

***INNOVATIVE  
SOLUTIONS* IN PUBLIC DEFENSE**

# **Assigned Counsel Mentoring Programs: Results and Lessons from Two Pilot Projects**

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# Introduction

Following the U.S. Supreme Court decision in *Gideon v. Wainwright*,<sup>1</sup> recognizing the constitutional right to counsel in state felony matters, jurisdictions nationwide have developed various approaches to providing defense lawyers to people who cannot afford counsel. Different delivery models used to provide representation at the federal, state and local level include public defender agencies, legal aid societies, assigned counsel systems and contract attorney programs.

Since *Gideon*, the criminal justice discourse has evolved so that the focus is no longer on merely providing representation, but on providing effective representation.<sup>2</sup> Mechanisms have been developed to help indigent defense systems deliver effective representation, despite chronic resource limitations and pressures on defense counsel to take on voluminous caseloads. One example is establishment of national and local attorney performance standards. Another is enforcement of experiential requirements to ensure that attorneys are only appointed to cases that are within their level of developed competencies to handle.

Adopting strategies that support the delivery of effective assistance of counsel fosters confidence in our system of justice, as well as fair and just outcomes for people who stand accused of violating the law. However, one unintended consequence of establishing experience thresholds relates to populating the pipeline for new criminal defense lawyers, particularly those who accept court appointed cases. Adoption of stiffer requirements to qualify for appointments keeps inexperienced lawyers from taking on cases for which they do not possess the requisite experience. Yet for lawyers new to criminal practice, particularly those in solo practice, opportunities to obtain the requisite training and experience can be hard to come by.

To address concerns about inadequate training and experience, some jurisdictions have established mentoring programs for assigned counsel criminal defense attorneys.<sup>3</sup> Existing mentoring programs use different structures and approaches, and little information is available to help guide development of new programs. Generally, mentoring provides semi-structured opportunities for experienced lawyers to share their wisdom and skills, while providing support and assistance to those who are new to the field. The expectation is that mentoring enhances the professional development of criminal defense lawyers and thus, the quality of representation provided to clients.

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<sup>1</sup> *Gideon v. Wainwright*, 372 U.S. 335, 344 (1963). In discussing fundamental rights, the U.S. Supreme Court recognized that the noble ideal of equal justice before the law cannot be realized if a poor man charged with a crime has to face accusers without a lawyer to assist. [I]n our adversary system of criminal justice, any person hauled into court, who is too poor to hire a lawyer, cannot be assured a fair trial unless counsel is provided for him. *Id.* Subsequent opinions expanded the right to counsel to include essentially any charge that can result in the loss of liberty. For example, in *Argersinger v. Hamlin*, 407 U.S. 25 (1972), the U.S. Supreme Court recognized the right for misdemeanors and in *In Re Gault*, 387 U.S. 1 (1967), the court extended the right to juvenile delinquency cases. For a full sketch of the development of the right to counsel through case law, see Chapter 1 of *Justice Denied: America's Continuing Neglect of Our Constitutional Right to Counsel* (the Constitution Project, 2009)

<sup>2</sup> *McMann v. Richardson*, 397 U.S. 759, 771 n.14 (1970) ("It has long been recognized that the right counsel is the right to the effective assistance of counsel." To be effective, an attorney must be reasonably competent, providing to the particular defendant in the particular case the assistance demanded of attorneys in criminal cases under prevailing professional norms, such as those "reflected in American Bar Association standards and the like.")

<sup>3</sup> Mentoring is a special partnership between two people based on commitment to the mentoring process, common goals and expectations, focus, mutual trust and respect. Mentoring can also encompass activities that allow for transfer of knowledge and skills from one [person] to others. U.S. Department of Energy Office of Learning and Workforce Development, *MENTORING PROGRAM: GUIDANCE AND PROGRAM PLAN 7*, available at [https://www.energy.gov/sites/prod/files/2014/11/f19/DOE\\_Mentoring%20Guidance%20%20Pgrm%20Plan2\\_0.pdf](https://www.energy.gov/sites/prod/files/2014/11/f19/DOE_Mentoring%20Guidance%20%20Pgrm%20Plan2_0.pdf)

Although growing in number, mentoring programs with coordinated oversight and program administration are still rare.<sup>4</sup> Therefore, the principal purpose of this project was to implement and evaluate two pilot mentoring programs, to share lessons learned, and to offer recommendations for others interested in establishing effective mentoring opportunities. This report describes and evaluates pilot projects for assigned counsel mentoring in Lubbock County, Texas and in Westchester County, New York. Any new mentoring program should be evaluated to obtain information on the program's effectiveness and impact. Insights from a program's evaluation can help improve existing programs and inform the implementation of new mentoring programs in other jurisdictions.

The balance of this report contains three chapters that provide: 1) descriptions of the pilot programs implemented, 2) findings from their evaluations, and 3) lessons learned and recommendations for others seeking to implement assigned counsel mentoring programs.

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<sup>4</sup> Examples of established assigned counsel mentoring programs are found in Massachusetts (Committee for Public Counsel Services), Los Angeles, California (Los Angeles County Bar Association Independent Juvenile Defender Program), Onondaga County, New York (County Bar Association Assigned Counsel Plan), and Texas (Harris County Public Defender Office, Travis County Capital Area Private Defender Services, and Texas Indigent Defense Commission).

# Chapter 1

## Project Description

### I. Background on the Innovative Solutions in Public Defense Initiative

In late 2015 the U.S. Department of Justice, Bureau of Justice Assistance (BJA) awarded the National Legal Aid & Defender Association (NLADA) a grant to serve as a Training and Technical Assistance (TTA) provider in support of its Innovative Solutions in Public Defense Initiative. Originally that TTA award focused on providing support to five grantee sites under that Initiative. An expansion of funding added one more grantee site and allowed NLADA to implement and evaluate pilot mentoring programs for court-appointed indigent defense lawyers.<sup>5</sup>

The mentoring pilots drew from a resource that NLADA developed in 2015 for the Texas Indigent Defense Commission, called Indigent Defense Attorney Mentoring in Texas: A Guide to Establishing a Mentoring Program (TIDC Mentoring Guide).<sup>6</sup> The TIDC Mentoring Guide sets out a model mentoring curriculum and provides suggestions for establishing mentoring programs, particularly in jurisdictions using assigned counsel and contract counsel systems, rather than public defender programs. The odds of a jurisdiction actually implementing a new intervention, and not merely reading about it in a report, are greatly enhanced if it is provided with technical assistance. Therefore, NLADA assembled a team of three subject matter experts, Andrea Marsh, Trudy Strassburger and Susan Saab Fortney, to help design, implement and evaluate the pilot mentoring programs.

Formerly Executive Director of the Texas Fair Defense Project, Andrea Marsh is now a Clinical Lecturer and the Director of the Richard and Ginni Mithoff Pro Bono Program in the William Wayne Justice Center for Public Interest Law at the University of Texas School of Law. Marsh partnered with NLADA on the original TIDC Mentoring Guide and wrote the program's detailed, modular curriculum. She consulted on tailoring the curriculum for use in the pilot sites.

Trudy Strassburger is a lawyer who previously served as a public defender with the Bronx Defenders, then as Deputy Director of the Capital Area Defender Services (CAPDS) in Austin, Texas. She now serves as Senior Legal Counsel at The Justice Collaborative Engagement Project. While at CAPDS, Ms. Strassburger developed an assigned counsel training and mentoring program that NLADA relied heavily upon to

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<sup>5</sup> The work was originally known as the Smart Defense Initiative, and it was part of a broader "Smart Suite" of criminal justice programs that included Smart Pretrial, Smart Policing, Smart Supervision, and Smart Prosecution. The Initiative supported criminal justice professionals in building evidence-based, data-driven criminal justice strategies that combine the expertise of researchers and practitioners for maximum, sustained, and measurable impact. The initial five Innovative Solutions grants were awarded to the Alameda County, California Public Defender Office; the Kentucky Department of Public Advocacy; the New York City Mayor's Office of Criminal Justice; the Texas A&M University's Public Policy Research Institute; and the Wisconsin State Public Defender. A sixth grant was awarded a year later to the Contra Costa County, California Public Defender Office. For more information see <http://smartdefenseinitiative.org/>.

<sup>6</sup> INDIGENT DEFENSE ATTORNEY MENTORING IN TEXAS: A GUIDE TO ESTABLISHING A MENTORING PROGRAM (2015), prepared by the National Legal Aid & Defender Association on behalf of the Texas Indigent Defense Commission. [hereinafter *TIDC Mentoring Guide*].

develop its mentoring guide. She provided guidance to the pilot sites on how best to implement successful mentoring programs, with an emphasis on effective trainings for both mentors and mentees.

Susan Saab Fortney serves as a Professor at Texas A&M University School of Law. Professor Fortney is an empiricist and legal ethics professor who seeks to conduct studies that make a difference in improving how lawyers serve clients and the community. Professor Fortney evaluated the two mentoring programs to help gauge their impact and develop an evidence base for future use and adaptation. The evaluation shared here is the work of Professor Fortney, while the lessons and recommendations are drawn from Professor Fortney and NLADA's observations.

## **II. General Project Goals**

Goals of the mentoring pilots were to improve the quality of representation provided by assigned counsel by:

- building a local culture and community of client-centered representation<sup>7</sup>; and
- providing training and support to develop the competencies and confidence of mentored lawyers, most of whom are solo practitioners and much more isolated than those working in private law firms or in defender offices.

For project director and participant perspectives regarding the project goals, see Chapter 2 (Program Evaluation) below.

## **III. Site Selection**

Initially the TTA team considered six possible sites in Michigan, New York, and Texas, to implement pilot mentoring programs. To have more of a comparative basis, the team sought to select three sites, and eventually selected two sites: Westchester County, New York and Lubbock County, Texas. As discussed in Chapter 3, Lessons and Recommendations, there are minimal, but important, administrative roles necessary to carry out effective assigned counsel mentoring programs. These basic structural conditions were simply not ripe in several sites. The mentorship programs in both Westchester County and Lubbock County were able to dedicate the administrative resources needed to effectively implement mentoring programs in their jurisdictions.

In Westchester County, the Assigned Counsel Resource Center (ACRC), located within the Legal Aid Society of Westchester County (LASW), organized the inaugural mentoring program, in collaboration with the NLADA, New York State Office of Indigent Legal Services (ILS), and the Westchester County Bar Association (WCBA).

In Lubbock County, the Lubbock Private Defenders Office (LPDO) organized the mentoring program. LPDO, the first managed assigned counsel program in Texas, is the non-profit corporation that contracts with the county of Lubbock to administer and oversee appointments for all non-capital felonies, misdemeanors, and mental health

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<sup>7</sup> For a discussion as to why client-centered representation should be emphasized in mentoring programs for appointed counsel, see *id.* at 5.



appointments for indigent defendant representation in Lubbock County.<sup>8</sup> The LPDO also handles complaints involving criminal defense lawyers that the office appoints to represent indigent clients.

#### **IV. Program Design**

Both of the pilot projects shared the same overall goal to improve the quality of representation provided to clients by assigned counsel. Both sought to strengthen a local culture and community of client-centered representation. In addition, both sought to increase skills and confidence of the mentored attorneys, most of whom are solo practitioners and therefore lack the support received by those working in private law firms or institutional providers. After consulting with the TTA team, the two pilot projects undertook different approaches to best meet the needs of their jurisdictions' assigned counsel practitioners. While both programs integrated aspects of individual and group mentoring, the approaches employed were markedly different.

##### **Westchester County**

In Westchester County, the Legal Aid Society's Criminal Division (LASW) represents indigent defendants in felony matters, whereas assigned counsel panel attorneys represent indigent defendants in misdemeanor cases. In addition, assigned counsel panel attorneys represent indigent defendants in felony conflict cases, felony co-defendant cases, probation violations, parole hearings, family court matters, and appeals. The county's bar association manages panel membership while the Assigned Counsel Division (ACD) of LASW provides lists of qualified panel attorneys to the courts, processes vouchers, and oversees fair attorney rotations throughout the county. In addition, it oversees an Assigned Counsel Resource Center (ACRC) to assist panel attorneys with legal research tools, investigators, social workers, expert witnesses, in-house developed Continuing Legal Education (CLE) programs, and reimbursement for outside CLE programs.

