

 **SCHOOL OF PUBLIC AFFAIRS**
American University • Washington, DC

**The Role of Court Managers in
Ensuring the Right to Counsel**

National Association of Court Managers
Annual Conference
Monday July 11, 2016
2:30 pm – 3:30 pm

Moderator: Preeti P. Menon, Interim Director, American University Justice Programs Office

Panelists: Marea L. Beeman, Director of Research Initiatives, National Legal Aid and Defenders Association
Geoffrey Burkhardt, Attorney and Project Director, American Bar Association
Nathan Jensen, Director of Court Administration, Montgomery County, Texas

BJA Right to Counsel National Campaign
www.rtcnationalcampaign.org



The Challenge of Equal Justice:

Sixth Amendment Guarantee of the
Right to Counsel in Criminal Matters



Marea Beeman

Director, Research Initiatives
Defender Legal Services



The Constitution of the United States of America Sixth Amendment

In all criminal prosecutions, the accused shall enjoy the right . . . to have the assistance of counsel for his defense.



Right to Counsel: How Did We Get Here?



Models

- **Public Defender:** public or private non-profit organization with full or part-time staff attorneys and support personnel
- **Assigned Counsel** – private attorneys appointed on a case-by-case basis
- **Contract Counsel** – contract with one or more attorneys to handle some or all of the indigent defendant cases in a given period



Why Should Courts Care?

1. Indigent defense is the criminal and juvenile justice system
2. Courts drive important practices
3. Courts control important case resources
4. Data sharing
5. Procedural justice





public
defense

The gap between duty and practice

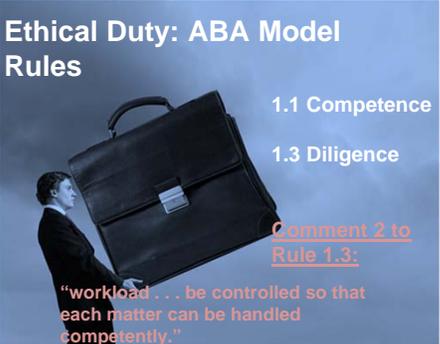




3 things:
Duties
Workloads
What you can do



Ethical Duty: ABA Model Rules

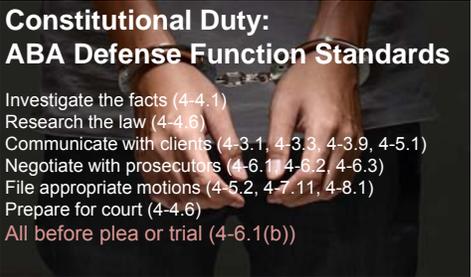


1.1 Competence
1.3 Diligence

Comment 2 to Rule 1.3:
"workload . . . be controlled so that each matter can be handled competently."



Constitutional Duty: ABA Defense Function Standards



Investigate the facts (4-4.1)
Research the law (4-4.6)
Communicate with clients (4-3.1, 4-3.3, 4-3.9, 4-5.1)
Negotiate with prosecutors (4-6.1, 4-6.2, 4-6.3)
File appropriate motions (4-5.2, 4-7.11, 4-8.1)
Prepare for court (4-4.6)
All before plea or trial (4-6.1(b))



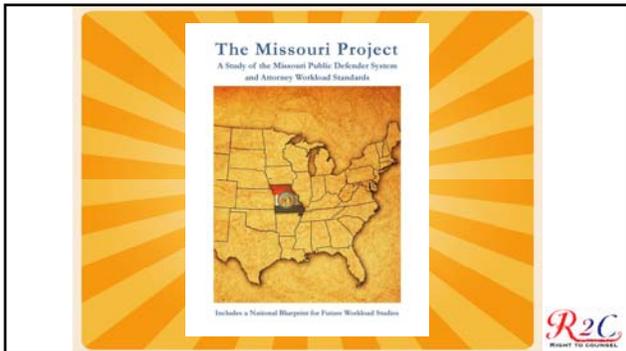
Workloads



Most public defenders have **excessive** caseloads.

Rhode Island defenders have handled up to **1,756 cases** each year on average.





Missouri Workload Study: Results

Case Type	Time Study	Delphi
Murder/Homicide	84.5	106.6
A/B Felony	8.7	47.6
C/D Felony	4.4	25.0
Sex Felony	25.6	63.8
Misdemeanor	2.3	11.7
Juvenile	4.6	19.5
Appellate/PCR	30.3	96.5
Probation Violation	1.4	9.8

Educate
 Unite
 Declassify

Court Managers & Indigent Defense

Nate Jensen, Montgomery County, Texas



- Court Manager's Role in Right to Counsel
- Level of Objectivity
- Policy Recommendation & Funding Requests
- Procedural Fairness



Court Manager's Role in Right to Counsel

From a report by BJS (<http://www.bjs.gov/content/pub/pdf/clpdo07.pdf>) in 2007, the majority of states have local level indigent defense systems (public defender, assigned counsel, contract defender, etc.)

Court management likewise occurs overwhelmingly at a local level

Court Managers are uniquely situated to observe the entirety of the justice process, including the right to counsel piece



Level of Objectivity

A system of defense should be independent

In an assigned counsel environment, the Courts may play an active role in appointing counsel

Court Managers can aid in ensuring the appointment business process is fair and objective



Policy Recommendations & Funding Requests

Most jurisdictions have a system or business process set up for a magistrate to find probable cause within a specific time from arrest

Requesting an attorney should likewise be systematized

In an assigned counsel environment, court managers can make recommendations for improved access (timelines, standards, compensation, etc.)



Policy Recommendations & Funding Requests

Court managers, as liaison with funding authorities, can provide valuable and quantifiable information about the justice system

Likewise, court managers can recognize how indigent defense processes closely interact with caseload management practices

Court managers have a vested interest in monitoring the system

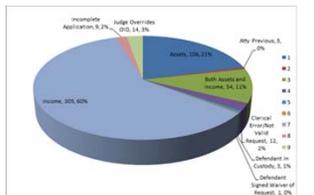


Policy Recommendations & Funding Requests

Using data to measure indigent defense is essential

Both process and expenditure

Can drive meaningful discussions



Procedural Fairness

Again, in an assigned counsel system, court managers need to monitor attorney caseloads and quality of representation questions

Ultimately, the overall perception of justice is closely tied to perception of representation



Questions?

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Right to Counsel National Campaign Goals

- Raise public awareness nationally of the importance of providing skilled public defense services to criminal defendants who cannot afford a lawyer.
- Spearhead broad based initiatives by policy makers in multiple sectors, both within and outside of the criminal justice system to take appropriate action.
- Develop a strategic vision of the role of public defense that policy makers and criminal justice leaders integrate in the operational conduct and planning of the functions of their respective agencies.



Right to Counsel National Campaign

Mission
To inform and engage policymakers, criminal justice stakeholders and the community on the importance of meaningfully carrying out the Sixth Amendment Right to Counsel.

Collective Vision
A fair and equitable criminal justice system requires representation by skilled defense counsel with adequate resources at every stage of the criminal process.



R2C National Campaign
Our Work: Building Capacity and Advocating for Change

- Inaugural meeting (by invitation) was held on November 10, 2015
- Build a broad-based coalition of stakeholders to articulate the importance of the right to counsel to everyone (law enforcement, judges, court personnel, politicians, law makers, prosecutors, defense counsel, and community advocates)
- Support and promote consortium member activities to achieve the right to counsel
- Promote development of proposals for systemic changes in the delivery of public defense recognizing jurisdictional differences
- Promote support for implementing these changes
- Act as a resource to localities and other consortium members to promote and encourage policy proposals and implementation