

UTAH PROSECUTION COUNCIL

MODEL PROSECUTION MENTORING PROGRAM UTAH STATE BAR NEW LAWYER TRAINING PROGRAM

The following is submitted as a Model Mentoring Plan for prosecution offices. It was prepared by a committee of six experienced prosecutors from five different offices, including both county and city prosecution offices. It is intended as a guide, recognizing that individual offices may make additions or deletions as they adapt the plan to their specific situations and needs. It is anticipated that all participants will engage in activities and experiences noted as required in Required Sections 1 through 5 in the model plan.

Once the proposed plan is completed and executed, it must be submitted by the new lawyer to the New Lawyer Training Program Office. Both the new lawyer and the mentor should retain a copy of the plan for reference.

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.

REQUIRED ACTIVITIES AND EXPERIENCES

Required Section 1

Introduction to the Legal Community

Activity	Initial When Completed
The new lawyer should contact the mentor as soon as practicable after receipt of the mentoring match and 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 Prosecution Council (UPC) and the Statewide Association of Prosecutors (SWAP). Introduce the new lawyer to the National District Attorney's Association (NDAA) and the resources available through NDAA. Introduce the new lawyer to the UPC and the NDAA websites.	Required

Acquaint the new lawyer with <i>And Justice For All</i> , 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 pro bono 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. Explain clearly to the new lawyer that, while doing pro bono activity, (s)he is not covered by county, city or state liability insurance or other policies nor do pro bono activities come under governmental immunity protection. Encourage the new lawyer to affirmatively look for opportunities to use his or her 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.

Activity	Initial When Completed
Review and discuss the Rules of Professional Conduct, particularly those having specific application to prosecutors. Review and discuss the following Rules. 1.7-8. Conflict of interest: current clients; 3.3. Candor toward the tribunal; 3.6. Trial publicity; 3.8. Special responsibilities of a prosecutor; 4.1. Truthfulness in statements to others; 4.2 Communication with persons represented by counsel; 4.3 Dealing with unrepresented persons; and <i>State v Brown</i> , 853 P.2d 851, regarding prohibition of prosecutors from representing criminal defendants in any jurisdiction of the state.	Required
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.	Required
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.	Required

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.	Required
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Required Section 3.

Litigation and Transaction Handling Experiences

Activities	Initial When Completed
Screen five different kinds of criminal cases and determine the charges to be filed. Discuss one of the screenings with a law enforcement officer, covering the factors leading to the charging decision. Review the prepared Informations. Determine whether to request an Arrest Warrant or a Summons.	Required
Discuss with the mentor what should be done when a prosecutor declines to file charges requested by law enforcement; including contact with the officer, victims, what notices should be filed - with whom.	Required
Participate in trial preparation.	Required
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. Respond to a defense discovery request in a misdemeanor or a felony case.	Required
Participate in at least two trials in civil or criminal cases in either a state or federal court, at least one of which should be a jury trial taken to verdict.	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 or victim.	Required
Prepare or participate in the preparation of jury instructions 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.	Required
Review and understand Protective Orders; 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 written response to a defense motion.	Required

Become familiar with the Crime Victims' Bill of Rights, particularly a prosecutor's responsibilities under the act. Prepare or review required notices to crime victims.	Required
"Ride along" with law enforcement; preferably at least four hours each with at least two different officers.	Required

Required Section 4

Working with others in the criminal justice system

Activity	Initial when completed
Engage in a training discussion about the many different persons a prosecutor is likely to deal with in his or her and their official capacity.	Required
Discuss how to deal with "difficult" situations that are likely to arise between prosecutors 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

Activity	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 prosecutorial activities are confidential and how that confidentiality must and will be maintained.	Required
Discuss and explain CLE requirements and ways to fulfill such requirements, including UPC and SWAP sponsored programs, NDAA programs and Bar CLE programs.	Optional
Attend UPC's Basic Prosecutor Course 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.	Optional
Review and discuss the support and counseling available for the new lawyer and his or her family through the Bar's contract with a professional counseling service, the Lawyers Helping Lawyers Committee and/or through providers available through benefits provided by the employer.	Required

Optional Activities:

