capital felonies, appeals, and misdemeanor mental health cases.<sup>28</sup>

To be approved for the entry-level county court misdemeanor appointment list, the county's indigent defense plan requires a lawyer to have practiced three years or more and have tried to verdict five Class A and/or B misdemeanors as first chair, or ten as second chair.<sup>29</sup> From that list, attorneys are assigned to accept cases as attorneys of the day, week, and term. To be approved for the district court appointment list, an attorney must have handled between three and eight felony jury trials, depending on felony degree level.<sup>30</sup> These requirements are thought to be the most stringent of any county in the state.

Harris County has two indigent defense attorney mentoring programs. The Future Appointed Counsel Training (FACT) is a pilot project funded by a federal grant and administered by the Harris County Public Defender Office (HCPDO). The Harris County Criminal Lawyers Association (HCCLA) Second Chair Program is an all-volunteer, bar-run program that has been in place since 2008.

#### A. FACT

In 2013, the HCPDO received a \$349,360 grant from the U.S. Department of Justice, Bureau of Justice Assistance to design and run FACT, a training, supervision, and mentoring program. HCPDO leadership applied for the grant out of concerns over the unintended consequences of the strict standard to get onto the appointment list. The Council of State Governments documented these consequences in its interim report on FACT:

First, new practitioners could not get this experience since only a small fraction of cases reach trial, so the lawyers on the list tended to be former prosecutors or older lawyers. A shorter appointment list can result in a situation where lawyers are overloaded with cases. And, second, any young defense attorney on the list who is

not a former prosecutor likely gained experience in a surrounding county with lower standards, and without any training.<sup>31</sup>

The grant supported two FACT classes, one that began in 2013 and one that started in 2014, of ten young defense attorneys each seeking to represent clients in appointed cases in Harris County.

Although the HCPDO provides in-house training for its own attorneys and offers free continuing legal education (CLE) for attorneys in the county, its leadership believed new lawyers wishing to receive appointments in Harris County courts needed additional training and supervision. With no coordinating oversight board to manage appointed counsel, and therefore administer a training program, the HCPDO applied for the grant monies to develop a program on its own. The primary distinction between FACT and other mentoring programs is that participants, in addition to receiving local mentorship and training, also enrolled in the nationally acclaimed Gideon's Promise training.<sup>32</sup>

Gideon's Promise spans three years, with participants attending an initial, two-week summer training session and then semi-annual follow-up meetings. Upon completion, participants will have accessed 130+ hours of instruction from 12 current and former public defenders from around the country. Although designed and marketed toward public defenders, exceptions were made to allow the FACT participants to attend Gideon's Promise.

Each FACT class of 10 participants traveled as a group to attend the annual Gideon's Promise boot camp training in Birmingham, Alabama. Gideon's Promise (formerly the Southern Public Defender Training Center) trains new lawyers on how to provide values-based, client-centered representation and how to resist following systemic pressures to cut corners and follow the status quo. In addition to teaching client-centered values, Gideon's Promise seeks to build a community, teach storytelling and persuasion techniques, and develop pre-trial litigation and trial skills. Each student was assigned a Gideon's Promise mentor to call upon for ongoing support after they returned home from boot camp. These mentors were located across the country.

When they returned to Houston, the FACT class attended a two-day training session about the criminal justice system in Harris County. Beyond information on the county (misdemeanor) and district (felony) courts, the training touched on substantive criminal law, the requirements included in the American Bar Association's Ten Principles of an Effective Public Defense Delivery System, and the Performance Guidelines for Non-Capital Criminal Defense Representation from the State Bar of Texas. In addition, participants were paired with local mentors recruited

28 Mental health cases are those of defendants flagged by mental health and jail records as having a diagnosed condition and recent prescription of psychoactive medications. Cases are assigned to the HCPDO in all 15 (soon to be 16) County Criminal Courts at Law via a computer algorithm.

29 See Harris County Court Plan, available at <http://tidc.tamu.edu/IDPlan/ViewPlan.aspx?PlanID=442>.

30 See Harris District Court Plan, available at <http://tidc.tamu.edu/IDPlan/ViewPlan.aspx?PlanID=294>.

31 See Council of State Governments Justice Center, Interim Report on Harris County Future Appointed Counsel Program 1 (on file with author).

32 See *Meet Gideon's Promise, the Organization behind Gideon's Army*, <https://www.youtube.com/watch?v=eLx8rlcqWw>.

from the Houston area. The primary distinction between the two types of mentors assigned to FACT participants was that the Gideon's Promise mentors signed on for three years and focused on building a public defense community while the mentors from Harris County assisted mentees for one year and focused on creating a practice and working in Houston.

HCPDO recruited ten criminal defense attorneys practicing in Harris County to serve as FACT mentors. The attorneys had to commit to mentoring for one year and were provided with a \$3,500 stipend to participate, half of which was given at the onset and the other half upon completing the requisite 75 hours during the year and the list of mentoring activities. As for mentees, HCPDO received 40 applications for the inaugural 2013 class and, through a competitive process, selected 10 attorneys.<sup>33</sup> The applicants must have graduated from an accredited law school and passed the Texas Bar Examination by the time of entry into the program, but they could have no more than three years of experience as an attorney. In the second year, another ten participants were selected in much the same fashion.

FACT participants attended HCPDO's in-house trainings that are open to the private defense bar in the county. In addition, specific in-house training programs were developed for, and open only to, the FACT participants. Mentees also attended a variety of trainings put on by the Harris County Criminal Lawyers Association (HCCLA) and the Texas Criminal Defense Lawyers Association (TCDLA).

For the first class, mentors were required to attend the FACT orientation in June 2013. Starting in September 2013, they met with their assigned mentees, attended court with mentees, attended monthly mentorship meetings, and helped their mentee complete all activities in the curriculum by August 2014. The program evolved from one-on-one mentoring to a system in which mentees could reach out to any of the mentors. Over the course of the year, mentees were expected to cover each topic on an 86-item list. Other accountability measures included a requirement that mentors sign a contract outlining their participation, and mentees had to report when expected milestones were completed. To measure the effect of the program, mentees took the same test covering basic criminal law practice knowledge before and after completion of the program.

By October 2015, none of the FACT participants had gained enough trial experience and/or accumulated the three years of experience required to get onto the Harris County appointment list. However, most had begun accepting appointed cases in surrounding counties that have less stringent requirements, with the expectation of joining the Harris County list.

<sup>33</sup> HCPDO solicited applications for mentee slots through announcements on HCCLA message boards; requests sent to law schools and professors; making presentations at Houston area law schools; and informing its own interns of the opportunity.

From all accounts in interviews with mentors, mentees, and program administrators, participating in Gideon's Promise was a highly valued experience. Interviewees from both FACT cohorts reported that their confidence soared, and their knowledge increased substantially. Mentees bonded with one another and with their mentors and formed a supportive community in which members continue to reach out and rely on one another as they become more experienced practitioners.

The only downside to Gideon's Promise is its cost. A significant portion of the FACT grant funds went toward mentee tuition. Without an additional grant or appropriation from the county, the FACT model will not be able to continue in its original format after its first two years. HCPDO leadership is exploring alternatives to providing new indigent defense attorneys with a similar level of intensive training, community esprit building, and local mentoring without sending participants to Gideon's Promise.

## B. HCCLA SECOND-CHAIR

The HCCLA Second Chair Program is an all-volunteer project run through the Harris County Criminal Lawyers Association that matches mentors with mentees for six-month partnerships. The program began in 2008 and is administered by HCPDO Assistant Public Defender Sarah Wood, who is also the HCPDO's Intern and Career Development Coordinator and organizes the FACT program. Ms. Wood began running the Second Chair Program while in private practice before joining the HCPDO.

Potential mentors and mentees apply through an online form on the HCCLA website. First Chair mentors must have five years of experience as criminal lawyers and have served as first chair in at least five trials. All levels of experience are eligible for Second Chair menteeships, but, because demand for mentors outstrips supply, preference is given to attorneys who have not previously been mentored.

Ms. Wood strives to match First Chair mentors with Second Chair mentees who will work well together, considering geography and areas of practice interest.<sup>34</sup> With any volunteer program, the levels of engagement vary. HCCLA provides supportive aids including a "Helpful Hints" document that provides Do's and Don'ts for First Chairs and Second Chairs.<sup>35</sup> It makes clear to mentees that the onus is on them to seek out their mentors' help. HCCLA has difficulties finding enough attorneys with the full five years/five trials level of experience to meet the local demand for mentorship and relies on attorneys who have somewhat less experience to serve as junior First Chairs.

<sup>34</sup> Interest areas, for example, could include criminal defense lawyers who work with many non-citizens and focus on the immigration consequences of criminal convictions or criminal defense lawyers who also have a family law practice.

<sup>35</sup> See TIDC Mentoring Resources page.

HCCLA offers an active listserv and multiple training opportunities that complement the Second Chair program, as well as a periodic Brainstorming Lunch. Mentees are encouraged to participate in this interactive forum, where all criminal defense attorneys are welcome to pose questions about their cases for group input. Beyond Ms. Wood's substantial donated time, resources to administer the program are minimal.


#### IV. LUBBOCK COUNTY

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In 2009, Lubbock County began the first managed assigned counsel (MAC) program in Texas. The selection of Lubbock County as the site of the first MAC program was largely due to the county's active and supportive criminal defense bar. First created to handle just mental health cases, the program expanded in 2011 to take on all indigent defendant cases in which the county was not seeking the death penalty. The Lubbock Private Defender Office was formed to oversee the work through the services of an executive director and three other employees. A year and a half ago, the board voted to establish a professional development director position, currently held by Philip Wischkaemper, who provided us with information about Lubbock's mentoring program.

Although Lubbock County's mentoring program has developed a strong reputation, it does not actually have any formal or written guidelines and is voluntary for both mentors and mentees. Mr. Wischkaemper describes Lubbock's mentoring as "organic," "episodic," and continuously evolving, though there is also interest in developing a more formal structure overall. Unique to this program is the establishment of more structured Rapid Response Teams, similar to those in the medical community. If an attorney identifies a problem with a case that requires immediate attention, a rapid response team with experts in that area assembles to brainstorm and examine the case. This team usually consists of five to six people who meet for at least an hour a week, for as many weeks as it takes to resolve the problem. According to Mr. Wischkaemper, this team is the number one mentoring tool in Lubbock County, as "no one attorney is as good as all of us."

Mr. Wischkaemper is also central to Lubbock's informal mentoring program, as he is known to wander the courthouse looking for mentoring opportunities. In addition, he maintains a motions bank and a brief bank and is available five days a week for eight to ten hours a day. He also participates in matching more experienced attorneys, who call him when they have a trial case coming up, with newer attorneys to serve as second chair. This work is usually unpaid unless it is a more serious case, such as a capital case. Mr. Wischkaemper advertises second chair opportunities through an active local listserv.



### Lubbock

Mentorship via sitting second chair is important in Lubbock County because there are trial requirements to move up the case appointment list. The requirements for an attorney to be appointed to Category 1 misdemeanor (except for DUIs and assaults with domestic violence) are a law degree and license to practice. In order to move up the list, lawyers need trial experience as well as 12 hours in CLE in criminal defense annually. For instance, to move up a Category 2 DUI case, attorneys need to be second chair in at least four trials, which can be either misdemeanors or felonies. Moving up to take a third degree felony case requires sitting first chair in at least one felony trial, and moving up again requires four felony trials, one of which must be as first chair. Because so few cases go to trial, attorneys often go to other counties to gain trial experience. Also, it is common for more experienced attorneys to volunteer to try cases with a young lawyer for free to help them gain experience to advance up the list.

