

Mentoring Curriculum Menu Worksheets

The following mentoring curriculum worksheets present the complete mentoring curriculum menu that can be used by program coordinators to develop a curriculum that is tailored to local goals and resources.

Additional information about how to use the curriculum worksheets is located in Chapter 4 of *Indigent Defense Attorney Mentoring in Texas: A Guide to Establishing a Mentorship Program*.

Note: 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 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.			

Resources

1. American Bar Association, Standing Committee on Ethics and Professional Responsibility, Formal Ethics Opinion 98-411: Ethical Issues in Lawyer-to-Lawyer Consultation¹
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)²
3. Gary Seiser, Mentoring: A Partnership in Growth, The Benchers (Jan./Feb. 2005)³

¹ Available at https://www.americanbar.org/content/dam/aba/publishing/litigation_news/top_stories/docs/ethics-98-411.authcheckdam.pdf.

² Available at http://coloradomentoring.org/wp-content/uploads/2013/09/10-2013_FoggGabrielParker.pdf.

³ Available at <http://www.supremecourt.ohio.gov/AttySvcs/mentoring/MentoringOrientationManual.pdf> (at Tab V.G).

Module 2: Ethical Considerations for Defense Lawyers

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?
Review and discuss Guidelines 1.1-1.3 of the State Bar of Texas's Performance Guidelines for Non-Capital Case Representation 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).			
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 Creed⁴
 2. Texas Disciplinary Rules of Professional Conduct⁵
 3. Guideline 1.1: Role of Defense Counsel⁶
 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)⁷
 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)⁸
- 4 Available at www.legalethicstexas.com/Downloads/Texas-Lawyers-Creed/Texas_Lawyers_Creed.aspx.
- 5 Available at www.legalethicstexas.com/Ethics-Resources/Rules/Texas-Disciplinary-Rules-of-Professional-Conduct.aspx.
- 6 Resources identified as "Guideline" are specific guidelines contained in the State Bar of Texas's Performance Guidelines for Non-Capital Case Representation. Available at <http://goo.gl/JwBD3u>.
- 7 Available at www.tidc.texas.gov/resources/publications/reports/special-reports/weightedcaseloadstudy.aspx.
- 8 Available at www.dpa.ky.gov/NR/rdonlyres/0A05F4ED-79D7-40C8-BC9A-1AD7D8E33421/0/ABAFORMALOpinion.pdf.

Module 3: Introduction to the Legal Community

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?
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 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?
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.			
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)⁹
3. Lawrence G. Boyd, The Mythology of Non-Refundable Flat Fees, Voice for the Defense Online (Oct. 1, 2013)¹⁰

⁹ Available at www.legalethictexas.com/Ethics-Resources/Opinions/Opinion-611.aspx.

¹⁰ Available at www.voiceforthedefenseonline.com/story/mythology-non-refundable-flat-fees.

Module 5: Working with Your Client

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?
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.			
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, among other things, the reasons for involving the client in those instances and the reasons for not involving the client in certain other decisions the mentor makes.			
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)¹¹
2. New York State Defenders Association, Client-Centered Representation Standards (2005)¹²

¹¹ Available at www.youtube.com/watch?v=w-j20aGs6uU.

¹² Available at http://www.nysda.org/docs/PDFs/Pre2010/05_ClientCenteredStandards.pdf.

Module 6: Initial Interview and Pretrial Release

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?
Review State Bar of Texas's Performance Guidelines for Non-Capital Case Representation Guideline 2.2 and discuss how to conduct an initial interview.			
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.			
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)¹³

¹³ Available at www.fairdefense.org/wp-content/uploads/media/Depenalizing-Poverty1.pdf.

Module 7: Case Evaluation and Theory of the Case

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?
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.			
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/Storytelling¹⁴
3. Cathleen Bennett, If You Build It, They Will Come: Using Stories to Create Key Moments, Win Key Evidentiary Battles and Vindicate Your Client¹⁵

¹⁴ Available at http://www.fd.org/pdf_lib/TS2011/Theoriesandthemes.pdf.

¹⁵ On file with author; available upon request.

Module 8: Investigation and Discovery

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?
Review Guideline 4.1 of the State Bar of Texas's Performance Guidelines for Non-Capital Case Representation and discuss the lawyer's duty to conduct an independent investigation of facts relevant to both the merits of the charges and to the penalty in the event of conviction.			
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.			
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 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 common pretrial motions, including when to file.			
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

4. Guideline 5.2: The Decision to File Pretrial Motions
5. Guideline 5.3 Filing and Arguing Pretrial Motions
6. Guideline 5.4 Subsequent Filing of Pretrial Motions

Module 10: Plea Negotiations and Counseling

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 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.			
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.			
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 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 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.			
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 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?
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.			
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)