

# MODEL CRIMINAL DEFENSE MENTORING PROGRAM

## Utah State Bar New Lawyer Training Program

The following Model Mentoring Plan for the criminal defense practice field has been approved. It was prepared by an experienced criminal defense practitioner for those engaged in state and federal criminal defense offices. It is intended as a guide that individual offices may make additions or deletions as they adapt the plan to their specific needs. It is expected that all participants will engage in those activities noted as required.

Once the proposed plan is completed and executed, it must be submitted by the new lawyer to the New Lawyer Training Program (NLTP) Office. Both the new lawyer and the mentor should retain a copy of the plan for reference. See the [NLTP website](#) for more resources.

If the mentor does not practice in all the areas selected and agreed upon by the mentor and the new lawyer, the mentor may choose to call on other experienced lawyers who practice in the specific areas to assist in mentoring the new lawyer in those areas. Multiple mentors are encouraged and may be appropriate in some circumstances. In such a situation, the program allows for shared credit between supervising mentors.

### Criminal Defense Based Mentor Program

#### Required Section 1: Introduction to the Legal Community

Activities	Initial When Completed
The new lawyer should contact the mentor as soon as practicable after the mentor accepts the new lawyer's mentoring request. The new lawyer should arrange to meet at the mentor's office to get acquainted and discuss an appropriate mentoring plan.	Required
During the initial meeting, or shortly after the initial meeting, the mentor should introduce the new lawyer to other lawyers and staff members at the mentor's office or ascertain that such introductions have already occurred. (Not necessary for an outside mentor.)	Required
Invite the new lawyer to attend a meeting of the local bar association and discuss advantages of involvement with local, state and/or national bar or professional associations. Familiarize the new lawyer with the different roles and responsibilities of and services provided by Utah Association of Criminal Defense Lawyers (UACDL), National Association of Criminal Defense Lawyers (NACDL), the Federal Bar Association (FBA); the State or Local Public Defender's Office, and the Federal Public Defender's Office (FPD).	Required
Acquaint the new lawyer with And Justice For All, including Legal Aid, Utah Legal Services, the Disability Law Center and opportunities for lawyers in private practice to engage in pro bono activity, or have the new lawyer report on a visit with someone closely connected to these services.	Required
Discuss the office policy in regard to engaging in <i>pro bono</i> activities. Discuss with the new lawyer how to avoid potential conflicts when undertaking pro bono activities and the types of pro bono activities that are less likely to present conflicts. Discuss whether the <i>pro bono</i> activity is covered by your malpractice insurance. Encourage the new lawyer to affirmatively look for opportunities to use their legal education and skills to help members of the community who cannot afford to hire lawyers or the community as a whole.	Required

## Required Section 2: Rules of Professional Conduct and Standards of Professionalism and Civility

Activities	Initial When Completed
<p>Review and discuss the Rules of Professional Conduct, particularly those having specific application to prosecutors. Review and discuss the following Rules.</p> <ul style="list-style-type: none"> <li>▪ 1.7-8. Conflict of interest: current clients;</li> <li>▪ 3.3. Candor toward the tribunal;</li> <li>▪ 3.6. Trial publicity;</li> <li>▪ 3.8. Special responsibilities of a prosecutor;</li> <li>▪ 4.1. Truthfulness in statements to others; and</li> <li>▪ 4.2 Communication with persons represented by counsel.</li> </ul>	Required
<p>Review and discuss the Utah Standards of Professionalism and Civility: The Preamble and all twenty standards. Rule 14.301, Supreme Court Rules of Professional Practice, Rules Governing the Utah State Bar. Discuss any “unwritten” customary rules of civility or etiquette among lawyers and judges in the community, particularly between prosecutors and criminal defense lawyers.</p>	Required
<p>Discuss ethical issues that arise with some regularity in prosecution. Discuss ways to resolve the issues, referring to experience as well as to the Rules of Professional Conduct. Review and discuss the importance of methods used to screen for potential conflicts. Discuss the differences between issue conflicts, office conflicts and personal conflicts.</p>	Required
<p>Learn and discuss with the mentor absolute prosecutorial quasi-judicial immunity and what prosecutorial activities come under quasi-judicial immunity. Learn and discuss with the mentor qualified immunity, how it applies to prosecutors and what prosecutorial activities come under qualified immunity.</p>	Required

## Required Section 3: Litigation and Transaction Handling Experiences for Criminal Defense

Activities	Initial When Completed
<p>Review five different kinds of filed criminal cases and the charges that have been filed. Review the cited statutes, the allegations, and the related police reports. Review any arrest and search warrants filed in connection with the case and the charges. Discuss with mentor the elements of the offenses and the related alleged facts.</p>	Required
<p>Participate in the filing of case initiation documents, including the entry of appearance, request for discovery, and case file opening procedures.</p>	Required
<p>Participate in trial preparation.</p>	Required
<p>Learn and discuss with the mentor a prosecutor’s disclosure requirements under Rule 16, URCrP, <i>Brady</i> requirements and other applicable discovery rules and law. Review the reciprocal discovery rules for the defense and discuss with the mentor when and why reciprocal discovery should be provided.</p>	Required
<p>Attend an oral argument in open court.</p>	Required