To supplement informal mentoring, such as sitting as second chair, new attorneys are required to participate in formal and structured training programs. In addition to the required 12 hours of CLE credit, they must attend the 12-hour Prairie Dog training program offered by TCDLA. This program, in addition to teaching important information and skills, also provides new attorneys with valuable networking experiences. Attorneys are also encouraged to attend other highly regarded Texas criminal law trainings, including the annual Rusty Duncan Advanced Criminal Law Course and Terry MacCarthy's training on cross examination.

#### V. TRAVIS COUNTY

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In 2015, the newly created Travis County Capital Area Private Defender Services (CAPDS) introduced a Mentorship Program to provide a path to the county's misdemeanor panel for attorneys who are eager to join but lack the minimum requirements to join the panel.

In order to join the misdemeanor appointment list, Travis County requires an attorney to have served as lead counsel in two misdemeanor jury trials or lead counsel in one misdemeanor trial and second chair in a felony trial. As in Bell County, the mentorship program in Travis County offers a path to the case appointment list that has been incorporated into the county's indigent defense plan. While in Bell County judges have discretion whether to move an attorney up or onto the list upon completion of the program, in Travis County, successful completion of the mentorship program triggers an attorney's addition to the list.

CAPDS, a nonprofit organization, was created with support from TIDC grant funds to improve oversight and



accountability and bolster the quality of representation provided by court-appointed attorneys. As in Lubbock County, case appointments and payments are overseen by a small staff rather than by judges. Development of the mentorship program was supported by \$32,000 from the TIDC grant. After five years, when TIDC grant funds taper off, the mentoring component will be built into the county's indigent defense budget.

Interviews indicated that, over time, Travis County's list of court-appointed attorneys has shifted heavily toward attorneys who are former district attorneys or who have been on the list for one to two decades, often with very few or no trials. In all, there are roughly 200 attorneys on the Travis County appointment lists. As elsewhere, cases go to trial infrequently in Travis County, so new attorneys who want to work in indigent defense must gain experience elsewhere before joining the appointment list. The Travis County District and County Court judges agreed to amend the county's Fair Defense Plan to permit inclusion of attorneys who successfully complete the CAPDS mentorship program onto the misdemeanor panels.<sup>36</sup>

The program was designed by CAPDS staff attorney, Trudy Strassburger, who drew from her experience working as a staff attorney at New York City's Bronx Defenders. The Bronx Defenders is a public defender office nationally known for its client-centered, values-based, holistic defense model. It provides extensive training and supervision for its staff of attorneys, social workers, investigators, and others.

## A. SELECTION OF MENTEES AND MENTORS

CAPDS held an open call for mentee and mentor applications. Applicants were asked to submit a cover letter, resume, writing sample, and references. CAPDS conducted interviews with 30 mentee applicants, probing why they wanted to practice indigent defense and seeking assurance that they would commit to remaining on the CAPDS panel for three years. An initial group of 14 mentees and nine mentors were selected. Mentors received stipends of \$2,000 for mentoring one attorney or \$3,000 for mentoring two.

## B. PROGRAM OUTLINE

The initial iteration of the CAPDS training program consisted of two full weeks of mentee training plus ongoing mentorship. We met with program participants when they were approximately half-way through the six-month program. The four primary components of the program were as follows:

1. *Week-long practical introduction to Travis County*

<sup>36</sup> "Alternatively, attorneys will be qualified for the misdemeanor panel after successful completion of the Capital Area Private Defender Service mentoring program. Attorneys may be assigned misdemeanor cases while in the mentorship program." *Travis District Court and County Court Plan*, available at <http://tidc.tamu.edu/IDPlan/ViewPlan.aspx?PlanID=31>.

*ty criminal justice system.* Meeting at the Travis County Courthouse, mornings were spent shadowing mentors; meeting judges, prosecutors, and other court personnel; and learning court processes. Mentees also toured the local jail and the Austin State Hospital.

2. *Week-long client-centered/substantive law training.* During the same week of the practical introductions, afternoons were spent gaining skills to become effective client advocates. Attorneys were trained on client-centered representation, collateral cases, and other related topics. Mentors joined CAPDS staff as trainers.
3. *Week-long, off-site trial advocacy training.* Mentees attended the Center for American and International Law (CAIL) Criminal Defense Skills Training in Plano, Texas.
4. *Mentorship/supervision.* Upon completion of the two weeks of training, mentees were placed on the misdemeanor panel to begin accepting case appointments. For the next six months, mentees were expected to work with their mentors as appropriate in informal case conferencing and supervision. Mentees were also required to meet with their mentors twice a month to discuss specific designated topics. Finally, mentees were required to attend all trainings CAPDS hosts, which are numerous.

Mentees gave high praise for the level of support and engagement from the CAPDS staff. Although a formal evaluation had not yet been conducted when we visited, we heard from several mentees that their favorite components of the program were the practical introduction to Travis County criminal justice system and the ability to call mentors and ask questions. While they enjoyed the CAIL trial skills training, some felt the best thing about it was the camaraderie the training provided. Both mentors and mentees appreciated access to a shared file Ms. Strassburger prepared containing practical materials, such as court forms and articles of interest on indigent defense.

## V. SUMMARY

Mentoring programs in Bell, Comal, Harris, Lubbock, and Travis counties demonstrate the wide range of program available as models for counties interested in developing their own mentoring program.

First, the extent to which a county can replicate a mentoring model, or components thereof, depends on **the amount of available funding**. The most resource-intensive model is FACT, which includes sending mentees to Gideon's Promise. Mentee tuition for Gideon's Promise constituted a large portion of the FACT grant awarded by the Bureau of Justice Assistance, meaning that FACT in its current form cannot be replicated exactly without securing funds for Gideon's Promise. The mentoring programs in Bell, Comal, and Travis counties were supported



by more modest TIDC grants. However, even counties with minimal resources can attempt some version of a mentorship program. For instance, the HCCLA Second Chair Program relies primarily on unpaid mentors and one volunteer coordinator to match mentors with mentees and facilitate communication.<sup>37</sup>

Second, the **type of indigent defense service delivery system** used in a county affects whether it can replicate certain mentoring programs.

For instance, the Travis County Mentorship Program is ideal for counties using a Managed Assigned Counsel program due to the level of oversight and coordination required. Lubbock County's mentoring program, though informal, is effective because of the dedication of the Lubbock Private Defender Office's professional development director. Lubbock County also benefits from an active and supportive local criminal defense bar.

Finally, indigent defense mentoring programs benefit from **community-building efforts**. Counties with the ability to provide group training and other activities are most suited to encourage relationship building that allows mentoring effects to be sustained beyond the duration of any formal program. For instance, both FACT and CAPDS utilize a cohort model in which mentees bond with each other during joint training and mentoring sessions, in addition to having one-on-one mentoring. HCCLA also invites Second Chair Program participants to attend its Brainstorming Lunches and other activities.

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<sup>37</sup> Alex Bunin, Harris County Public Defender, urges caution in assuming ease of replicability of the HCCLA Second Chair Program as its success is largely due to the dedication of Ms. Wood. He says, "The program would not exist or function without Sarah. Despite what she might say, replicating this with a[nother] volunteer lawyer would be nigh impossible."

# CHAPTER 3

## CONSIDERATION FOR PROGRAM DESIGN

Just as there is no single indigent defense delivery system that suits all 254 counties, there is no single mentoring model appropriate or feasible in every county. Issues relating to oversight, administration, and resources prescribe considering different approaches ranging from very structured programs to more modest, informal ones. On the spectrum of mentoring models to replicate, the resource-intensive Harris County FACT program and the Travis County CAPDS program fall on one end. At the other end of the spectrum might be an orientation for all new attorneys to familiarize them with the courthouse, identify basic court practices and resources, and meet judges, prosecutors, court staff, and probation personnel. Volunteer, bar-run, second-chair mentoring programs offer a compromise between these two.

This chapter addresses a number of factors that should be considered when developing a mentoring program. A jurisdiction must be clear about the goals it hopes to obtain with its program. These include helping young lawyers become the best advocates they can be for their clients within the confines of the system and creating a corps of lawyers who will over time collectively try to challenge some of the systems and practices that undermine effective indigent defense. As Advisory Panel member Jonathan Rapping puts it, “Are you trying to change systems or are you trying to make sure the lawyers are as effective as they can be, given the status quo?”

Beyond this philosophical and underlying question of program goals fall more practical concerns, which are addressed below.

### I. ADMINISTRATION AND OVERSIGHT

Effective mentoring requires some level of administration. While judges can provide input into the design of mentoring programs, they should not be responsible for direct administration. Managed assigned counsel programs (MACs) are an ideal locus for program oversight. The support and involvement of MAC staff in Travis and Lubbock counties were seen to have immense value to the success of mentor program efforts. However, as we saw, criminal defense bar associations and public defender offices can also anchor mentoring programs. For some counties, particularly smaller ones that lack one of these options, it may make sense to explore options to develop a regional mentoring program across two or more counties.

It is not uncommon for defense attorneys to accept appointed cases in multiple counties. If one of the coun-

ties in such a region has an active criminal defense bar that recognizes the value of mentoring, that association could invite attorneys practicing in surrounding counties to participate in mentoring opportunities. Working with two or more counties, of course, may increase the amount of oversight and coordination needed, and thus would require a committed team or individual to make it feasible.

Whatever model is used, emphasis must be placed on ensuring that there is enough structure to make participants take the program seriously and fully engage in any training, mentorship, and network-building opportunities that are offered. At minimum, the program needs a basic plan that spells out the goals and requirements. Mentors and mentees need a clear understanding of the levels of commitment expected of them. Explicit questions include: Are mentors and mentees expected to meet in person a certain number of times each month? Should mentors go over a formal list of topics? Should

they allow mentees to sit second chair in trials? To shadow them? To be available for phone and email consultation? What trainings are mentees required to attend?

For ease of administration and sustainability of mentoring programs from year to year, a “mentorship handbook” should be created. All mentorship materials can be collected for easy modification and reuse, including sample notifications, agendas, contracts, curricula, mentee checklists, evaluation instruments, and any other key materials.

## II. FORMAT: ONE-ON-ONE OR GROUP

Based on feedback from Texas mentoring programs reviewed, we recommend, when possible, that counties develop programs that incorporate group training and/or gatherings with one-on-one mentoring. A key feature and purpose of the FACT and Travis County mentoring programs is the fostering of community through the shared experience of group training and engagement. Inevitably, lasting relationships develop. Mentees become supports and resources for one another as their practices develop. Mentors gain access to junior attorneys who may be able to second chair trials or accept case referrals. Over time, these small groups of participating attorneys who share values about zealous lawyering will grow into larger cohorts, thereby establishing a higher standard of quality for indigent criminal defense.

## III. THE MENTOR

In order to advance the development of client-centered, competent indigent defense attorneys, care must go into the selection of mentors. Effective mentoring involves considerable commitment of time and little if any compensation. Considerations for selection of mentors include incentives, selection process, oversight, expectations, and training.

### A. MENTOR INCENTIVES

For some, the satisfaction of “giving back” and extending support to up-and-coming attorneys is motivation enough to serve as a mentor. Other attorneys will not participate without a stipend. In counties where CLE offerings are limited, one type of payment for mentors could be award of CLE credit. Formal recognition, through issuance of certificates or publicity to local criminal defense bar outlets, are worth exploring. Some of the statewide mentoring programs we examined in our national search provide CLE and recognition but no monetary payment.