At least twelve (12) of the Activities included in this Optional Activities block must be completed by the new lawyer during his or her 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, UPC's Basic Prosecutor Course, a simulated skills course or a supervised Pro Bono case. See pages 19–20 of 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.	
Participate in a deposition of a witness or adverse party in a civil action.	
Discuss the mechanics of trial, including where to stand, proper attire, when to stand, courtroom decorum, jury selection, judges' bench books, 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 "No Contest" pleas, "Sery" pleas, "Alford" 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.	
Participate in preparing settlement documents in a civil case, including a discussion of any tax implications in a settlement including a monetary award.	
Participate in an administrative hearing.	
Participate in drafting, amending, or reviewing a contract.	
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 PIMS case management software. Enter at least two new cases into PIMS, including defendant information, victim information, charges to be filed and the preparation of an Information. Enter or observe the entry of disposition information in two cases into PIMS.	
Participate in drafting a civil pleading or motion for an administrative body or a state or federal court.	
Become familiar with the E-warrant 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 prosecutor experienced in juvenile prosecution the rules and practices in Juvenile Court.	
Review a case report and prepare a delinquency petition for filing in Juvenile Court.	
In a Juvenile delinquency case, observe, participate in, or discuss: <ul style="list-style-type: none"> • A detention hearing • The role of a probation officer in detention cases • An arraignment • A pre-trial • A trial 	
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.	

ELECTIVE ACTIVITIES AND EXPERIENCES

The mentor and the new lawyer should choose five of the Elective Sections identified in Sections A through N below. Within each area, select as many activities as feasible.

Under each area, you are encouraged to adjust the activities and experiences to your particular practice setting and individual needs.

The mentor, or another experienced lawyer approved by the mentor, should monitor and facilitate the progress of the new lawyer in fulfilling practice experiences by discussing the context and assessing the activity selected.

Elective Section A – ADR

Activity	Initial Each Selected Item
Review and discuss Utah statutes on mediation including requirement to screen for potential conflict of interest of mediator.	
Observe, participate in, or prepare for an actual or simulated mediation.	
Observe, participate in, or prepare for, an arbitration and review and discuss AAA rules.	
Discuss how to prepare a client for mediation or arbitration.	

Elective Section B – Negotiation

Activity	Initial Each Selected Item
Discuss how to prepare for the negotiation of a legal matter (e.g., release of a personal injury claim, lease agreement, etc.).	
Discuss when and how negotiation should be initiated.	
Discuss when and how to involve the client in negotiation.	
Discuss ethical and professional obligations of negotiators.	
Discuss skills needed to be an effective negotiator and how to acquire them.	

Elective Section C – Client Interviewing and Counseling

Activity	Initial Each Selected Item
Discuss and review interview techniques (asking the right questions).	

Discuss and review counseling techniques (providing the hard advice).	
Simulate and discuss the counseling of a client (mentor and new lawyer should alternate being client and lawyer).	
Participate in interviewing a client.	
Participate in counseling a client.	

Elective Section D – Civil Procedure

Activity	Initial Each Selected Item
Prepare a complaint and summons.	
Cause a summons to be served.	
Participate in preparing a Rule 12 motion to dismiss.	
Participate in preparing a Rule 9(b) and/or 8(a) motion to dismiss.	
Participate in preparing answer to complaint, counterclaim, cross-claim and third-party complaint.	
Participate in 26(f) conference to discuss settlement, discovery plan and initial disclosures.	
Participate in preparing initial disclosures as required by Rule 26.	
Participate in preparing for and observing, taking, or defending a deposition.	
Participate in drafting discovery requests, including interrogatories, requests for admission and requests for production of documents.	
Participate in identifying expert witnesses and producing expert witness reports.	
Participate in depositions including the deposition of expert witnesses.	
Participate in preparing motions and memoranda in support of summary judgment.	
Participate in preparing pretrial order and making pretrial disclosures of witnesses and exhibits.	

Elective Section E – Estate Planning

Activity	Initial Each Selected Item
Participate in drafting and reviewing at least six of the following:	
• Wills.	
• Revocable living trusts: tax planning.	
• Revocable living trusts: non-tax planning.	
• Revocable living trusts: generation skipping tax planning.	
• Irrevocable trusts.	
• Durable powers of attorney.	
• Special powers of attorney for health care.	
• Directives to physicians (living wills).	
• Life insurance trusts.	
• Transfer of ownership documents: quit-claim deeds.	
• Transfer of ownership documents: assignments.	
Assist in gathering and organizing client information.	
Prepare diagrams of specific estate plans for clients.	
Prepare estate planning binders for clients.	
Prepare Crummey notices for life insurance trusts.	

Elective Section F – Probate

Activity	Initial Each Selected Item
Prepare notice to creditors and arrange for publication.	
Prepare inventory of estate.	