Participate in at least one trials criminal cases in either a state or federal court (preferably a case for which a jury verdict is reached).	Required
Participate in an evidentiary hearing in a state or federal court.	Required
Observe or participate in a plea negotiation. Explain relevant background and context and prepare or review a plea agreement.	Required
Participate in the interviewing of a witness.	Required
Participate in the interviewing of a defendant.	Required
Prepare or participate in the preparation of voir dire for a misdemeanor or a felony case.	Required
Prepare or review a Statement of Defendant to be used in entry of a guilty plea in both a misdemeanor and a felony case. Review and become familiar with Rule 11, URCrP and Rule 11 Fed.R.Cr.P.	Required
Review and understand Protective Orders including both civil protective orders under Chapter 7 of Title 78B and criminal protective orders under §77-36-2.5. Review the penalties for violations of both.	Required
Prepare a dispositive defense motion (e.g. <i>Motion to Suppress Evidence</i> ).	Required
Become familiar with the Crime Victims’ Bill of Rights and the Rape Shield Statute and related Rules of Evidence regarding victims of sexual assaults and child molestation. (U.R.E. & F.R.E. 413 and 414, U.R.E. 404(c)).	Required
Crime Scene Viewing: Visit at least two crime scenes, preferably with an investigator, with regard to an active case.	Required

#### Required Section 4: Working with Others in the Criminal Justice System

Activities	Initial When Completed
Engage in a training discussion about the many different persons a defense attorney is likely to deal with in addressing a case.	Required
Discuss how to deal with “difficult” situations that are likely to arise between defense attorneys and others with whom the prosecutor must deal.	Required
Discuss “DOs and DON’Ts” of maintaining good ongoing relations with others, such as returning telephone calls and keeping other interested persons informed about matters.	Required
Train, through discussion and case review, how to screen for, recognize, and avoid conflicts of interest, either personal or office. Explain to the mentor what actions should be taken if a conflict is suspected or identified.	Required

## Required Section 5: Public Service, Bar Programs, and Life Balance

Activities	Initial When Completed
Discuss the importance of family and life balance, including sharing or not sharing with spouse, friends, and others the unsavory and sometimes terrible things with which a prosecutor deals.	Required
Reach an understanding of what defense activities are confidential, what constitutes work product, what is covered by client confidentiality and how that confidentiality must and will be maintained.	Required
Discuss and explain CLE requirements and ways to fulfill such requirements, including UACDL, NACDL sponsored programs, FPD programs and Bar CLE programs.	Required
Participate in the representation of one defendant for at least a significant part of a case or pleading preparation <i>pro bono</i> .	Required
Attend one basic criminal defense-oriented CLE and one DUI seminar during the mentoring year.	Required
Review and discuss Bar sections and committees and the value of involvement in Bar activities and service, including the Young Lawyers Division.	Required
Review and discuss with the mentor how to deal with case related stress including both difficult and sympathetic clients, and the psychological and emotional impact and coping methods for defense counsel when clients are convicted and/or confrontational.	Required
Review and discuss the support and counseling available for the new lawyer and their family through the Bar's contract with a <a href="#">professional counseling service</a> , the <a href="#">Lawyers Helping Lawyers</a> Committee and/or through providers available through benefits provided by the employer. See the Bar's <a href="#">Well-Being Committee for the Legal Profession</a> and <a href="#">Well-being resources</a> .	Required

## Required Section 6 Criminal Procedure

Activities	Initial When Completed
Participate in client interview.	Required
Participate in assessment of charges in Indictment or Information, including constitutional, statutory and/or procedural defects.	Required
Participate in assessment, research, and evaluation of the elements of the offenses charged or under investigation; discuss.	Required

