

# MAINE STATE LEGISLATURE

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# Accountability Through Attorney Performance Evaluations

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Developing a System of Performance Evaluations  
for Private Assigned Counsel to Ensure Delivery of  
High-Quality Indigent Legal Services

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11 August 2015

On behalf of the Maine Commission on Indigent Legal Services and pursuant to the ABA's "Ten Principles of a Public Defense Delivery System," I conducted a national survey resulting in the following report of thirteen states' systems for providing indigent legal services and attorney performance evaluations, with additional input from the NLADA and the Sixth Amendment Center. The following report and recommendations are designed to provide the State of Maine with a resource for developing a system for evaluating private assigned counsels' performance to ensure high-quality, independent delivery of indigent legal services.

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## I. Research Summary

### A. Introduction

The State of Maine currently provides indigent legal services primarily through the use of private assigned counsel, with oversight from the Maine Commission on Indigent Legal Services (MCILS), headed by Executive Director John Pelletier. In 2002, the American Bar Association (ABA) promulgated black letter guidelines titled, *ABA Ten Principles of a Public Defense Delivery System*, that provide national standards for ensuring quality, independent indigent criminal defense representation. *See* Appendix I.<sup>1</sup> Furthermore, the statute enacting and authorizing MCILS requires the Commission to promulgate seven standards to govern the delivery of indigent legal services, including “standards for the evaluation of assigned counsel and contract counsel.” 37 M.R.S. § 1804(2)(D) (2009).

Due to limited staff and resources, Maine has been unable to develop the robust system of performance evaluations and standards contemplated by *Principle Ten* requiring that “defense counsel is supervised and systematically reviewed for quality and efficiency according to nationally and locally adopted standards.”<sup>2</sup> Not surprisingly, however, many states around the nation are not in compliance with at least one of the Ten Principles set forth by the ABA.<sup>3</sup>

The Sixth Amendment to the United States Constitution provides for the right to counsel in criminal cases. In 1963, the Supreme Court in *Gideon v. Wainwright* declared that “in our

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<sup>1</sup> The ABA’s *Ten Principles* are applicable to all aspects of indigent legal services, including adult criminal and juvenile defense, child protective cases, and other cases in which an indigent person has a right to representation at state expense.

<sup>2</sup> “The defender office (both professional and support staff), assigned counsel, or contract defenders should be supervised and periodically evaluated for competence and efficiency,” *ABA Ten Principles of a Public Defense Delivery System*, including commentary, 2002.

<sup>3</sup> For instance, many jurisdictions’ public defense systems are not independent from political interference (Fresno County, California; *See* Sixth Amendment Center, David Carroll, September 29, 2013), lack parity between defense counsel and the prosecution (*See* ABA *Principle 8*, Appendix I), and do not provide continuous representation of clients by the same attorney until completion of their case (*See* Sixth Amendment Center, Jon Mosher, July 2, 2014).

adversary system of criminal justice, any person haled into court, who is too poor to hire a lawyer, cannot be assured a fair trial unless counsel is provided for him. *This seems to us to be an obvious truth.*” *Gideon v. Wainwright*, 372 U.S. 335, 344 (1963, emphasis added). Since 1963, the Supreme Court has further added that the defendant must not only be represented by counsel, unless the defendant waives her right, but that there must be *effective* representation by counsel. *See Strickland v. Washington*, 466 U.S. 668, 686 (1984).

The potential consequences of a failure to supervise and provide systemic review of indigent defense counsel can be seen in a Sixth Amendment Center report titled, “The Delaware Report” (2014). The report on Delaware’s indigent defense system concluded that a pervasive lack of accountability, in addition to excessive caseloads, had created “systemic deficiencies prevent[ing] those defendants who manage to invoke their right to counsel from getting adequate representation.” *The Delaware Report*, The Sixth Amendment Center, Executive Summary, page v (2014) (emphasis added). As such, the Sixth Amendment Center found that ABA *Principle Ten* is one of the most important and yet, often lacking, mechanisms to ensure constitutionally mandated legal representation, as well as *quality* legal counsel for indigent defendants in the criminal justice system.<sup>4</sup>

In addition to input from two national public defender organizations (NLADA and the Sixth Amendment Center), my research included a survey of thirteen states’ systems of indigent defense representation and attorney evaluation, with the goal of designing a system of attorney performance evaluation that would ensure efficient, independent, and high-quality representation throughout the State of Maine. For the purposes of this report, I have organized the surveyed

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<sup>4</sup>The “Delaware Report” concluded that, while most states are better situated than Delaware, Delaware’s system failed to meet the majority of the ABA’s *Ten Principles*, designed to “provide the fundamental criteria necessary to design a system that provides effective, efficient, high quality, ethical, conflict-free legal representation for criminal defendants who are unable to afford an attorney.” *The Delaware Report*, Sixth Amendment Center, III-IV (2014); see also *Ten Principles of a Public Defense Delivery System*, American Bar Association (2002).

states based on how each state evaluates attorney performance.<sup>5</sup> I will begin with a brief summary of each state's system for delivery of indigent legal services and then describe how that state implements their system of attorney performance evaluations.

## **B. Survey Systems**

Survey systems for conducting attorney evaluations can be designed to gather as little or as much information about attorneys' performance as a Commission or an Office of the Public Defender (OPD) requires. The following systems are the best examples of a pure survey method used to gather information and evaluate attorney performance.

### New Hampshire

New Hampshire's Indigent Defense Fund currently employs a Public Defender system for indigent representation supplemented by the Judicial Council contracting with private attorneys for conflict cases.<sup>6</sup> New Hampshire's Public Defender offices (NHPD) conduct annual attorney evaluations for all staff and private contract counsel, performed by the managing attorney or evaluator and reviewed in-person with the surveyed attorney. According to the NHPD Evaluation Guidelines, the primary purpose of the performance evaluation is to "improve the quality of client representation and assure the professional development of our attorneys . . . . It is an opportunity to recognize achievements and set goals for future progress and continued professional development."

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<sup>5</sup> Additionally, I compiled an Appendix of sample attorney performance evaluation methods as well as helpful documents that can be used to monitor a state's overall indigent defense system.

<sup>6</sup> New Hampshire's Judicial Council is a twenty-four person board, comprised of members appointed by all three branches of the government, that provides oversight and guidance for the Indigent Defense Fund.



Survey question topics include: organizational skills, client relationships, advocacy skills, case load management, motion practice, and professional development. Attached to the attorney evaluation form is a set of guidelines that provide a brief summary of what the evaluating attorney should look for as a “general aide and not as an exhaustive list of all considerations applicable.” Finally, the last question on the survey form is an attorney self-evaluation question designed to be completed at the evaluation review, requiring the attorney to “reflect on personal and professional development” and identify their individual “needs or desires” with NHPD. The responses to survey questions are limited to comments and whether the attorney “meets expectations” or displays “room for growth.”

### Vermont

Vermont uses a county-based Public Defender system that contracts with private counsel to help with caseload relief, as well as on an *ad hoc* basis for conflict cases. In order to conduct performance evaluations of both in-house public defenders and contract counsel, Vermont conducts anonymous surveys of attorney performance by soliciting input from magistrates, judges, and justices using *LimeSurvey*, an online survey system. The questions are first drafted in a Word document, uploaded to the *LimeSurvey* system, and then sent to requisite judicial officers in four month cycles. The OPD conducts evaluations for both criminal matters in the district courts, as well as family law matters. However, in-house counsel, contract counsel, and *ad hoc* counsel do not complete a self-evaluation.

The online survey includes a numeric rating scale, ranging from number 1, indicating no information, to number 7, indicating consistently superior performance. The survey questions address: motion practice and legal knowledge, courtroom skill, plea bargaining and sentencing,

and professionalism, with relevant differences for district court criminal cases and family law matters. Every four years, the OPD compares the individual attorney performance evaluations to determine areas of improvement and to note areas of successful, positive professional growth or change.

According to Mary Deaett at the Vermont Office of the Public Defender, judicial officers are targeted because they spend the most time interacting with and observing OPD attorneys, and the Office sends anonymous evaluations to the judicial officers that attorneys appear before most frequently seeking constructive feedback on attorney performance. Ms. Deaett did state that it is incredibly important to the participating judicial officers that the attorney evaluations are conducted anonymously so as to ensure OPD and attorney independence from the judicial branch.

### **C. Standards of Practice Model**

The following states employ a Standards of Practice model for conducting attorney performance evaluations. Under this model, a jurisdiction designs Standards of Practice unique to each case type (e.g. criminal, juvenile, emancipation, civil commitment, serious violent felony/capital cases, etc.) that each appointed or contracted attorney must review and follow to remain eligible to represent indigent clients. The Maine Commission on Indigent Legal Services has currently adopted Practice Standards for the following case matters: Chapter 101 - Juvenile, Chapter 102 - Criminal, and Chapter 103 - Child Protective.

#### District of Columbia (D.C.)

The District of Columbia uses a Public Defender system, in addition to a panel of private assigned attorneys who are managed by the Superior Court's Criminal Division, to provide

representation in misdemeanor cases. Under this panel system, individual judges/justices are responsible for acting on voucher payment requests, as well as periodically reviewing attorney panel renewals and new assignment applications. Under D.C.'s system, private paneled attorneys are appointed by the court to represent clients facing only "less serious" misdemeanor or regulatory offenses, while staff public defenders handle all other "more serious" cases, including but not limited to sex offenses, violent crimes, and felony matters.

In 2003, the Superior Court formed a Representation Committee to develop criminal defense practice standards with the goal of maintaining "the highest level of representation in all Criminal Division matters." In January 2010, by Administrative Order 10-02, the D.C. Superior Court adopted *Attorney Practice Standards for Criminal Defense Representation*, as well as practice standards for family court matters, including juvenile and special education representation. The Practice Standards were developed based on D.C.'s Rules of Professional Conduct and the D.C. Superior Court Rules of Criminal Procedure. The Criminal Defense Practice Standards include requirements for attorney appointments and trainings, basic functions of defense counsel, attorney-client relationship, pre-trial actions, hearings, trial preparation, sentencing, post-conviction advocacy, and appeals. It is unclear how the District of Columbia ensures attorney compliance with these Standards.

### Louisiana

Louisiana uses a parish-based public defender system to provide indigent criminal defense representation. However, Louisiana does not currently have an assigned counsel system in any parish. As such, the majority of the State provides indigent criminal defense representation using a hybrid system of parish public defender offices, as well as private

attorneys working either part-time or full-time under contract with the PD office. In 2007, the Louisiana Public Defender Board (LPDB) was established as an administering state agency to serve the public by providing representation for clients pursuant to their constitutional right to counsel.

