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Judges don't always rule In Travis, they review, but lawyers must make cut

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AUSTIN - Even the harshest critics of Texas' indigent defense system find a kind word to say about the way attorneys are appointed in Travis County.

"If everybody did what Travis County did, we'd be fine," said James Harrington, director of the Texas Civil Rights Project.

The county's system was cited as a bright spot by Texas Appleseed Fair Defense Project in its recent report on indigent defense.

What sets the Travis County system apart from other Texas counties is that although judges still have input, the appointment process has been removed from their direct control.

The current system began evolving about eight years ago, said Rod Gustafson, Travis County's director of court management for district and county criminal courts.

Before then, new attorneys received appointments if a judge "saw that spark in their eyes or they were mentored by some older lawyer they knew," Mr. Gustafson said. "That was bull. What we had was baby lawyers who prosecutors just cut to pieces. ... One day, the judges looked up and said, 'We can't do this.'"

Now attorneys must apply to be put on a list of lawyers eligible for appointments, and to get on the list they must meet certain minimum standards. The county maintains lists of attorneys deemed qualified for misdemeanors, felonies, capital crimes and appeals.

To receive felony trial appointments in Travis County, for instance, an attorney must have spent at least two years as a prosecutor or a criminal defense lawyer. In addition, he or she must have served as lead counsel in at least three misdemeanor trials or as lead or assisting attorney in at least three felony trials. To stay on the list, attorneys must complete 10 hours of continuing legal education in criminal law each year.

The judges review applications and evaluate the performance of lawyers already receiving appointments at semiannual meetings.

Judge Wilford Flowers said the system works well. "I gain by having a judge I respect tell me 'this is an excellent trial lawyer' or 'this guy is not as good,'" he said.

After the list is compiled, county administrators take over the appointment process.

Once they identify which defendants are poor, they appoint attorneys from the judges' list on a rotating, alphabetical basis. Exceptions to the rotation are made only for special needs, such as a defendant who requires a Spanish-speaking attorney.

Persuading judges to relinquish control of each appointment was difficult, Mr. Gustafson said. "Judges like doing that," he said. "One of the benefits of being a judge is you get to help your friends, you get to be in charge."

But because the system cut judges' administrative workload, it quickly became popular. "The judges here have been wise enough to realize that playing politics takes a lot of time," Mr. Gustafson said.

As an added benefit, the system silences complaints of patronage or favoritism often heard in other counties.

"We love it. That way, no one can gripe about appointing their buddy," said Judge Bob Perkins, the administrative judge of criminal district courts in Travis County.

Unlike counties where appointments may be concentrated among a select group of attorneys, the rotating system spreads appointments more evenly. According to county records, out of about 150 attorneys eligible for felony appointments, only five made more than \$50,000 during the 1999 fiscal year. The top earners often are involved in capital cases or receive more appointments because they're bilingual, Mr. Gustafson said.

Judge Perkins said judges also like the system because the review process gives them control of the quality of lawyers in their courts.

Texas judges' role in the process has been a major issue in efforts to change the state's system for providing lawyers to poor defendants.

Proposals to improve indigent defense pending before the Legislature include giving judges the option of making appointments on a rotating basis from a list of qualified attorneys.

Judge Perkins isn't sure the Travis County system would work statewide, where conditions vary widely. "It will work statewide if you have a big enough pool of volunteer lawyers, that's the key," he said.

Judge George Godwin said he didn't necessarily think it would work in Houston. "Austin is to Texas what Washington, D.C., is to the United States.

"If it works for Travis County, I want Travis County to be able to do it, I don't want them to tell me to do what they do."