When stipends are available, some evidence of mentorship should be required for payment. Approaches include splitting the payment into two or more installments or requiring documentation of activities performed before payment. Reporting should not be so burdensome as to be a disincentive to participating.

### B. MENTOR EXPECTATIONS

Feedback from those involved with mentoring programs throughout Texas suggests that models with structure and clear expectations are more effective, both for mentors and mentees, than informal arrangements. The role of mentors is best formalized through signed agreements that spell out expectations for the requisite time period (e.g., mentor will introduce mentee to relevant individuals in the courthouse, allow mentee to shadow mentor in out-of-court activities, and be available to mentee for advice and suggestions). A model mentoring agreement, to be signed by both mentor and mentee, appears in Appendix A.

The primary expectation focuses on accessibility and communication. At the very least, mentors are expected to be available to their mentees when they have questions. This piece of mentoring is essential to maintaining the mentor-mentee relationship. Although the impetus is on the mentee to reach out to the mentor, lack of communication from the mentor could easily discourage the mentee to continue to contact the mentor for advice, thus dissolving the relationship.

### C. MENTOR SELECTION

A key function of the program administration is selection of appropriate mentors. Informal peer review, based on observed performance and perceived reputation, can bolster formal application. Judges can be sources of recommendations. We were repeatedly reminded, however, that mentoring is not for everyone. As one mentor noted, an attorney “could be the greatest trial lawyer” and yet be a terrible “people person.”

Some attorneys are not suited for teaching. For example, a mentor who allows her mentees to shadow her in court without any explanation of what is happening would be far less effective than a mentor who stops to explain nuances of each step so that mentees can better understand strategy and local practices and procedures. Prospective mentors could be asked to answer hypothetical questions, such as “how would you mentor a mentee on a Class B theft?” How attorneys respond would help program administrators select appropriate attorneys and also pair them with mentees who would be a good match.

In addition to practice skills, mentors can help new attorneys with running a successful law office. Again, excellent trial lawyers are not always the best business people. One mentor we interviewed suggested that mentor selection consider how prospective mentors run their law practice by having the program administrator visit applicants’ offices.

Finally, if mentoring is intended to help young attorneys think critically about the systems in which they work and be prepared to push back against systemic injustices, this factor must be carefully considered in mentor selection. Not all “good” attorneys are concerned with system defi-

ciencies; some have adapted to flourish in unfair systems. In site visits, we were told that one mentor boasted to mentees that he was client-centered because he used the word “client” not “defendant.” The same attorney said if he was paid more to go to jail to visit clients, he would do it. These are the types of attitudes—born from systemic realities—that trainings like Gideon’s Promise seek to counter. Mentor orientation is a way to ensure that mentors signal desired values to mentees.

#### D. MENTOR-MENTEE ORIENTATION

One way to help mentors be effective is to provide an orientation session to all first-time mentors. We recommend use of joint mentor-mentee orientation sessions, so all participants understand the goals of the program and each side is told about their respective responsibilities in the partnership. Mentors and mentees alike should hear what is considered effective indigent defense mentoring. Ground rules on what is considered effective communication should be established: for instance, what is the preferred method of contact (email, phone call, text) and what is considered a reasonable response time in various contexts. Both mentors and mentees should understand what is meant by values-based, client-centered representation. One cost-effective suggestion is to invite motivational speakers (e.g., from Gideon’s Promise) to deliver a presentation that is recorded and shared with mentor programs across the state. (By no means do we suggest that orientation should be merely a recorded introduction. Any orientation should include discussion and personal interaction.)

Returning mentors would not need to attend the orientation for every new mentoring class, but they should have the option to do so. Orientation should be mandatory for all mentees. Chapter 4 provides a suggested mentorship program orientation curriculum.

### IV. THE MENTEE

Site visits suggested that, in some areas of the state, demand for mentorship may outstrip available mentors. When that is the case, mentorships should be prioritized for attorneys who are truly motivated to practice indigent criminal defense and are likely to continue working in that area.

#### A. MENTEE INCENTIVES

The benefits of mentorship might seem obvious. However, if gaining skills and confidence to build a successful practice representing indigent criminal clients are not sufficiently enticing, there are other incentives to joining structured mentoring programs. These include accelerated inclusion onto case appointment wheels (as in Bell and Travis counties), access to some of the best training available at no cost, and inclusion in a supportive community of like-minded colleagues pursuing common interests.

#### B. MENTEE EXPECTATIONS

As with mentors, the role of mentees should be formalized through signed agreements that spell out expectations for the requisite time period.

When financial investments are made in mentees, such as sending them to Gideon’s Promise or to the CAIL training, it is reasonable to expect more in return. Travis County asked that mentees, once admitted to the county wheel, continue to take appointed cases for three years. While that is not ultimately enforceable, it signals the seriousness of the administering program’s investment in mentees’ professional development. It places value on the importance of indigent defense work. If working with a curriculum, mentees can be asked to document completion of program modules.

#### C. MENTEE SELECTION

To be sure that limited mentorship resources are devoted to attorneys who will benefit most from them, criteria for mentee selection should be developed. Attorneys who apply should be asked to explain their interest in indigent defense practice. Program administrators can decide who is eligible (e.g., attorneys admitted to practice in the past year or those hoping to move from one level to the next of a case appointment wheel). For more resource intensive programs, such as in Travis County, attorneys may be expected to submit references (such as from law school clinic professors) that attest to their commitment to indigent client practice.

#### D. MENTEE TRAINING

Most existing mentoring programs we reviewed in Texas included a structured, substantive law training component that mentees attended, either as part of a larger CLE offering or just with the other members of their mentoring class. Training can be provided on-site, off-site, or both, as was the case in Travis County.<sup>38</sup> Counties with limited local CLE offerings can try to leverage off-site training options to complement mentoring activities. Examples include the Texas Criminal Defense Lawyers Association’s Rusty Duncan and Prairie Dog advanced criminal law courses, courses from the Center for American and International Law (CAIL), or the Advanced Criminal Law Course from the State Bar of Texas. For instruction in successful business tools and practices, use of outside presenters could be beneficial. Vendors of case management software and malpractice insurance, or financial institution representatives (e.g., for IOLTA practices), could supplement substantive lawyering training.

<sup>38</sup> Travis County used CAPDS staff and local mentors to provide the first week of training and sent mentees off-site to attend CAIL for their second week.

## V. STAKEHOLDER BUY-IN

Both to implement and sustain mentoring programs, program organizers should seek buy-in from key stakeholders not directly involved with the programs. Judges, in particular, should be informed about the programs. Judicial buy-in will be essential if seeking to amend a county indigent defense plan to add mentorship program completion into attorney qualifications as a permitted option. Program organizers can also reach out to others with whom defense attorneys will routinely interact, particularly if the program includes a “meet the local players” component for new attorneys being mentored. Judges, court staff, probation personnel, prosecutors, and corrections personnel can attest to the value of working with more competent and informed defense counsel. These other institutional players can provide important support for the program.

## VI. FUNDING

Annual costs for running indigent defense mentoring programs can range from almost nothing, as with the all-volunteer HCCLA Second Chair Program, to the low six figures required for Gideon’s Promise tuition for the 20 participants in the Harris County FACT program. Done well, mentoring is a wise investment into the professional development of lawyers who want to do indigent defense work and yet lack opportunities to learn from more senior attorneys. Mentoring programs encourage attorneys who care about the practice to stick with it. Local criminal justice systems benefit from having competent defense practitioners interested in indigent defense work.

TIDC grant funding supported development of attorney mentoring programs in Bell, Comal, and Travis counties. Harris County developed the FACT program with support from a two-year federal grant. In Lubbock County, making sure attorneys are prepared and supported is part of Philip Wischkaemper’s role as Professional Development Director for the Private Defender Office. As mentioned, the Harris County Criminal Lawyers Association operates its Second Chair Program on an all-volunteer basis.

Options for future funding include seeking TIDC grants, receiving county support, and seeking foundation or law firm support. State monies provided to the Court of Criminal Appeals for indigent defense attorney training are administered by the TCDLA. TCDLA could choose to direct some of the funds to support statewide or regional mentorship programs. Another possible avenue is receipt of federal Byrne-JAG monies administered by the governor.

## VII. EVALUATION

Every mentoring program should include an evaluation component to ensure that the program is meeting its goals and to help determine if modifications are needed.

In addition, such information can help justify resource requests for mentorship program sponsorship through grants or appropriations.

Types of evaluation can range from simple participant (mentor, mentee, and client) satisfaction surveys to more formalized before-and-after knowledge tests, as used in the Harris County FACT program. Other metrics will depend on the objectives of the program.

For those counties where mentoring offers an accelerated path to joining an appointment list, metrics should track the number of mentees who successfully move up on or join the wheel. Also, to gauge effectiveness over time, programs can check to see how many mentees are accepting case appointments and what lists they are on at various intervals, e.g., after one year, two years, and five years.

All programs should track basic information on numbers of mentee and mentor applicants/participants, and number and types of activities (CLE sessions, off-site training, etc.).

## VIII. USE OF TECHNOLOGY

The core feature of mentoring is the formation of supportive personal relationships to share information that advances professional development. The human factor, which includes in-person time and togetherness, is fundamentally important but not always possible.

There are multiple ways to use technology to enhance mentoring programs, including listservs, blogs, online participant portals, and access to shared electronic files. Texas mentoring programs use these tools to support mentees both while they are in the program and afterwards to promote long-term networking, such as through continued access through email and listservs. Technology can also be tailored to meet mentees’ needs. In Harris County, FACT mentees developed their own text message group that attorneys use to ask pressing questions requiring more immediate assistance than an email or phone call can offer.

In smaller or more remote jurisdictions, where it may not be possible to find a local mentor or offer a group training class, mentor relationships might be formed through the assistance of technology. For example, online applications could help coordinate interested mentors and mentees who live in different parts of the state. As a direct example, HCCLA’s Second Chair program first started accepting applications for mentors and mentees on paper and then shifted to an online process that reduced administrative time and cost. From the information gathered, the program coordinator could easily see where individuals were located as well as their subject interests—information that allowed for better “matching” between mentors and mentees.

Should there be a committed coordinator, a model that uses an online application to match mentors and mentees could be replicated on a statewide level. The online

application could gather data about participants, including contact information, professional background, legal areas of interest, and location. By identifying in which county each individual is located, this method could promote the opportunity for mentors and mentees located close to each other to conduct in-person mentoring sessions. We were told that while setting up an online application is relatively easy, the time-intensive components include matching mentors and mentees, circulating contact information, and conducting outreach to make sure individuals interested in becoming mentors or mentees are aware of the online application.

Technology can also facilitate mentorship program orientation. The suggested Mentorship Program Orientation in Chapter 4 suggests that portions of the orientation could be conducted online using web-based tools to allow individuals to participate in the exercises. This could be particularly useful for smaller jurisdictions doing one-on-one mentorship without a group component. Even jurisdictions with the ability to conduct live orientation sessions may choose to present some material via online videos.

Finally, if indigent defense attorney mentorship were to become more formalized, it would be worth exploring options to create a statewide Mentoring Resource Bank, to house centralized mentoring materials. Possible hosts for such a resource are a law school criminal law clinic, TIDC, or TCDLA.