LPDB's mission is to provide high quality and constitutionally mandated representation of indigent defendants through a "commitment to performance standards, ethical excellence, data-driven practices and client-centered advocacy." In order to evaluate contracted attorneys' performance, LPDB established performance standards for capital cases and trial court cases for the following matters: delinquency, criminal, and CINC (Child in Need of Case and Termination of Parental Rights cases). These standards are designed and intended to "provide a measure by which the performance of individual attorneys and district public defender offices may be evaluated, and to assist in training and supervising attorneys . . . . The language of these standards is general, implying flexibility of action which is appropriate to the situation." The Trial Court Performance Standards for criminal matters include guidance on the duties and obligations of counsel, how to conduct investigations, filing pretrial motions, plea negotiation information, trial preparation, sentencing and the appeal process, and defending juveniles prosecuted as adults.

As stated earlier, LPDB designed these Standards of Performance to provide flexible guidelines for attorneys, ensure quality legal representation, and establish a means by which LPDB can measure performance. While these Standards do provide for a certification process, it is unclear how the Louisiana Public Defender Board ensures attorney compliance with these Standards.

## Virginia

Virginia's indigent defense system is comprised of statewide public defender offices for non-capital and capital cases, as well as court-appointed counsel provided by Virginia's private criminal defense bar. Attorney performance is monitored by the Virginia Indigent Defense Commission (VIDC). The VIDC also sets the legislatively mandated Standards of Practice for both public defenders and court-appointed counsel.

In order for a private attorney to be rostered for indigent criminal defense representation, she must be in good standing with the Virginia State Bar and complete the certification process that includes meeting the training and experience qualifications. Once an attorney is placed on the roster, an attorney's failure to comply with or violation of the Standards can result in the attorney's removal from the roster and, depending on the violation, can be reported to the Virginia Bar.

The VIDC has established Standards of Practice for non-capital criminal cases, as well as for Appellate Practice and Juvenile Defense. The standards for non-capital criminal cases are organized into the following sections: duties, training, and experience of counsel, pre-trial release, preliminary hearing and counsel's continuing obligation to raise the issue of client's incompetence, discovery and investigations, pre-trial motions, plea negotiations, trial, sentencing and appellate procedural matters.

The comprehensive Standards are enforced using a Five-Step complaint-based process and a mandatory recertification process. The process for enforcing the standards begins with submission of a "qualified" complaint that must be in writing, must not be anonymous, and must involve a court-appointed attorney or public defender in an indigent defense case, amongst other

requirements. A qualified complaint is evaluated to determine whether clear and convincing evidence of a violation exists by the VIDC Standards of Practice Enforcement Attorney (SOPEA), who is responsible for investigating the complaint and preparing an Investigative Report. Next, the report is submitted to a three-member Informal Resolution Panel (IRP) consisting of licensed Virginia attorneys who may pursue one of the following three options: issue a formal determination and dismiss the complaint; request more information; and/or schedule a formal agency hearing with the respondent attorney. If a formal hearing is required, the hearing will be recorded and conducted by three Virginia Bar members chosen from a committee of volunteer attorneys who may issue a sanction if necessary. The respondent attorney may appeal any sanction imposed to a three-person VIDC panel.

One should note that, although there is a comprehensive procedural review of complaints about attorney performance by VIDC, there is no routine system-wide evaluation of attorneys. Rather, the VIDC only takes disciplinary action against an attorney pursuant to the qualified complaint procedure. However, a judge or justice may choose not to appoint a particular attorney if she believes the attorney is incompetent.

#### **D. Data Collection Systems**

The use of data to assess attorney performance by tracking case outcomes, pretrial data, case types, average imposed sentences, and the method of disposition is a relatively new development throughout the country. North Carolina and Travis County (TX) are two systems conducting cutting-edge data collection and synthesis for the purposes of monitoring state-wide indigent defense representation.

## North Carolina

North Carolina currently uses a county-based hybrid system comprised of public defender offices, appointed counsel, and contract counsel (for conflict and/or relief cases). The Office of Indigent Defense Services (IDS) has adopted Best Practices and Performance Guidelines for non-capital criminal cases, juveniles in delinquency proceedings, and parent respondents in abuse, neglect, dependency, or TPR proceedings.

Recently, IDS has developed the North Carolina Systems Evaluation Project (NCSEP), headed by Margaret Gressens, with the primary purpose of using “empirical data to measure quality, assess policy, and to improve the indigent defense system by determining how well the system meets the needs of clients, the criminal justice system as a whole, and the community.” Although North Carolina’s indigent defense system is county-based, IDS collects statewide data from all IDS attorneys, as well as directly from the Judicial Branch. To process the large amount of data collected, IDS uses specialized software, staff proficient in economics and statistics, and a server warehouse for data storage.

To monitor attorney performance, North Carolina has developed Key Performance Indicators (KPIs)—defined jurisdiction-specific goals and objectives that are subsequently distilled into measurable performance indicators.<sup>7</sup> In order to create the KPIs, NCSEP organized a committee of members from the criminal justice community to determine community values that were important to measure and track, some examples of which include: case types, sentence faced versus sentence received, cost of case, number of cases handled by each attorney, and the

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<sup>7</sup> NCSEP developed 7 KPIs: (1) access to attorney, (2) client outcomes, (3) quality of representation--regardless of race, gender, ethnicity or income, (4) wrongful convictions, (5) efficiency, (6) comprehensive representation, and (7) accountability to taxpayers.

method of disposition.<sup>8</sup> Based on the success of data collection for case types and attorney performance, North Carolina has expanded their current system to include pretrial data analysis as well.

North Carolina has also partnered with the NLADA to publish their “data toolkits” online in order to provide a resource for other jurisdictions interested in organizing, collecting, and evaluating data, as well as ways in which data can inform and improve attorney performance.<sup>9</sup> By collecting state-wide data, regardless of whether representation was provided by a public defender, private assigned counsel or contract counsel, North Carolina is able to analyze a rich source of information. According to the NLADA, some of the internal uses of data can include: “conduct intake and perform conflict checks, continuously monitor and manage workload, track case outcomes, document exactly what is done for clients and when, develop and apply workload standards and case weights, track attorney, social workers’ and investigators’ time, manage with clear expectations and performance measures.”<sup>10</sup> Using data collection, IDS has been able to monitor, cross-tabulate, and improve attorney performance, as well as provide informed policy recommendations to the legislature regarding North Carolina’s system of indigent criminal defense representation.

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<sup>8</sup> Recommended members of the KPI Committee include: judges and justices, criminal defense attorneys, prosecutors, assistant attorney generals, law professors, and non-profit service providers most frequently used by indigent defendants.

<sup>9</sup> Link to NCSEP Toolkit for Performance Measures:

[http://www.ncids.org/Systems%20Evaluation%20Project/PerformanceMeasures/PM\\_Links.htm](http://www.ncids.org/Systems%20Evaluation%20Project/PerformanceMeasures/PM_Links.htm)

Link to NCSEP Toolkit for Building Data Infrastructure:

<http://www.ncids.org/Systems%20Evaluation%20Project/Infrastructure/links.htm>

Link to NCSEP Pilot Site Project:

<http://www.ncids.org/Systems%20Evaluation%20Project/Projects/PilotSite.pdf>

<sup>10</sup> *Basic Data Every Defender Program Needs to Track: A Toolkit for Defender Leaders*, NLADA, prepared by Marea Beeman, page 15 (2014); <http://www.ncids.org/Systems%20Evaluation%20Project/Projects/PilotSite.pdf>



### Travis County (TX)

On March 28, 2015, the NLADA and Travis County hosted a webinar on how Travis County changed their system of indigent defense representation from a court-appointed “wheel” model, where judges rotated eligible rostered attorneys based on qualifications and appointment eligibility, to a structured non-profit private defender model.<sup>11</sup> The radical change in indigent defense systems was necessary because Travis County was not in compliance with most of the ABA’s *Ten Principles*. The primary areas of concern were the lack of independent representation, the lack of parity of resources between the defense and prosecution, and the lack of systematic review and supervision of defense attorneys for quality and efficiency. The 2011 reform led to the creation of the Capital Area Private Defender Service (CAPDS) to provide oversight and management of the representation system. *See* Appendix X.

CAPDS, in turn, created a data collection system, collaborating with North Carolina, to serve three important functions: “evaluation, management, and advocacy” of the criminal defense system. CAPDS established a “Values Committee” (similar to NCSEP’s Key Performance Indicator Committee) comprised of members of the local defense bar, the judiciary, policy makers, and members of the Texas Indigent Defense Commission (TIDC). The values committee developed approximately 60 total measures (only about half are in use today) or “values” unique to Travis County.

For instance, one of the values identified by the CAPDS Value Committee was “Competent Representation.” To collect data for this specific value, staff distilled the value into “goals,” such as “clients receive competent representation.” This goal was narrowed into

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<sup>11</sup>Link to the webinar documents, including a YouTube video and pdf document, hosted by the NLADA and Travis County, <http://tidc.texas.gov/media/37799/150520nladawebinar-travismac-.pdf>

objectives, such as “counsel meets with clients in timely manner” or “type and timelines of meetings,” that could be measured by collecting data on attorneys’ case outcomes, including the time spent on an individual case, the amount of time an attorney spent on writing briefs/motions, or the amount of time an attorney spent meeting with a client.<sup>12</sup> Therefore, by tracking data objectives such as convictions, trials, sentence length, impact of pretrial release, and cases overturned on appeal, etc., CAPDS has been able to qualitatively monitor large amounts of system information that allows Travis County to identify and implement necessary changes.

### New York

A third example of a data collection method is New York’s county-based Public Defender model. Under this system, a county’s Public Defender Office contracts with private counsel for case relief and conflict matters, resulting in approximately 150 state-wide private counsel “providers” for appellate, criminal defense, and family law cases. Pursuant to the New York State Bar Association Standards and Executive Law Article 30 Section 832(3)(d), establishing the New York Office of Indigent Legal Services (ILS), ILS developed Standards and Performance Criteria for public defenders and contracted private counsel. In addition to Standards and Performance Criteria for evaluating attorney performance, the Office of Indigent Legal Services conducts random in-court observations but does not review case files or briefs due to concern regarding attorney-client privilege.

