

Role of Defense Attorney in Treatment Courts

WI SPD ANNUAL CONFERENCE
November 2019

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3 SEPARATE AND DISTINCT ROLES:

- ◉ Member of Planning/Development Team
 - ◉ Member of Treatment Court Team
 - ◉ Adversary Counsel to Individual Clients
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- ◉ Many challenges
 - ◉ Evolving understanding of roles
 - ◉ No “one size fits all” answer

Role 1: Defense Attorney as Member of Planning/Development Team

- ◉ Non-traditional defense attorney role
- ◉ Allegiance to the team and the collective objective of the program
- ◉ Not representing individual clients
- ◉ Clarify role early and often
- ◉ Be the most informed/educated person on your team

Advocate the Development of Procedural Fairness

- ◉ Selection/admission criteria and process
- ◉ Policy and Procedure Manuals
- ◉ Contracts
- ◉ Waivers: confidentiality, attorney, ex parte communication, due process
- ◉ Discharge/expulsion procedure including notice and the right to adversary counsel

Advocate Adherence to Best Practices

- ◉ Incentives/Sanctions
- ◉ Drug Testing
- ◉ Treatment modalities
- ◉ Court procedures
- ◉ Cultural competency/disparate impact
- ◉ Training
- ◉ Program Assessment

Role 2: Defense Attorney as Member of a TX Court Team

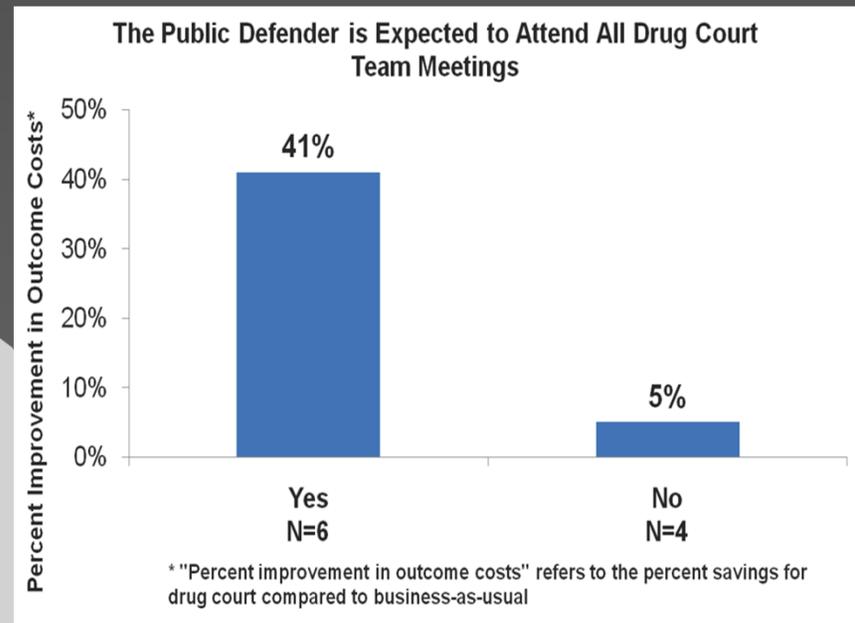
- ◉ Non-traditional role for defense attorney
- ◉ Advocate for adherence to TX principles, due process, standards and best practices
- ◉ Monitor efficacy and availability of TX courts including disparate impacts
- ◉ Not representing individual participants
- ◉ Clarify role early and often

Responsibilities of Defense Attorney as Member of TX Court Team

- ◉ Learn and stay up-to-date on best practices for TX Courts
- ◉ Learn and stay up-to-date about local treatment resources and modalities
- ◉ Attend pre-court staffings and court sessions, advocate allegiance to the model
- ◉ Community outreach
- ◉ Educate peers/colleagues

DEFENSE ATTORNEY PARTICIPATION ON TX COURT TEAM

Drug Courts that Expected the **Public Defender** to Attend All Team Meetings Had 8 Times **Greater** Savings



