

MAINE STATE LEGISLATURE

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MAINE COMMISSION ON INDIGENT LEGAL SERVICES

Accountability Through Attorney Performance Evaluations

Executive Summary

Katherine M. MacRae

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Overview

The State of Maine currently uses a system of private assigned counsel to provide high quality indigent legal services, with oversight and guidance from the Maine Commission on Indigent Legal Services. The Sixth Amendment of the United States Constitution provides for the right to counsel for criminal defendants, regardless of a defendant's ability to pay. In 2002, the American Bar Association established ten black letter principles, *Ten Principles of a Public Defense Delivery System*, that every jurisdiction should follow to ensure quality and efficient representation for indigent clients. However, nationwide research conducted by the NLADA and the Sixth Amendment Center identified three ABA Principles most often overlooked by indigent legal services systems, *Principle One* (maintaining an independent system of representation), *Principle Eight* (ensuring parity of resources between defense counsel and the prosecution), and *Principle Ten* (providing continuous attorney supervision to monitor quality and efficient representation). Due to limited staff and resources, Maine's system is not compliant with respect to providing continuous, systematic supervision and monitoring of attorneys' performance. See 37 M.R.S. § 1804 (2)(D) (2009) (stating the Maine Commission on Indigent Legal Services' responsibilities and standards) and ABA *Principle Ten*.

The purpose of this Report is to recommend a method for evaluating attorney performance to bring Maine into compliance with the statutory requirements and the ABA's *Principles*. Establishing statewide consistent supervision of attorneys' performance ensures high quality, independent indigent legal services and provides parity of resources between the indigent criminal defense bar and the prosecution.

Summary of Research

In addition to input provided by the NLADA and the Sixth Amendment Center, I conducted nationwide research on systems for evaluating attorney performance that I reduced to thirteen state models. I organized the systems based on the state's respective attorney performance evaluation methods ranging from surveys, enacted Standards of Performance, data collection, and hybrid models. I analyzed these performance evaluation systems according to the depth and quality of the method used, resulting in three distilled assessments: comprehensive performance evaluation models (Colorado, Massachusetts, North Carolina, Oregon, and Travis County (TX)), adequate performance evaluation models (San Mateo (CA) and Virginia), and minimum performance evaluation models (D.C., Vermont, New Hampshire, and New Mexico).

Recommendations

Based on my research, the best model for the State of Maine is a hybrid system of attorney performance evaluations (Colorado, Massachusetts, North Carolina, Oregon, San Mateo (CA), Travis County (TX), Vermont, and Virginia) comprised of annual surveys sent to organizations and criminal justice actors that frequently interact with assigned counsel; robust Standards of Practice for juvenile, criminal, child protective, civil commitment, and appeals; a formal mentoring protocol that pairs a newly rostered attorney with an experienced attorney located in the same county; a brief and motion bank to provide the most frequently used legal documents to all rostered attorneys; a review and submission process for client complaints that would consist of forms, made available online and provided in all courthouses, as well as a monitored collect-call phone number; a contracted Supervising Attorney position located in each county that would ensure highly qualified and well-respected local attorneys provide in-person

monitoring of appointed counsel, such as court observations and conducting initial investigations of client complaints; and finally, a data collection system used to track case types, pretrial services and other criminal justice data by coordinating with the courts to receive monthly data retrieval. While this proposed hybrid system requires personnel and financial resources to implement, this recommended system provides a robust and comprehensive process for ensuring high quality representation and accountability to taxpayers and the local community.

The second recommended model that would provide a practical, low-cost method of attorney performance evaluation is a combined survey and standards of practice model based on Vermont's survey system and Virginia's robust Standards of Practice. This model would not require a significant increase in personnel or financial resources to implement. However, I would caution that this system is likely to result in minimal assurance of attorney compliance as compared to conducting in-depth reviews of attorneys' performance.