## IX. ETHICAL CONSIDERATIONS

Because most criminal defense lawyers in Texas work in solo practices or small law firms, jurisdictions undertaking mentoring programs must be mindful of the ethical issues that can arise when mentors and mentees do not work in the same law firm and are not associated as co-counsel.<sup>39</sup> Jurisdictions should establish guidelines that specify that the mentoring relationship does not result in the mentor being co-counsel or in any way responsible for any aspect of representation provided by mentees in their individual cases. The guidelines should be written into the agreement that both mentee and mentor sign.<sup>40</sup>

Attorneys in a mentoring relationship can be instructed to couch all discussion about substantive legal matters as hypothetical situations. When it is possible to achieve the goals of the mentorship by discussing topics in hypothetical terms and without exchanging information related to a specific case, doing so will allow the mentor and mentee to avoid potential ethical concerns related to client confidentiality. However, guidelines are also need-

39 For a general discussion of ethical issues raised by lawyer-to-lawyer consultation, see American Bar Association, Standing Committee on Ethics and Professional Responsibility, Formal Ethics Opinion 98-411: Ethical Issues in Lawyer-to-Lawyer Consultation, available at <https://goo.gl/r0zwWD>.

40 See Appendix A for a model mentoring agreement.

ed regarding ethical obligations that will arise when the mentoring relationship involves shadowing or second chairing, which can play an important role in criminal defense mentoring and is common in existing criminal defense mentoring programs in Texas. Other issues to consider include having mentee attorneys seek written consent from all clients to discuss their case—confidentially—with a mentor, and when mentors should perform conflict of interest checks.<sup>41</sup>

Texas ethical rules concerning safeguards for client confidentiality in the context of one attorney seeking advice or guidance from another attorney who is not co-counsel in a criminal case can be read as requiring client consent for any lawyer-to-lawyer consultation on a specific case. Under the Model Rules of Professional Conduct, lawyer-to-lawyer consultation is impliedly authorized without client consent, with some limitations.<sup>42</sup> Under the Texas rules, this would appear to be the case for consultations involving non-privileged information in civil cases as well.<sup>43</sup> However, because in criminal cases in Texas privilege extends to any fact “which came to the knowledge of the lawyer or the lawyer’s representative by reason of the attorney-client relationship,”<sup>44</sup> consultation in criminal cases arguably is not authorized under an implied consent theory<sup>45</sup> but rather may only occur with client consent after consultation.<sup>46</sup>

To avoid any problems arising from consultation with mentors, the members of the Advisory Panel for this report recommend that, as part of every initial client meeting, mentees explain that they may seek out input from a mentor or other expert in order to provide the best representation possible. Appendix C contains a sample form to secure client consent for the mentee to engage with a variety of individuals, including experts, investigators, immigration specialists, mentors, and other attorneys about the client’s case in order to produce the best results for the client. The mentee should inform his or her client that these individuals will be under agreement to keep all information shared about the client strictly confidential. Mentees should seek assurance from each individual so engaged to keep client information confidential.

41 See Appendix B for a sample attorney consultant agreement used in Travis County for situations in which mentors and mentees exchange confidential client information in the course of the mentoring relationship in order to support client representation.

42 See ABA Formal Ethics Opinion 98-411, *supra* note 40.

43 See Tex. Disc. R. of Prof. Conduct R 1.05(d)(1) (containing same language as provision in Model Rules of Professional Conduct that is basis for ABA Formal Ethics Opinion 98-411).

44 Tex. R. Evid. R. 503(b)(2).

45 See Tex. Disc. R. of Prof. Conduct R. 503(d)(1) (implied authorization limited to unprivileged information).

46 See Tex. Disc. R. of Prof. Conduct R. 503(c)(2).

# CHAPTER 4

## MENTORING CURRICULUM

This chapter discusses the role of a formal curriculum in mentoring programs and shows how a county, local bar association, or other entity can develop a mentoring curriculum that is adapted to local goals and resources. It includes a mentoring curriculum “menu” that jurisdictions can use to design a local curriculum, a sample mentoring curriculum developed using the menu, and a model curriculum for mentor/mentee orientation.

### I. PURPOSES OF A MENTORING CURRICULUM

Having a curriculum for a mentoring program makes it more likely that the program will successfully foster a more uniform standard of quality criminal defense representation in a jurisdiction. A curriculum can provide a consistency in training that currently is unavailable to lawyers entering criminal defense practice in most Texas counties and make it possible for a mentoring program to achieve results similar to those obtained in prosecutor’s offices and in public defender’s offices, in which new lawyers have access to coordinated training programs and direct supervision. A lawyer’s successful completion of a formal mentoring curriculum also can provide counties with assurance that the lawyer meets specified, objective standards for legal knowledge and experience and thus is qualified to receive criminal defense appointments.

A curriculum provides additional benefits to the mentoring pair. Particularly when lawyers are matched by a formal mentoring program and do not know each other or do not have commonalities that support a close personal relationship, a curriculum that contains specific resources and activities can provide structure around which they can develop their professional mentoring relationship. Even in informal mentoring relationships, including those in which the mentor and mentee form the relationship outside of any mentoring program, a curriculum can provide inspiration for topics and skills the mentoring pair can explore to advance the mentee’s professional development.

A mentoring curriculum also can provide, or help the lawyers in a mentoring pair develop, shared goals and expectations for the mentoring relationship. These goals and expectations will make the lawyers more account-

able to each other and make their relationship more durable. Lawyers have very busy schedules, and solo and small-firm criminal defense lawyers face financial pressures that make it particularly difficult for them to wall off time for mentoring meetings. When the mentoring relationship does not have clear objectives or a timeline, it can be easy for mentoring to be pushed aside in favor of more concrete and immediate obligations.

### II. RESOURCES FOR DEVELOPING A MENTORING CURRICULUM—THE MENTORING CURRICULUM MENU

A mentoring curriculum menu has been designed to help attorneys provide high quality representation to appointed and retained clients in criminal cases.<sup>47</sup> Counties, bar associations, or other entities can select from the resources and activities listed in the menu and use them to design a mentoring curriculum that both has the structure necessary to make a mentoring program successful and is tailored to local needs.

The curriculum menu was developed primarily with the goal of helping lawyers develop the knowledge and skills required to comply with the State Bar of Texas’s Performance Guidelines for Non-Capital Criminal Defense Representation.<sup>48</sup> Additional resources that were reviewed to develop the curriculum menu include: 1) curricula from existing mentoring programs in Comal, Harris, and Travis counties; 2) curricula from statewide mentoring programs in Colorado, Georgia, Illinois, Nevada, New Mexico, Ohio, and Utah, all of which contain general components for ethics, client relationships, and

<sup>47</sup> The menu is available at the TIDC Mentoring Resources page.

<sup>48</sup> State Bar of Texas, Performance Guidelines for Non-Capital Case Representation (2011), available at <http://goo.gl/JwBD3u>.

law office management, and several of which contain specialized criminal practice components; 3) relevant ethics materials; and 4) relevant case law and other materials, with a focus on resources that were not available when the State Bar adopted the Performance Guidelines in 2011.<sup>49</sup>

### III. THE MENTORING MODULES

The mentoring curriculum menu is divided into twelve modules, each of which has a specific learning objective. Each module should be included in a mentoring program curriculum for lawyers new to criminal defense practice. The twelve modules and their objectives are:

1. *Establishing the Mentoring Relationship*: set goals and expectations for the mentoring relationship.
2. *Ethical Considerations for Defense Lawyers*: understand how to handle difficult ethical situations that arise in criminal defense practice.
3. *Introduction to the Legal Community*: become familiar with local court personnel and practices.
4. *Law Practice Management*: learn practices necessary to sustain an ethical and successful private criminal defense practice that serves both appointed and retained clients, which is the most common practice setting for criminal defense lawyers in Texas.
5. *Working with Your Client*: understand best practices for communicating with clients and involving clients in decision-making.
6. *Initial Interview and Pretrial Release*: develop skills for conducting an initial interview and advocating for a client's pretrial release.
7. *Case Evaluation and Theory of the Case*: understand how to develop a theme/theory of the case that will be effective in negotiations or trial.
8. *Investigation and Discovery*: develop skills in conducting investigations and discovery.
9. *Pretrial Motions*: understand when to file and how to draft common pretrial motions.
10. *Plea Negotiation and Counseling*: learn how to negotiate a plea and counsel a client about a plea offer.
11. *Trial*: develop skills in preparing for and conducting a trial.
12. *Sentencing and Post-Trial Proceedings and Procedures*: understand the role of defense counsel at sentencing and their post-trial obligations to a client.

<sup>49</sup> Curricula from Texas and other states are available at the TIDC mentoring resources page.

Ideally, a mentoring pair would work through the curriculum during a twelve-month mentoring period. Some modules may not be necessary for a mentoring program focused on preparing lawyers currently practicing criminal defense to provide effective representation in more serious criminal cases (i.e., to move up to a different appointment list) or for mentoring an experienced criminal defense lawyer who is new to a jurisdiction.

### IV. DEVELOPING A MENTORING CURRICULUM FOR LOCAL NEEDS

For each module, a mentoring program administrator will need to decide which activities are best suited to meet local needs. To begin this process, jurisdictions should consider the following questions:

- What institutional resources do we have to support a mentorship program? Possible resources may include an indigent defense coordinator, a local bar association, a managed assigned counsel system, or a public defender's office (even if that office only is responsible for a subset of criminal representation).
- How comprehensive do we want the mentoring program to be?
- How much structure do we want to require of the mentoring pairs?
- What is the professional background of lawyers new to criminal defense in our jurisdiction? Are they likely to have some professional legal experience in a different practice area?
- What is the professional background of experienced lawyers in our jurisdiction? Are we likely to have enough mentors to support intensive one-on-one mentoring, or does it make sense to reduce the load on mentors by addressing some topics through group mentoring, simulation, or classroom training?
- Independent of mentor resources, what activities do we want the mentorship program to address through mentorship and one-on-one experiential learning? Through simulations? Through classroom-based learning?

### V. USING THE MENTORING CURRICULUM MENU TO DESIGN A LOCAL MENTORING CURRICULUM

Once a jurisdiction has assessed its priorities and institutional resources available for a mentoring program, it can select activities within each module from the mentoring curriculum menu and use them to design a local mentoring curriculum.



The mentoring curriculum menu is presented in a worksheet format with one worksheet for each module. For reference, the worksheet for Module 1 appears in Table

1. The complete set of worksheets is available at the TIDC mentoring resources page.

## Table 1: Mentoring Curriculum Menu Worksheet For Mentoring Program Coordinator

### Module 1: Establishing the Mentoring Relationship

In this module, there are \_\_\_ mandatory activities and \_\_\_ elective activities required.

Activity	Learning Method (Mentorship, Simulation, Classroom Training?)	Mandatory or Elective Mentoring Activity?	Individual or Group Mentoring?
Discuss each lawyer's background and interests, and identify commonalities.			
Discuss the mentee's incoming knowledge and skills.			
Discuss the mentee's goals for the mentoring relationship, including gaps in his or her knowledge or skills s/he would like to address.			
Develop a mentoring plan based on the mentee's goals and mentor's knowledge and skills.			
Discuss ethical issues that will arise in the mentoring relationship, including how to preserve client confidentiality and avoid conflicts of interest.			
Establish expectations and boundaries for the mentoring relationship, including when and how the mentor will be available to the mentee.			
Sign a mentoring agreement.			

With the mentoring curriculum menu worksheets, mentoring program administrators can specify whether specific activities should be mandatory for all mentees or can be elective, whether some activities should be covered in group rather than individual mentoring sessions, and whether some activities should be addressed through traditional classroom training or simulation rather than through mentoring. The worksheets thus can be used to develop mentoring curricula that range from highly structured to informal.