Elective Section G – Family Law

Activity	Initial Each Selected Item
Review and discuss the Rules of Civil Procedure specific to Family Law.	
Understand the role of a Domestic Relations Commissioner. Meet as many commissioners as possible.	
Prepare proposed Case Management Order.	
Create a child support worksheet.	
Observe hearing on motion for temporary orders.	
Observe or participate in custody evaluation settlement conference if permission is granted.	
Participate in a collaborative law meeting if permission is granted.	
Participate in a mediation if permission is granted.	
Observe or participate in a family law trial.	
Participate in preparing a premarital agreement or review and discuss statutory requirements, case law, and necessary terms of premarital agreements.	

Elective Section H – Business Law

Activity	Initial Each Selected Item
Participate in forming business entities by drafting and reviewing at least three of the following:	
<ul style="list-style-type: none"> • Articles of incorporation. 	
<ul style="list-style-type: none"> • Articles of organization 	
<ul style="list-style-type: none"> • Bylaws 	
<ul style="list-style-type: none"> • Operating agreements 	
<ul style="list-style-type: none"> • Partnership agreements 	
<ul style="list-style-type: none"> • Corporate minutes and resolutions 	
Participate in drafting and reviewing at least three of the following:	
<ul style="list-style-type: none"> • Shareholders' agreements 	

• Buy-sell agreements	
• Stock purchase agreements	
• Asset purchase agreements	
• Non-competition agreements	
• Security/collateral agreements	
• Promissory notes	
Participate in the due diligence process for mergers and acquisitions	
Prepare UCC filings	

Elective Section I – Tax Law

Activity	Initial Each Selected Item
Participate in preparing a client’s tax return.	
Prepare and analyze tax calculations	
Participate in preparing certain IRS tax forms, including the following:	
• Form 2553 (S Corporation Election)	
• Form 709 (Gift Tax Return)	
• Form 706 (Estate Tax Return)	
• Form 1041 (Income Tax for Trusts)	

Elective Section J – Real Estate Law

Activity	Initial Each Selected Item
Search a title at Recorder’s Office	
Participate in drafting and reviewing at least four of the following:	
• Real estate purchase agreements	
• Deeds of trust	
• Mortgages	

• Commercial leases	
• Residential leases	
• Notice of default on the above	

Elective Section K – Employment Law

Activity	Initial Each Selected Item
Review and discuss the UALD/EEOC administrative process. Review or participate in drafting a charge or the response to a charge.	
Prepare for and participate in the UALD/EEOC administrative process, including a resolutions conference or an appeal to the Labor Commission.	
Participate in drafting a separation or settlement agreement.	
Participate in consultation with management on HR issues.	
Prepare for and observe or participate in an unemployment benefits insurance appeal hearing.	
Review and discuss an ongoing employment law issue, such as a claim under Title VII, the Family Medical Leave Act, the Americans with Disabilities Act, or other substantive federal law or its state counterpart.	

Elective Section L – Patent Law

Activity	Initial Each Selected Item
Observe or participate in a client interview.	
Participate in patent search/evaluation.	
Participate in drafting and filing a patent application.	
Participate in filing an Information Disclosure Statement (IDS).	
Participate in drafting an Office Action response.	
Participate in a telephone conversation with an Examiner.	
Participate in preparing and drafting an appeal brief.	
Discuss and review techniques for successful patent prosecution.	

Participate in patent litigation.	
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Elective Section M – Trademark Law

Activity	Initial Each Selected Item
Observe or participate in a client interview.	
Participate in trademark search/evaluation.	
Participate in drafting and filing a trademark application.	
Participate in drafting an Office Action response.	
Participate in preparing and drafting an appeal brief.	
Discuss and review techniques for successful trademark prosecution.	
Participate in trademark litigation.	
Participate in drafting and filing a copyright application.	

Section N – Other Possible Electives

There are a number of other substantive areas of the law not included but for which you may prepare a plan and your own check-off sheet. Those areas include but are not limited to:

- Administrative law
- Securities law
- Bankruptcy law
- Environmental law and compliance
- Antitrust law
- Water law
- Oil, gas, and mining law
- Public utilities law
- Contract law
- Personal injury law, including products liability
- Insurance defense law, including coverage analysis
- Merger and acquisition law
- Constitutional law
- Immigration law
- Health care law
- Ethical leadership in corporate practice (audit committees, Sarbanes Oxley, corporate monitors)
- Lobbying requirements, ethics and state legislative process.