The mentoring pilot implemented in Westchester County closely resembled the Travis County, Texas program described in the 2015 TIDC Mentoring Guide. It involved a small group of mentees with mentors who participated in a week of intensive group training, followed by a year of one-on-one mentoring and bi-monthly group trainings. A Supervising Attorney was hired by LASW to, among other varied duties, assist the Chief Administrator of the Assigned Counsel Plan in running the mentorship program. To recruit participants, the Chief Administrator developed a competitive online application process. Stipends in the amount of \$3,000 were offered to the mentors for each mentee they were supervising as an incentive to attract seasoned attorneys to participate. For this initial pilot, mentors and mentees were selected from geographic areas close to the ACRC to facilitate ease in participation, as suggested by the TTA team. Ultimately, five mentors and ten mentees were selected. The practice focus was misdemeanors, as that

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<sup>8</sup> See Texas Indigent Defense Commission, PRIMER ON MANAGED ASSIGNED COUNSEL PROGRAMS, available at [http://www.tidc.texas.gov/media/57815/tidc\\_primer2017.pdf](http://www.tidc.texas.gov/media/57815/tidc_primer2017.pdf) (providing information on the managed assigned counsel model with comparison to other attorney appointment systems used in Texas).

was the area in which program administrators believed panel attorneys needed the most support, largely due to minimal experience requirements to join the county's misdemeanor panel. Some felony topics were also covered as the experience of the mentees varied. All participants were informed at the program's inception they would be identified on court panel lists as participants in the formal mentorship program. The directors report that court panel lists continue to identify participants who successfully completed the formal mentorship program.

The New York State Office of Indigent Legal Services (ILS) provided funding for the mentorship program. This funding was obtained through LASW. Matt Alpern, ILS Director of Quality Enhancement for Criminal Defense Trials and adjunct professor at Albany Law School, consistently provided guidance and support to the program.

Janet DiFiore, the Chief Judge of the Court of Appeals for the State of New York, wrote a letter congratulating Westchester County for being selected from a nationwide search to participate in the pilot mentoring program. This letter, demonstrating the judiciary's support, was circulated when soliciting applicants.

The mentors selected were seasoned lawyers with at least eight years of experience handling felony matters. They attended two intensive days of "train the trainers" sessions, where they received instruction in adult learning principles and techniques to help them impart their knowledge to mentees in a constructive fashion.

The mentors were also closely involved in delivering an initial, mandatory, week-long training program for the mentees. The training consisted of five full days of programming, and included sessions on client-centered representation, story-telling, effective client interviewing, bail applications, and specialty courts. It also featured visits to the local jail and forensics lab. At the end of the training week, mentors selected their mentees. All participants received 14.5 Continuing Legal Education (CLE) credits and were given a comprehensive 1,000-page resource binder.

Program administrators and mentors also organized six mandatory group trainings for mentors and mentees to attend during the year that covered a range of topics relating to local practice.<sup>9</sup> CLE credit was awarded for attendance at four of the six trainings, which lasted between one to two hours. Some meetings were held in a law office and others were held at a local restaurant. The informal, restaurant setting was intentional, as fostering community and connections was as much a goal of the project as was developing professional skills of mentees. Client-centered representation was a theme that ran throughout the group training sessions. One of the six group trainings, called "Grand Rounds," was held toward the end of the year-long program. Mentees each presented one current, challenging case and both mentors and program directors provided best practice observations.

The sixth and final group session was a candid discussion of what worked well during the course of the year, what areas needed improvement, and suggestions for how the program should evolve going forward. The directors reported that all participants were enthusiastic about continuing a program that focused on trial training skills. Thus, a program called Mentorship 201: Trial Training Skills Program was

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<sup>9</sup> Topics of the group sessions were (1) Local Court Practice, (2) Parole and Post-Release Supervision, (3) Facial Insufficiency of Accusatory Instruments and Speedy Trial, and (4) Immigration Consequences and Mitigation of Controlled Substance Offenses.

developed. The program consisted of four, day-long sessions of lectures and interactive exercises, starting with developing the theory of a case through closing argument.

The minimum requirements for program participants included mentors and mentees meeting once a month for one hour, mentors and mentees observing each other in court at least twice during the program term and, attending four to six mandatory larger group meetings over the course of the program term. In addition, program administrators conducted separate meetings with mentors as well as mentees, so that each party to the relationship could freely discuss the strengths and weaknesses of the other. All participants were required to sign a Mentor and Mentee Expectation Agreement with each other. In addition, all participants were required to sign an Agreement of Understanding with the Assigned Counsel Mentorship Program so that program participation expectations were made clear.

Finally, mentors worked one-on-one with mentees using a curriculum adapted from the twelve-module program set forth in the TIDC Mentoring Guide. Mentors and mentees were asked to develop individualized plans that drew from the modules, but addressed the mentee's particular needs and interests. At their own pace, during the course of the program term, each mentoring pair could work through the modules to provide a road map of the progress that the mentees made over the course of the program.

## Lubbock County

The Lubbock County mentoring pilot was designed to meet the site's particular priorities and needs, which differed somewhat from those of Westchester County. At the time of the Texas pilot, the Lubbock County Private Defender's Office (LPDO) oversaw a managed assigned counsel program in which seventy-eight attorneys accepted court-appointed cases in criminal matters. Attorneys qualify to take cases of advancing severity based on demonstrated experience.<sup>10</sup> The entry-level misdemeanor panel requires no prior experience, only a bar license and twelve hours of CLE. To receive appointments to more severe cases, attorneys must have served as second and first-chair counsel in a number of trials.<sup>11</sup> With more than ninety percent of criminal cases resolved in pleas, it can be difficult to acquire the requisite trial experience to advance to the serious felony panels. Over time, fewer and fewer attorneys who qualified to accept the most serious cases – second and first-degree felonies – remained on the panel, which disproportionately burdened those who continued to handle the most serious cases.

Lubbock County is known in Texas legal circles for having a very supportive criminal defense bar and, prior to the pilot program, the LPDO already offered interventions that drew on these supportive practitioners to assist less experienced attorneys. One was a “rapid response team,” which convened experienced “senior”

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<sup>10</sup> LPOD has eight panels, or “wheels,” of varying case complexity: 1st Degree Felony, 2nd Degree Felony, 3rd Degree Felony, State Jail Felony, Class A Misdemeanor, Class B Misdemeanor, Mental Health, and Appeals. Annual Report Fiscal Year 2015–2016 to Lubbock County, Lubbock Private Defender's Office 13, *available at* [https://docs.wixstatic.com/ugd/56ccb7\\_8ad9dd9598c7467e8e6c4d850b7907dc.pdf](https://docs.wixstatic.com/ugd/56ccb7_8ad9dd9598c7467e8e6c4d850b7907dc.pdf)

attorneys to assist less experienced attorneys facing case challenges on an as-needed basis. Another involved a core set of almost two dozen experienced attorneys who volunteered to meet with less experienced attorneys in group case review sessions on Fridays. In addition, Lubbock County defense attorneys already had access to a wealth of high-quality trial advocacy trainings.

Despite the commitment of many experienced defense bar practitioners to support newer lawyers, the sense from LPDO administrators and senior attorneys who met with the TTA team was that newer lawyers were not interested in pursuing traditional one-on-one mentoring relationships. The group discussed other approaches that might be viewed more favorably, such as shadowing, reverse shadowing, or a second-chair program. Eventually, the LPDO chose to create a second-chair program for first-degree felony trial cases. The program functions much like mentoring, yet plays a dual role of improving skills of the less experienced lawyers, while easing the workload of senior attorneys. The more junior lawyers appointed as second chairs handle responsibilities such as visiting clients, reviewing discovery, handling motions practice, and assisting at trial, all under supervision of the lead attorney. The first and second-chair lawyers were both paid for their case work; however, the second-chair lawyers received a lower rate (\$65) than the standard \$75 per hour amount paid to first-chair lawyers.

In addition to the second-chair program, the LPDO leadership detected a need for more client-centered trainings for all panel lawyers, both experienced and newer panel members. Other local and state trainings did not directly cover these topics. Therefore, the TTA team helped the LPDO design a pilot series of three trainings focused on: 1) ethics and enhancing client relationships, 2) team based criminal defense, and 3) sentencing advocacy. The trainings were offered to a group of twelve experienced lawyers and twenty-three more junior lawyers, including all of the participants in the second-chair program. Each training session lasted a half-day, was broadcasted for live viewing, and recorded for those who could not attend in person. Attendees obtained two hours of CLE credit for each training session.

The three group trainings were intentionally held on Friday afternoons to facilitate a transition to group socializing and community-building at the end of the sessions. This built on the already existing case review model, where on Friday afternoons a newer attorney brings in a case to discuss with a small group of experienced lawyers. Although LPDO administrators did not implement a traditional one-on-one mentoring program, they came to refer to the junior and senior attorneys participating in all of the interventions as “mentees” and “mentors.” In all, the support provided to less experienced attorneys in Lubbock County included four components:

- the pre-existing rapid response program
- the group case review program
- the new second-chair program, and
- three trainings on client-centered practice.<sup>12</sup>

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<sup>12</sup> Although the focus of the evaluation was on the client-centered trainings, attorneys who participated in the training sessions and judges also commented on the other approaches used to provide support to junior attorneys.

The mentors were eligible to submit vouchers to obtain a modest stipend of \$65 per hour for up to six hours devoted to the mentoring program. The Texas Indigent Defense Commission awarded a grant to support the mentoring program and to pay the stipends.

Upon completion of the mentoring program, mentees in both pilot locations obtained Certificates of Completion from the National Legal Aid & Defender Association, as well as the sponsoring office. Mentors were also acknowledged in a final session and provided Certificates of Appreciation for their service and contributions.

# Chapter 2

## Program Evaluation

### I. Methodology

The general purpose of the program evaluation was to learn about participants' experiences in both pilot programs, the impact of the programs, and how the programs could be improved. Before launching the pilots, program directors conferred with the NLADA team to consider a number of evaluation instruments and approaches, including obtaining data from case management systems, client surveys, participant testing, and interviews. After deliberation on the options, the decision was made to use a mixed-method approach to determine if the pilot program met participants' and organizational objectives. To systematically obtain information, the first phase of the study used surveys and the second phase involved interviews. Given the small number of participants it was feasible to interview all program participants.

In Phase One, all mentees in both programs were asked to complete a pre-mentoring questionnaire at the outset of the mentoring program. The questionnaire (Appendix A) sought information on the mentees' goals and interests related to participating in the mentoring program. The questionnaire also included a number of inquiries covering mentees' perspectives, experiences, and knowledge related to aspects of criminal defense work.

In Westchester County, nine of the ten mentees completed the first questionnaire. Subsequently four mentees withdrew for personal reasons and changes in professional circumstances. One new mentee joined the program, making a total of seven mentees with five mentors.

Following completion of the program, all mentees were asked to complete a second questionnaire. In Westchester County, all seven remaining mentees completed the post-program questionnaire. The post-program questionnaire (Appendix B) included some of the same inquiries as the pre-mentoring questionnaire, as well as a number of questions related to the mentees' experiences in the program, their opinions of the program, and input on how the mentoring program could be improved. Mentees completed the questionnaires on an anonymous basis. A number of questions and Likert-scale inquiries were designed to obtain respondents' perspectives to gauge whether the mentoring program helped instill a client-centered ethos.

In Lubbock County, twenty mentees completed the first questionnaire. Following the last training session, the ten mentees in attendance completed the second questionnaire.

Before their presentations, presenters at the group training were not provided copies of the questionnaires. Therefore, they would not be influenced to specifically cover questionnaire inquiries in their presentations and materials.

In Phase Two, Susan Fortney conducted qualitative interviews. The purpose of the interviews was to learn about experiences related to the program and to learn how mentoring programs for appointed counsel can be improved. Interviewees were asked to be candid in describing what features of the mentoring appeared to be most effective, as well as issues to be addressed. All mentors and mentees were contacted to schedule interviews. All program directors were interviewed, and interviews were



conducted with criminal court judges who are assigned to courts where mentees appear. In total, across both pilot programs, thirty-one interviews were completed.

Reliance on surveys and interviews does not directly yield information on the impact of the mentoring programs on client outcomes. Rather, the approach was designed to tap insights on whether the program made a difference in lawyers' perspectives on client representation, self-confidence, and sense of community. The survey and interview responses also provide important information on how programs can be improved to better meet mentees needs and interests.

Developing and sustaining a successful mentoring program requires planning, administration and evaluation. Experts underscore the importance of evaluating the effectiveness of mentoring programs. From the outset of the pilot programs in Westchester and Lubbock counties, the plan was to conduct an evaluation to determine what worked and what could be improved. The principal objectives of the evaluation were to do the following: (1) to learn about the experiences of the program participants, (2) to obtain feedback on their needs and interests and (3) to learn how the programs could be improved. In both interviews and survey instruments the participants were asked to consider the programs' outcomes, as well as issues to be addressed. Candid responses provide valuable information to be used in designing programs to meet the personal goals of the participants and the organizational goals. The following discussion draws on those responses.