New York is in the early process of developing a state-wide data collection system to evaluate attorney performance and monitor caseloads. Andy Davies, at ILS, coordinated with

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<sup>12</sup> Much of the success of the data collection system, due in part to highly knowledgeable data retrieval staff, is the ability to access court data from the period *before* the 2011 indigent system reform. CAPDS has been able to conduct a “before-and-after” comparison of data variables by analyzing attorney performance and the success of the current system of indigent legal services as compared to the pre-2011 system.

NCSEP to develop Key Performance Indicators (*see North Carolina*) specific to New York.<sup>13</sup> In New York City, however, the Legal Aid Society, uses a pure data collection system by recording case data from the City of New York computers that populates into the Society's system as a "one-way street" data flow for attorney-client privilege protection. However, Mr. Davies noted that court-provided data often does not have all the information a jurisdiction may want to collect.

### **E. Hybrid Systems**

The following states are examples of defender systems that use a hybrid method of attorney performance evaluations. For instance, some states use a combination of in-court monitoring and in-person evaluation reviews (*see Colorado* and *San Mateo*) while other states use performance standards, surveys, financial audits, in-person evaluations, and data collection to monitor a jurisdiction's attorneys' performance. *See Oregon* and *Massachusetts*.

#### Colorado

Colorado's indigent defense system is comprised of county-based public defender offices that work with the Alternative Defense Counsel (ADC) to contract with Colorado's private bar to handle conflict cases ("cases in which the public defender office determines that an ethical conflict of interest exists"). The Colorado Office of the State Public Defender is comprised of 21 regional offices, one centralized administrative office, and one centralized appellate office that is responsible for handling statewide appeals.

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<sup>13</sup> See Appendix VI for a copy of a working document Andy Davies' (New York) developed to include on attorneys' voucher submissions in order to track identified performance measures.

I spoke with Lindy Frolich at the ADC to determine how Colorado monitors private contract counsels' performance. According to Ms. Frolich, the ADC conducts contract renewals of private counsel every three years. Each year, the ADC reviews roughly 130 contract renewals for a total of approximately 400 ADC attorneys. The ADC conducts a Performance Plan review with each contract renewal, comprised of seven basic components beginning with mandatory evaluations for both private attorneys and contracted investigators. The ADC's renewal application requires attorneys to respond to questions such as describing two ADC trials or significant cases completed in the last two years, providing a filed motion or brief for review, documenting how frequently the attorney uses the ADC Brief and Motion Bank, identifying the percentage of cases in which the attorney used an ADC investigator, and documenting the number and type of CLE courses taken over the past three years related to either criminal or juvenile law.

In addition to requiring attorneys to file a contract renewal form, the ADC conducts random in-court observations at both the trial and appellate levels, reviews pleadings, surveys courts for input on attorney performance, and reviews attorneys' billing practices from the last three years for financial discrepancies. Furthermore, the ADC provides all contracted attorneys with access to a Motions and Briefs Document Bank that is routinely updated with complex and commonly used documents, as well as access to comprehensive manuals on most frequently addressed subject matters such as character evidence, self-defense, and juvenile cases. ADC has also created a formal complaint procedure that allows any client to file an attorney complaint with the ADC, and every client complaint must be reviewed by the ADC *before* they will renew an attorney's contract. Finally, as of April 2013, ADC private attorney contracts provides for "at will termination," regardless of the formal complaint procedure.

## Massachusetts

Massachusetts currently has a state-wide public defender system (the “Office of Public Counsel;” OPD), including divisions for mental health and juvenile cases, that contracts for panel appointments with county-based private attorneys. Nancy Bennett, Deputy Chief Counsel of the Private Counsel Division, established and implemented a process for conducting attorney performance evaluations, beginning with a certification process for panel appointments. In addition to the performance evaluations, the Central Office of Public Counsel also conducts financial audits of paneled attorneys’ billing practices in accordance with the “Assigned Counsel Manual: Policies and Procedures.”

In order for an attorney to be panel certified, the attorney must complete either a seven day training program or meet the certification experience requirement (e.g. has tried five criminal jury cases as lead counsel in the last five years), and apply for membership to the local county board, which is responsible for conducting the initial interview. If the local county board finds that an attorney meets both the skill (objective) and reputation (subjective) requirements, the attorney is placed on probation for up to eighteen months with no right to appeal. During this probationary period, a performance assessment of the attorney is conducted by the Local Advisory Board, comprised of local attorneys and a staff attorney from the OPD Central Office.

Massachusetts has also established a system of paid, local Supervising Attorneys to provide in-person monitoring of paneled attorneys. The Supervising Attorney (SA) position as a “position of honor,” encouraging the Supervising Attorney to focus on the welfare of indigent clients over their social relationships with local attorneys. At least one Supervising Attorney is designated in each county, with more SAs in more populous counties. To apply for the

Supervising Attorney position, an applicant must be currently rostered for Superior Court cases and be interviewed by a local advisory board. The advisory board will forward its recommendation to the Chief Counsel, who either approves or rejects the applicant. The OPD contracts with Supervising Attorneys for ten hours per week at \$60.00 per hour for one year.<sup>14</sup> SAs are required to meet with private counsel monthly to review case files, motions, briefs, etc., in order to look for objective indicia of an attorney's good performance and areas needing improvement, and to prepare Performance Assessment reports. The SA's monthly Report is submitted to and reviewed by Central Office attorneys.

According to Ms. Bennett, Massachusetts currently has twenty-seven county-based Supervising Attorneys, with numbers increasing every year, who oversee approximately 1,800 private assigned attorneys and maintain an average of part-time hours on assigned cases. Calculated according to full-time employee numbers, there is approximately one Supervising Attorney for every thirty-three private attorneys (keeping in mind that more populated counties require multiple SAs). Ms. Bennett stated that a system of local part-time Supervising Attorneys is more efficient because the SAs are locally connected and have established professional relationships throughout the county (e.g. court clerks) who can alert them to attorney performance problems.

Additionally, Supervising Attorneys are required to conduct primary investigations of client complaints. The Private Counsel Division's client complaint process uses a collect-call phone service, answered by administrative personnel under the Private Counsel Division's guidance, to provide clients, especially illiterate or imprisoned defendants, with direct access to

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<sup>14</sup> Note, according to Ms. Bennett, Supervising Attorneys are paid out of the same fund as panel attorneys since work performed by SAs are part of the OPD's operating costs.

the complaint process. The Division's most common type of client complaint relates to their attorneys' failure to meet with them in prison. Ms. Bennett cautioned against relying too heavily on client complaints given the potential for inaccurate information, but stated that client complaints can be a great source of information about attorney performance problems if determined to be credible. While Massachusetts' system of private counsel performance evaluations does require increased personnel and financial resources, taxpayers benefit from enhanced accountability and quality of representation.

### New Mexico

New Mexico currently uses a public defender system that also contracts with private attorneys to provide representation in criminal cases. Currently, New Mexico is in a development phase (Request for Proposals; RFPs) to implement a more comprehensive attorney performance monitoring system. However, amongst the RFPs is a sample annual evaluation conducted using a point-based system: thirteen factors are considered at twenty points per factor for a total of 260 points available. Effective May 2, 2014, the New Mexico Public Defender Commission (NMPDC) published Performance Standards for Criminal and Juvenile case types that are built into private counsel contracts. Included in the Performance Standards are requirements regarding evaluations (to be conducted "at least annually"), as well as periodic supervision and evaluation of contracted private counsel's "first contact with a new client, use of investigators and experts, trial outcomes, motions on substantive issues and outcomes, courtroom evaluations, and dismissal or nonconviction dispositions."

## Oregon

Oregon uses a 100% state funded, private assigned counsel system managed by the Office of Public Defense Services (OPDS) with oversight provided by the State Public Defense Services Commission. In each county, private assigned counsel are contracted through private law firms, consortia, or non-profit public defender offices called “providers.” In order to evaluate private assigned counsels’ performance, the OPDS formed an advisory group called the Quality Assurance Task Force (QATF) to develop practices for “monitoring and improving the quality of public defense services in Oregon.” In part, the QATF developed eight Best Practices that serve as recommendations for all providers. These best practices are: “client-centered practice, forming a board of directors, quality assurance, case assignment, information management, facilities that instill pride and confidence in the work, collaborative efforts with the community, and civic engagement.”

In addition to the QATF Best Practices, the OPDS currently uses multiple performance evaluation methods to monitor multiple types of performance indicators. These systems are: an online survey of counsel, in-person audits of providers in every county by Peer Review Teams (PRTs) comprised of volunteer lawyers, a Service Delivery Review conducted by Commissioners, and finally, a newly implemented data collection system.

Beginning with surveys, the OPDS uses *Survey Monkey*, an online survey platform, to query all organizations that have frequent contact with OPDS providers, such as the District Attorney’s Office, the Attorney General’s Office, the Courts, the Department of Health, and the Department of Corrections. These surveys are sent annually and, according to Nancy Cozine the Executive Director of OPDS, only after the Chief Justice of the Oregon Supreme Court has sent



a preliminary message to participating organizations highlighting the importance of participating in the survey and providing thoughtful, serious responses. *See* Appendix XI.

OPDS' most labor-intensive method of performance evaluations is the in-person audits of providers in every county. Peer Review Teams conduct interviews with organizations that most frequently interact with providers, and issue a final report and recommendation to the Service Delivery Review Board (SDRB), comprised of OPDS Commissioners, detailing changes in providers' cases, performance, and the use of interpreters and investigators.

After the PRTs issue their final recommendation to the Service Delivery Review Board, the SDRB Commissioners conduct a Review of the providers' performance one year after the PRT recommendation was issued in order to allow attorneys to make the changes. The SDRB Review is a formal process that is open to the local public and allows for testimony by providers and local interested community members. Therefore, this review process functions like an administrative or agency hearing. After the public review hearing, the Service Delivery Review Board can terminate a provider's contract if the attorneys have not changed their performance based on the Peer Review Team's recommendations.

Finally, OPD has implemented a data collection system based on the toolkit made available by North Carolina and the NLADA. OPDS has implemented a data system that will be capable of interfacing with the courts' data system for one-way data retrieval. Additionally, according to Ms. Cozine, providers also send individual records to OPDS to track variables. Regarding staff requirements, OPDS currently has one staff person working on the data collection, synthesis, and validation of each field, but they do have an IT manager who understands data collection. One example of how OPDS uses data collection is to track

attorneys' time spent, which can be indicated by the frequency and length of attorneys' client meetings. As such, OPDS can track this variable to determine if providers are meeting OPDS' goal of "one-third time spent," divided between in-court appearances, client meetings, and researching/writing.