Research and analyze the maximum and minimum sentence, potential enhancements for the charges in an Information or Indictment, together with immigration, civil rights and collateral impacts for a felony drug or violent crime case with respect to both federal and state law.	Required
Review and discuss pretrial diversion agreements.	Optional
Review and discuss plea in abeyance agreements, statutory law, case law and procedure in a particular case.	Required
Review and discuss one- and two-level reduction of offense statutory law, case law and procedures in a particular case.	Required
Review and discuss expungement statutory law, case law and procedures in a particular case.	Optional
Review and discuss pardon statutory law, case law and procedures in a particular case.	Optional
Participate in charge negotiations with prosecutor's office.	Optional
Participate in discovery requests, demands and compulsion pleadings, case law and procedures.	Required
Participate in and review exculpatory evidence pleadings, case law and procedures.	Optional
Participate in and review impeachment evidence pleadings, case law and procedures.	Optional
Participate in and review 404(b) evidence pleadings, case law and procedures.	Optional
Discuss and review the Rules of Evidence, generally and specifically Evidence Rules 608, 609, 803 and 804.	Optional
Discuss the privileges provided under the law including Attorney-Client, Doctor-Patient, Clergy-Penitent, Spousal Privilege and Testimonial/5th Amendment Privileges, when they are applicable and how they are raised.	Required
Participate in and review prosecution expert witness evidence, testimony pleadings, case law and procedures.	Optional
Participate in engagement of a private investigator to interview witnesses and obtain evidence.	Required
Participate in the engagement and use of an expert defense witness.	Optional
Participate in discussions with Pretrial Services (Bail).	Required
Participate in Editing and Evaluation of a Statement by Defendant in Advance of Plea.	Required
Observe and/or participate in a trial.	Required
Observe and/or participate in the entry of a plea in court.	Required
Participate in a Presentence Investigation Interview	Required
Participate in reviewing and discussing as Presentence Report; including making corrections and objections.	Required
Research and participate in State Sentencing Matrix Analysis in a particular case.	Required
Research and participate in calculating Federal Sentencing Guidelines in a particular case.	Required
Participate in and attend a client interview in a jail facility.	Optional
Participate in and attend a client interview in a prison facility.	Optional

## Other Optional Activities for Criminal Defense

The new lawyer must complete at least twelve (12) of the Activities included in this Optional Activities block during their mentoring period. Up to four (4) of the selected optional experiences may be accomplished during law school in a credit-earning Externship, a Law School Clinical program, a simulated skills course, or a supervised Pro Bono case. See the Guidelines and FAQs in the [New Lawyer Training Program Manual](#) for information about receiving credit for experiences accomplished during law school.

Activities	Initial When Completed
Participate in drafting a fee agreement for a client.	
Discuss the mechanics of trial, including where to stand, proper attire, when to stand, courtroom decorum, jury selection, trial notebooks, etc.	
Following the sentencing of a defendant to prison, draft a letter to the Board of Pardons pursuant to the provisions of §77-18-5.	
Participate in or observe an appellate argument in the Utah Supreme Court, Utah Court of Appeals or in a Federal Appellate Court.	
Review and discuss alternate case dispositions, such as drug court, plea in abeyance agreements, etc. Understand the statutory limitations and office policy regarding each.	
Review and understand “402” reductions (§76-3-402). Understand the statutory and office policy limitations regarding “402” motions.	
Review and understand “ <i>No Contest</i> ” pleas, “ <i>Sery</i> ” pleas, “ <i>Alford</i> ” pleas and pleas of “Guilty and Mentally Ill.” Explain the conditions under which each plea may be offered and when a prosecutor may agree with the entry of each. Understand the provisions that must be contained in the Statement of Defendant for each plea.	
Prepare or review a written Plea in Abeyance Agreement. Review and become familiar with the Plea in Abeyance statute.	
Review and discuss Pre-sentence Reports.	
Prepare a sentencing memorandum.	
Participate in preparing settlement documents in a criminal case that includes a discussion of any tax implications or collateral civil consequences.	
Participate in an administrative hearing (e.g., DLD Hearing).	
Review at least two Affidavits in Support of Requests for a Search Warrant that have been prepared by law enforcement officers and discuss any problems you find with the Affidavits.	
Become familiar with the E-warrant procedures and software used in electronically requesting Search Warrants. Review or observe the review of an actual affidavit filed by a law enforcement officer using the E-warrant system.	

Review with a defense attorney experienced in juvenile prosecution the rules and practices in Juvenile Court.	
Review a case report and prepare for a hearing regarding a delinquency petition in Juvenile Court.	
In a Juvenile delinquency case, observe, participate in, or discuss: <ul style="list-style-type: none"> <li>▪ A detention hearing;</li> <li>▪ The role of a probation officer in detention cases;</li> <li>▪ An arraignment;</li> <li>▪ A pre-trial; and</li> <li>▪ A trial.</li> </ul>	
Attend or participate in a Juvenile Court shelter hearing.	
Attend or participate in a Juvenile Court disposition hearing.	
Discuss the standards for removal of a child from its home with a Department of Child and Family Services (DCFS) worker.	
Discuss the role of a juvenile Guardian ad Litem; introduce where possible.	
Participate in a Victim Impact Panel (usually sponsored by MADD).	
Visit the Offices of Federal Probation and Pretrial Services and discuss what their office does with an agent.	
Visit the offices of Adult Probation and Parole and discuss what their office does with an agent.	
Attend a meeting of the Board of Pardons and Parol	
Discuss and review the steps in filing a notice of appeal, perfecting the record on appeal, filing of briefs on appeal, and preparation for oral arguments.	
Discuss and review the steps in filing a <i>petition for a writ of certiorari</i> .	
Assist in researching and drafting an appellate brief.	
Assist in formatting, structuring and printing an appellate brief in accordance with the state or federal rules of appellate procedure.	
Prepare and effect service of a witness subpoena or a subpoena duces tecum.	