## **II. Determining and Achieving Program Goals**

As a starting point, a successful mentoring program should address a specific organizational need or skills gap.<sup>13</sup> Once program organizers define the program goals, the next step is to design the approach and structure to meet those goals.

### **Director insights**

The directors of both pilot programs reported that they had a clear vision of what they were trying to accomplish in establishing mentoring opportunities. One of the Westchester County directors who had worked with assigned counsel for many years, reported that many lawyers who were newly added to the assigned counsel panel were representing clients with limited assistance from others. Unless assigned counsel previously worked as a prosecutor or in a legal aid or public defender office, the lawyers may have limited experience and contacts. One director noted that many appointed lawyers work in isolation. The director believed that a formal mentoring program could help address these concerns and help "level the playing field." The view was that mentoring would help empower and prepare appointed lawyers in discharging their responsibilities to clients. The director suggested that clients would be better served when lawyers developed their skill set and built a support community. As concisely

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<sup>13</sup> MBA@UNC, *How to Build a Successful Mentoring Program* 1, 6 available at [https://cdn1.onlinemba.unc.edu/content/723bd5b906f943ec9a463b49d9895810/How-to-Build-a-Successful-Mentoring-Program-MBAUNC2.pdf?\\_ga=2.106177280.2087569793.1555186068-1402495487.1555186068](https://cdn1.onlinemba.unc.edu/content/723bd5b906f943ec9a463b49d9895810/How-to-Build-a-Successful-Mentoring-Program-MBAUNC2.pdf?_ga=2.106177280.2087569793.1555186068-1402495487.1555186068).

stated by one director, the program would be successful if it met the goal of giving mentees a “pathway to get better.”

Although it may be too early to definitively opine on whether the program met the goals that the directors’ envisioned for the Westchester County program, the directors pointed to two developments that suggest the pilot met their goals. First, records reveal that the mentee-participants were being appointed to more complex cases. Some mentees who were previously handling only lower-level violations were starting to handle misdemeanors. Another indication that the program had successfully communicated the availability of resources and other assistance was that mentees were making more requests for investigators to assist on cases.

In Lubbock County, the directors of the program observed success with the second-chair program that paired a junior lawyer with an experienced lawyer. Previously, senior members of the Lubbock legal community had been working with junior lawyers on a more informal basis. Observing these working relationships led the directors to recognize that a good mentoring relationship requires “chemistry” and the desire to be engaged. This was captured by one director in noting that “lawyers can be lifted up if they are willing to be lifted up.” With the client-relations training series, the administrators indicated that the goal was to improve client relations of both senior and junior lawyers. Another goal was to help mentees gain good experience to move up the appointment wheel, meaning to be eligible for appointment to more complex cases. In a group setting, CLE training was provided “on Friday to use on Monday.” The Client-Relations Certification Course was an extension of the other mentoring and support provided through the LPDO. As discussed below, the directors’ goals generally aligned with many mentors’ and mentees’ understanding of the goals of the pilot programs.

### **Mentor insights**

When asked about the goals of the program, mentors from the two pilots made observations that related to the general goal of helping junior lawyers elevate the quality of representation by learning skills to practice in the local area and to effectively manage representation. This was done by “imparting knowledge” and “making connections.” One mentor believed that the program facilitated such connections because their mentee continued to consult him on matters.

A number of mentors also noted that a goal of the program was to build community between junior and more senior lawyers, contributing to the junior and senior lawyers working together more. As one noted, the “idea was for juniors to see that we are in this together.” At the same time, one noted that s/he did not think that a goal of the program was to “get the mentee to look [or act] like the mentor.”

Although they generally understood the role of mentoring and training programs, a small number of mentors suggested that the goals and expectations of the Lubbock program could have been clarified more.

A number of mentors expressly stated that they believed the goals had been met. One qualified, by stating the goals had been met if the mentees were focused (term used was “paying attention”). Another suggested one indication that the program goal of “making connections” was achieved was junior lawyers were reaching out and participating more than they were prior to the program. Because interviews were conducted within months of the program’s conclusion, a couple of mentors noted it may be too early to determine if program goals were met.



## Mentee insights

Many mentees echoed the mentors' views on the goals of the program. In interviews, a number stated that the program goal was to help prepare them as criminal defense lawyers to better represent their clients. Many also referred to the community and team-building goal of providing an opportunity for the mentees to get guidance from seasoned lawyers. A couple of mentees expressly noted the goal of the program was to impart the message that resources and help were available. As explained by one mentee, lawyers must "carry their own water," but should "not hesitate to ask questions and get help." A couple of mentees had to reflect before describing their understanding of the goals of the pilot. One stated s/he understood the goal was to help lawyers so that clients' rights are "not compromised by [lawyer] mistakes." A number referred to the connection between working with mentors and being better defense lawyers. A few mentees stated the mentoring had already made positive differences in their practices, believing the program goals had been met.

On the questionnaire completed at the conclusion of the mentoring programs, mentees were asked to indicate which goals the mentoring program met. Table One sets forth the responses.

**Table One**  
**Mentee Survey of Goals Met by the Assigned Counsel Mentoring Program**

Answer	Westchester	Lubbock
Enhanced my practice skills and knowledge	86%	100%
Developed my confidence as a criminal defense attorney	71%	80%
Cultivated my professional network in the legal community	42%	80%
Learned more about law practice management	57%	40%
Improved the likelihood of obtaining court appointments	42%	20%
Developed relationships with mentors	100%	60%

### **III. Expressed Interest in Participating in Mentoring**

Mentors and mentees described their own motivation for being involved in the program. On the questionnaire completed at the beginning mentees were asked to indicate all the reasons they applied for the mentoring program. In both jurisdictions, the largest percentage of mentees checked "To enhance my practice skills and

knowledge.”<sup>14</sup> The second largest percentage marked “To develop my confidence as a criminal defense attorney.”<sup>15</sup> When asked the most important reason to participate in the program, the highest percentage (a total of 90% in both programs) noted that it was to enhance their practice skills and knowledge.<sup>16</sup> The second highest number of respondents (79%) indicated the most important reason was to develop their confidence as criminal defense attorneys.<sup>17</sup>

Similar themes emerged in mentees’ interview comments. Mentees expressed a thirst for learning and getting started (practicing criminal defense law) with a solid foundation. A number indicated they were keen to get the exposure because they had no criminal justice experience in defending or prosecuting cases. One former prosecutor was interested in serving as a mentee to obtain updated training. Given that a client’s “life and liberty are at stake” one mentee explained the importance of getting as much training as possible. A number were keen to participate in the mentoring programs to get both practical exposure and advice that could be applied when representing defendants in criminal matters. Rather than a mentor from another practice area, one noted the importance of having a mentor who practices in the same practice area and community. Another mentee saw the program as an opportunity to help the mentee’s firm continue to be at the forefront of criminal defense practice in the community.

Mentors explained that they were interested in serving as mentors for a variety of personal and professional reasons. On a professional level, a number of mentors wanted to serve and help others, especially new lawyers without a network or confidence to reach out to others. This was captured by the mentor who explained that s/he obtained a great deal of assistance from others when s/he was a new criminal defense lawyer and now wanted to help others. Others shared this perspective, in noting that they wanted “to give back.” Several generally referred to the imperative to “step up and lift up” other members of the criminal defense bar. As stated by one, the bar is “only as strong as its weakest member.”

In addition to the professional and altruistic motivations for serving as mentors, a few pointed to the benefits to the mentor, as well as the mentee. A couple explained that you learn from teaching. One stated they loved to teach. A small number simply explained they served because the “director asked.” With the succinct explanation the mentors revealed their sense of community and willingness to step up when asked.

#### **IV. Participants’ General Impressions of the Programs**

Across both sites, many participants were enthusiastic about the program experience. Others saw it as a “good starting point” or “foundation.” A few were uncertain about the impact of the program, with a couple suggesting that (at the time of the interview) it was too early to know if the experience made a difference and that “time would tell.”

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<sup>14</sup> Appendix A, at Item 3.

<sup>15</sup> *Id.*

<sup>16</sup> *Id.* at Item 4.

<sup>17</sup> *Id.*

When asked in interviews to describe their general impressions of the program, some mentees responded by stating “excellent,” “great” and “overall good.” The explanations that they gave for these general impressions corresponded with responses of others who described how the mentoring experience made a difference in their practices. The differences articulated by many corresponded with the goals described for participating in the program: developing skills and a professional network.

Many comments related to the goals of fostering interpersonal relationships with seasoned lawyers and fostering a professional community. As noted by one mentee, it was “great” having someone to bounce ideas off and having a professional network. Another indicated s/he had 100% trust in the mentor. One other mentee reported they found the greatest value of the program was having the ability to reach out to the mentor without feeling like s/he was bothering. A similar sentiment was expressed by another mentee who noted the greatest value of the program was fostering a sense of community and providing a place to turn when you have questions and “expose [one’s] vulnerability without being judged.”

In addition to being positively impressed with the assigned mentor, some pointed to the value of having a “core of people” or “network” of mentors and mentees. A number of mentees commented on developing relationships with all program participants. On the issue of collaboration and problem-solving, one indicated it was “extraordinarily useful” to discuss concerns as a team, with many providing good ideas and different perspectives.

As related to training on client communication, one mentee noted s/he learned more about what questions to ask. S/he explained this could help avoid mistakes by communicating with clients from the beginning of representation.

In both programs, mentee-interviewees indicated that before the mentoring programs they knew other counsel on the assigned counsel panels, but the mentoring connection facilitated more communication because mentees were more comfortable reaching out to the mentors. As noted by one respondent, even if you knew other criminal defense lawyers, the mentoring program brought people closer together. Not surprisingly, some mentees especially appreciated the fact that participating mentors’ expertise varied, enabling the mentees to seek guidance from other mentors than their assigned one when they encountered certain issues.

In addition to valuing the substantive exchanges, a few noted they appreciated the informal exchanges and the manner in which participants listened and shared. One noted the discussions helped the mentees think more strategically and proceed in a more organized way. Another commented that the greatest value of the program was the mentor helping bridge the gap between knowing the rules and applying them.

A number of mentees in both programs expressed appreciation for the great assistance provided by the directors’ offices. Mentees referred to the great job done by the directors in providing support and assistance. One noted that s/he can better satisfy clients because of the support received. A few commented on the value of the materials provided to program participants. They also believed the directors’ offices provided great resources and that it was especially helpful to learn about those resources.

One mentee who indicated that s/he did not get much from the assigned mentor indicated that the group sessions with CLE were helpful. As noted, even if a person has to personally “figure out” the matter, it was meaningful to hear different perspectives.

Two mentees expressed some reservations related to their communications with their mentors. One suggested the mentors may not have “understood what their job was.” This mentee indicated it was always helpful to observe other lawyers in court and the greatest benefit of the program was interacting with other lawyers and having access to resources and experts. The mentee-appreciated the “amazing” support provided by the program director who communicated that the office was “there to work with you.” Another mentee indicated s/he would have welcomed more meetings with the mentor, but that s/he recognized scheduling-was always difficult when dealing with busy lawyers. S/he did report the times that s/he sat down with the mentor were “tremendously helpful” and “eye-opening.” The mentee believed-the concerns over the number of meetings and other dealings with the mentor may have been addressed if there had been stricter guidelines because it was awkward to reach out to busy people. As suggested, if meetings “were mandated, then they would happen.”<sup>18</sup> This mentee still believed the program was worth the time and effort. S/he would recommend the program to an attorney who is starting to accept court assignments, but believed there should be more communication and clarification of expectations.

Even though some mentees identified aspects of the mentoring programs that might be improved, all mentees who completed the second questionnaires (seventeen respondents across both programs) reported they would participate again in the mentoring program.<sup>19</sup> In response to the interview question on the mentee’s interest in participating again, one mentee enthusiastically said “in a heartbeat” and that s/he would pay to participate.

The mentors’ general impressions of the program were mixed. Some were very enthusiastic, using terms like “great” and “awesome.” Others believed the program was a great start,” suggesting the experience provided a “good basis” on which to build. One Lubbock mentor said this was the “first large scale, structured program in the county.” Another mentor who had mixed opinions of the program said, “overall the program was good.” A third mentor who expressed some misgivings about the program, said they “would absolutely recommend the program . . . every new attorney needs such a program.”