## A. DEGREE OF STRUCTURE

### High Degree of Structure

If a jurisdiction wants a highly structured and comprehensive mentoring curriculum, it can require each mentee to complete all of the activities in each of the twelve modules during the mentorship period, and to obtain the mentor’s signature to certify completion. This approach is similar to that adopted by the Harris County Public Defender’s Office for its Future Appointed Counsel Training (FACT) Program.<sup>50</sup>

### Moderate Degree of Structure

If a jurisdiction wants to provide lawyers with greater flexibility to focus their time on individualized goals but still maintain a moderate degree of structure, the jurisdiction can make some or all of the mentoring curriculum activities elective. This approach may be particularly useful in

<sup>50</sup> See TIDC Mentoring Resources page.

jurisdictions in which lawyers in the mentoring program are likely to enter the program with some professional experience. Additionally, designating some activities as electives makes it possible for the mentor and mentee to adjust the curriculum when an initially planned activity does not occur (e.g., a case that is expected to go to trial is resolved without one) or an unanticipated opportunity arises.

Within the range of curricula that would fall into this moderate structure category, jurisdictions may want to design a curriculum in which the amount of structure has an inverse relationship to the experience level of the mentee attorneys. For example, if a mentoring program will serve lawyers who are relatively new both to criminal defense practice and to legal practice in general—even if they have some limited law school clinical or professional criminal law experience—the jurisdiction may want to design a curriculum that makes one to three activities in each module mandatory and only allows a limited selection of electives. This curriculum structure of units that contain mandatory activities plus electives is common in states with mandatory mentoring programs for admission to the bar.<sup>51</sup> For reference, a sample mentoring curriculum for Module 1 that adopts a moderate structure, drawn from the mentoring curriculum menu, appears in Table 2. A complete sample mentoring curriculum for a moderately structured program is included as Appendix D.

<sup>51</sup> Selected profiles of attorney mentoring programs are available at the TIDC Mentoring Resources page.

**Table 2: Sample Mentoring Curriculum – For Mentors & Mentees**

### Module 1: Establishing the Mentoring Relationship

In addition to the mandatory activities, **at least one** other activity from this module must be completed.

Activity	Check if Selected	Date Completed
Discuss each lawyer’s background and interests, and identify commonalities.		
Discuss the mentee’s incoming knowledge and skills.		
Discuss the mentee’s goals for the mentoring relationship, including gaps in his or her knowledge and skills s/he would like to address.		
Develop a mentoring plan based on the mentee’s goals and the mentor’s knowledge and skills.	MANDATORY	
Discuss ethical issues that will arise in the mentoring relationship, including how to preserve client confidentiality and avoid conflicts of interest.	MANDATORY	
Establish expectations and boundaries for the mentoring relationship, including when and how the mentor will be available to the mentee.	✓	
Sign a mentoring agreement.	MANDATORY	

If the mentoring program in a jurisdiction will serve lawyers with more experience—for example, lawyers who have several years of prosecutorial experience—the jurisdiction may want to require mentees to choose a specific number of electives within each module but not make any activities mandatory. For example, within the Plea Negotiations and Counseling module, a lawyer who has worked as a prosecutor may be familiar with plea negotiation strategy (likely to be a mandatory activity in a mentoring program for new lawyers) but not have any experience with counseling a client about a plea offer. An elective-based mentoring program curriculum will enable this lawyer to focus the mentoring relationship on activities in the module that address gaps in his or her experience that are specific to criminal *defense* practice.

### Low Degree of Structure

If a jurisdiction wants to have very little structure in its mentoring program or does not have the institutional resources to support a structured mentoring program, it can simply provide the resource materials and activities in each module as background information and discussion prompts for informal mentoring conversations. Indeed, even informal mentoring pairs that exist completely outside of a mentoring program can use the mentoring curriculum menu to support their relationship and as resources for the mentee's professional development.

## B. INDIVIDUAL VS. GROUP

A jurisdiction may choose to cover some or all of the activities in group, as opposed to individual, mentoring sessions. For example, if a jurisdiction has a specific mentor who excels in law practice management, the jurisdiction could cover that module in a group mentoring session or have each mentee rotate to that mentor for one-on-one mentoring related to the law practice management module.

## C. MENTORING-PLUS-TRAINING

Many Texas jurisdictions have incorporated a training component into their mentoring programs, and some jurisdictions may choose to address certain activities contained in the mentorship curriculum modules through more traditional classroom training or through simulations, rather than through mentorship and one-on-one experiential learning. The mentoring curriculum menu worksheets provide these jurisdictions with flexibility to choose different professional development strategies for different activities within the modules.

## VI. MENTORING PROGRAM ORIENTATION

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In addition to a mentoring curriculum, jurisdictions should also consider developing a curriculum for an ori-

entation session that will prepare both mentors and mentees to successfully participate in a mentorship program. Having a single orientation program for both groups of lawyers will help establish shared expectations for the mentorship program—both mentors and mentees will know what their mentoring partners were told about their respective responsibilities in the partnership.

A common orientation session can also provide the first opportunity for jurisdictions to start developing a larger community of mentors and mentees. Participants in formal criminal defense mentorship programs in Texas unanimously report that engagement with a broader community of mentors and mentees can significantly expand the professional development and support opportunities provided by a mentorship program.

In addition to these group benefits, the orientation program offers specific benefits to each group of program participants.

For mentors, orientation is an important opportunity to explore the difference between being a good lawyer and being a good teacher and to prepare them to be effective teachers. For some mentors, this aspect of the orientation program will reinforce skills they have developed in informal mentoring relationships outside of a formal mentorship program and provide them tools to become even better mentors. For mentors who have less teaching and mentoring experience, this preparation will be absolutely necessary to make the mentorship program successful.

For mentees, orientation will provide them with an overview of the skills and knowledge they will gain if they successfully complete the mentoring program. In a highly fragmented profession in which formal training has often been nonexistent, orientation also can introduce mentees to the value of learning, about how to practice to shared standards of quality representation and to the resources and support available in the larger criminal defense community.

Like other mentorship program development tools included in this manual, this suggested mentorship program orientation curriculum is designed to be flexible so that it can be adapted to the needs and resources of each jurisdiction.

For example, a jurisdiction with a sufficiently large mentorship program may choose to offer the entire curriculum in a live training. In another scenario, some topics could be offered via a video that is accessible on demand, and other topics would be offered in live training. In jurisdictions that are not large enough to support their own mentorship program, all sessions theoretically could be offered remotely, using interactive, web-based tools for those sessions that engage participants in exercises. Once a mentorship program is well established, a jurisdiction could exempt repeat mentors from most sessions of the orientation program and require their participation only to the extent required to introduce them to mentees and new mentors as part of the jurisdiction's larger mentoring community.

A final note: This orientation program is designed to prepare mentors and mentees to participate successfully in a mentoring program. It is not designed to provide substantive legal training to mentors or mentees. One consequence of the historic absence of entry-level training and supervision for criminal defense lawyers in Texas is that it is possible that even dedicated and experienced criminal defense lawyers qualified to serve as mentors may vary considerably in their approach to practice. Some degree of variation and inconsistency is an inevitable consequence of the fact that law is a profession in which individuals with different personality styles and strengths can be effective advocates for their clients. However, when a jurisdiction is starting a mentorship program, the amount of variation and inconsistency in the pool of available mentors may be greater than is desirable. In a jurisdiction particularly concerned with promoting a more uniform standard of practice through its mentorship program, program organizers may wish to give its mentors additional training or resources related to the mentoring curriculum modules in order to provide greater assurance that all mentees are receiving similar information and guidance from their mentors.

## VII. SUGGESTED MENTORSHIP PROGRAM ORIENTATION TOPICS

### A. THE ROLE OF THE CRIMINAL DEFENSE LAWYER

Through this session, mentors and mentees will begin to develop a shared understanding of the criminal defense lawyer’s role, which will serve as the foundation of the mentoring relationship and mentoring program. This session should introduce Guidelines 1.1 through 1.3 of the State Bar of Texas’s Performance Guidelines for Non-Capital Case Representation, which address the fundamental role, duties, and obligations of defense counsel. This session also should introduce the concept of client-centered representation and include deeper consideration of criminal defense lawyers’ role in working with clients and as actors in the criminal justice system.

In a live training, this session could include a discussion of the preconceptions about the criminal defense lawyer’s role with which mentors and mentees are entering the mentorship program.

### B. INTRODUCTION TO THE MENTORING PROGRAM

Through this session, mentors and mentees will become familiar with the goals, structure, and curriculum of the mentoring program. The goals may vary somewhat by jurisdiction, but are likely to include increasing the supervision and training available to lawyers beginning criminal defense practice; assisting new criminal defense lawyers in beginning the process of acquiring the practi-

cal skills and judgment necessary to provide high-quality representation; creating a pathway for lawyers to obtain the knowledge, skills, and experience deemed necessary to represent indigent defendants in the jurisdiction; increasing the consistency of practice within the jurisdiction; ensuring compliance with the Performance Guidelines for Non-Capital Criminal Defense Representation; increasing the professionalism of lawyers practicing criminal defense in the jurisdiction; and, most fundamentally, improving the quality of representation provided to indigent defendants in the jurisdiction.

The structure of the mentoring program will vary by jurisdiction but should be clearly explained to mentors and mentees before they enter the mentoring relationship. For example, if mentoring pairs are expected to have one shadowing session and one out-of-court meeting per month for a twelve-month period and will be required to report on their meeting dates and curriculum activities at the end of the mentoring period, those expectations should be established at the outset of the program.

For the curriculum, the mentors and mentees should be provided with an overview of each of the twelve curriculum modules, as well as information about how many and which of the curriculum activities they will be required to perform in order to complete successfully the locally-adopted version of the mentoring program curriculum.

### C. BENEFITS OF MENTORING

Through this session, mentors and mentees will explore the potential benefits of the mentoring program and the mentoring relationship for both parties, including opportunities for cross- and reverse-mentoring.

For the mentors, benefits may include passing on their accumulated knowledge to the next generation of criminal defense lawyers, experiencing the personal rewards of teaching, and contributing to the improvement of the profession. Mentors also may enjoy the opportunity for their own professional development that results when they take a break from their busy practices to consider how they do things, why they do them certain ways, and whether certain practices should be reconsidered and improved—reflections that can occur when the mentor breaks down his or her own practice to explain it to the mentee or in response to a mentee’s question about the mentor’s practice.

For the mentee, benefits may include the opportunity for practical training and to acquire local knowledge, having an open invitation that makes them feel comfortable in approaching a more experienced lawyer with their questions, and acquiring qualifications that will enable them to receive court appointments. Participating in the mentoring program also provides new criminal defense lawyers with a community of mentors and peers to support their practice.

For both mentors and mentees, the relationship may have the practical benefit of becoming a source of co-counseling opportunities and referrals. It can be difficult for experienced and new lawyers alike to know which lawyers in the other group have a standard of practice they can trust and recommend to others. Working together in the mentorship program can provide the basis for that trust.

In a live training, this session could include break-out conversations for mentors and mentees, respectively, with members of each group sharing what the benefits they hope to achieve through the mentoring program and possibly gaining new perspective on and goals for their role in their program based on the responses of their peers in the mentoring program. These break-outs also would allow lawyers to get to know their peers in the program, who provide an additional resource for professional development.

#### D. WHAT IS MENTORING?

Through this session, mentors and mentees will gain an understanding of the mentor's role and develop skills for effective communication in the mentoring relationship.