#### San Mateo County (CA)

California currently employs a county-based system for indigent defense representation. One of the leading models for assigned counsel representation is San Mateo County. San Mateo County uses a pure private defender model managed by the San Mateo Bar Association, under contract with the County ("Agreement"), to assign private attorneys (Private Defender Program; PDP) to indigent defendants. Part of the Agreement requires the bar association to develop and implement a mentoring program for new attorneys, as well as to conduct annual evaluations of private defenders and disclose the evaluation results in the San Mateo County Annual Report. Included in the attorney evaluation standards are assessments of each lawyer's professional ability, attitude, legal knowledge and preparation, work habits, and communication skills. However, each year the association weights factors they believe to be the most important in their jurisdiction; the 2014 Evaluations emphasized the effective use of investigation, willingness to try cases, effective use of legal research and pretrial motions, CLE training, and consideration of immigration issues.<sup>15</sup> *See also* Appendix IX.

The PDP Evaluation Standards provide for a number of factors listed under three primary headings: Professional Ability, Professional Attitude, and Professional Relations. Additionally, part of the PDP annual attorney evaluation process requires the evaluator to actively participate

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<sup>15</sup> *See Annual Report Fiscal Year 2013-2014*, page 43, by Chief Defender John S. Digiacinto, to the Board of Supervisors San Mateo County, San Mateo County Bar Association Private Defender Program.

in reviews by conducting in-person court observations, brief and motion reviews, and ensuring contracted private attorneys complete self-evaluations. However, it is unclear how the San Mateo Bar Association staffs for and conducts the in-person evaluations or the in-court observations.

## **II. Analysis & Assessment**

Based on my research, a majority of the reviewed states' systems for attorney performance evaluations were continuously modified throughout the implementation process. Assessing the states systems discussed above, I have divided the above states' systems into the following categories: models that best provide comprehensive attorney performance evaluations, models that provide the minimum performance monitoring, and models that are adequate but need improvement.<sup>16</sup>

### **A. Comprehensive Performance Evaluation Models**

Comprehensive performance evaluation systems, such as those found in Colorado, Massachusetts, North Carolina, Oregon, and Travis County (Texas), best address the complex legal issues facing indigent defendants and, therefore, provide the most effective method to monitor attorney performance and ensure high quality legal representation.

Massachusetts' hybrid system provides a detailed approach to monitoring attorneys' performance, regardless of whether counsel is privately assigned or contracted. The advantages of this model are substantial community involvement and investment in monitoring attorneys' performance, particularly the use of local Supervising Attorney positions. The Supervising

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<sup>16</sup> Of the above researched states, I decided to exclude Louisiana and New York from my analysis and assessment. New York is in the process of constructing and implementing a data collection system. Louisiana, while using Standards of Performance, has provided me with little information as to how they conduct attorney performance evaluations. However, I greatly appreciate Andy Davies communications and suggestions for how to best develop and implement a performance evaluation system in Maine given the current system of private assigned counsel.

Attorney provides the local community with an immediate form of oversight and direct mentoring of attorney performance conducted by highly experienced and well-respected members of the local bar through in-depth review of casefiles, motions and briefs, and in-person court observations. Of course personnel and financial resources are necessary to operate a system of supervising attorneys who conduct in-person interviews, submit reports, and investigate client complaints. These costs, however, are outweighed by the benefit provided to the community and represented indigent defendants.

Oregon operates a hybrid system very similar to that of Massachusetts. Oregon, however, also conducts system-wide evaluations as well as individual attorney evaluations. One of the key differences between the two states is Oregon's reliance on volunteer attorneys from the community to comprise the Peer Review Teams as opposed to contracting with thoroughly vetted counsel for that purpose (Massachusetts). While this model certainly has advantages, such as ensuring community investment in increasing the quality of representation, the primary disadvantage is the potential difficulty getting well-trained, competent, and non-biased individuals to conduct *volunteer* performance interviews of attorneys, especially if the interviews are conducted as a result of client complaints. However, Oregon's Public Defender Office has the benefit of developing and implementing a new data collection system, and its use of surveys (via *Survey Monkey*) provides a low-cost and easy-to-use method for obtaining feedback from organizations that routinely interact with private assigned counsel.

Although Oregon's data collection system is still in the development phase, the benefits of receiving rich information about the indigent defense system and attorney performance are reflected in the North Carolina and Travis County approach. Furthermore, the benefits of a data system certainly seem to outweigh the costs of software and the personnel requirements,

including but not limited to: financial auditing, attorney performance monitoring, caseload and workload assessment, predictability of case volume, efficient cross-tabulation of information across the state, and objective measurements (including graphics) that can positively influence policy decisions. It is important to note that, while North Carolina has been perfecting their data system for years, Travis County restructured their entire indigent defense system in 2011 starting the data collection process shortly thereafter.

As previously stated, North Carolina and the NLADA have published online toolkits as a resource for jurisdictions interested in developing a data collection system that is cost-efficient and relatively easy to navigate. Therefore, the foreseeable costs associated with implementing a data collection method are likely to be personnel and software/data server costs. Other potential disadvantages of data collection include the length of time it would take to implement the system (likely a year at least), the difficulty of monitoring and evaluating issues at the local level, and the need to ensure a close relationship with the Judicial Branch for ease of information access.

Finally, Colorado provides a very cost-effective yet comprehensive model for performance evaluations by requiring a contract renewal process, including in-person court observations, court surveys, brief and motion review, and financial audits. Under Colorado's system, all evaluation types are conducted every three years during the mandatory attorney renewal cycle. However, the system requires substantial personnel resources to conduct in-person attorney performance evaluations and the use of survey results from judicial officers could undermine the independence of an indigent defense system.

## **B. Adequate Performance Evaluation Models**

Virginia's model and San Mateo's model provide adequate evaluations of attorneys' performance. Standards of Practice can be as complex as required and are easily modified for a specific jurisdiction or case type with a minimal amount of staff and implementation costs. Furthermore, the addition of a formal complaint process, together with comprehensive standards of practice, increases both real and perceived accountability of attorneys to their clients and taxpayers. Finally, an agency hearing and review process based on the standards of practice provides for a meaningful review and the availability of disciplinary actions.

San Mateo's guidelines for attorney evaluations do provide a value-laden process that requires in-person monitoring and establishes an accountability procedure. Based on my research, however, it is unclear how the San Mateo Bar Association practically implements and conducts the evaluations, i.e., who conducts in-person court observations, what are the guidelines for the review of submitted briefs and motions, and what are the ramifications if an attorney fails to meet these operative standards.

## **C. Minimum Performance Evaluation Models**

The District of Columbia, Vermont, New Hampshire, and New Mexico are states that provide the minimum structure necessary to monitor attorneys' performance. Concerns with these models are the risk that comprehensive feedback on attorney performance will not materialize and the lack of independence if the judiciary is involved (even anonymously) in attorney evaluations. Furthermore, relying only on a client complaint process is not the most effective way of monitoring attorney performance because attorney oversight comes too late in the process, primarily because the problem has already occurred.

The District of Columbia Standards of Practice model, enforced by Superior Court Justices, is an excellent tool for providing guidelines for newly paneled private attorneys. The Standards can be compiled with input from various organizations and groups in the local criminal justice community, including judicial officers, prosecutors, defense attorneys, and client-centered non-profits. However, the disadvantage to adopting a pure Standards of Practice Model for evaluating attorney performance is the lack of direct systemic oversight. It is unrealistic to assume that rostered attorneys would follow the Standards of Practice like the Rules of Evidence, especially the more experienced criminal defense attorneys. However, the Standards do provide initial practice guidelines and can be used to identify jurisdiction-specific practice areas that need further improvement.

Vermont's survey system provides a simple format and structure that can be adapted to any jurisdiction and practice area, requiring minimal staff and operating costs. One of the advantages to using a survey system is that the survey document can be routinely modified online using either *LimeSurvey* (Vermont) or *Survey Monkey* (Oregon) at a reasonable financial cost.<sup>17</sup> Vermont, for example, sends out online surveys in four month cycles to judges and justices for anonymous review of attorneys at the district court level (only criminal matters) and for family court cases.

Alternatively, New Hampshire's evaluation forms provide similar benefits as Vermont's online survey system. In New Hampshire, unlike in Vermont, the Judiciary does not participate in the evaluations. Rather, a supervisor will meet with the attorney and complete the evaluation

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<sup>17</sup> *LimeSurvey* will allow for up to 10 responses for free or for \$25 per month up to 100 responses. *Survey Monkey* provides up to 100 responses for free, for \$26 per month up to 1,000 responses and for \$300 per year an unlimited amount of response plus graphics, syncing to other data systems (e.g. SQL/SPSS), and allows for cross-tabulation.

form with the attorney participating in a “self-evaluation” portion. This method gives the New Hampshire system an advantage by retaining system-wide independence from the Judiciary.

Finally, New Mexico’s hybrid system of Standards of Practice and proposed point-based evaluations provide a good basis for further developing attorney performance standards. However, I would caution that using a point-based system that reduces assessment of an attorney’s performance to a purely subjective numeric scale could create problems with attorneys if they believe that their performance is reviewed on an arbitrary basis. Therefore, it is important to communicate to attorneys that the evaluations are *one aspect* of the performance review system, providing a baseline report of attorneys’ successful practices as well as areas that need improvement.

### **III. Recommendations**

Currently, Maine’s indigent legal services system provides representation almost exclusively through the use of private assigned counsel, with oversight provided by the Maine Commission on Indigent Legal Services (Commission).<sup>18</sup> As a state agency, the Commission owes a duty to taxpayers and indigent clients to ensure that assigned counsel provide the highest quality legal representation possible throughout Maine. To inform my recommendations, I have created a list of subsidiary goals that any system of performance evaluation should pursue to enhance the overall quality of indigent legal services.

The goals of the recommended systems are: to provide that each attorney meets with their client as early as possible and keeps their client properly informed of her case; to provide for and monitor appropriate caseloads that do not overburden assigned counsel; to provide that issues are

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<sup>18</sup> One exception to Maine’s exclusive system of private assigned counsel is Somerset County where the Commission contracts with private counsel for criminal and juvenile cases.



appropriately addressed *before* complaints are filed; to provide that attorneys are appropriately qualified and experienced for the requisite assigned case type; to provide that performance guidelines are adhered to by attorneys providing indigent legal services; to provide that rural counties receive similar high quality representation as the more densely populated counties; and finally, to provide for feedback from the criminal justice community regarding attorney performance, pretrial resources, and developing legal issues that may impact the system.

