

**COMAL COUNTY INDIGENT DEFENSE ATTORNEY  
MENTORING PROGRAM  
Comal County, Texas**

***Program Description,  
Policies and Procedures***

**April 2014**

## **Introduction**

The Comal County Indigent Defense Attorney Mentoring Program is part of a larger project that is being undertaken by Comal County with the support of a grant from the Texas Indigent Defense Commission (TIDC). The primary focus of the project is to afford indigent clients in criminal cases in Comal County the opportunity to select their own lawyer from a list of attorneys approved by the judiciary. The “client choice” part of the program is scheduled to begin in October 2014.

In addition to providing indigent defendants with a choice of attorney, the project also includes a mentoring program pilot project for a few members of the private bar approved to receive court appointments. As independent contractors, private court-appointed defense attorneys do not have the same opportunities for professional development through supervision and mentoring that a county department normally has. The program seeks to elevate the skills and professionalism of private defense attorneys who serve an essential function in the county’s justice system.

Mentoring programs for assigned counsel are used in a number of jurisdictions around the country. In Texas, mentoring programs for assigned counsel are underway in both Bell and Harris Counties. Goals of these mentoring programs, like the one in Comal County, are to provide practical assistance to mentees in a wide variety of subject areas, including standards for defense representation, practical skills, motion practice, case preparation, plea negotiations, and sentencing.

In order to identify mentees, Comal County Court-at-Law judges agreed to nominate lawyers who they believed might benefit from a mentoring relationship with a senior member of the bar qualified for appointments to serious felony cases. The attorneys who will serve as mentors are among the lawyers identified by Comal County judges to serve on the client choice project team. All are highly-qualified and experienced defense attorneys and will be assigned to mentees who agree to participate in the mentoring program.

Participation in the program is offered to mentees as a unique opportunity for professional development. Completion of the mentoring program does not guarantee or imply any future qualification to serve on court appointment lists maintained by the judiciary.

The mentoring program pilot project will operate for six months prior to the start of the client choice phase of the project, from May through October 2014.

## **Program Structure and Expectations of Mentors and Mentees**

The mentoring program is being coordinated by Edwin Colfax, Project Director for TIDC, who is working with Comal County officials on implementation of the client choice program. In addition, Professor and Dean Emeritus Norman Lefstein, program design consultant for the client choice project, also is involved in oversight of the mentoring

program. At the conclusion of the client choice project, Professor Lefstein will prepare a Final Project Report, in which the mentoring program will be summarized.

The expectations of mentors and mentees include the following:

1. For mentors and mentees: To meet with one another on at least two scheduled occasions each month, as well as informally as may be necessary. The scheduled meetings should last at least one hour. The ways in which these scheduled mentoring sessions might best be used will depend to some degree on what the mentee believes would be most beneficial. The material beginning at page 4 provides suggestions about a wide variety of subject areas that would likely be beneficial to address.
2. For mentors: To arrange for their mentee, upon court approval, to serve as second chair in the trial of a case. In some circumstances, mentors may arrange for their assigned mentee to sit second chair in a trial in a case handled by another highly experienced attorney.
3. For mentees: To attend the day-long CLE training program that is being planned to be held in New Braunfels in September 2014.
4. For mentees: To attend periodic noontime CLE training seminars to be held in New Braunfels during 2014 and 2015 as part of the grant project.
5. For mentors: At the conclusion of the mentoring program, to complete an evaluation regarding the progress of their mentee and providing feedback on the mentoring program in general.
6. For mentees: At the conclusion of the mentoring program, to complete an evaluation form regarding the assistance provided by their mentor and providing feedback on the mentoring program in general.

In addition, mentors should:

- Help mentees understand and appreciate professional standards of defense practice;
- Be available for questions;
- Answer questions and give advice;
- Listen to ideas, plans, doubts, and fears of their mentees;
- Reveal their previous mistakes and lessons learned;
- Share successful strategies and “war stories;”
- Ensure that their mentee has access to the people and professionals who will support their practice, by introducing their mentee to judges, court staff, prosecutors, and others with whom their mentee may not be acquainted; and
- Be positive and constructive.

In addition, mentees should:

- Review the Texas Performance Guidelines for Non-Capital Criminal Defense Representation published by the Texas State Bar;
- Acknowledge the subject areas and issues about which they may need help;
- Ask questions; and
- Be open to suggestions and advice from their mentor.