Other mentors expressed the view that the overall impact of the program depended on the mentee. Another mentor expressed a similar sentiment in noting the program went well in many ways, but “you get out of the program what you put in.” As expressed by one mentor, there needs to be the “right chemistry” between the mentor and mentee. In describing their relationships with mentees, mentors used positive adjectives, such as “positive” and “comfortable.”

## **V. Participant Observations on the Structure and Content of the Programs**

In addition to communicating their general impressions of the programs, a number of participants shared more specific observations on the programs’ structure, logistics and coverage of material. Because the two pilot programs used different approaches, the review of feedback on program features is covered separately.

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<sup>18</sup> In Westchester County the agreement with the mentoring program and the agreement between the mentors and mentee stated, at a minimum, monthly meetings of one hour each were mandatory.

<sup>19</sup> Appendix A, Item 21.

## Westchester County Pilot

As noted above, mentors selected their own mentees in the Westchester County program. In addition, all mentors and mentees were expected to attend a number of group sessions conducted over the course of a year. In referring to the group sessions, one Westchester County mentor reported the sessions included “top to bottom great speakers and presentations.” Although the “train the trainer” session for mentors was reportedly useful, one mentor believed the session may have been too “intensive.”

Westchester County mentors and mentees alike indicated the group sessions were helpful, but could be improved. One Westchester County mentor said the group trainings started off great with exercises for the mentees, but became more like lectures as the year progressed. As suggested by one, the amount of information may have made the mentees’ “heads spin.” There was also a recognition that mentees were “not in the same place,” meaning the mentees in the group were at different points of professional development as criminal defense lawyers. Given that the mentee group included some persons with limited experience, one suggestion was there should be more attention to providing a foundation on the types of cases panel lawyers would handle. With such a foundation, the mentees would have been better prepared to understand the anatomy and life of a case. In particular, mentor believed it would be helpful to devote more attention to legal analysis and issue spotting. A related observation was the value of having a “roadmap of a case and having the discipline to go through it.” The same mentor believed the mentees “learned a lot they needed to know” . . . things in the beginning on “dealing with and interviewing clients” as well as “nuts and bolts of particular cases.” As suggested, the “most important thing is to know the questions to ask.”

A number of Westchester County mentees shared similar views on the content and format of the group training. Content-wise, a view expressed was that a large part of the CLE group trainings was not relevant to the practices of junior lawyers. In planning future sessions, the respondents underscored the importance of knowing the audience and the types of cases the mentees are handling.

Although they found the intensive week-long training session to be interesting, one believed it was “too much” and another explained it was hard to devote an entire week. A number of mentees reported they found the subsequent groups trainings to be worthwhile. One said the sessions were helpful when there was a good speaker. Another sentiment expressed was some of the coverage may have been redundant. Mentees indicated they obtained good information on specified courts and benefitted from field trips.

A few mentees commented on the amount of lecture, suggesting they would have welcomed more interactive sessions. Interactive sessions mentioned were role playing and exercises. In particular, a number commented on the value of the time devoted to examining issues mentees were encountering on their cases. A group session was dedicated to mentees discussing their most difficult cases. One mentee explained how s/he liked hearing about the issues others were dealing with in their cases. As expressed by another mentee, the “brainstorming was invaluable.” One mentor summed up the connection between individual mentoring and group sessions as follows: the one-on-one consultations between the mentor and mentee were “best for building skill sets, but the group sessions were best for brainstorming.”

Two logistics issues related to the organization of the group meetings were identified. One view was the group sessions should not be in a public place. Another view suggested that written materials be provided before the group sessions.<sup>20</sup>

Time-wise, participants expressed satisfaction with the length of the program, although one sentiment was that longer sessions could be broken up. One mentee expressly stated s/he would have welcomed more group sessions and CLE training.

Westchester County participants reported that the one-on-one mentoring included in-person meetings, as well as consultations and communications by telephone, text, and email. In addition, unscheduled meetings and consultations occurred when the mentors and mentees saw each other at the courthouse. One reported s/he especially valued the meetings with the mentor, finding the discussions to be “tremendously helpful and eye-opening.”

The amount of communication between mentors and mentees appeared to vary by team and participant preferences, the mentee’s comfort level in reaching out to the mentor, and the mentors’ receptivity and responsiveness when contacted. As noted by one mentee, face-to-face mentoring was not essential because s/he knew the mentor “was a call away.” Another mentee indicated s/he could have used more personal meetings. One reported spending hours a week talking to the mentor by telephone. Because of busy schedules of the participants, some mentees indicated they understood consultations being conducted by telephone or electronically, rather than in person.

Mentees noted the value of observing a mentor in trial and hearings, as well as having the mentor observe the mentee handling court matters. One mentee explained that it would help the client to have a mentor sit through a trial with a mentee. S/he recognized that there are obstacles to doing so such as compensation for the mentor and “rules on another lawyer standing in for you.” The mentee suggested this issue should be addressed because it is “nice to have another set of eyes and ears in the courtroom when someone’s liberty is at stake.”

In Westchester County, mentor and mentees were asked to complete the modules adapted to New York practice from the TIDC Mentoring Guide. The participants’ impressions of the modules varied. A general impression was the modules were reasonably effective as a guide or checklist to make sure certain items were covered. Rather than reviewing each module in a systematic manner, the approach described by some was to use the modules in a “fluid” way. One mentee reported the modules were used to set goals. As explained by another mentee, it was good to have an outline, but work was not necessary on some of the items. Another view was the module exercise appeared to be more of a ministerial, box-checking exercise than an opportunity to discuss the content. One mentee noted that the participant’s caseload, not the modules, “drove the discussions.”

### **Lubbock County Pilot**

The pilot program in Lubbock County complemented a range of other mentoring and training opportunities already provided by the LPDO. As noted above, the assistance provided by the LPDO includes a “rapid response” program (when a lawyer

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<sup>20</sup> The directors report that written materials were sent well in advance of the sessions, when applicable.



seeks guidance on an expedited basis) and brown-bag lunch sessions where members of the panel can seek guidance on particular cases or questions. In providing feedback on the pilot program, many participants would refer to their different experiences with other mentoring and training provided by the LPDO.

Although there are various CLE and other opportunities for criminal defense lawyers in Lubbock County, one mentor characterized the pilot program as the first large scale, structured program. The following discussion focuses on the mentoring and training provided in connection with the Lubbock County training pilot called “Enhancing Client Relations.”

A number of Lubbock County participants reported they found the group trainings to be helpful. They commented on the quality of the speakers. The majority of the Lubbock County respondents said they found the last session to be the most interesting. By contrast, one indicated s/he got nothing out of the third session, but found the first session to be the most helpful. Evaluation forms completed at the end of each of the training sessions provided additional feedback.

Beyond the content of the presentation, some Lubbock County mentors believed the value of the trainings was to bring senior and junior lawyers together, suggesting that the interactions would help junior lawyers be more comfortable reaching out for guidance and availing themselves of the other rich opportunities available through the LPDO and the local criminal defense lawyers association.

A related suggestion was that the program include specific training for senior lawyers on how to “reach juniors.” This would include consideration of what motivates young lawyers. One mentor suggested that junior lawyers may be more comfortable approaching the LPDO if they better understood the goals of LPDO in undertaking mentoring.

A few mentors indicated the trainings did not directly help with mentoring. Although there was already “loose mentoring” in Lubbock, one mentor believed more structure would help break down barriers between senior and junior attorneys. Recommendations from mentors in moving forward with the mentoring program included adding processes to foster teambuilding, use of more interactive exercises and less lecture, and making the group sessions more “real” and “less academic” by discussing actual cases that the junior lawyers are handling.

## **VI. Program Benefits, Impact, and Outcomes**

Survey responses suggest that mentoring programs may have contributed to mentees devoting more of their practices to criminal defense work. When the program commenced, the questionnaires completed by mentees indicated that criminal defense work did not represent over fifty-one percent of any mentee’s law practice.<sup>21</sup> On questionnaires completed at the conclusion of the program, seventy-two percent of the mentees completing the questionnaires reported criminal defense work represented

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<sup>21</sup> Appendix A, at Item 1.

more than fifty-one percent of their law practice.<sup>22</sup> This increase suggests that the mentoring programs contributed to junior lawyers handling more criminal matters. This is a positive outcome if junior lawyers agreed to handle more criminal matters because the mentoring program helped them prepare and develop their skills, confidence, and professional network.

The post-training questionnaire asked mentees whether they implemented a new practice as a result of their participation in the program. Four of the seven Westchester County respondents reported they did implement a new practice. A much larger number of Lubbock County respondents (nine out of ten) indicated they implemented a new practice as a result of their participation in the program. The description of the practice implemented by the Westchester County participants varied, but all of the descriptions provided by Lubbock County mentees pertained to practices related to client relations, the client's story, and a team-based approach.

Interviewed mentors and mentees identified a number of benefits derived from program implementation and participation. These benefits generally aligned with program goals related to building a professional network, helping junior lawyers develop various competencies, and advancing the understanding of client-centered representation. Most notably, mentors in both programs said the great benefit of their program was the development of a professional network. As described by one Westchester County mentor, the program cultivated a "village of lawyers" for criminal defense lawyers to serve as a sounding board for one another. Another Westchester County mentor said building community connections was especially important for mentees who otherwise would be practicing law in isolation.

Lubbock County mentors also referred to the value of the program in getting people to interact. In the words of one Lubbock County mentor, the greatest benefit was "getting everyone to the table." Because the program helped cultivate personal connections between mentors and mentees, one noted that mentees should be comfortable reaching out for help. One stated that unless junior "lawyers proactively reach out for guidance," senior lawyers will not know that junior lawyers need help. At the end of the day, one mentor explained that what is important is junior lawyers knowing they have access to help. As noted by another Lubbock County mentor, "when lawyers connect it improves client representation."

Role modeling was identified as another benefit to the mentoring program. This was described by one Lubbock County mentor who explained it was "good for junior lawyers to see top lawyers devoting time to the program." It signaled mentoring is important to top lawyers and thus, cultivates more engagement from junior lawyers.

Mentors also recognized their programs were beneficial in helping themselves and mentees address deficiencies and further develop professional competencies. One Lubbock County mentor noted that s/he learned something in every meeting. In addition to providing opportunities for mentors and mentees to build their technical lawyering skills, mentors also noted the programs helped both parties better understand client-centered practice. Even for those who may already use client-centered

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<sup>22</sup> Among Westchester County mentees, on the second questionnaire 71% reported criminal defense work represented over 76% of their practice. Among Lubbock County respondents, 50% indicated criminal defense work represented 51-75% of their practices and another 33% indicated criminal defense work represented over 76% of their practices. Appendix B, at Item 1.



approaches, one mentor said the program reinforced the importance of what they were doing. Similarly, another noted that the training “refreshed her on client-centered and other issues.”

A few mentors commented on how the program helped them personally develop in other ways. A Westchester County mentor appreciated how the program helped the mentor “slowdown in handling cases.” Another Westchester County mentor indicated the group sessions and individual work also forced the mentor to “slow down” in handling cases and “reminded [him] of the fundamentals that are taken for granted.” Another Westchester County mentor said the program experience was a “recommitment to what you are doing.”

Lubbock County mentors also indicated they benefitted from the program. The psychodrama training helped one mentor see that a criminal defense lawyer who wears two hats as advocate and advisor should be “more simplistic in explaining things to clients.” In addition to improved communication with clients, better communications with family and friends of the client was reported. Storytelling skills and more self-examination were identified as benefits of the program.

Mentees’ feedback on the impact and benefits of the program largely mirrored opinions expressed by mentors in both pilot programs. The second questionnaire asked mentees to describe the greatest impact that the program had on their law practices. Table Two breaks down the text responses by program.

**Table Two**

**Mentee Survey of Goals Met by the Assigned Counsel Mentoring Program**

**Lubbock County Mentee Responses**

- Changing how I investigate cases
- Developing relationship w/mentors
- Experience that is hands on
- Getting to know others practicing in this area and working closely with LPDO.
- Helping to set the scene and see the case from the different parties and jurors standpoint.
- How to gain a better understanding of my client and fulfill my role for them
- New ideas
- Preparation for trial via client relations
- Thinking more carefully about the case from its inception
- Training and mentorship

**Westchester County Mentee Responses**

- All was instrumental to my practice
- Confidence
- Having a knowledgeable person to go over cases with & not scrambling (as I did before) when I have an issue
- More cases @ felony, more assignments. Network of attorneys to reach out to
- More management and interview skills (consultation)
- The assistance from the legal aid office

Table Three summarizes mentee responses on a Likert-scale inquiry that asked respondents to note their agreement with statements related to the impact and benefits of the mentoring program.