The recommendations for an attorney performance evaluation system that follow take into account the cost of implementation (both personnel and fiscal concerns), the ease or difficulty of using the system, and the community and local needs that should be addressed by any evaluation system. Two models for evaluating attorneys' performance are recommended and listed in order of preference: a hybrid system and a combined survey and standards of practice system.

### **A. The Hybrid Model**

Regardless of the availability of resources (financial and personnel) in Maine, the best system for evaluating attorney performance is a hybrid model that can be implemented across a geographically diverse state, allows for local modification, and simultaneously incorporates a review of the state's indigent legal services system. A system-wide review is important because an attorney's inadequate performance can be indicative of a failure of the entire representation system, especially if the performance results are consistent throughout the state rather than a localized problem.

The envisioned hybrid system combines aspects of Colorado, Massachusetts, Oregon, San Mateo County (CA), Vermont, and Virginia's performance evaluation systems, to provide a

comprehensive, adaptable, and efficient method of conducting reviews of private assigned counsels' performance throughout Maine. The system should be based on annual reviews of the performance of each assigned attorney, but that time frame could be shortened to periodic six-month reviews if the system is found to be an effective method of conducting attorney performance evaluations.

The implementation process should, first, strengthen the Commission's current Standards of Practice, for juvenile, criminal, and child protective cases, and expand those to include standards for mental health/involuntary (civil) commitment cases and appeals. *See Virginia*. These standards should be built into attorneys' contracts/appointment agreements and renewal applications, requiring every attorney to sign a form indicating that the attorney has reviewed the relevant standards. While I acknowledge the practical inefficiency in requiring each attorney to review all of the adopted Standards, establishing a process that ensures all private assigned counsel are made aware of and provided access to these resources creates an additional system-wide safeguard that all assigned counsel receive consistent guidance regarding the representation they provide.

A low-cost resource that would provide further systemic accountability in Maine is the implementation of a formalized Mentoring Protocol for newly rostered attorneys. Ideally, this procedure would pair an experienced rostered attorney with a newly rostered attorney practicing in the same locale. This procedure will foster professional relationships within the local indigent legal services bar and provide newly rostered attorneys with an excellent practice resource, especially if a second-chair attorney is needed for more specialized cases. A formal mentoring program may also benefit solo practitioners by providing these attorneys with an additional resource. Another beneficial resource for all MCILS rostered attorneys would be establishing to

a Brief and Motion Bank that is routinely updated by MCILS. Colorado provides an excellent example of this type of document bank, which includes the most frequently used legal documents.

In addition to providing the additional resources described above, the Commission should establish a formalized complaint process. Massachusetts has implemented a review process for client complaints that can be submitted using an online form or a collect-call phone number. The collect-call line is monitored by administrative personnel who are provided with a form, drafted by the Public Counsel Division, that includes required information such as the client's name and docket number, attorney, and the alleged complaint information. I would suggest that MCILS establish a collect-call number and provide online and hard copy client complaint forms that are made available in all prisons and courthouses. This collect-call feature for client complaints would provide indigent defendants who are illiterate or imprisoned with enhanced ability to make complaints about alleged inadequacies in assigned attorney performance. For example, according to Massachusetts, the most commonly made client complaint is an attorney's failure to properly meet with and inform their imprisoned client of their pending matter. Once Massachusetts receives this complaint, they check with prison records to see how frequently the client's attorney signed in and out of the prison and who the attorney was meeting. The client complaint process will also establish a heightened level of accountability and oversight for taxpayers by providing an opportunity for active participation by affected community members.

In addition to these initial recommendations, establishing a Survey system for criminal justice organizations that frequently interact with private assigned counsel, rather than only providing questions to the judiciary (*see Vermont*), will provide MCILS with anonymous feedback on attorney performance as well as system-wide performance information. I suggest

conducting the surveys using a survey platform that provides ease of access, graphics, cross-tabulating data, and options to sync with other data software. *See Oregon*; *see also* Appendices II-V. Ideally, survey participants should include District Attorneys, Judicial Officers, MCILS Executive and Deputy Directors, participating mentors and supervisors, assigned counsel for self-evaluations, investigators, interpreters, *guardian ad litem*s, and Department of Health and Human Services (DHHS) social workers. Soliciting input from other criminal justice participants beyond the judiciary minimizes the “system independence” concern raised by Vermont’s system and addressed by *Principle 1* of the ABA’s *Ten Principles* is minimized. *See* Appendix I.

My next recommendation for a hybrid system of performance evaluations would be to establish Supervising Attorneys (SA) or Compliance Officers positions in every county. My suggestion is to model the position’s structure after Massachusetts, combined with Oregon’s job description and responsibilities. As such, Supervising Attorneys would be attorneys currently rostered for serious violent felonies cases and appeals and contracted for supervision in their current county of practice, with multiple positions established in more populated districts.

To establish the Supervising Attorney position in Maine as one of “honor,” similar to Massachusetts’ model, the application process and standards for contract renewal should be set very high. Furthermore, in order to qualify as an SA, I suggest that no Supervising Attorney have a criminal charge in any jurisdiction that was not an outright dismissal or acquittal nor had any disciplinary complaint filed by the Maine Board of Overseers within the last two years. Requiring high standards for this position ensures that MCILS will receive applicants who are highly qualified and well-respected within their local communities with a dedication to providing and improving indigent legal services. Finally, the Executive Director of MCILS or a quorum of

Commissioners should make the final decision approving or denying an attorney's application for the Supervising Attorney position.

I also recommend creating a contract-based system for the Supervising Attorney position at an initial \$70.00 per hour for a maximum of ten hours per week, with contracts renewable for one-year terms. *See* Massachusetts. According to Ms. Bennett (Massachusetts), establishing this position as a one year contract with a set workload increased the likelihood of attracting highly qualified attorneys, especially given that applicants are rostered attorneys currently accepting cases. Maine's Supervising Attorneys would provide direct monitoring, oversight, and evaluation of rostered attorneys in their county. *See* Massachusetts and Oregon. Furthermore, requiring the SAs to conduct in-person trial observations (*see* Appendices VIII- X), random brief and motion reviews (*see* San Mateo), and act as the initial investigator for client complaints (*see* Massachusetts) is likely to increase community awareness of MCILS' dedication to monitoring attorneys' performance.

My final recommendation for the hybrid system would be to establish a preliminary Data Collection system to track case types. It is my understanding that the Judiciary in Maine is currently in the process of redesigning or updating their software system. If the software upgrade occurs, I would strongly recommend working with the Judicial Branch to coordinate a cloud-based system that would provide MCILS with monthly "data dumps" from the courts (one-way only) to MCILS designated servers for data review and synthesis. This is very similar to how Oregon developed and implemented their data collection program and seems to be working well with minimal additional staff (two persons: one data researcher and one I.T. specialist). Since MCILS already uses DefenderData, which provides rich information about assigned cases, Meg Ledyard (Travis County) suggested that MCILS use existing resources to establish a test data

collection system. According to Andy Davies (NY), it is important to collect data from multiple sources to ensure that MCILS receives a variety of information from different perspectives and resources. If access to data is difficult (e.g. getting data “dumps” from the court system every month), Mr. Davies suggests including questions on submitted vouchers that attorneys are required to answer to get their voucher request approved. Furthermore, it is very likely that Maine will need to invest in servers and data software (either an SPSS or SQL) to ensure that the collection program runs efficiently as the collection process grows and develops.<sup>19</sup>

As previously stated, North Carolina (NCSEP) and the NLADA have developed online toolkits to help jurisdictions develop efficient and successful data collection systems. According to North Carolina and Travis County (TX), a jurisdiction seeking to implement a data collection program will need to organize a commission (“Values Commission”) or panel of individuals from the local criminal justice community to determine local values that would inform MCILS’ development of Key Performance Indicators (KPIs). The values commission should be comprised of at least local criminal defense bar members, judges and justices, prosecutors, non-profit organizations, etc., in order to obtain broad and rich value sets that the community has identified regarding indigent criminal defense representation. The KPIs would be distilled into quantifiable data points that MCILS could track for the purposes of attorney performance evaluation, monitoring the effectiveness and availability of pretrial services, and providing feedback on the indigent legal services system as a whole. Andy Davies’ (New York) initial suggestion is to focus on local, county-specific case type data for preliminary attorney

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<sup>19</sup> The cost for purchasing, not running, SPSS or SQL starts around \$10,000. However, we will likely need at least two additional personnel, one well versed in statistics and economics, and an IT person to conduct initial data collection and synthesis into the KPIs and specified objectives.

performance metrics and then expand to other areas, such as pretrial access, once the data collection system is fully operational.

One benefit that a data collection system can provides is safeguarding against implicit biases, especially race-based biases, that often occur within the criminal justice system. For instance, in the United States, our society has developed commonplace negative stereotypes regarding the association between “blackness” and crime, resulting in a “general tendency to categorize the group [blacks] with anything negative because of the overall negativity of the associations.” *Yale Law Journal*, *Implicit Racial Bias in Public Defender Triage*, L. Song Richardson and Phillip Atiba Goff, 122 Yale L.J. 2626, 2630 (2013).

Data collection for case types, attorney performance, and pretrial services can be particularly informative for determining how implicit bias affects Maine’s criminal justice system, specifically what the effect of implicit racial bias by criminal justice actors’ (e.g. defense attorneys, prosecutors, and judges) has on the quality and effectiveness of indigent criminal defendants.<sup>20</sup> Establishing attorney performance evaluations can prevent rushed decision-making by assigned counsel, thereby decreasing implicit attitudes towards marginalized minority groups by encouraging a more comprehensive initial case review process. While Maine’s system of private assigned counsel is likely to demonstrate less implicit bias than an overworked, understaffed public defender office in a densely populated jurisdiction, I suggest that a data collection system will provide Maine with a non-biased evaluation method that will help reduce

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<sup>20</sup> “Moreover, *without data collection*, it is *simply impossible to know* whether similarly situated clients are being treated alike.” L. Song Richardson and Phillip Atiba Goff, *Implicit Racial Bias in Public Defender Triage*, 122 Yale L.J. 2626, 2648-49 (2013) (emphasis added).

the discretionary impact implicit biases have on Maine’s system of indigent criminal defense representation.<sup>21</sup>

The implementation of a data collection system in Maine can also benefit indigent clients with respect to the assessment and availability of pretrial services. For instance, research conducted, in part, by NCSEP (including Travis County and other states) and the Laura and John Arnold Foundation<sup>22</sup> with Dr. Marie VanNostrand (Luminosity) has produced meaningful data analysis on the effect of available, effective pretrial systems. The result of this nationwide pretrial data has led to the creation of a pretrial risk-assessment tool “designed to assist judges in making release/detention determinations.”<sup>23</sup> Some of the data collected identified the impact pretrial resources has on, for instance, the rate of recidivism, a jurisdiction’s ability to predict new criminal activity, the likelihood of an increased sentence if no pretrial services are offered, and the overall efficiency of a pretrial system.<sup>24</sup> Therefore, MCILS would benefit from the implementation of a data collections system by providing objective evaluations of assigned counsels’ performance as well as monitoring the availability and effectiveness of pretrial services.