### **Mentor Stipends**

Mentors will be compensated for the time they spend with mentees at the rate of \$75 per hour up to a maximum of four hours per month for each mentee assigned to them. Mentors will typically have one mentee assigned at one time, and may have a maximum of two concurrently. Time spent by mentors preparing to meet with their mentee will not be compensated. Payments to mentors will be made upon monthly submission of a completed mentoring services invoice form (Appendix C) to the Comal County Auditor's Office, with a copy to TIDC's Project Director. The invoice form must include the name of the mentee, dates of consultation, brief description of subjects discussed, and the amount of time spent with the mentee.

### **Mentee Training Stipends for Second Chair Trial Time**

Mentees will not be paid for their time consulting with mentors except when they sit as second chair in the trial of a case. Payment for in-court time spent sitting as second chair will be at the rate of \$50 per hour, up to a maximum of 24 hours per mentee. To receive reimbursement, mentees should submit a complete mentee training stipend invoice form (Appendix D) to the Comal County Auditor's Office, with a copy to TIDC Project Director. The invoice form must include the name of the case in which the mentee participated as second chair, the attorney of record for the case, the dates and times of the trial, and the amount of time that the mentee spent in court.

### **Evaluations**

At the end of the mentoring program pilot project both mentors and mentees will complete an evaluation form. Mentors will be asked to assess the professional growth and performance of their assigned mentee in the program. Mentees will be asked to assess the support provided by their mentor. Both mentors and mentees will be asked for general feedback on the program. Completed evaluation forms will be submitted to Edwin Colfax, TIDC's Project Director. Mentor and mentee evaluation forms will be treated as confidential and not released to persons outside TIDC and its program consultants *except* upon approval of the submitting party. Based upon assessments of the completed evaluation forms, Certificates of Appreciation to mentors and Certificates of Achievement to mentees will be awarded.

## **Subject Areas for Mentoring Sessions**

Attorneys experienced in representing indigent defendants can assist the professional development of less experienced attorneys in many different ways. The following list of subject areas is intended to provide some framework for constructive discussions.

1. **The Texas Lawyer's Creed and Texas Performance Guidelines for Non-Capital Criminal Defense Representation**

Have meaningful discussions about the Texas Lawyer's Creed: A Mandate for Professionalism (Appendix A); and Performance Guidelines for Non-Capital Defense Representation (Appendix B). Respecting the latter document, focus on Guidelines 1.1 through 1.3 dealing with the fundamental role, duties, and obligations of defense counsel.

2. **Texas Rules of Professional Conduct**

Discuss ethical issues that arise in criminal defense and to which the Rules of Professional Conduct have application, and the ways in which to resolve such issues. Also, discuss "unwritten" customary rules of civility and etiquette among lawyers in Comal County.

3. **Special Ethical Situations that Sometimes Arise**

Discuss, for example, appropriate ways to handle difficult ethical situations, such as the obligation to report misconduct of another lawyer, the appropriate way to deal with situations where a lawyer believes that he or she has been asked to do something unethical, proposed client perjury, and the handling of incriminating physical evidence that comes into the possession of a defense lawyer.

4. **Initial Client Interview**

Review and discuss Appendix B, Guidelines 2.1 and 2.2. To augment discussion of the Guidelines, mentor and mentee might agree to have the mentor observe an interview between the mentee and a new client and offer comments on the interview. Alternatively, the mentor might decide to arrange for the mentee to observe an initial interview between the mentor and a new client.

5. **Initial Appearance, Pretrial Release, Competency, and Requests for Non-Testimonial Evidence**

Review and discuss Appendix B, Guidelines 3.1 through 3.4.

6. **Investigation, Discovery, and Theory of the Case**

Review and Discuss Appendix B, Guidelines 4.1 through 4.3.

7. Pretrial Motions and Arraignment

Review and Discuss Appendix B, Guidelines 5.1 through 5.4.

8. Plea Negotiations, Decision to Plead Guilty and Entry Before the Court

Review and Discuss Appendix B, Guidelines 6.1 through 6.4.

9. Trial Preparation, Jury Selection, Conducting the Trial, and Instructions

Review and Discuss Appendix B, Guidelines 7.1 through 7.7.

10. Sentencing, Preparation, Presentence Report, and Defense Memorandum

Review and Discuss Appendix B, Guidelines 8.1 through 8.9.

11. Post-Trial Proceedings

Review and Discuss Appendix B, Guidelines 9.1 through 9.8.

12. Law Office Management

**Questions about the Comal County Mentoring Program**

Inquiries about the Comal County Mentoring Program should be addressed to:

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