This session will expose participants to various mentoring roles (including teacher, role model, coach, counselor, and sponsor) and formats (including discussion, observation and analysis of courtroom advocacy, simulation, shadowing, second-chairing, and role reversal). Participants will be asked to consider the different skills involved in being a good lawyer and in being a good mentor.

The session will also explore the differences between being a mentor and a supervisor. It will clarify for participants that a mentor is not acting as a lawyer to the mentee or to the mentee's clients and that the mentee must continue to exercise his or her own professional judgment when representing clients during the mentorship period.

The session will introduce participants to communications approaches that are consistent with the mentor's role and designed to support the mentee's professional development. These approaches include: encouraging mentors to provide context for isolated pieces of their cases that mentees may observe; to demonstrate not only how they do things but also to explain those actions, including the alternatives considered and the risks and benefits presented by each alternative; and to provide not only a solution to their mentees' problems, but to help mentees think through those problems and identify and assess potential courses of action.

This session is well suited for live training, even in jurisdictions that present other sessions via webinar or other technology. It will be particularly effective if mentors and mentees perform exercises in which they practice the communication techniques introduced in the session, which primarily involve learning how to "show their

work." For example, mentors could be given a scenario and be asked not only to say what they would do but also to describe how they approached the decision, the alternatives they considered, and why they chose their ultimate course of action. Similarly, mentees could be asked to reason through a presented scenario for an individual playing a mentor role.

#### E. MENTORING PROFESSIONALISM

Through this session, mentors and mentees will gain an understanding of professionalism standards relevant to the mentoring relationship, including ethical issues raised by communications between mentors and mentees who do not work in the same law firm (which is likely the most common mentoring scenario for criminal defense lawyers in Texas).

The session will frame mentoring as a professional teaching relationship and provide suggestions for how mentoring pairs can avoid conflict and how they can deal with conflict if it arises. To address avoiding conflict, the session will emphasize the confidential and non-judgmental nature of the relationship, which creates a safe space to learn. The session also will address the importance of setting shared expectations within the relationship, particularly related to mentors' and mentees' goals and availability. If conflict arises, in the absence of serious misconduct, mentors and mentees will be asked to approach the situation as they would any other professional relationship in which they have to learn to work with someone with whom they clash. This session will provide tips on how to successfully mentor across age, gender, race, and ethnicity.

The session will introduce the ethical constraints that exist when the mentor and mentee do not practice in the same law firm and provide guidance on how lawyers in those relationships should communicate in order to avoid unwittingly entering into a confidential relationship with each other's clients. The session will also explore situations in which mentors and mentees may want to move beyond hypothetical discussions and enter into a co-counsel or lawyer-consultant relationship and examine the ethical considerations involved in doing so.

#### F. COMMUNITY BUILDING

Particularly in a live training scenario, the mentoring session should include one or more activities to build community within the larger group of mentors and mentees. This sense of community can help reinforce lawyers' commitment to the shared standards of practice the mentoring program is hoping to strengthen and sustain criminal defense lawyers in what can be a very emotionally challenging practice area.

## VIII. CONCLUSION

All counties in Texas stand to benefit when attorneys new to indigent defense are better qualified, more confident, and better prepared. Mentoring is an excellent way to pass on the skills and knowledge of more experienced attorneys to those entering the field. Indigent defense mentoring programs can be developed to suit individual county needs through a variety of ways, as shown in Chapters 3 and 4 of this report. If a county lacks capacity to fine-tune its own mentoring curriculum, both the complete curriculum menu and sample curriculum are

available on the TIDC Mentoring Resources page and can be printed, photocopied, and used directly. Finally, any of the individuals listed on the “Resources” page that follows are available to discuss mentoring programs highlighted in this report.

Whether the administering entity is a county bar association, managed assigned counsel program, pre-trial services agency, public defender office, or some other agency, the following six-point checklist can serve as a road map to developing and implementing a mentoring program.

### Checklist for Developing and Implementing a Mentoring Program

1. **Identify oversight entity:** Before the program can be developed or implemented, an assessment must be conducted to identify the administrator of the program. The administrator should have an understanding of the need for a mentoring program in the county and a commitment to facilitating its implementation.
2. **Develop goals:** To develop the structure of the program itself, clear goals need to be established. The administrator can conduct outreach to key stakeholders (e.g., county officials, judges, bar leaders) and convene an advisory group that can provide insight on the direction of the program. The advisory group can also help identify resources to facilitate these goals.
3. **Establish time frame and action plan:** With program goals firmly established and resources identified, the administrator of the program should develop a project timetable and an action plan that outlines the necessary steps for program design, implementation, assessment, and modification.
4. **Develop mentoring program:** The mentoring program can be tailored to the needs of a particular county based on the materials provided in this report, particularly the curriculum components. In addition to the curriculum, the administrator should also develop the program protocol, recruit mentors and mentees, and generate the necessary materials (e.g., forms and contracts).
5. **Implement mentoring program:** After all components of the mentoring program have been completed and mentors and mentees have been recruited, the county can use the time frame and action plan it developed to guide implementation of the program.
6. **Assess and modify program:** Any new program will likely require some form of modification. By continuously assessing the progress of the program, the administrator can make changes as necessary. Mentors, mentees, and other stakeholders can be surveyed periodically to ensure that the program is meeting its objectives and goals.

# RESOURCES

## BELL COUNTY

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**Linda Ingraham**  
Department Director  
Bell County PreTrial Services  
Linda.Ingraham@co.bell.tx.us

**Fancy H. Jezek**  
Judge, 426th Judicial District Court  
Fancy.Jezek@co.bell.tx.us

## COMAL COUNTY

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**Edwin Colfax**  
Grant Program Manager  
Texas Indigent Defense Commission  
EColfax@tidc.texas.gov  
512-463-2508

## HARRIS COUNTY

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**Alex Bunin**  
Chief Public Defender  
Harris County Public Defender's Office  
alex.bunin@pdo.hctx.net  
713-368-0016 (Main Number)  
713-274-6706 (Direct Number)

**Sarah Wood**  
Assistant Public Defender  
Appellate Division  
Harris County Public Defender's Office  
Sarah.Wood@pdo.hctx.net  
713-368-0016

## LUBBOCK COUNTY

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**Philip Wischkaemper**  
Professional Development Director  
Lubbock Private Defender Office  
pwischkaemper@lpdo.org  
806-589-6325

## TRAVIS COUNTY

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**Trudy Strassburger**  
Deputy Director  
Capital Area Private Defender Service  
trudy@capds.org  
512-774-4208

## GIDEON'S PROMISE

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info@gideonspromise.org  
(404) 525-4505

## GENERAL ASSISTANCE

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**Marea Beeman**  
Director of the Justice Standards,  
Evaluation and Research Initiative  
National Legal Aid & Defender  
Association  
m.beeman@nlada.org  
202-452-0620 (x 219)

**Tiffany Culley**  
Senior Research Associate  
National Legal Aid & Defender  
Association  
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University of Texas  
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512-232-6170





# APPENDICES

APPENDIX A MODEL MENTORING AGREEMENT

APPENDIX B MODEL ATTORNEY-CONSULTANT  
CONFIDENTIALITY AGREEMENT

APPENDIX C SAMPLE CLIENT STATEMENT OF  
UNDERSTANDING

APPENDIX D SAMPLE MENTORING CURRICULUM



## APPENDIX A: Model Mentoring Agreement

*Note:*

*This model mentoring agreement is for a one-on-one mentoring program. In those programs, it is recommended that the mentor and mentee both sign the same agreement when they enter into the mentoring relationship. Aspects of the agreement may need to be modified for a group mentoring program or other program type. Also, in the event that the local program provides a stipend to mentors or mentees for their participation, a separate agreement specifying conditions of payment may be appropriate.*

## Model Mentoring Agreement

I agree to participate in the [JURISDICTION NAME] County Criminal Defense Lawyers Association's mentoring program. I understand that the program is comprised of a one-on-one mentorship relationship that primarily entails discussion of common issues in criminal defense practice, recounting experiences, coaching, and asking questions.

I acknowledge the specific goals of the program:

- To increase the supervision and training available to lawyers beginning criminal defense practice.
- To assist new criminal defense lawyers in beginning the process of acquiring the practical skills and judgment necessary to provide high quality representation.
- To create a pathway for lawyers to obtain the knowledge, skills, and experience deemed necessary to represent indigent defendants in [JURISDICTION NAME].
- To increase the consistency of practice in [JURISDICTION NAME] and compliance with the State Bar of Texas's Performance Guidelines for Non-Capital Criminal Defense Representation.
- To increase the professionalism of lawyers practicing criminal defense in [JURISDICTION NAME].
- To improve the quality of representation provided to indigent defendants in [JURISDICTION NAME].

I acknowledge and will abide by the following mentoring program rules:

- Any communication between the mentor and the mentee arising out of my participation in the mentoring program is for the sole purpose of guiding and teaching the mentee about the practice of criminal defense and the issues that the mentee is likely to face in the practice of criminal defense.
- No confidential relationship is formed between the mentor and the mentee as a result of participation in the mentoring program. Unless consent is granted by the client, neither the mentor nor the mentee will identify any client to the other party in the mentorship relationship or reveal to the other party any client confidence, nor will the mentor or mentee seek professional or legal advice from the other party about specific legal matters or clients. Instead, all discussions about substantive legal matters between the mentor and the mentee will be limited to hypothetical situations.
- If, with client consent, the mentor and mentee enter into an attorney-consultant relationship, associate counsel relationship, or any other relationship that involves revealing client confidences, the mentor and mentee will document the decision to enter into such a relationship in a written agreement that will be included in the case file and agree to observe all ethical rules applicable to the relationship.
- Unless the mentor and mentee enter into an associate counsel relationship in one of the mentee's cases, the mentor is not assuming any liability or responsibility with respect to

any legal matter of the mentee's clients, nor will the mentor render professional services to or take any responsibility for any aspect of representation of the mentee's clients.

- Unless the mentor and mentee enter into an associate counsel relationship in one of the mentee's cases, any communication between the mentor and mentee is not intended to be the rendering of legal or professional advice to the mentee or his/her clients, and the mentee will not rely upon such communications or cause any client to rely upon them. The mentee will rely solely upon his/her own judgment, legal opinions, or independent research.

I hereby certify that I have read this mentoring program agreement and agree to its terms. I pledge that I will devote the time and effort necessary to carry out [JURISDICTION NAME] County Criminal Defense Lawyers Association's mentoring program curriculum in a manner that fulfills the mentoring program's goals. I also certify that the mentor and the mentee do not have a direct supervisory relationship.

\_\_\_\_\_  
Mentor

\_\_\_\_\_  
Date

\_\_\_\_\_  
Mentee

\_\_\_\_\_  
Date

**APPENDIX B: Model Attorney-Consultant  
Confidentiality Agreement**

[Date]

RE: STATE OF TEXAS V. \_\_\_\_\_

Dear CAPDS Attorney,

Please sign this letter confirming your agreement to work with me as an attorney-consultant in the above captioned case.

In connection with your role as consultant, all communications between: us, other attorney-consultants, anyone in my employee and you, as well as communications between you and your agent, expert, or other employee acting on behalf of our client shall be privileged and confidential and made solely for the purpose of assisting counsel and giving legal advice to our client. You will not disclose to anyone, without our written permission, the fact of your consultation, our client's name, and the nature or content of any oral or written communications, nor any information gained from your consultation in connection with this case. All work papers, records, or other documents, regardless of their nature and the source from which they emanate, shall be considered by you to be confidential work product and shall be held by you solely for our convenience and subject to our unqualified right to instruct you with respect to their possession and control.