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<sup>21</sup> L. Song Richardson and Phillip Atiba Goff, in their article titled “Implicit Racial Bias in Public Defender Triage,” suggest five recommendations that could safeguard against effects implicit racial bias has on indigent criminal defense representation: (1) the change in office culture to increase recruitment of minorities and reduce negative stereotypes, (2) develop objective standards for case triage, (3) accountability for attorneys’ decisions, (4) awareness of an individuals’ unconscious bias through Implicit Association Tests (IAT), and (5) creating intentional goals to reduce affirmation of negative stereotypes. *Id.* at 2641-48 (2013).

<sup>22</sup> <http://www.arnoldfoundation.org/initiatives/case-studies/performing-foundational-research/>

<sup>23</sup> The Arnold Foundation developed the “Public Safety Assessment (PSA)” to provide criminal justice actors with an “evidence-based risk-assessment instrument.” The PSA was “created using a database of over 1.5 million cases drawn from more than 300 U.S. jurisdictions, analyzing collected data to predict factors such as how likely a defendant will commit a new crime and/or a new violent crime or fail to return to court.” The PSA does not take into account potential “discriminatory factors” such as race or education and, therefore, provides an objective standard. The PSA is currently in use in twenty-nine jurisdictions including three entire states—Arizona, Kentucky, and New Jersey. *Developing a National Model for Pretrial Risk Assessment* by the Laura and John Arnold Foundation (LJAF), [http://www.arnoldfoundation.org/wp-content/uploads/2014/02/LJAF-research-summary\\_PSA-Court\\_4\\_1.pdf](http://www.arnoldfoundation.org/wp-content/uploads/2014/02/LJAF-research-summary_PSA-Court_4_1.pdf).

<sup>24</sup> <http://luminosity-solutions.com/solutions/pretrial-research/>



## B. The Survey & Standards of Practice Model

While the above recommended hybrid system would provide Maine with the most comprehensive form of attorney performance evaluation, I have also developed a practical, low cost attorney performance evaluation model on the basis of Vermont's survey system and Virginia's Standards of Practice. This model would use an online survey platform, as discussed above, to conduct evaluations of private assigned counsel. The surveys should be sent to members of the local criminal justice community that consistently interact with MCILS rostered attorneys including, but not limited to, judges and justices, prosecutors, non-profits, MACDL, immigration counsel and advisors, investigators, psychologists and members of the Maine State Forensic Service, DHHS liaisons, and *guardian ad litem*s.<sup>25</sup> These surveys should be conducted every six months and can be sent out in monthly batches. I would also strongly suggest conducting annual rostered attorney self-evaluations, including a brief or motion submission to be reviewed by MCILS with the annual attorney renewal application.

Regarding standards of practice, I find that Virginia's Standards provide the most comprehensive Standards, including a breadth of resources and knowledge that is incredibly informative and helpful for newly rostered attorneys and attorneys taking on new case types. My recommendation is to further develop Maine's enacted Standards of Practice for criminal, juvenile, and child protective cases, and adopt new, robust Standards of Practice for civil commitments, serious violent felonies, and appellate cases.<sup>26</sup> Furthermore, I would require all rostered attorneys to review and acknowledge receipt of these Standards, which can be made

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<sup>25</sup> Drafts of sample survey questions can be found in Appendices I-IV based on samples graciously provided by Vermont's Mary Deaett.

<sup>26</sup> See Chapter 101 (Juvenile Practice Standards), Chapter 102 (Criminal Practice Standards), and Chapter 103 (Child Protective Practice Standards).

available on the MCILS website, in order to ensure a consistent preliminary standard for representation regardless of a rostered attorney's experience level.

The adoption of this recommended model of combined surveys and Standards of Practice is not likely to require additional personnel and significant financial costs. However, this recommendation is a *narrow approach* and is likely to produce a facial analysis rather than an in-depth review of attorney performance. The advantage to this model is that the surveys and Standards of Practice could be implemented relatively quickly with minimal costs.

### **C. Conclusion**

While no constitutionally mandated right is absolute, safeguarding the right to counsel under the Sixth Amendment requires persistent attention and vigilance. In Maine, the current system of private assigned counsel meets many of the ABA's *Ten Principles of a Public Defense Delivery System* (see Appendix I), including maintaining an independent defense system, active participation by the Bar, early attachment of counsel, controlled attorney workload and continuous representation by the same attorney throughout all stages of a case. However, MCILS does not provide for substantial and significant attorney supervision and evaluation.

Additionally, no existing system of indigent defense representation is a perfect model for every jurisdiction. Yet, every state must provide a method of review for indigent legal services systems and evaluations of qualified attorneys providing indigent legal services. At the very least, an evaluation system must ensure a jurisdiction provides qualified and dedicated attorneys for indigent clients regardless of how the jurisdiction decides to structure the review process. Therefore, my recommendation for Maine is to implement a hybrid system of comprehensive attorney performance evaluations, including surveys, robust Standards of Practice, in-person

court observations, attorney self-evaluations, Supervising Attorney positions in every county, brief and motion review, client complaints, document banks, and data collection. In so doing, MCILS will provide more oversight, transparency, and accountability to taxpayers and the community while increasing structural safeguards for indigent clients. Most importantly, Maine will have a procedure to ensure that indigent clients throughout Maine receive *high quality legal representation* as well as providing rostered attorneys with the resources necessary to allow them to become better advocates for their clients.<sup>27</sup>

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<sup>27</sup> I would like to express my gratitude to everyone I have communicated with regarding this research for their advice, input, and suggestions (in alphabetical order): the San Mateo Bar Association, Marea Beeman, Nancy Bennett, Avis Buchanan, Nancy Cozine, Jae Davenport, Andy Davies, Mary Deaett, Lindy Frolich, Margaret Gressens, Randy Hawkes, Lee Hood, Meg Ledyard, Jon Mosher, Richard Pittman, and John Potter.

## APPENDIX I

### *ABA Black Letter Ten Principles of a Public Defense Delivery System*

**1** The public defense function, including the selection, funding, and payment of defense counsel, is independent.

**2** Where the caseload is sufficiently high, the public defense delivery system consists of both a defender office and the active participation of the private bar.

**3** Clients are screened for eligibility, and defense counsel is assigned and notified of appointment, as soon as feasible after clients' arrest, detention, or request for counsel.

**4** Defense counsel is provided sufficient time and a confidential space within which to meet with the client.

**5** Defense counsel's workload is controlled to permit the rendering of quality representation.

**6** Defense counsel's ability, training, and experience match the complexity of the case.

**7** The same attorney continuously represents the client until completion of the case.

**8** There is parity between defense counsel and the prosecution with respect to resources and defense counsel is included as an equal partner in the justice system.

**9** Defense counsel is provided with and required to attend continuing legal education.

**10** Defense counsel is supervised and systematically reviewed for quality and efficiency according to nationally and locally adopted standards.

## APPENDIX II

### Draft of Sample Rating Scale for Online Survey

1. **No Information**
2. **Unsatisfactory-** attorney has not demonstrated an adequate level of expected or required competence.
3. **Needs Significant Improvement-** attorney has some skill but has not demonstrated consistent expected or required competence.
4. **Satisfactory-** attorney has demonstrated proficiency, but still needs experience and further training to demonstrate consistent, competent performance.
5. **Good-** attorney has demonstrated consistent, competence performance.
6. **Very Good-** attorney has demonstrated consistent, high quality performance.
7. **Exceptional-** attorney has demonstrated consistent, superior performance.
8. **No Answer**

**Comment Section:** Please elaborate rating in areas where you find the attorney needs the most improvement and/or where the attorney has excelled exceptionally in and/or out of the courtroom.

**Note:** All conducted evaluations are submitted to the Commission anonymously to preserve the identity of the evaluating individual. The one exception is attorney self-evaluations.

**\*\*Modeled after Vermont's *LimeSurvey* Rating Scale**

## APPENDIX III

### ATTORNEY SELF-EVALUATION

Attorney Name: \_\_\_\_\_

Date: \_\_\_\_\_

KNOWLEDGE OF THE LAW	Very Good	Satisfactory	Needs to Improve	Unsatisfactory	N/A
1. Demonstrates knowledge of the Rules of Criminal Procedure.					
2. Demonstrates knowledge of the Rules of Evidence					
3. Demonstrates knowledge of Family law.					
4. Demonstrates knowledge of search and seizure law.					
5. Appropriately files motions to suppress results of searches/seizures.					
6. Demonstrates knowledge of confession law.					
7. Appropriately files motions to suppress confessions.					
8. Demonstrates knowledge of OUI law.					
9. Demonstrates knowledge of substantive criminal law issues.					
10. Appropriately prepared for hearing.					
11. Appropriately addressed any potential immigration concerns.					
12. Please indicate any upcoming or interested CLE courses.					
<b>COMMENTS: **Please include areas where you need the most improvement and how you plan to improve your skills.</b>					

<b>MOTION PRACTICE/BRIEF WRITING</b>	Very Good	Satisfactory	Needs to Improve	Unsatisfactory	N/A
1. Written product is submitted in a timely manner.					
2. Written product effectively and concisely conveys theory of defense.					
3. Written product is free of error and unnecessary language.					
4. Written product is correctly submitted according to the Rules of Criminal Procedure.					
5. Written product effectively and concisely conveys legal theory.					
<b>COMMENTS: **Please include areas where you need the most improvement and how you plan to improve your skills.</b>					

<b>COURTROOM SKILL</b>	Very Good	Satisfactory	Needs to Improve	Unsatisfactory	N/A
1. Effectively presents the theory of defense.					
2. Effectively preforms voir dire.					
3. Persuasive opening and closing arguments.					
4. Demonstrates ability to effectively cross-examine state's witnesses.					
5. Demonstrates ability to effectively conduct direct examination of defense witnesses.					
6. Demonstrates ability to think and respond quickly.					
7. Raises appropriate objections.					
<b>COMMENTS: **Please include areas where you need the most improvement and how you plan to improve your skills.</b>					

