

Drug Courts, Confidentiality and Other Ethical Dilemmas

A Panel Discussion with

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Treatment Courts: A New Response to Substance Abuse Problems

- ***Increasing part of criminal justice landscape***
- ***First treatment court in Miami Florida in 1989***
- ***Presently – more than 2000 treatment courts nationally***
- ***More than 30 treatment courts in more than 25 Wisconsin counties – more in planning stages***

Subject of Substantial Controversy

Proponents: offers new form of intervention in drug and alcohol abuse cases where other responses have proven ineffectual

Opponents: Wary of abandonment of traditional procedural protections and call for redefinition of the role of defense counsel

Treatment Court: Basic Components

- ***Integration of treatment into case processing***
- ***Non-adversarial team approach***
- ***Early intervention***
- ***Continuum of services to participants***
- ***Regular monitoring of participants***
- ***Coordinated strategies to facilitate treatment goals***
- ***Ongoing judicial involvement***
- ***Continuous program evaluation and modification***
- ***Continuing interdisciplinary education of system actors***
- ***Partnerships with courts, public and private agencies***

TEN KEY COMPONENTS – National Association of Drug Court Professionals

Wisconsin Treatment Courts: Common Features

- ***County Based*** – decisions to create treatment court, identify target population and secure funding made at county level
- ***Planning and Oversight*** – local committee of system actors creates program, develops procedures and provides continuing oversight - defense presence common feature in Wisconsin
- ***Post-Adjudication Model*** – most Wisconsin treatment courts require conviction prior to entry – typically by guilty plea - legal control derived from sentencing-probation authority

Wisconsin Treatment Courts: Common Features - continued

- ***Treatment Court Team – comprised of trial judge, treatment professionals, prosecutor, public defender, corrections, and law enforcement – responsible for development and monitoring of individual treatment programs***
- ***Regular Staffings and Court Appearances - cases reviewed on regular basis to monitor progress, adjust treatment program, deliver rewards or sanctions – all participants must remain for entire treatment court session***

Wisconsin Treatment Courts: Common Features - continued

- ***Participant Accountability - participants must agree to cooperate with treatment plan and treatment professionals and provide information on request – immunity extended to admissions of relapses***
- ***Central Role of Trial Judge – continuing role in supervision and monitoring progress of program participants***
- ***Removal from Program - revocation-like hearings provided if team seeks to remove participant from program and return to traditional case-processing***

Defense Counsel in Communities with Treatment Courts: Ethical Questions

(1) May defense counsel participate on a committee to plan and provide oversight for a treatment court?

RELEVANT RULES: SCR 20:6.4

Defense Counsel in Communities with Treatment Courts: Ethical Questions

(2) May defense counsel participate as a member of the Treatment Court Team?

RELEVANT RULES: SCR 20:6.4

Defense Counsel in Communities with Treatment Courts: Ethical Questions

(3) Does defense counsel acting as a treatment court team member represent the treatment team?

RELEVANT RULES: no rule addresses this question

Defense Counsel in Communities with Treatment Courts: Ethical Questions

(4) May defense counsel simultaneously act as a treatment team member and as counsel for a participant or potential participant in the treatment program?

RELEVANT RULES: SCR's 20:1.2; 20:1.6; 20:1.7(b)

Defense Counsel in Communities with Treatment Courts: Ethical Questions

(5) May defense counsel act as a treatment team member when former clients of the lawyer or her firm are participants in the treatment program?

RELEVANT RULES: SCR_s 20:1.9; 20:1.10

Defense Counsel in Communities with Treatment Courts: Ethical Questions

(6) May defense counsel acting as a treatment team member disclose confidential client information about current or former clients of the attorney or her firm to other team members?

RELEVANT RULES: SCR 20:1.6; 20:1.9

Defense Counsel in Communities with Treatment Courts: Ethical Questions

(7) May defense counsel acting as a treatment team member discuss the merits of participants' cases with the trial judge assigned to treatment court out of the presence of the participants' lawyers?

RELEVANT RULES: SCR 20:3.5

Defense Counsel in Communities with Treatment Courts: Ethical Questions

(8) May defense counsel acting as a treatment team member have contact with a program participant about the underlying case without the consent of the participant's current or former lawyer?

RELEVANT RULES: SCR 20:4.2

Defense Counsel in Communities with Treatment Courts: Ethical Questions

(9) What responsibilities does a defense attorney have to her client in a community where treatment court is a possible dispositional option?

RELEVANT RULES: SCR's 20:1.1; 20:1.2; 20:1.3; 20:1.4

Defense Counsel in Communities with Treatment Courts: Ethical Questions

(10) What relevance to defense counsel's duties to her client does counsel's disfavor for the treatment court model have?

RELEVANT RULES: SCR's 20:1.1; 20:1.2; 20:1.3; 20:1.4

Defense Counsel in Communities with Treatment Courts: Ethical Questions

(11) How should the participant's agreement to participate in treatment – involving the waiver of a number of procedural protections – be explained and memorialized?

RELEVANT RULES: SCRs 20:1.0(f); 20:1.1; 20:1.4; 20:1.7(b)(4); 1.9(a), (b)(2)

Defense Counsel in Communities with Treatment Courts: Ethical Questions

(12) Do defense counsel's responsibilities to the client end when the client is admitted into treatment court or do they continue until the person either successfully completes the program or is removed for violation of program rules?

RELEVANT RULES: SCR 20:1.2(c)

Defense Counsel in Communities with Treatment Courts: Ethical Questions

(13) If defense counsel continues representation during the client's participation in treatment what constitutes effective advocacy at treatment court staffings or hearings?

RELEVANT RULES: SCR 20:1.2(c)