Dr. Douglas Marlowe, NADCP Adult Drug Court Best Practice Standards, Vol. II

*p<.05

Best Practice: Do not serve dual role on TX court team and adversary counsel

- Conflicts of Interest SCR 20:1.2; SCR 20:1.6; SCR 20:1.7(a)(1),(2)
- If represent someone as adversary counsel, transfer case upon admission to TX court or upon referral to TX court
- Inform your client about what is happening
- Do not disclose any confidential information to TX court team
- Clarify role often, to yourself and others

Best Practice: Maintain Confidentiality of TX Court Records/Information

- Screen information/reports from colleagues in your office
- Participants sign release/give permission for you to disclose information to adversary counsel SCR 20:1.6; SCR 20:1.9
- When you are not available, avoid having another attorney “cover” if they are any participant’s adversary counsel

Best Practice: Voting on admission/discharge of colleague's client

- Best practice is to do this by consensus, not by vote – promote change to best practice
- If you do vote:
 - > No one should get a vote who hasn't gone to training
 - > SCR 20:1.8(b), (k) – very tricky – abstain?

Best Practice: Avoid Communication With Participants About Underlying or Pending Case

- Participants should be encouraged to communicate with their adversary counsel about the original case, or the content/details of any pending case
- SCR 20:4.2

Defense Attorney as Adversary Counsel for Potential TX Court Participants

- ◉ What responsibility does an attorney have when TX court is an option in her jurisdiction? SCR 20:1.1 – SCR 20:1.4
- ◉ Attorney needs to be an expert on TX Court as a dispositional option for clients

Adversary Counsel: Advising Client on Entering TX Court

- ◉ Attorney will have core competencies in the TX Courts available in her jurisdiction
- ◉ Attorney will engage client in best practice attorney-client consultation about TX court option
- ◉ Attorney will assist client in making an informed decision and waiver of rights
- ◉ SCR 20:1.0(f); SCR 20:1.1; SCR 20:1.4

Adversary Counsel: Best Practice Consultation

- Traditional legal case analysis: client interview, obtain/review discovery, investigation, assess the strength of the case against the client and any viable means of contesting the charge(s)
- Candid conversation about substance abuse and treatment options
- Brainstorm all dispositional options with client
- Review TX court contracts and manuals with client
- Describe day-to-day requirements of TX court, legal waivers, consequences of success and failure
- Assist client in risk-benefit analysis and making decision
- Assist client in getting into TX court if that is what they choose

Adversary Counsel: Client in TX Court, Now What?

- No identified best practice
- No research on outcomes with or without adversary counsel at each review hearing
- Bare minimum: participant needs adversary counsel for any discharge/termination hearing
- Evolving: no one-size-fits-all model

Adversary Counsel: Client in TX Court, Now What? (cont'd)

- Traditionally, WI SPD requires attorney to keep case open for 60 days, then close if everything is OK
- WI SPD will appoint adversary counsel for discharge/termination hearings
- A few WI jurisdictions provide both an SPD representative on the TX court team and an SPD representative as adversary counsel at each TX court session

Adversary Counsel: Client in TX Court, Now What? (cont'd)

- WI SPD moving toward a model of minimal standards:
 - Continued availability of adversary counsel for client's consultation for the duration of participation in program
 - Appearance at review hearings by advocacy counsel at client request
 - Regular check-ins by advocacy counsel with client for the duration of the program
 - In locations where it works to have adversary counsel present, continue that practice

Looking to the Future

- WI SPD will continue to assess the role of the SPD attorney in all aspects of TX courts
- WI SPD will look for best practices on the role of adversary counsel in TX courts and apply these practices

Training is Essential

- ◉ Subject Matter Evolves
- ◉ Best Practices Evolve
- ◉ Avoid Harm – not adhering to the model and not evolving can lead to worse outcomes for clients
- ◉ DOJ Team Training 2020 – Dates TBD
- ◉ WATCP Conference – April 29 – May 1, 2020