**Table Three**  
The Assigned Counsel Mentoring Program...<sup>23</sup>

**Westchester County**

Description	Strongly Agree	Agree	Disagree	Strongly Disagree	Blank
Improved my confidence as a criminal defense attorney	1	6	0	0	0
Helped me better understand my ethical responsibilities as a criminal defense attorney	2	3	0	1	1
Helped me to develop my lawyering skills	2	4	0	0	1
Helped me advance my understanding of criminal law and procedure	2	4	1	0	0
Helped me cultivate my relationships and network with other criminal defense attorneys	2	3	2	0	0
Helped me better understand how to use client-centered approaches when handling criminal matters	2	4	0	0	1
Helped me learn how to better handle matters related to law practice management	1	4	1	0	1
Helped me understand how to better prevent disciplinary, malpractice and ineffective assistance claims	1	4	2	0	0
<b>Total</b>	<b>13</b>	<b>32</b>	<b>6</b>	<b>1</b>	<b>4</b>

<sup>23</sup> Appendix B, at Item 6.

## Lubbock County

Description	Strongly Agree	Agree	Disagree	Strongly Disagree	Blank
Improved my confidence as a criminal defense attorney	1	9	0	0	0
Helped me better understand my ethical responsibilities as a criminal defense attorney	1	8	1	0	0
Helped me to develop my lawyering skills	5	5	0	0	0
Helped me advance my understanding of criminal law and procedure <sup>24</sup>	0	6	4	0	0
Helped me cultivate my relationships and network with other criminal defense attorneys	4	4	2	0	0
Helped me better understand how to use client-centered approaches when handling criminal matters	5	4	1	0	0
Helped me learn how to better handle matters related to law practice management	0	6	3	1	0
Helped me understand how to better prevent disciplinary, malpractice and ineffective assistance claims	0	7	2	0	1
<b>Total</b>	<b>16</b>	<b>49</b>	<b>13</b>	<b>1</b>	<b>1</b>

In both counties, the majority of respondents indicated they agreed or strongly agreed with the statements related to how the mentoring program helped them. Most notably, all of the respondents in both counties agreed or strongly agreed with the following statements: “The Assigned Counsel Mentoring Program improved my confidence as a criminal defense attorney” and “The Assigned Counsel Program helped me develop my lawyering skills.”

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<sup>24</sup> The Lubbock County mentoring program was not intended to provide general training on criminal law and procedure, but focused on ethics and enhancing client relationships, team-based criminal defense, and sentencing advocacy. Other Lubbock programs, such as the annual Prairie Dog Seminar, sponsored by the Lubbock Criminal Defense Lawyers Association, provide training on the nuts and bolts of criminal defense practice.

In their interviews, mentees in both programs emphasized how mentoring provided support and helped them develop their professional network and function as members of the criminal defense community.

When interviewed, mentees provided insights on how the programs fostered relationships and community building. In Westchester County, the mentees explained the benefit of having professional connections and others to consult. According to one Westchester County mentee, the network was all mentors and other mentees who were friendly, knowledgeable and approachable. In addition to other participants in the program, another mentee said the network included resource people such as the immigration specialists with the Regional Immigration Assistance Center (RIAC), whose office is located within LASW. One Westchester County mentee summed up the experience, by stating that the greatest benefit was the team and being able to ask questions.

Similarly, mentees in Lubbock County referred to the development of their community relationships. As described by one, the greatest benefit of the Lubbock County program was “getting them talking.” Because of the program, Lubbock County mentees said they are now more comfortable reaching out to other criminal defense lawyers, whether it be in person or by email. One described the “freedom” and “not feeling guilty” to call another person and “ask a question whenever you need it.” Others referred to a sense of camaraderie and team work that encourages asking questions and getting help. One Lubbock County mentee described the sense of teamwork by stating the senior lawyers communicated that they wanted to help and share their experiences “in the trenches.” One person who said s/he already had a community, reported that now s/he has more people to consult. Another indicated s/he now understands who has expertise in particular areas. That mentee felt like s/he was “able to satisfy clients because [s/he] has support.” In both jurisdictions a number of mentees indicated they will continue to communicate with the experienced lawyers they met through the mentoring program.

Mentees also described how the program helped them develop lawyering skills and competencies. Some indicated the experience led them to implementing changes in their law practices, such as how they approach representation involving immigration or mental health issues. A few Westchester County mentees reported they learned how to make better use of available resources. Some integrated lessons taken from the group training sessions, such as the Lubbock County session on ethics and client relations. A few Lubbock County mentees indicated the training helped them be more reflective in representing clients.

In interviews, the majority of mentees answered in the affirmative when asked if the program helped them better understand client-centered approaches to handling representation of appointed clients. One reported that “message came from the initial program [and continued] throughout the program.” In particular, one Westchester County mentee reported s/he learned a lot about framing questions related to immigration. Two mentees in both programs responded that the program did not help them better understand client-centered representation because they already understood it. Others who indicated they already did a good job in working with clients but still believed the program coverage was helpful. One Lubbock County mentee explained said s/he was already comfortable talking to clients, but he learned how to “help the client be more comfortable [and] if they are comfortable, you will be more comfortable.”

A few mentees commented on how they developed more confidence through the program. One referred to the following double-edged sword: “on one hand the program helped with confidence in being part of a group, on the other hand you see how much you don’t know.” Another indicated the program helped her develop as a practitioner because before the program it “gave her anxiety to work harder.” A Lubbock County mentee referred to three phases of representing clients: “being nervous, feeling guilty on whether you did enough, and finally being confident.” The mentee described the role of mentors as follows: “Confidence may come with failure and having the mentor tell you that you did your best.” As related to the benefit of being part of a professional community, the mentee concluded: “Mentors can help you build confidence so that you don’t feel alone.”

Finally, mentees expressed interest in obtaining more guidance. As stated above, after the pilot program ended, the ACRC implemented a continuing Mentorship 201: Trial Training Skills Program for those mentees actively accepting assignments who indicated they were interested in developing their trial skills. As noted by one Westchester County director, the fact that all the mentees and mentors (who were still in private practice) wished to come back for more mentoring and training was “validating.”

Starting small with the pilot group, the ACRC plans to eventually grow the program and foster a community of private lawyers to provide high quality, client-centered representation to their court-appointed clients in Westchester County. In addition, based on the pilot, the ACRC is interested in expanding the program to help more lawyers, including recent law graduates, and to cover additional topics, such as family court practice and law practice management. This points to the value of starting with a small program, learning from it, and adapting the program to take it to the next level.

In Lubbock County, the directors noted that while a positive culture was already in place, mentoring enhanced that and participants desired expansion of the program. Moving forward, the directors feel optimistic that mentoring can help the program participants be “change agents.” They plan to build on the success of the second-chair program and determine how fee schedules, appointment guidelines, and case management systems can be used to track performance and improve the quality of representation. In an effort to help prepare experienced lawyers to train more junior ones, the LPDO is organizing an Evidence Bootcamp, a comprehensive, scenario-based evidence training. After they complete the boot camp, the experienced lawyers will participate in training the junior lawyers in the same type of program. The LPDO has also identified six junior lawyers with active criminal defense practices to participate in theatrical training with an expert who conducts workshops for professionals. The training will cover opening and closing statements, as well as other delivery and presentation concerns such as body language and demeanor. For the next fiscal year, the LPDO will also organize two field trips: a comprehensive tour of the Lubbock County Detention Center and a tour of the state crime lab.

Judges who were interviewed in both mentoring sites recognized the value of mentoring programs for junior lawyers seeking court assignments. A Westchester County judge emphasized the importance of the program covering state rules and local practice. Lubbock County judges expressed their appreciation for the various mentoring and support opportunities provided by the LPDO including the brown-bag sessions and second-chair program. As noted by one, the LPDO is “going to make sure you are going

to effectively represent your clients.” One judge emphasized that it is imperative that new lawyers have someone to bounce ideas off. Regardless of the type of appointment system the jurisdiction uses, the judge suggested that formal mentoring programs are especially important with so many lawyers “hanging out their shingles.”

# Chapter 3

## Lessons Learned and Recommendations

Both interview and survey responses provided respondents' insights on the value of mentoring, their experiences with the pilots, and what could be done to improve the programs. The following outlines lessons drawn from the responses and recommendations for designing and implementing effective mentoring programs for private practice lawyers serving as appointed criminal defense counsel.

### **I. Planning the Program**

Experts on mentoring emphasize the importance of planning and laying the groundwork. "Laying the groundwork is a time-consuming but critical step that can be broken into two basic stages:" stage one involves recognizing the need and setting program objectives and stage two involves developing the program's structure.<sup>25</sup>

#### **A. Identify the sponsoring entity**

The TIDC Mentoring Guide includes a checklist for developing and implementing a mentoring program.<sup>26</sup> The first item listed is to identify an oversight entity that understands the need for a mentoring program in the jurisdiction and a commitment to facilitating its implementation. It is also important for the sponsoring oversight entity to dedicate the time, commitment, and resources to the program. The entity and those associated with it should also be viewed as a credible leader motivated to educate and assist lawyers to improve criminal defense representation. In the pilot programs in Westchester and Lubbock counties, the reputation and standing of both the organizing entities and the designated program directors contributed to the success of both pilot projects.

All indications are that successful mentoring programs need caring directors committed to helping defense counsel serve their clients in the best possible way. The likelihood of success will also largely turn on the director and sponsoring entity having the support of the judiciary, the organized bar, and the criminal defense community.

#### **B. Evaluate needs and interests**

An effective and impactful program meets needs in the jurisdiction and serves participants' interests. As a starting point, program sponsors should evaluate the jurisdiction's needs for a mentoring program and gauge interest in mentoring for

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<sup>25</sup> MBA@UNC, *supra* note 13 at 5-6.

<sup>26</sup> TIDC Mentoring Guide, *supra* note 6, at 26.

junior criminal defense practitioners. For example, the assessment may reveal that lawyers in the jurisdiction need certain practice experiences to qualify to handle more serious cases. Another possibility is to design a program to help bridge the gap between law school and practice for recent graduates pursuing criminal defense work. As in the case of the Lubbock County program, a different focus could be to instill client-centered principles among the mentees.

The evaluation should seek information from various sectors and stakeholders, including members of the judiciary involved in criminal appointments, members of the organized bar association, representatives of the criminal defense bar, and administrators of programs that provide representation to indigent clients. Having evaluated needs, the organizers of the mentoring program are prepared to design a program to meet those needs.

### **C. Clarify program goals and design**

Program organizers should identify specific goals for the program based on the needs and interest's assessment. To obtain input and buy-in, organizers may share the proposed goals with persons consulted in the evaluation process and others interested in mentoring for appointed defense counsel. In soliciting feedback, organizers could expressly ask for observations on what would advance or impede achieving the articulated goals.

Clarifying and communicating short and long-term goals provide a guide for program directors and participants from the outset. Such clarification engages participants in the planning process and avoids making assumptions on program goals. At the conclusion of the program, its success can be evaluated on the basis of whether those goals were met.

### **D. Determine the nature of the participation and steps to be taken to incentivize participation**

Depending on the needs assessment, program goals, and other considerations of local concerns, including the procedure for assigned counsel, the sponsors should determine if participation in the mentoring program should be mandatory or encouraged. Some interviewees, including judges, expressed reservations when asked about mandating participation in a mentoring program for private practitioners who seek assignments, but do not possess a requisite level of experience.

Unless completion of the program is mandatory, there may be challenges in recruiting mentees to participate in the program. For programs that are purely voluntary, the program directors should seek information on steps that can be



taken to encourage lawyers to volunteer to serve as mentors for the program. In both the Lubbock and Westchester county programs, the payment of stipends did not appear to play much of a factor in motivating mentors to volunteer to serve. Months after the program ended, some Lubbock County mentors had not submitted the paperwork to be paid the stipend. Although the prospect of a modest stipend may have not motivated mentors in the pilots to participate, one mentee observed that s/he was more comfortable seeking the mentor's assistance because the mentor was receiving a stipend.

Offering CLE credits encourages some lawyers to participate in the program. A few participants indicated they appreciated the opportunity to obtain CLE credits through the program. Others noted the training should not be "CLE-driven."

More than offering a stipend or CLE, mentors indicated that public recognition for their service could help motivate lawyers to volunteer for the program. Such acknowledgement should include providing a list of participants to judges and persons who play a role in assigning counsel.