<b>PLEA BARGAINING/SENTENCING</b>	<b>Very Good</b>	<b>Satisfactory</b>	<b>Needs to Improve</b>	<b>Unsatisfactory</b>	<b>N/A</b>
1. Negotiates best dispositions on behalf of client.					
2. Well-prepared on the facts for sentencing.					
3. Introduces evidence effectively at sentencing.					
4. Makes effective arguments at sentencing.					
5. Ensures client understands ramifications of sentence.					
6. Effectively conveys to the court extenuating circumstances surrounding client's case at sentencing.					
<b>COMMENTS: **Please include areas where you need the most improvement and how you plan to improve your skills.</b>					

<b>PROFESSIONALISM</b>	<b>Very Good</b>	<b>Satisfactory</b>	<b>Needs to Improve</b>	<b>Unsatisfactory</b>	<b>N/A</b>
1. Advocates zealously for client.					
2. Treats opposing counsel and court with respect and dignity.					
3. Treats client with respect, compassion, and dignity.					
4. Demonstrates professional demeanor.					
5. Well-prepared for courtroom appearances.					
6. Demonstrates paramount concern for the legal rights of her/his client.					
<b>COMMENTS: **Please include areas where you need the most improvement and how you plan to improve your skills.</b>					



<b>CLIENT RELATIONSHIP</b>	<b>Very Good</b>	<b>Satisfactory</b>	<b>Needs to Improve</b>	<b>Unsatisfactory</b>	<b>N/A</b>
1. Attorney is responsive to client needs and regularly informs clients about her/his case.					
2. Ensures client understands her/his case, available options, and any offers from the State.					
3. Attorney's ability to consider and identify interpersonal problems facing clients, such as learning disabilities, substance abuse issues, and psychiatric needs, and how those problems may affect cases.					
<b>COMMENTS: **Please include areas where you need the most improvement and how you plan to improve your skills.</b>					

## APPENDIX IV

### ATTORNEY EVALUATION—DISTRICT COURT

**Attorney Name:** \_\_\_\_\_

**Date:** \_\_\_\_\_

KNOWLEDGE OF THE LAW	Very Good	Satisfactory	Needs to Improve	Unsatisfactory	N/A
1. Demonstrates knowledge of the Rules of Criminal Procedure.					
2. Demonstrates knowledge of the Rules of Evidence					
3. Demonstrates knowledge of search and seizure law.					
4. Appropriately files motions to suppress results of searches/seizures.					
5. Demonstrates knowledge of confession law.					
6. Appropriately files motions to suppress confessions.					
7. Demonstrates knowledge of OUI law.					
8. Demonstrates knowledge of substantive criminal law issues.					
9. Appropriately prepared for hearing.					
10. Appropriately addressed potential immigration concerns.					
<b>COMMENTS:</b>          					

<b>COURTROOM SKILL</b>	<b>Very Good</b>	<b>Satisfactory</b>	<b>Needs to Improve</b>	<b>Unsatisfactory</b>	<b>N/A</b>
1. Effectively presents the theory of defense.					
2. Effectively preforms voir dire.					
3. Persuasive opening and closing arguments.					
4. Demonstrates ability to effectively cross-examine state's witnesses.					
5. Demonstrates ability to effectively conduct direct examination of defense witnesses.					
6. Demonstrates ability to think and respond quickly.					
7. Raises appropriate objections.					
<b>COMMENTS:</b>					

<b>MOTION PRACTICE/BRIEF WRITING</b>	<b>Very Good</b>	<b>Satisfactory</b>	<b>Needs to Improve</b>	<b>Unsatisfactory</b>	<b>N/A</b>
1. Written product is submitted in a timely manner.					
2. Written product effectively and concisely conveys theory of defense.					
3. Written product is free of error and unnecessary language.					
4. Written product is correctly submitted according to the Rules of Criminal Procedure.					
5. Written product effectively and concisely conveys legal theory.					
<b>COMMENTS:</b>					

<b>PLEA BARGAINING/SENTENCING</b>	Very Good	Satisfactory	Needs to Improve	Unsatisfactory	N/A
1. Negotiates best dispositions on behalf of client.					
2. Well-prepared on the facts for sentencing.					
3. Introduces evidence effectively at sentencing.					
4. Makes effective arguments at sentencing.					
5. Ensures client understands ramifications of sentence.					
6. Effectively conveys to the court extenuating circumstances surrounding client's case at sentencing.					
<b>COMMENTS:</b>					

<b>PROFESSIONALISM</b>	Very Good	Satisfactory	Needs to Improve	Unsatisfactory	N/A
1. Advocates zealously for client.					
2. Treats opposing counsel and court with respect and dignity.					
3. Treats client with respect, compassion, and dignity.					
4. Demonstrates professional demeanor.					
5. Well-prepared for courtroom appearances.					
6. Demonstrates paramount concern for the legal rights of her/his client.					
<b>COMMENTS:</b>					

<b>CLIENT RELATIONSHIP</b>	<b>Very Good</b>	<b>Satisfactory</b>	<b>Needs to Improve</b>	<b>Unsatisfactory</b>	<b>N/A</b>
1. Attorney is responsive to client needs and regularly informs clients about her/his case.					
2. Ensures client understands her/his case, available options, and any offers from the State.					
3. Attorney's ability to consider and identify interpersonal problems facing clients, such as learning disabilities, substance abuse issues, and psychiatric needs, and how those problems may affect cases.					
<b>COMMENTS:</b>					

## APPENDIX V

### ATTORNEY EVALUATION—FAMILY COURT (JV, CP, EM)

Attorney Name: \_\_\_\_\_

Date: \_\_\_\_\_

KNOWLEDGE OF THE LAW	Very Good	Satisfactory	Needs to Improve	Unsatisfactory	N/A
1. Demonstrates knowledge of Family law.					
2. Demonstrates knowledge of the Rules of Evidence.					
3. Raises appropriate objections.					
<b>COMMENTS:</b>					

COURTROOM SKILL	Very Good	Satisfactory	Needs to Improve	Unsatisfactory	N/A
1. Effectively presents the theory of defense.					
2. Effectively preforms voir dire.					
3. Persuasive opening and closing arguments.					
4. Demonstrates ability to effectively cross-examine state's witnesses.					
5. Demonstrates ability to effectively conduct direct examination of defense witnesses.					
6. Demonstrates ability to think and respond quickly.					
7. Is familiar with facts of the case.					
8. Effectively represents her/his client.					
9. Appropriately prepared for hearing.					
10. Effectively introduces relevant evidence at hearing.					
<b>COMMENTS:</b>					

<b>EFFECTIVE REPRESENTATION</b>	Very Good	Satisfactory	Needs to Improve	Unsatisfactory	N/A
1. Negotiates best outcome for client.					
2. If representing a child, is sensitive to the developmental and emotional needs of the child.					
3. Understands the causes and effects of child abuse.					
4. Understands the family dynamics in each case.					
5. Demonstrates awareness of dispositional alternatives.					
<b>COMMENTS:</b>					

<b>PROFESSIONALISM</b>	Very Good	Satisfactory	Needs to Improve	Unsatisfactory	N/A
1. Advocates zealously for client.					
2. Treats opposing counsel and court with respect and dignity.					
3. Treats client with respect, compassion, and dignity.					
4. Demonstrates professional demeanor.					
5. Well-prepared for courtroom appearances.					
6. Demonstrates paramount concern for the legal rights of her/his client.					
<b>COMMENTS:</b>					

<b>CLIENT RELATIONSHIP</b>	<b>Very Good</b>	<b>Satisfactory</b>	<b>Needs to Improve</b>	<b>Unsatisfactory</b>	<b>N/A</b>
1. Attorney is responsive to client needs and regularly informs clients about her/his case.					
2. Ensures client understands her/his case, available options, and any offers from the State.					
3. Ability to consider and identify interpersonal problems facing clients, such as learning disabilities, substance abuse issues, and psychiatric needs, and how they may affect cases.					
<b>COMMENTS:</b>					



## APPENDIX VI

**\*\*Note, this is a working document provided by Andy Davies at New York Indigent Legal Services**

For each case, indicate:

- 1) Investigation/Legal research
  - Did any member of the defense team visit the crime scene? (Y/N)
  - Were any potential witnesses interviewed by a member of the defense team? (Y/N)
  - What was the total amount of time of all such interviews in minutes, combined? (**Enter # minutes**)
  - Did any member of the defense team request records (other than the client's rap sheet, or discovery materials)? (Y/N)
  - Did any member of the defense team testify in court to the findings of the defense investigation? (Y/N)
  - Did any member of the defense team conduct legal research (e.g. consult statutes or cases, practice manuals, treatises, or law review articles) in the course of the case? (Y/N)
- 2) Use of Experts/Interpreters
  - Was any person retained as an expert witness in the course of the case? (Y/N)
  - Did that person testify in the case? (Y/N)
  - Was English the client's first language? (Y/N)
  - Was an interpreter used in the case? (Y/N)
  - Was an interpreter retained by the defense to facilitate confidential client communications? (Y/N)
- 3) In-court work
  - Was a motion to dismiss filed at any time in the case? (Y/N)
  - Was a motion to suppress evidence filed at any time in the case? (Y/N)
- 4) Client contact and communication/Counsel at first appearance. Record date of arrest, first appearance, first client meeting, all subsequent meetings and court appearances, and time taken for those meetings. From these, system can calculate:
  - Time between first appearance and first client meeting (**# hours & days, or 'zero' if counsel at first appearance is present.**)
  - How many court appearances in the case (**# appearances**)
  - How many meetings with clients other than in court (**# meetings, other than on court appearance days**)
  - Total amount of time of all in-person client meetings combined? (**# minutes/hours of meetings**)

For each attorney, indicate, for the past year:

- 1) Qualifications and experience
  - # hours in program-relevant CLE training (**Enter # hours per 2 year license renewal period**)
  - # trials conducted. (**Enter # trials, including trials where plea agreement was reached after proceedings had begun**)
  - Year passed bar.
- 2) Hours worked on private & public cases

- Hours worked per week, on average, on cases as privately retained lawyer (**Enter # hours, entered quarterly**)
  - Hours worked per week, on average, on cases as public defender, conflict defender, legal aid attorney, or assigned counsel under county law 18-b (**Enter # hours, entered quarterly**)
- 3) Part-time or full-time status
- Is attorney part-time or full-time? (**PT/FT**)
  - How many hours per week does their contract require? (**Enter # hours**)
- 4) Responsibilities
- Hours per week spent supervising other attorneys (in context of publicly funded representation only). (**Enter # hours**)