As part of this agreement, please notify this office if any of the following occurs: (a) the exhibition or surrender of any documents or records prepared in connection with this case; (b) a request by anyone to speak with you about this matter or inspect documents or records; or (c) any attempt to serve or the actual service of a court order, subpoena, or summons upon you that requires production of any documents or records relating to our client.

Kindly indicate your acceptance of the terms of this letter agreement and your agreement to act as an attorney-consultant for the purposes of the attorney-client privilege by signing the bottom of this letter and returning to me.

Should you have any questions about the nature or scope of this agreement or of any of the terms thereof, please feel free to contact me. I look forward to working with you.

Sincerely,

[Attorney Name]

I, \_\_\_\_\_, Bar # \_\_\_\_\_,  
accept and understand the terms of this agreement.

\_\_\_\_\_  
Attorney

[Date]

## **APPENDIX C: Sample Client Statement of Understanding**



### Client Statement of Understanding

I understand that I have the privilege to prevent my lawyer, \_\_\_\_\_, from disclosing any confidential communications covered by the attorney-client privilege and any other fact that comes to the knowledge of my lawyer by reason of the attorney-client relationship. All of this information is referred to in this statement of understanding as "privileged information."

I have consulted with my lawyer about how disclosure of privileged information to investigators, experts, immigration specialists, social workers, and other criminal defense lawyers acting in the role of attorney-consultants may be necessary in order to carry out the lawyer's representation effectively.

I consent to my lawyer's disclosure of privileged information to investigators, experts, immigration specialists, social workers, and/or other criminal defense lawyers acting in the role of attorney-consultants when, in my lawyer's judgment, it is necessary in order to carry out the lawyer's representation effectively and solely for that purpose.

If my lawyer does disclose confidential information as described in this statement, I understand that the individuals to whom the information is disclosed will be under an obligation to maintain the confidentiality of the information. Prior to disclosing any privileged information in my case, the lawyer will seek and obtain confirmation that the confidentiality of the information will be maintained from the individual to whom disclosure will be made.

\_\_\_\_\_  
Client Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Client Name

## **APPENDIX D: Sample Mentoring Curriculum**

*Note:*

*This sample mentoring curriculum is designed for a mentoring program that serves lawyers who are relatively new to criminal defense practice but who may have some limited criminal defense experience in a clinical or professional setting. The curriculum requires lawyers to complete certain activities within each module that are most fundamental to their professional development. However, through the selection of electives, it also allows lawyers flexibility to develop an individualized mentoring plan that addresses specific gaps in their prior legal experience. Additionally, designating some activities as electives makes it possible for the mentor and mentee to adjust the curriculum when an initially planned activity does not occur (e.g., a case that is expected to go to trial is resolved without one) or an unanticipated opportunity arises.*

*Resources identified as “Guideline” are specific guidelines contained in the State Bar of Texas’s Performance Guidelines for Non-Capital Case Representation.*

## Module 1: Establishing the Mentoring Relationship

In addition to the mandatory activities, **at least one** other activity from this module must be completed.

Activity	Check if Selected	Date Completed
Discuss each lawyer's background and interests, and identify commonalities.		
Discuss the mentee's incoming knowledge and skills.		
Discuss the mentee's goals for the mentoring relationship, including gaps in his or her knowledge and skills s/he would like to address.		
Develop a mentoring plan based on the mentee's goals and the mentor's knowledge and skills.	MANDATORY	
Discuss ethical issues that will arise in the mentoring relationship, including how to preserve client confidentiality and avoid conflicts of interest.	MANDATORY	
Establish expectations and boundaries for the mentoring relationship, including when and how the mentor will be available to the mentee.		
Sign a mentoring agreement.	MANDATORY	

### Resources

1. American Bar Association, Standing Committee on Ethics and Professional Responsibility, Formal Ethics Opinion 98-411: Ethical Issues in Lawyer-to-Lawyer Consultation<sup>52</sup>
2. Mark A. Fogg, Richard L. Gabriel, and Margrit Lent Parker, The Mentoring Relationship: How to Make It Work and Why It Matters, 42 The Colorado Lawyer 53 (Oct. 2013)<sup>53</sup>
3. Gary Seiser, Mentoring: A Partnership in Growth, The Benchers (Jan./Feb. 2005)<sup>54</sup>

<sup>52</sup> Available at [https://www.americanbar.org/content/dam/aba/publishing/litigation\\_news/top\\_stories/docs/ethics-98-411.authcheckdam.pdf](https://www.americanbar.org/content/dam/aba/publishing/litigation_news/top_stories/docs/ethics-98-411.authcheckdam.pdf).

<sup>53</sup> Available at [http://coloradomentoring.org/wp-content/uploads/2013/09/10-2013\\_FoggGabrielParker.pdf](http://coloradomentoring.org/wp-content/uploads/2013/09/10-2013_FoggGabrielParker.pdf).

<sup>54</sup> Available at <http://www.supremecourt.ohio.gov/AttySvc/mentoring/MentoringOrientationManual.pdf> (at Tab V.G).

## Module 2: Ethical Considerations for Defense Lawyers

In addition to the mandatory activity, **at least one** other activity from this module must be completed.

Activity	Check if Selected	Date Completed
Review and discuss Guidelines 1.1-1.3 dealing with the fundamental role, duties, and obligations of defense counsel.		
Discuss appropriate ways to handle difficult ethical situations that arise in criminal defense, such as the appropriate way to deal with situations in which a lawyer has been asked to do something unethical or is practicing in conditions that make the lawyer feel pressured to engage in unethical conduct (e.g., if court management practices or a defendant's custodial status encourage a lawyer to counsel a client about a plea offer before the attorney has time to adequately evaluate and investigate the charges).	MANDATORY	
Review caseload guidelines for criminal defense lawyers and discuss ethical issues that may be raised by an attorney's caseload.		
Discuss practical suggestions for the types of practices in which a lawyer should engage to minimize client dissatisfaction and avoid common client grievances, including the best ways to communicate with a client and to involve a client in his or her representation.		
Discuss substance abuse and mental health issues, including possible warning signs of substance abuse or mental health issues; what to do if the lawyer, a colleague, or a superior is faced with substance abuse or mental health problems; and the resources for assistance with a substance abuse and mental health problem.		

### Resources

1. Texas Lawyer's Creed<sup>55</sup>
2. Texas Disciplinary Rules of Professional Conduct<sup>56</sup>
3. Guideline 1.1: Role of Defense Counsel<sup>57</sup>
4. Guideline 1.2: Education, Training, and Experience of Defense Counsel
5. Guideline 1.3: General Duties of Defense Counsel
6. Public Policy Research Institute, Guidelines for Indigent Defense Caseloads (2015)<sup>58</sup>
7. American Bar Association, Standing Committee on Ethics and Professional Responsibility, Formal Ethics Opinion 06-441: Ethical Obligations of Lawyers Who Represent Indigent Criminal Defendants When Excessive Caseloads Interfere with Competent and Diligent Representation (2006)<sup>59</sup>

55 Available at [www.legalethictexas.com/Downloads/Texas-Lawyers-Creed/Texas\\_Lawyers\\_Creed.aspx](http://www.legalethictexas.com/Downloads/Texas-Lawyers-Creed/Texas_Lawyers_Creed.aspx).

56 Available at [www.legalethictexas.com/Ethics-Resources/Rules/Texas-Disciplinary-Rules-of-Professional-Conduct.aspx](http://www.legalethictexas.com/Ethics-Resources/Rules/Texas-Disciplinary-Rules-of-Professional-Conduct.aspx).

57 Resources identified as "Guideline" in the model curriculum are specific guidelines contained in State Bar of Texas's Performance Guidelines for Non-Capital Case Representation. The Performance Guidelines are Available at [www.texasbar.com/AM/Template.cfm?Section=Texas\\_Bar\\_Journal&Template=/CM/ContentDisplay.cfm&ContentID=14703](http://www.texasbar.com/AM/Template.cfm?Section=Texas_Bar_Journal&Template=/CM/ContentDisplay.cfm&ContentID=14703).

58 Available at [www.tidc.texas.gov/resources/publications/reports/special-reports/weightedcaseloadstudy.aspx](http://www.tidc.texas.gov/resources/publications/reports/special-reports/weightedcaseloadstudy.aspx).

59 Available at [dpa.ky.gov/NR/rdonlyres/0A05F4ED-79D7-40C8-BC9A-1AD7D8E33421/0/ABAFomalOpinion.pdf](http://dpa.ky.gov/NR/rdonlyres/0A05F4ED-79D7-40C8-BC9A-1AD7D8E33421/0/ABAFomalOpinion.pdf).

### Module 3: Introduction to the Legal Community

At least two activities from this module must be completed.

Activity	Check if Selected	Date Completed
Introduce the mentee to members of the judiciary, court personnel, and clerks.		
Explain the roles of different court staff, including the clerks, the bailiffs, and judicial assistants, and discuss the appropriate demeanor with court personnel.		
Review and discuss the local court rules and procedures. Explain how to obtain court records and file pleadings. Discuss filing protocols such as cover sheets, required forms, number of copies, the delivery of courtesy copies to the judge, etc.		
Discuss whether different judges have different courtroom practices and preferences. Discuss expectations for checking in when a lawyer arrives for a court setting, how a lawyer should handle a situation in which he or she has cases set in multiple courtrooms at the same time, etc.		
Discuss “unwritten” customary rules of civility and etiquette among lawyers and judges in the community.		
Review visitation procedures at different jail facilities and contingencies such as bringing a translator, expert, or a computer.		
Discuss the various bar associations the mentee should consider joining and the advantages of joining each.		

#### Resources

1. Local rules of the relevant jurisdiction (if available)
2. Local court forms (if available)

## Module 4: Law Practice Management

In addition to the mandatory activity, **at least two** other activities from this module must be completed.

Activity	Check if Selected	Date Completed
Review a sample client contract and fee agreement. Discuss how to set a fee. Discuss associated ethical issues.		
Review and discuss rules for handling client funds, for placing funds in operating or trust accounts, and the Texas IOLTA program.		
Discuss best practices for calendaring case events, maintaining time records, maintaining records of client-related expenses, maintaining client files, conducting conflict checks, and data back-up and security.	MANDATORY	
Discuss practical issues that must be resolved when sharing office space with lawyers not in the same firm regarding safeguarding confidential information of clients.		
Discuss methods and techniques of client and business development, including any relevant ethical concerns and the most professional practices in this regard.		
Discuss considerations in purchasing liability insurance.		
Discuss available legal research services.		

### Resources

1. Texas Disciplinary Rules of Professional Conduct
2. State Bar of Texas, Professional Ethics Committee, Ethics Opinion 611 (2011)<sup>60</sup>
3. Lawrence G. Boyd, The Mythology of Non-Refundable Flat Fees, Voice for the Defense Online (Oct. 1, 2013)<sup>61</sup>

<sup>60</sup> Available at [www.legaethicstexas.com/Ethics-Resources/Opinions/Opinion-611.aspx](http://www.legaethicstexas.com/Ethics-Resources/Opinions/Opinion-611.aspx).

<sup>61</sup> Available at [www.voiceforthedefenseonline.com/story/mythology-non-refundable-flat-fees](http://www.voiceforthedefenseonline.com/story/mythology-non-refundable-flat-fees).

## Module 5: Working with Your Client

In addition to the mandatory activities, **at least one** other activity from this module must be completed.