In addition, thanking attorneys publicly on social media, as well as articles in bar newsletters and other publications, could acknowledge mentors for their service as well as mentees for their commitment to professional development. Creating an annual award for the most dedicated mentor and mentee would also be worthwhile. This award could be given at the final gathering of the program, but would receive more attention, for example, if bestowed at a luncheon of the county bar association.

Participants in both pilot programs were provided certificates upon completion of the program. One mentor noted that the certificate received should expressly state that the recipient was a mentor.

#### **E. Develop a multifaceted approach to recruiting**

Unless participation in the program is mandatory, program directors must devote time to recruiting mentees and mentors. A multi-faceted recruitment process should include general publicity, as well as outreach to judges, court administrators, and bar leaders who can provide support and encourage participation in the program. In addition, directors' observations of court proceedings and communication with judges and court personnel can provide insights on prospective participants. Other outreach could include contacting persons who work with bar affinity groups, such as the young lawyers bar group in the county, and law school career service departments.

Publicity and recruitment materials could include program highlights and endorsements from leaders in the bench and bar. Notices seeking applications

should also be circulated widely in bar newsletters and electronically distributed to members of the panels who accept court assignments. More marketing of the program should broaden the pool of prospective mentors and mentees.

Recruiting materials targeting prospective mentees should emphasize the benefits of participating in the program. Testimonials from persons who participated in the program could describe the value of participation in the program. In describing the advantages of participating in the program, a consistent message should emphasize that “it is a strength, not a weakness, to get help.” As part of the recruitment process, organizers should explore possible obstacles or resistance to mentoring. Above all, it is imperative that the program be presented as an opportunity, not a punishment or remedial program for lawyers dealing with challenges.

## **F. Screening and selecting participants**

A larger pool of prospective participants enables program directors to screen applicants to determine if applicants’ interests, expectations, and levels of experience fit with the design of the program.<sup>27</sup> A formal application process can provide such information through a written application, interviews, and reference checking.

For prospective mentors, program directors should evaluate the lawyers’ skills, reputation, and experience. In selecting mentors, it would be helpful to include mentors with different expertise in criminal law practice, such as lawyers who focus on representing clients dealing with mental health or drug dependency concerns. Doing so provides a group of mentors who can be consulted when mentees are dealing with different concerns in representing clients. Equally as important to technical and lawyering skills, lawyers selected to be mentors should be prepared to devote time to the program and highly respected for their professionalism and ethics. Feedback on mentor-applicants can be obtained from judges, peers, and court personnel. These individuals may be able to share insights on the applicants’ ability to juggle multiple responsibilities and also, their standing in the community. Lawyers selected for the program should commit to devoting time to work with junior lawyers and serve as a guide and teacher when appropriate.

For prospective mentees, program directors should seek information on why applicants are interested in the mentoring program. Through interviews, directors should attempt to determine if the applicant is “dabbling” in criminal defense

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<sup>27</sup> For example, the ACRC required interested persons to complete applications. See <https://www.18bwest.org/mentoring> (providing program information, selection criteria, and applications).

work or is committed to developing a criminal defense practice. Such information will help directors determine if applicants' goals align with program goals. This input can also inform directors' decisions on the content and format of program sessions.

During the screening process, directors should also discern the mentees' level of experience. Depending on the program approach, it is easier to design a curriculum for group sessions when there is not a wide disparity among the mentees. Otherwise, group sessions may be "over the heads" of novice lawyers or too basic for mentees with more experience. To avoid situations where topics and experiences may help some mentees and lose others, ideally it is helpful for mentees to roughly be in the same stage of their professional development as other criminal defense lawyers in the program.

As part of the selection process, program directors should determine if the applicants are prepared to satisfy the program requirements and expectations. As discussed below, only those persons (who agree to meet the requirements and to devote the necessary time to the program) should be selected.

#### **G. Assign particular mentors to mentees**

Although the mentees and the mentors developed relationships during group sessions, the Lubbock County experience revealed that mentoring outside the group sessions was largely episodic unless mentees were working in a second-chair arrangement or taking advantage of other opportunities, such as participating in the rapid response or brown-bag lunch sessions. In Lubbock County, traditional one-on-one mentoring and assigning mentors to specific mentees was not a feature of the program, however the second-chair program facilitated a learning environment that was similar to mentorship. For other programs, establishing teams or pairing of specific mentors and mentees would likely foster more consultations and communications, especially if the expectations are clearly defined and agreed to by the participants. Expectations can be established in different ways. An indigent defense mentoring program in Massachusetts designates particular, experienced private practitioners who are available to mentor, or consult with, less experienced lawyers on an as-needed basis. The mentors are available as a resource to a body of lawyers and they are paid for all mentoring work. This removes the worry newer lawyers sometimes feel of imposing on others for help.

## II. Launching And Implementing The Program

### A. Designing the program structure and clarifying expectations

The actual structure and features of the mentoring program should be designed to meet the articulated program goals and participants' needs and interests. Although program implementation should be based on what the directors learn in the exploration process, the following discussion draws on lessons derived from the evaluation of the pilot programs in Texas and New York.

From the outset of the program, one of the most important steps is to define the expectations for mentors and mentees. In setting the expectations, directors should seek participants' input to set reasonable work and time commitments. This might include setting a minimum number of times that mentors and mentees communicate during a month, whether it be in person, by telephone or email. The expectations could also include certain experiences, such as mentees observing or shadowing the mentors for a minimum number of hours over the course of the program. Mentors could also be asked to commit to observe their mentee in court on a certain number of occasions. The advantage of clarifying expectations is that participants enter the program agreeing to fulfill the requirements. This set of expectations should be discussed and also spelled out in writing, and assented to in writing by all participants.

Written agreements can also be used to describe the nature of the mentor-mentee relationship. Such a written agreement can address ethics issues and avoid misunderstandings on the relationship between the lawyers and their responsibilities to clients. The TIDC Mentoring Guide includes a Model Mentoring Agreement, a Model Confidentiality Agreement, and a Sample Client Statement of Understanding that can be used as a starting point in drafting agreements geared toward the program's structure and the jurisdiction's rules of professional conduct.<sup>28</sup>

To get a sense of how the interactions between mentors and mentees are progressing, the program director should also reach out to individual participants on a monthly or other periodic basis. This type of outreach can help address a situation in which a participant is experiencing difficulties, such as a mentor not being available, and the mentee may be reluctant to contact the program director. Another mechanism to improve the likelihood that mentees are getting needed experiences is to require participants to provide the director with a short monthly description or log of the mentoring activities completed. Another option is for the director to ask participants to periodically report the time they devote

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<sup>28</sup> *TIDC Mentoring Guide*, *supra* note 6, at Appendices A-C.

to mentoring activities. The approach used for the program will depend on a number of factors, including the receptivity of mentors to the proposal.

### **B. Tailor the content of the program to mentees' interests and needs**

Based on the information learned during the planning process (discussed above), program directors should tailor the content of the program to meet those interests and needs. Feedback from mentees in the pilot programs revealed they would have liked more coverage of the nuts and bolts of criminal defense work. As described by a participant, s/he would have liked more attention to the “anatomy of a case.”

### **C. Educate mentors on best practices related to mentoring**

Applicants selected to serve as mentors should receive training on being a mentor and teacher. To help mentors learn how best to reach junior lawyers, it is important for a skilled trainer to provide mentors guidance on using adult learning principles.

Interviewees suggested that one entire session with the mentors should be devoted to coverage of how to be an effective mentor. An early session with mentors should be used to get mentors' input on planned program features, including the program structure and coverage. It is essential that the mentors be engaged in shaping the curriculum and program design.

### **D. Integrate interactive activities and case reviews**

Participants from both pilot programs reported that they especially valued the discussion and practical training related to cases they were handling in their own law practices. One participant believed the case review sessions were especially successful because they “made them drill down” and the “reality-based” discussion provided constructive ideas, while sharing with mentees insight into how the mentors and program directors approach similar problems. The collaborative sessions also contributed to building team spirit. One director described the exchanges as “magical” and the mentees “loved it.” As noted by one Westchester County director, the case reviews were the “best thing they did” outside the intensive training week. The case reviews were considered by the Westchester County director to be the most successful aspect of the program because they enabled mentees to “drill down to understand their cases,” and to get feedback from others, including all mentors and the directors.

Based on the feedback received on such activities in both pilot programs, it would be worthwhile to devote significant time to collaborative case reviews, such as

ones where mentees bring to the group session their most challenging cases. When possible, coverage of particular topics should be connected to what mentees are working on and tailored to practice in the jurisdictions where they practice.

#### **E. Integrate court and field work into the program requirements**

Mentees reported that they valued opportunities to see their mentors “in action.” As suggested above, program requirements should include observing mentors in court for a minimum number of hours. In addition, mentors should commit to observing mentees’ performance in court and debriefing thereafter. In addition to scheduled observations, there are opportunities for more spontaneous (or unplanned) observations when the mentors and mentees practice in the same courts.

New York mentees also believed the field visits incorporated in their pilot were worthwhile, noting they valued visits to the forensics lab. Participants were also invited to and attended a tour of a local youth shelter program that serves as an alternative to incarceration for 16-21 year old males. Depending on access, such field visits should be integrated into the program.

#### **F. Develop a collaborative program that includes group and individual sessions**

Participants noted that group and individual sessions met different needs. Group sessions provided opportunities for training and exchanges among lawyers with different expertise and insights. Group sessions also fostered a sense of community and enabled junior lawyers to get to know multiple experienced lawyers who the junior lawyers may later contact with questions and concerns. By providing multiple contact points, mentees do not have to rely on the one mentor who has been assigned to work with the mentee. This is particularly helpful if there is not “chemistry” or “fit” between a mentor and the mentee or the mentee encounters difficulties connecting with his/her assigned mentor. With a collaborative approach, mentees should feel comfortable reaching out to any mentor.

#### **G. Introduce mentees to available resources**

A key feature of the mentoring program is educating mentees on effective use of available resources, such as investigators, social workers, and immigration experts. Current resource guides and materials also provide invaluable assistance to mentees.

Although a listserv for criminal defense lawyers may provide useful information to mentees, posts on such a listserv may not be easily searchable. To address this

concern, one mentee suggested that the program develop and host a website where listserv exchanges could be uploaded and searchable.

#### **H. Encourage participants to develop tools and forms that could be used by others**

Participants commented on how much they valued tools and forms to be used in their practices. For example, one mentor developed for mentees an appellate checklist for developing the trial record.

In terms of forms for court documents, such as motions, one mentee recommended that the documents be made available in a Microsoft® Office Word format so that lawyers can easily modify the document.

#### **I. Clarify time commitment and establish a meeting schedule at the outset of the program**

The amount of time and scheduling should be adequate, but not excessive. For example, a few Westchester County participants found it burdensome to devote an entire week to training. One suggested the initial training be broken into two sessions. A Lubbock County participant believed training sessions should be limited to two hours. As suggested by these comments, lawyers will have different perspectives on the length and timing of sessions. To address this concern, directors could try to get a consensus on what works best for a particular cohort of participants.

Because lawyers are busy, the group meeting sessions for the entire course of the program should be set at the outset of the program. This enables lawyers to block the time on their calendars.

In addition to the more formal sessions, a few participants recommended social gatherings for participants to get to know one another. The suggestion was that such gatherings would foster a sense of community.

#### **J. Develop training materials and modules geared toward practice in the mentees' jurisdiction and practice areas**

The modules from the TIDC Mentoring Guide provide a helpful roadmap. Some perceived them as being too general, suggesting the modules could have been more tailored to practice in the mentees' jurisdiction. A related observation was that all tools and forms provided address local practice.



Another suggestion was to develop modules based on actual cases. Such an approach was used in the Westchester County training sessions on trial practice that were a continuation of the pilot program.

### **K. Develop a second-chair program**

Many mentors and mentees recognized the value of observing another lawyer in court. An extension of observation is to work as co-counsel on a matter in a second-chair capacity. As discussed above, the LPDO is successfully using a second-chair approach in which junior lawyers are appointed to work with experienced lawyers on complex cases. Both lawyers receive compensation under the fee schedule set for the county that provides for a lower hourly fee for the lawyer serving as second chair.<sup>29</sup>

A second-chair program promises to benefit clients, the lawyers, and the community. From the client's perspective, the key advantage of this approach is that the client is being served by two lawyers, rather than one. One interviewee described how the approach helps clients as follows: "at trial four eyes are better than two." A different mentee expressed a similar sentiment in stating, "It is nice to have another set of eyes and ears in the courtroom when someone's liberty is at stake."