**APPENDIX VII**  
**DISTRICT COURT OBSERVATION**

**\*\*developed from Colorado's Trial Court Observation Form (see Appendix VIII)**

Observer & Date:

Attorney, Docket Number, & Judge's Name:

Hearing Type; Portion of Case Observed:

Client Interaction:

Level of Preparedness:

Knowledge of Record & Facts:

Knowledge of Relevant Law:

Comments on Objections, Evidence Handling, Persuasion:

General Observations:

Areas for Improvement:

## APPENDIX VIII

### Colorado ADC Appellate Court Observation Form; provided by Lindy Frolich

#### APPELLATE COURT OBSERVATION FORM

Defendant's attorney: \_\_\_\_\_ Date: \_\_\_\_\_

Defendant's name and case number: \_\_\_\_\_

Panel of Judges: \_\_\_\_\_

Opposing counsel: \_\_\_\_\_

Issue(s): \_\_\_\_\_

Attire: \_\_\_\_\_

Mannerisms: \_\_\_\_\_

Papers/iPads/laptops: \_\_\_\_\_

Knowledge of Record/Facts: \_\_\_\_\_

Knowledge of relevant law: \_\_\_\_\_

General Impressions: \_\_\_\_\_

Areas for Improvement: \_\_\_\_\_

Evaluator: \_\_\_\_\_

## APPENDIX IX

### San Mateo County Bar Association Evaluation Standards

#### EVALUATION STANDARDS

##### 1. PROFESSIONAL ABILITY

###### A. Preparation and Knowledge

1. Recognition of Legal Issues: The attorney recognizes the issues in the case that are necessary for the proper defense of the client. The attorney demonstrates creativity in resolving legal problems.
2. Judgment in Assessing Cases: The attorney demonstrates an ability to evaluate and assess a case taking into consideration the strengths and weaknesses of the prosecution and defense cases.
3. Effective Legal Research and Use of Pretrial Motions: The attorney has a satisfactory working knowledge of resource materials for use in all aspects of criminal practice. The attorney prepares well-written and researched motions that are timely filed in appropriate cases.
4. Effective Use of Investigation: The attorney recognizes those cases in which investigation is required. Requests are reasonable and appropriate and communicated in a clear and timely manner.
5. Effective Use of Experts: The attorney seeks assistance of experts in appropriate cases. Information is provided to the expert in a timely fashion, and the attorney prepares for presentation of expert testimony.
6. Witness Preparation: The attorney prepares witnesses and clients in such areas as courtroom procedures, direct and cross-examination, demeanor, and physical appearance.

###### B. Advocacy

1. Courtroom Demeanor: The attorney's demeanor is professional and conducive to effective representation.
2. Willingness to Try Cases: The attorney takes cases to trial when appropriate.
3. Advocacy Skills: A Private Defender is called upon to employ a variety of differing advocacy skills in representing clients in jury trials, court trials, juvenile hearings, preliminary hearings, and in other courtroom matters. For purposes of this category, the attorney should demonstrate effective advocacy skills including but not limited to such items as: voir dire; direct and cross-examination; introduction of, objection to, and admissibility of evidence; argument; instructions; and recognition of appellate issues.
4. Case Negotiations and Sentencing: The attorney enters into case negotiations conversant with the significant issues and ascertainable facts. The attorney recognizes plea alternatives and

consequences and properly advises the client. The attorney communicates effectively with the other parties involved in the case. The attorney makes thorough use of sentencing laws, seeking imaginative and creative sentencing alternatives.

## II. PROFESSIONAL ATTITUDE

### A. Professionalism

1. Ethics and Integrity: The attorney is aware of and observes the Rules of Professional Conduct and other ethical obligations of the defense bar and acts at all times with integrity.

2. Professional Growth: The attorney demonstrates an interest in his or her professional growth by a willingness to accept new and more challenging assignments and by seeking educational opportunities that will make him or her a more knowledgeable advocate. The attorney's attendance at Private Defender Program education programs and at continuing education programs sponsored by other defender organizations, such as CPDA and CACJ, should demonstrate his or her zeal for excellence as a trial lawyer.

### B. Work Habits

1. Volume and Calendar Management: The attorney satisfactorily handles the number of cases he or she accepts and manages his or her schedule to maximize personal effectiveness to the benefit of the client.

2. Court Appearances: The attorney appears in court punctually and keeps the court apprised of his or her whereabouts.

## III. PERSONAL RELATIONS

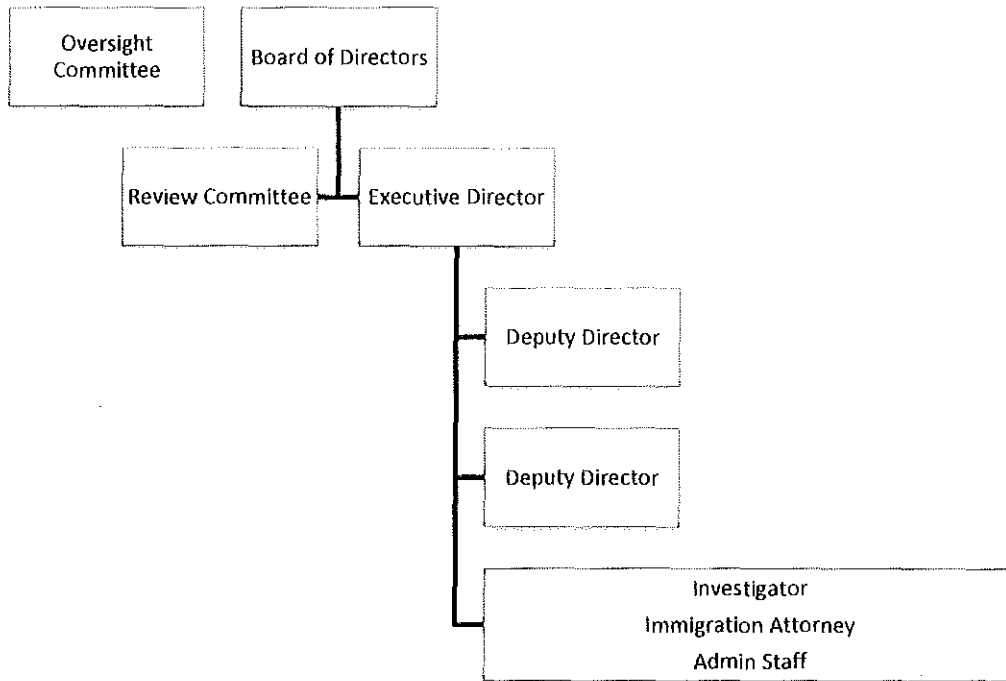
1. Clients: The attorney maintains contact with both in- and out-of-custody clients sufficient to provide competent representation for each court appearance. The attorney develops and maintains the client's trust and confidence. The attorney keeps the client advised as to the status of the case and explains constitutional and statutory rights. The attorney is sensitive to the special problems attendant to the representation of mentally ill clients, hostile clients, and resistant clients.

2. Private Defender Staff: The attorney's interaction with, clerical staff, investigators, and other staff demonstrates a spirit of cooperation, assistance and respect. The attorney is considerate of the pressures imposed upon all staff by high volume, time constraints and limited resources.

3. Members of the Justice System: The attorney is cognizant that the manner in which he or she interacts with judicial officers, prosecutors, courtroom personnel, law enforcement personnel, co-counsel, and other members of the justice system contributes to the effective representation of Private Defender clients.

## APPENDIX X

### TRAVIS COUNTY (TX)—“CAPDS” ORGANIZATION STRUCTURE



## APPENDIX XI

### Oregon Annual Public Defender Survey Questions

**\*\*working document provided by Nancy Cozine**

1. Please tell us your role in your county's justice system?
2. How long have you worked in your county's justice system?
3. Please tell us where you work (county/Court).
4. Are you able to comment on the quality of public defense representation in adult criminal cases?—survey will skip questions related to this topic
5. Please rate your overall impression of the quality of public defense representation in adult criminal cases.
6. Within the past year, has the quality of public defense representation changed in adult criminal cases?
7. Do public defense attorneys in your judicial district provide satisfactory representation of clients in adult criminal cases?
8. Do you question the competence of any public defense attorneys in your jurisdiction who provide representation in criminal cases?
9. How would you describe the adult criminal caseloads of public defense attorneys in your judicial district?
10. Are you able to comment on the quality of public defense representation in juvenile dependency cases?—survey will skip questions related to this topic
11. Please rate your overall impression of the quality of public defense representation in juvenile dependency cases.
12. Within the past year, has the quality of public defense representation changed in juvenile dependency cases?
13. Do public defense attorneys in your judicial district provide satisfactory representation of clients in juvenile dependency cases?
14. Do you question the competence of any public defense attorneys in your jurisdiction who provide representation in juvenile dependency cases?
15. How would you describe the juvenile dependency caseloads of public defense attorneys in your judicial district?
16. Are you able to comment on the quality of public defense representation in juvenile delinquency cases?—survey will skip questions related to this topic
17. Please rate your overall impression of the quality of public defense representation in juvenile delinquency cases.
18. Within the past year, has the quality of public defense representation changed in juvenile delinquency cases?
19. Do public defense attorneys in your judicial district provide satisfactory representation of clients in juvenile delinquency cases?
20. Do you question the competence of any public defense attorneys in your jurisdiction who provide representation in juvenile delinquency cases?
21. How would you describe the juvenile delinquency caseloads of public defense attorneys in your judicial district?



22. Are you able to comment on the quality of public defense representation in death penalty (serious violent felony) cases?—survey will skip questions related to this topic
23. Please provide any comments you have concerning the quality of public defense representation in death penalty cases.
24. Are you able to comment on the quality of public defense representation in civil commitment (involuntary commitment) cases?—survey will skip questions related to this topic
25. Please rate your overall impression of the quality of public defense representation in civil commitment cases.
26. Within the past year, has the quality of public defense representation changed in civil commitment cases?
27. Do public defense attorneys in your judicial district provide satisfactory representation of clients in civil commitment cases?
28. Do you question the competence of any public defense attorneys in your jurisdiction who provide representation in civil commitment cases?
29. How would you describe the civil commitment caseloads of public defense attorneys in your judicial district?
30. Please provide any comments, concerns, or suggestions that you may have about the quality of public defense representation in your county or judicial district.