Activity	Check if Selected	Date Completed
Share best practices for communicating with clients, including clarifying the lawyer’s role and the scope of the representation, in both retained and appointed cases; clarifying reasonable expectations for the representation; communicating the steps of the criminal justice process and what will happen when; how and when to follow up on verbal communications with the client; responding to communication from the client personally and promptly; and being respectful of the client in all communications.	MANDATORY	
Discuss how to identify the client’s goals and the responsibilities of the client and the lawyer in decision making. Provide examples of the types of decisions in the mentor’s practice in which he or she involves the client, including, reasons for involving the client in those instances and the reasons for not involving the client in certain other decisions the mentor makes.	MANDATORY	
Share tips on counseling the client for decisions, including advising fully on all relevant considerations or consequences to a course of action and responding appropriately when the client wants to choose a course of action not recommended by the lawyer.		
Discuss considerations for how you interact with a client’s family member, boyfriend/girlfriend, etc.		
Discuss the emotional toll that working with clients, who often live in difficult circumstances and who likely are under extreme stress due to their criminal justice system involvement, can have on the lawyer. Discuss strategies for mitigating that emotional toll while maintaining the client relationship.		

### Resources

1. Jonathan Rapping, Building a New Generation of Public Defenders, TEDx Atlanta (May 8, 2015)<sup>62</sup>
2. New York State Defenders Association, Client-Centered Representation Standards (2005)<sup>63</sup>

<sup>62</sup> Available at [www.youtube.com/watch?v=w-j20aGs6uU](http://www.youtube.com/watch?v=w-j20aGs6uU).

<sup>63</sup> Available at [http://www.nysda.org/docs/PDFs/Pre2010/05\\_ClientCenteredStandards.pdf](http://www.nysda.org/docs/PDFs/Pre2010/05_ClientCenteredStandards.pdf).

## Module 6: Initial Interview and Pretrial Release

In addition to the mandatory activities, **at least one** other activity from this module must be completed.

Activity	Check if Selected	Date Completed
Review Guideline 2.2 and discuss how to conduct an initial interview.	MANDATORY	
Subject to client consent, observe a lawyer conducting an initial client interview and discuss the experience.		
Discuss how to recognize signs of mental illness or incompetence, and considerations and procedures to follow should the lawyer perceive such signs.		
Discuss how to recognize signs of drug use or dependency, and considerations should the lawyer perceive such signs.		
Discuss how to obtain and use translators in court and in client meetings.		
Discuss the potential consequences for the client, the client's family, and the case that can result from the client's pretrial release status. Discuss the lawyer's obligation to attempt to secure pretrial release through a bond reduction or other means, and local procedures for doing so.	MANDATORY	
Observe or participate in a bond reduction hearing or other proceeding to secure the client's pretrial release and discuss the experience.		

### Resources

1. Guideline 2.1: General Obligations of Counsel Regarding Pretrial Release
2. Guideline 2.2: Initial Interview
3. Guideline 3.1: Initial Appearance before the Magistrate and Pretrial Release Proceedings
4. Texas Fair Defense Project, Depenalizing Poverty: A Proposal for Improving Harris County Bail Policies, pages 4-6 (2014) (on impact of pretrial custody on families and case outcomes)<sup>64</sup>

<sup>64</sup> Available at [www.fairdefense.org/wp-content/uploads/media/Depenalizing-Poverty1.pdf](http://www.fairdefense.org/wp-content/uploads/media/Depenalizing-Poverty1.pdf).



## Module 7: Case Evaluation and Theory of the Case

In addition to the mandatory activity, at least one other activity from this module must be completed.

Activity	Check if Selected	Date Completed
Complete an initial case evaluation: analyze the charge language; review each offense charged and discuss the elements of the offense; review the offense report; and consider potential jury charges as relevant to the analysis.		
Discuss how to use the initial case evaluation and information obtained from the client to begin to find a theme/theory that will be effective in negotiations or trial and how to develop and refine that theme/theory through investigation, etc.	MANDATORY	
Discuss how to prepare a mitigation case for a client, including how to engage or request the appointment of a social worker or other expert.		

### Resources

1. Guideline 4.3: Theory of the Case
2. Anthony Natale, Theory and Themes/Storytelling<sup>65</sup>
3. Cathleen Bennett, If You Build It, They Will Come: Using Stories to Create Key Moments, Win Key Evidentiary Battles and Vindicate Your Client<sup>66</sup>

<sup>65</sup> Available at [http://www.fd.org/pdf\\_lib/TS2011/Theoriesandthemes.pdf](http://www.fd.org/pdf_lib/TS2011/Theoriesandthemes.pdf).

<sup>66</sup> On file with author; available upon request.

## Module 8: Investigation and Discovery

In addition to the mandatory activities, **at least one** other activity from this module must be completed.

Activity	Check if Selected	Date Completed
Review Guideline 4.1 and discuss the lawyer's duty to conduct and independent investigation of facts relevant to both the merits of the charges and to the penalty in the event of conviction.	MANDATORY	
Discuss and review federal and state law relevant to discovery in criminal cases and review a formal discovery request, including a request for exculpatory materials.	MANDATORY	
Review frequently used Internet resources such as criminal background databases.		
Review how to draft, file, and serve subpoenas and what to expect/best practices.		
Discuss when and how to obtain an investigator, including how to request appointment of an investigator in an appointed case.		
Subject to client consent, participate in interviewing a witness or a victim and discuss the experience. Discuss the possible trial consequences when a lawyer conducts his or her own witness interviews.		
Discuss the engagement and use of an expert witness for consultation and/or testimony. Discuss and review procedures to file an ex parte request for appointment of an expert.		

### Resources

1. Guideline 3.4: Prosecution Requests for Non-Testimonial Evidence
2. Guideline 4.1: Investigation
3. Guideline 4.2: Formal and Informal Discovery

## Module 9: Pretrial Motions

In addition to the mandatory activity, **at least one** other activity from this module must be completed.

Activity	Check if Selected	Date Completed
Discuss common pretrial motions, including when to file.	MANDATORY	
Review samples of common pretrial motions.		
Discuss the characteristics of effective legal writing, techniques for the most effective legal writing, how to avoid common mistakes that may cause pleadings to be rejected, how to effectively use sample legal pleadings, and how to conduct efficient legal research.		
Observe or participate in a hearing on a motion to suppress or other pretrial hearing and discuss the experience.		
Observe or participate in a non-evidentiary pretrial motion hearing and discuss the experience.		

### Resources

1. Guideline 5.2: The Decision to File Pretrial Motions
2. Guideline 5.3 Filing and Arguing Pretrial Motions
3. Guideline 5.4 Subsequent Filing of Pretrial Motions

## Module 10: Plea Negotiations and Counseling

In addition to the mandatory activities, **at least one** other activity from this module must be completed.

Activity	Check if Selected	Date Completed
Discuss how a lawyer should prepare for a plea negotiation, including when and how negotiation should be initiated. Discuss when and how to involve the client in negotiation.	MANDATORY	
Discuss what to expect in a plea offer, including standard offers on different types of cases in the relevant jurisdiction.		
Discuss any local diversion programs or specialty courts that may offer alternative resolutions for the client and how to apply for or otherwise access these programs and courts for the client.		
Discuss potential consequences for negotiation strategy related to the fact that the client is not a U.S. citizen, has another case pending, has previous convictions, or is on probation or parole for another offense.		
Subject to client consent, observe or participate in a plea negotiation and discuss the experience.		
Discuss how to counsel a client about a plea offer, including how to counsel a client about immigration and other collateral consequences that would result from the plea under consideration and how to counsel the client about difficult options.	MANDATORY	
Subject to client consent, observe or participate in a plea counseling session and discuss the experience.		
Learn how to complete plea papers and go over them with the client and prepare the client for the plea hearing.		

### Resources

1. Guideline 6.1: The Plea Negotiation Process and the Duties of Counsel
2. Guideline 6.2: The Contents of the Negotiations
3. Guideline 6.3: The Decision to Enter a Plea of Guilty
4. Guideline 6.4: Entry of the Plea before the Court
5. *Padilla v. Kentucky*, 559 U.S. 356, 130 S. Ct. 1473 (2010)
6. *Lafler v. Cooper*, 132 S. Ct. 1376 (2012)
7. *Missouri v. Frye*, 132 S. Ct. 1399 (2012)

## Module 11: Trial

In addition to the mandatory activity, **at least two** other activities from this module (including one courtroom experience) must be completed.

Activity	Check if Selected	Date Completed
Discuss how to prepare a case for trial, including how to prepare for opening and closing statements, how to prepare for direct and cross examination, how to introduce or challenge the introduction of evidence, how to prepare draft jury instructions, etc.	MANDATORY	
Discuss how to physically prepare a case file for trial.		
Discuss the importance of preserving objections and how to do so.		
Discuss the courtroom technology available in the local courts and which court personnel to contact for access to courtroom technology.		
Observe or participate in jury selection and discuss the experience.		
Observe or participate in opening statements and discuss the experience.		
Observe or participate in a cross-examination and discuss the experience.		
Observe or participate in a direct examination of a testifying client and discuss the experience.		
Observe or participate in a charge conference and discuss the experience.		
Observe or participate in a closing argument and discuss the experience.		
Sit second chair in a trial and discuss the experience.		

### Resources

1. Guideline 7.1: General Trial Preparation
2. Guideline 7.2: Voir Dire and Jury Selection
3. Guideline 7.3: Opening Statement
4. Guideline 7.4: Confronting the Prosecution's Case
5. Guideline 7.5: Presenting the Defense Case
6. Guideline 7.6: Closing Argument
7. Guideline 7.7: Jury Instructions

## Module 12: Sentencing and Post-Trial Proceedings and Procedures

In addition to the mandatory activity, **at least two** other activities from this module must be completed.

Activity	Check if Selected	Date Completed
Observe or participate in a sentencing hearing and discuss the experience.		
Review and discuss a motion for new trial.		
Observe or participate in a motion for new trial hearing and discuss the experience.		
Discuss when and how the attorney's representation of a client concludes in both appointed and retained cases, including procedures for filing a motion to withdraw as counsel of record.		
Discuss the attorney's duty to advise the client about the right to appeal, action that must be taken to perfect an appeal, and, if the attorney will not represent the client on appeal and the client cannot afford to retain new counsel, procedures for requesting counsel to assist in the appeal. Discuss the attorney's obligations to take all steps necessary to preserve the right to appeal prior to concluding representation of the client.	MANDATORY	
Review a motion to revoke probation or motion to adjudicate and discuss common procedures or strategies.		
Observe or participate in a motion to revoke probation or motion to adjudicate and discuss the experience.		
Discuss eligibility for expunction and non-disclosure.		
Participate in drafting and filing a petition for expunction or non-disclosure.		
Discuss the lawyer's duty to provide the file to the client on request and to cooperate with successor counsel, including limits on the duty to cooperate.		

### Resources

- Guideline 8.1: Obligations of Counsel in Sentencing
- Guideline 8.2: Sentencing Options, Consequences and Procedures
- Guideline 8.3: Preparation for Sentencing
- Guideline 8.4: The Official Presentence Report
- Guideline 8.5: The Prosecution's Sentencing Position
- Guideline 8.6: The Defense Sentencing Memorandum
- Guideline 8.7: The Sentencing Process
- Guideline 8.8: Self-Surrender
- Guideline 8.9: Expungement of Record
- Guideline 9.1: Duties of Defense Counsel in Post-Trial Proceedings
- Guideline 9.2: Education, Training and Experience of Defense Counsel in Post-Trial Proceedings
- Guideline 9.3: Motion for New Trial
- Guideline 9.4: Protecting the Right to Appeal
- In re McCann*, 422 S.W.3d 701 (2013)





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