Another advantage of a co-counsel arrangement is that there may be more client consultations when two lawyers are working on the client's matter. A first-chair lawyer can also delegate particular tasks to the junior lawyers.

From the perspective of the junior lawyer, the program is attractive because the junior lawyer receives compensation while developing professionally under the direct guidance of the seasoned lawyer. The approach also helps a busy first-chair lawyer who can use assistance, but is not seeking to hire a full-time associate. As suggested by one Lubbock County director, this may contribute to more seasoned lawyers continuing to accept court appointments. Clients and the justice system benefit when there is less attrition of experienced lawyers. Jurisdictions and clients are served when the resources are spent in a way to provide effective representation of appointed clients.

As revealed by the Lubbock County experience, a managed assigned counsel office can effectively implement a second-chair program. Jurisdictions with other types of appointment systems may consider using a second-chair approach if there is administrative support for implementation and monitoring.

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<sup>29</sup> In Westchester County the program directors have submitted a grant funding proposal to ILS to pilot a second-chair program.



In order for a second-chair relationship to work smoothly, administrative obstacles should be addressed. For example, Lubbock County participants reported that the second-chair lawyer may not be able to obtain discovery or court notices because the lawyer does not work in the same firm as the first-chair lawyer.

#### **L. More training that focuses on challenges associated with client-centered representation**

Some participants noted they valued their programs' emphasis on client-centered lawyering. Others reported they did not benefit from the discussion of client-centered representation because they already used a client-centered approach in their dealings with clients.

The survey and interview responses did not provide much information on whether the participants understood the different dimensions of client-centered representation. Various comments suggested that some respondents may narrowly view client-centered representation with client communication.

For client-centered representation to be effectively covered, it would be helpful to develop interactive teaching modules that include case studies on client-centered concerns that go beyond regular communication with clients. Specifically, the exercises could cover issues such as client autonomy, self-determination, decision-making, and counseling on the non-legal aspects of the client's case.<sup>30</sup>

#### **M. Provide additional opportunities for mentees who want to continue**

Individual mentees have different interests and expectations on the type and amount of mentoring experiences and training sessions. In addition to the minimum expectations for completion of the program, ideally opportunities should be created for additional work and training. For example, following completion of the Westchester County pilot program, a number of mentees urged the program administrators to develop a Mentorship 201: Trial Training Skills Program, in which they continued to meet with mentors to work on trial skills.

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<sup>30</sup> See Jonah A. Siegel, et al, Client-Centered Lawyering and Redefining of Professional Roles among Appellate Public Defenders, 14 OHIO ST. J. CRIM. L. 579, 584 (2017) (explaining that the foundation of client-centered lawyering is built on the following overarching goals: "recognizing the importance of non-legal aspects of the client's case, (2) limiting the role of lawyers' professional expertise, (3) giving primacy to client decision-making, and (4) understanding the client's perspective and values").

These sessions were well-received by those who elected to continue meeting. In Lubbock County some mentees were inspired to take their training to the next level by attending a program sponsored by the Texas Criminal Defense Lawyers Association.

#### **N. Publicize the program and recognize participants**

As suggested above, publicizing the program can help attract prospective participants. In addition, publicity can be used to recognize those who completed the program. In addition to general publicity, judges and court personnel should be provided the names of persons serving as mentors and mentees. When distributing to judges the list of participants (noting their respective roles), a cover letter from the program director could describe the basic structure and features of the program so that judges can better appreciate the value of the mentoring provided.

### **III. Evaluating the Program**

#### **A. Determine evaluation methods when designing the program**

From the outset, directors should consider how they want to evaluate the program. Such evaluations should include metrics and measurable outcomes, as well as both formative and summative assessments.<sup>31</sup>

#### **B. Identify metrics and measurable outcomes to be used in evaluations**

Depending on what information is input in case management systems, data from them can provide insights on the work of appointed counsel. For example, vouchers or closing forms submitted by lawyers may provide information on the number of client meetings and the use of investigators, as well as consultations with social workers and immigration counsel. Using such data bases would also allow evaluators to compare aggregate data related to participants in the program and aggregate data on non-participants. Tracking such information would be easier in jurisdictions with case management software that includes an e-vouchering component.

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<sup>31</sup> National Center for Women & Information Technology, *Evaluating a Mentoring Program Guide* 1, 3, available at [https://www.ncwit.org/sites/default/files/resources/evaluatingmentoringprogramguide\\_web.pdf](https://www.ncwit.org/sites/default/files/resources/evaluatingmentoringprogramguide_web.pdf) (defining a “formative evaluation” as one collecting information during the course of a program and a “summative evaluation” as one that collects evidence upon completion of the program).

Although the impact on client representation is difficult to gauge, one possibility is to track the number and type of complaints filed against mentees who complete the program (if such data is available) and client satisfaction data if such information is available.

Another possibility mentioned by one Lubbock County director is to create a form for evaluating the professional development of junior lawyers. Annual review forms for associates in law firms could provide a starting point for developing such a tool. Such tools can be used to constructively provide meaningful feedback on progress in defined areas.

Depending on the eligibility guidelines and requirements for case appointments, the advancement of lawyers within the appointment systems can also provide information on the impact of formal mentoring programs. For example, in Lubbock County some program participants advanced to handle first degree matters.

If the mentoring program provides assistance to experienced mentors, such as through the second-chair arrangement discussed above, another consideration is whether the experienced lawyers continue to accept appointments. Although a number of factors could contribute to lawyers' continued willingness to accept appointments, it would be worthwhile to seek mentors' input on whether the assistance provided made a difference in their decisions to continue to accept appointments.

### **C. Use both formative and summative assessments**

To evaluate and improve the experiences for participants and the mentoring program, both formative and summative assessments should be conducted. Formative assessments are evaluations that seek feedback from mentors and mentees during the course of the mentoring program. For example, the Lubbock County program distributed an evaluation form following each group session. In Westchester County, meetings that included CLE credit had evaluation forms distributed at the end of the lecture which provided appropriate feedback. Such formative evaluations can help shape the program while it is ongoing

Following the conclusion of the program, summative evaluations should undertake to assess whether the program has achieved its objectives and to learn how the program can be improved. To obtain this information, surveys, interviews, and focus groups can be used to obtain feedback on the program. The questionnaire reproduced in Appendix C includes many questions that a director may want to integrate in a survey conducted after mentees complete the program. To encourage candid responses, the questionnaires should be

completed on an anonymous basis. Interviews and focus groups also provide information that directors may use in attempting to improve programs.

# Conclusion

The Westchester County and Lubbock County pilots did a very commendable job in executing their plans for a mentoring program. The Westchester County program was a new launch and the Lubbock County program was built on the local tradition of experienced lawyers being eager to help less experienced lawyers in the county. The pilots provided a foundation on which to build and improve future programs.

Both pilot programs generally achieved their articulated goals. The structured mentoring programs not only empowered and supported the mentees, but impacted the communities that the lawyers serve. As stated by a Lubbock County mentor, “the strength of the [criminal defense] bar is tied to its weakest link” and it is up to the organized bar ‘to improve the standard of practice for all.’ This sentiment was shared by another mentor who stated that “having a strong bar lifts everyone up.” In the words of one mentor, “At the end of the day, it’s about making sure the system works for everyone.”

Directors of both pilot program recognized that mentoring programs promise to change the organizational culture and norms for criminal representation. A Lubbock County director explained that through mentoring on client-centered representation, lawyers recognize that the acceptable norm is not to “meet, greet and plead.” Lawyers also can raise their level of practice by learning about the assistance and resources available.

As recognized by one Westchester County director, mentoring can also help instill confidence in the assigned counsel program. A Lubbock County director made a similar point in noting that the mentoring program can help establish the sponsoring office’s credibility as an ally committed to supporting lawyers and helping them improve. A related outcome identified by another director is that a mentoring program can strengthen the sponsoring entity while improving the quality of representation for clients. Most importantly, all directors recognized how mentoring benefits clients.

By cooperating in the program evaluation, the program directors and the participants also assisted those in other jurisdictions who are considering launching mentoring programs for appointed counsel. Drawing on their experiences, observations and suggestions, the lessons and recommendations in this report are intended to provide guidance to others. The pilots demonstrated that there is no single model that will work in every jurisdiction; adaptation to local conditions is essential. Because “one size does not fit all,” a goal of this report was to provide insights on fundamental considerations for effective mentoring programs, as well as information on different models used in the pilot programs. The hope is that this will make it more likely for a jurisdiction to implement a mentoring program tailored to meet local needs.

# Appendix A

## Assigned Counsel Mentoring Program

### Questionnaire

At the outset of the mentoring program, we ask that you complete the following questionnaire. Upon completion of the program, we will ask that you complete a second questionnaire. This will provide information on your experiences, attitudes, and the impact of the program, as well as information on how the program can be improved.

At the end of the questionnaire you will be asked questions that enable the generation of a unique code to identify your questionnaire. This will allow you to answer the questionnaire anonymously, while comparing the results on the first and second questionnaires.

1. What percentage of your law practice is related to criminal defense work?  
☐ Less than 25%  
☐ 26% - 50%  
☐ 51% - 75%  
☐ Over 76%
2. What percentage of your law practice derives from court appointments in criminal matters?  
☐ Less than 25%  
☐ 26% - 50%  
☐ 51% - 75%  
☐ Over 76%
3. Why did you apply to participate in the Assigned Counsel Mentoring Program?  
Check ALL that apply.  
☐ To enhance my practice skills and knowledge  
☐ To develop my confidence as a criminal defense attorney  
☐ To cultivate my professional network in the legal community  
☐ To learn more about law practice management  
☐ To improve the likelihood of obtaining court appointments  
☐ To develop relationships with mentors
4. Of the items described in Question (3) above, which is the most important to you?  
Check ONE.  
☐ To enhance my practice skills and knowledge  
☐ To develop my confidence as a criminal defense attorney  
☐ To cultivate my professional network in the legal community  
☐ To learn more about law practice management  
☐ To improve the likelihood of obtaining court appointments  
☐ To develop relationships with mentors

5. In representing a client, which of the following decisions would you ONLY make AFTER consulting the client? Check all that apply?
- ☐ Calling a family member as a witness
  - ☐ Calling a forensics expert as a witness
  - ☐ Objecting to the admissibility of forensics testing
  - ☐ Cross-examining the state's witness who has positively identified your client
  - ☐ Decisions on what jurors to strike
  - ☐ Determining what evidence to introduce
  - ☐ Determining what issues to cover in your closing argument
  - ☐ Making decisions that will have a substantial legal impact on the case
  - ☐ Making decisions that will have a substantial nonlegal impact on the client
6. The minimum burden of proof to justify an officer detaining someone is
- ☐ Probable cause
  - ☐ Reasonable suspicion
  - ☐ Preponderance of the evidence
7. In a misdemeanor jury trial, the defense is allowed how many
- ☐ Preemptory challenges
  - ☐ Challenges for cause
8. Assigned counsel may
- ☐ accept a monetary gift from assigned clients after the disposition of the case.
  - ☐ be retained by a client after assigned counsel has determined that the client is not indigent and can afford to hire the attorney.
  - ☐ be retained in an assigned counsel matter after counsel has gotten the assigned client released from jail.
  - ☐ all the above
  - ☐ none of the above
9. You learn that a client's mother intends to testify that the client was with the mother at home during the time of the crime. If you know the mother's story is false, what should you do?
- ☐ allow the mother to testify to her version of the facts.
  - ☐ refuse to call the mother as a witness.
  - ☐ report the matter to the court.
10. Name four facts that criminal defense counsel must inform a client about plea negotiations:
- (1) \_\_\_\_\_
  - (2) \_\_\_\_\_
  - (3) \_\_\_\_\_
  - (4) \_\_\_\_\_



11. Name four consequences, or potential consequences, of a misdemeanor conviction for a criminal defense client.

- (1) \_\_\_\_\_  
 (2) \_\_\_\_\_  
 (3) \_\_\_\_\_  
 (4) \_\_\_\_\_

12. In open court, what term do you most often use in referring to individuals you represent?

- \_\_\_\_\_ The defendant  
 \_\_\_\_\_ My client  
 \_\_\_\_\_ I use surnames.

13. When speaking to prosecutors about cases, what is the term that you most often use in referring to persons who allegedly suffered injuries?

- \_\_\_\_\_ The complainant  
 \_\_\_\_\_ The victim  
 \_\_\_\_\_ I use surnames.

14. For the following items, check the extent to which you agree/disagree with each statement. There are no right or wrong answers. Various inquiries were drawn from an instrument used by the Kentucky Smart Defense Project.

	Strongly disagree	Disagree	Agree	Strongly agree
I understand when criminal defense clients should be counseled on immigration-related concerns.				
I understand how to find a lawyer competent to counsel a criminal defense client on immigration-related concerns.				
I understand how to arrange for a consultation with an immigration expert.				
I routinely seek assistance on immigration-law issues of appointed clients.				
I am well-informed regarding the latest state and federal case law related to my criminal practice, including issues related to pleas and sentencing.				

I know how to obtain recent updates of case and statutory developments related to my criminal defense practice.				
I understand how sentences are calculated.				
I know how a defense attorney can assist in getting the best possible Pre-Sentence Investigation Report possible.				
I understand how an investigator can improve the case outcome.				
I know how to find an investigator.				
I understand how to secure funding for an investigator.				
I understand current search and seizure case law in my state.				
I understand how to litigate suppression issues.				
I understand the importance of a case review.				
I know how a case review is performed.				
I routinely request interpreters in and out of court when needed.				
I understand how my state ethics rules of professional conduct bear on diligent and zealous client advocacy.				
I can identify issues that help me avoid ineffective assistance of counsel.				
I feel confident in identifying critical issues in handling misdemeanor cases.				
I feel confident in handling jury trials.				
I feel confident in consulting other lawyers when I need guidance in defending criminal matters.				
I routinely file motions to suppress when I spot a potential search and seizure issue.				

When appropriate, I file other pretrial motions including venue, competency, and challenges to constitutionality.				
The decision to forgo legally available objectives or methods because of non-legal factors is ultimately a decision to be made by the client, not the lawyer.				
The lawyer's decision should control if a lawyer and client disagree about the decision whether to call a particular witness.				

15. Please describe anything else you would like us to know regarding your specific interests related to training and the mentoring program.

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16. Other comments or questions:

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To create a code for this survey and allow you to answer anonymously, please provide the following information:

What is the last digit of your telephone number? \_\_\_\_\_

What is the first letter of your home street address? \_\_\_\_\_

What is the first letter of your mother's maiden name? \_\_\_\_\_

What are the two digits for the month you were born? \_\_\_\_\_

THANK YOU

# Appendix B

## Assigned Counsel Mentoring Program

### Questionnaire

Please answer the following inquiries. If you have a question or comment on a particular item, please note it on the questionnaire.

At the end of the questionnaire you will be asked questions that enable the generation of a unique code to identify your questionnaire. This will allow you to answer the questionnaire anonymously, while comparing the results on the first and second questionnaires. The answers to these questions should be the same as the answers you provided on the questionnaire you completed at the outset of the program.

1. What percentage of your law practice is related to criminal defense work?  
☐ Less than 25%  
☐ 26% - 50%  
☐ 51% - 75%  
☐ Over 76%
2. What percentage of your law practice derives from court appointments in criminal matters?  
☐ Less than 25%  
☐ 26% - 50%  
☐ 51% - 75%  
☐ Over 76%
3. What goals did you have for participating in the Assigned Counsel Mentoring Program? Check ALL that apply.  
☐ To enhance my practice skills and knowledge  
☐ To develop my confidence as a criminal defense attorney  
☐ To cultivate my professional network in the legal community  
☐ To learn more about law practice management  
☐ To improve the likelihood of obtaining court appointments  
☐ To develop relationships with mentors
4. Of the items described in Question (3) above, did the Assigned Mentoring Program meet the goals? Check ALL goals that were met.  
☐ To enhance my practice skills and knowledge  
☐ To develop my confidence as a criminal defense attorney  
☐ To cultivate my professional network in the legal community  
☐ To learn more about law practice management  
☐ To improve the likelihood of obtaining court appointments  
☐ To develop relationships with mentors

5. Please identify the training session that you believed was the most educational?

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6. What topic(s) do you wish would have been addressed, but were not?

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7. Did you implement any new practice as a result of your participation in the Assigned Counsel Mentoring Program?

☐ Yes

☐ No

If you answered yes, please describe the new practice(s).

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8. What do you believe is the greatest impact that the program on your law practice?

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9. For the following items, check the extent to which you agree/disagree with each statement.

	Strongly disagree	Disagree	Agree	Strongly agree
The Assigned Counsel Mentoring Program improved my confidence as a criminal defense attorney.				
The Assigned Counsel Mentoring Program helped me better understand my ethical responsibilities as a criminal defense attorney.				
The Assigned Counsel Mentoring Program helped me develop my lawyering skills.				

The Assigned Counsel Mentoring Program helped me advance my understanding of criminal law and procedure.				
The Assigned Counsel Mentoring Program helped me cultivate my relationships and network with other criminal defense attorneys.				
The Assigned Counsel Mentoring Program helped me better understand how to use client-centered approaches when handling criminal defense matters.				
The Assigned Counsel Mentoring Program helped me learn how to better handle matters related to law practice management.				
The Assigned Counsel Mentoring Program helped me understand how to better prevent disciplinary, malpractice and ineffective assistance claims.				

10. In representing a client, which of the following decisions would you ONLY make AFTER consulting the client: check all that apply?

- ☐ Calling a family member as a witness
- ☐ Calling a forensics expert as a witness
- ☐ Objecting to the admissibility of forensics testing
- ☐ Cross-examining the state's witness who has positively identified your client
- ☐ Decisions on what jurors to strike
- ☐ Determining what evidence to introduce
- ☐ Determining what issues to cover in your closing argument
- ☐ Making decisions that will have a substantial legal impact on the case
- ☐ Making decisions that will have a substantial nonlegal impact on the client

11. The minimum burden of proof to justify an officer detaining someone is

- ☐ Probable cause
- ☐ Reasonable suspicion
- ☐ Preponderance of the evidence

12. In a misdemeanor jury trial, the defense is allowed how many

- ☐ Preemptory challenges
- ☐ Challenges for cause

13. Assigned counsel may
- ☐ accept a monetary gift from assigned clients after the disposition of the case.
  - ☐ be retained by a client after assigned counsel has determined that the client is not indigent and can afford to hire the attorney.
  - ☐ be retained in an assigned counsel matter after counsel has gotten the assigned client released from jail.
  - ☐ all the above
  - ☐ none of the above
14. You learn that a client's mother intends to testify that the client was with the mother at home during the time of the crime. If you know the mother's story is false, what should you do?
- ☐ allow the mother to testify to her version of the facts.
  - ☐ refuse to call the mother as a witness.
  - ☐ report the matter to the court.
15. Name four facts that criminal defense counsel must inform a client about plea negotiations:
- (5) \_\_\_\_\_
  - (6) \_\_\_\_\_
  - (7) \_\_\_\_\_
  - (8) \_\_\_\_\_
16. Name four consequences, or potential consequences, of a misdemeanor conviction for a criminal defense client.
- (1) \_\_\_\_\_
  - (2) \_\_\_\_\_
  - (3) \_\_\_\_\_
  - (4) \_\_\_\_\_
17. In open court, what term do you most often use in referring to individuals you represent?
- ☐ The defendant
  - ☐ My client
  - ☐ I use surnames.
18. When speaking to prosecutors about cases, what is the term that you most often use in referring to persons who allegedly suffered injuries?
- ☐ The complainant
  - ☐ The victim
  - ☐ I use surnames.



19. For the following items, check the extent to which you agree/disagree with each statement.

	Strongly disagree	Disagree	Agree	Strongly agree
I understand when criminal defense clients should be counseled on immigration-related concerns.				
I understand how to find a lawyer competent to counsel a criminal defense client on immigration-related concerns.				
I understand how to arrange for a consultation with an immigration expert.				
I routinely seek assistance on immigration-law issues of appointed clients.				
I am well-informed regarding the latest state and federal case law related to my criminal practice, including issues related to pleas and sentencing.				
I know how to obtain recent updates of case and statutory developments related to my criminal defense practice.				
I understand how sentences are calculated.				
I know how a defense attorney can assist in getting the best possible Pre-Sentence Investigation Report possible.				
I understand how an investigator can improve the case outcome.				
I know how to find an investigator.				
I understand how to secure funding for an investigator.				
I understand current search and seizure case law in my state.				
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I understand the importance of a case review.				
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I routinely file motions to suppress when I spot a potential search and seizure issue.				
When appropriate, I file other pretrial motions including venue, competency, and challenges to constitutionality.				
The decision to forgo legally available objectives or methods because of non-legal factors is ultimately a decision to be made by the client, not the lawyer.				
The lawyer's decision should control if a lawyer and client disagree about the decision whether to call a particular witness.				

20. What recommendations do you have for future mentoring programs?

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21. Would you participate in the mentoring program again?

☐ Yes  
☐ No

22. What advice would you give new mentees/mentors?

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23. Other comments or questions:

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To create a code for this survey and allow you to answer anonymously, please provide the following information:

What is the last digit of your telephone number? \_\_\_\_\_

What is the first letter of your home street address? \_\_\_\_\_

What is the first letter of your mother's maiden name? \_\_\_\_\_

What are the two digits for the month you were born? \_\_\_\_\_

THANK YOU

# Appendix C

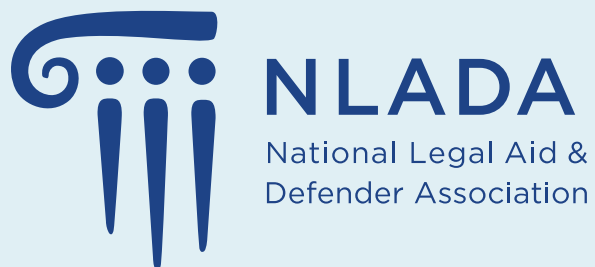
## Factors to Consider When Developing a Mentoring Program for Indigent Defense Attorneys

Mentoring programs should be tailored to the individual needs of each jurisdiction. This checklist can prompt consideration of key factors to help design an effective program.

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1. What are the goals of indigent defense attorney mentoring for this jurisdiction?
2. What is the focus: e.g., helping brand new lawyers or more experienced lawyers? Improving practice in selected case types, or in particular courts?
3. What is the effect and role of local bar support? How will you secure bar support?
4. What is the effect and role of local bench support? How will you secure bench support?
5. Structure: what entity or person should administer/manage the mentorship program?
6. Is there any possible coordination or overlap with existing local or state CLE training?
7. What components should the mentorship program include? Possible options: one-on-one curriculum module; serving second chair to mentor; shadowing mentor; reverse shadowing (mentor follows mentee); individual and/or group review of mentee cases; distance learning or support (e.g., webinars, internet Q&As); cohort listserv; group learning; field trips; social activities.
8. What should the term be of the mentorships?
9. Cohort size: number of mentors and mentees overall; number of mentees per mentor.
10. What is the basis for your mentoring curriculum: e.g., local, state or national performance standards?
11. What ethical and practice management concerns need to be addressed? (E.g., mentor and mentee are not attorney of record on one another's cases).
12. What is the best balance of informal v. formal program structure? (How to accommodate adult learning principles that embrace different learning styles.)
13. What should the process be for mentor selection/recruitment? Criteria. Evaluation.

14. What should the process be for mentee recruitment? Criteria. Evaluation.
15. What should the format be for mentor orientation? For mentee orientation?
16. Should mentors be paid? If so, how much? Should mentees be charged? If so, how much? Does mentorship program participation qualify as CLE credit? What other incentives might exist? What recognition could be provided to mentors?
17. How will you instill core values of client-centered practice to new panel attorneys?
18. How will you acknowledge the pressure that law practice is a business and balance that with client-centered values?
19. Funding/sustainability options. Grants. State, local funds. What will encourage state and or local government to invest in mentoring?
20. How will you measure the effect/value of mentoring? For example, does mentoring:
  - broaden pool of engaged, qualified attorneys
  - enhance competence and improve skills
  - improve client outcomes
  - improve client satisfaction
  - improve professionalism
  - improve efficiency and court administration
  - encourage/facilitate assigned counsel advancement to more serious/complex cases
  - increase ability of assigned counsel attorneys to advance to taking more complex/serious cases
  - improve the reputation of the criminal defense bar (difficult to quantify, but could be considered)
  - prepare attorneys for managing a solo practice
  - encourage attorneys to stay involved in criminal practice?
21. What data are needed for evaluation? How will you collect the data?
22. Expansion considerations: can a program in one county/jurisdiction expand into others?
  - Can a completed mentorship in one county be transferable/beneficial to practice in another county?
  - Is there any value to a certification process?
  - Can there be a central hub for mentoring resources?
  - Can one mentoring playbook with curriculum, forms, etc. be developed that other counties/localities can tailor/adapt?



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