

JUSTICE SPEAKERS INSTITUTE TRAINING HANDOUT

COLORADO PROBLEM SOLVING COURT JUDGES



**THE ROLE OF THE JUDGE AS THE TEAM LEADER:
ETHICAL AND LEADERSHIP LESSONS**

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Chief Financial Officer, Justice Speakers Institute

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1

IT IS ALL ABOUT LEADERSHIP

- Ethical Leadership
- Team leadership
- Program leadership

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2

ETHICAL LEADERSHIP

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3

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IS THERE A CONFLICT BETWEEN PROBLEM-SOLVING COURTS AND THE DUTIES OF A JUDGE?

- Key Component # 2:
 - "Legal rights such as due process and equal protection are never 'trumped' by therapeutic concerns even though the court's action may be anti-therapeutic."

<http://www.sjp.gov/office/No/03021.pdf>

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4

JUDICIAL ETHICS

- Preamble of the Colorado Code of Judicial conduct (Code) requires that a judge perform the duties of judicial office impartially, competently, and diligently.

Colorado Code of Judicial Conduct

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5

SANCTIONS: A TEAM DECISION?

- Team voting in order to determine the appropriate judicial response is prohibited.
- Judges may and should consider the recommendations of the experts on the team.

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6

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EX-PARTE COMMUNICATIONS

- Latin term meaning "by or for one party." The term refers to an attorney's communication with:
 - A judge or arbitrator without notice to, and outside the presence of, the other parties; or,
 - Another party outside the presence of that party's attorney.

<https://www.thespeakersinstitute.com/2019/06/06/10-ways-to-communicate-with-judges-and-arbitrators-the-ultimate-guide/>

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7

JUDICIAL EX PARTE

- A judge shall not initiate, permit, or consider ex-parte communications, or consider other communications made to the judge outside the presence of the parties or their lawyers, concerning a pending or impending matter.

Colorado Code of Judicial Conduct 2.9

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8

HOWEVER

- [4] A judge may initiate, permit, or consider ex-parte communications.....when serving on ...problem-solving courts In this capacity, judges may assume a more interactive role....

Colorado Code of Judicial Conduct 2.9 Comment (D)

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9

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SO, IS THIS ALLOWED?

A compassionate judge sentences a veteran to 24 hours in jail, then joins him behind bars

By Yanan Wang
April 22, 2016 at 4:52 a.m. EDT

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10

JUDICIAL ETHICS: OUT OF COURT CONTACT

- Must not associate;
- Must not have social contact; and,
- Matter of Blackman, 591 A.2d 1339 (N.J. 1991).

Colorado Code of Judicial Conduct

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11

JUDICIAL ETHICS: OUT OF COURT CONTACT

- Veterans' Court judge paid participant to paint his house; So,
- What could go wrong?

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12

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JUDICIAL MISCONDUCT: REMOVAL

- Judge met privately with probationers;
- Did not inform probation officers; and,
- Assisted in collecting a urine sample.

<https://www.courtdirector.com/courts/CO/138776310-re-complaint-against-judge/>

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13

JUDICIAL MISCONDUCT: REMOVAL

- Judge invited participant to family events;
- Judge allowed him to handle a gun and go target shooting with judge's son; and,
- Participant was a felon and it is a felony for him to possess a firearm.

<https://www.courtdirector.com/courts/CO/138776310-re-complaint-against-judge/>

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14

JUDICIAL MISCONDUCT: CENSURED

- Judge met privately with juvenile TX Court participant who was having bereavement issues; and,
- Judge and boy went for a walk alone in a park where he discussed the death of his mother and continued lack of sobriety.

<https://www.courtdirector.com/courts/CO/138776310-re-complaint-against-judge/>

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15

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JUDICIAL MISCONDUCT: REMOVAL

- Judge informed arrest warrant would be served after court;
- Didn't want participant in custody; and,
- Allowed him to escape through her chambers.

<https://www.uscourts.gov/pressroom/2018/08/28/18-087.pdf>

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19

JUDICIAL MISCONDUCT: REMOVAL

- Judge kept Drug Court participants past the two-year limit;
- Jailed participants for contempt of orders of the drug court; and,
- Denied participants the right to counsel.

<https://www.ms.judicialbranch.org/pressroom/02082018.pdf>

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20

JUDICIAL MISCONDUCT: REMOVAL

- Advising Drug Court participants on how not to get caught drinking; and,
- Watch what they say on jailhouse phones because "deputy DAs have nothing better to do" than to listen to those recordings.

<https://www.uscourts.gov/pressroom/2018/08/28/18-087.pdf>

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21

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AVOIDING PROBLEMS

- Review your Canons and Codes;
- Check for any opinions specific to PS courts;
- Ask for ethics opinions on issues of concern;
- Examine your own prejudices; and,
- Preconceived notions, biases, and stereotypes about people with AOD abuse and/or mental disorders can prevent fairness and impartiality toward those who have them.

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22

TEAM LEADERSHIP

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23

VOLUNTEERS

- Greater reductions in recidivism were found in courts where the judges oversaw the drug court on a voluntary basis.

https://www.matcp.org/uploads/6/3/3/0/6/33093324/ud_wf_drug_court_best_practice_manual_sico.pdf

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24

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STAYS

- Judges who stayed for at least two years had a lower recidivism rates than judges who presided for a lesser period of time.

https://www.matcp.org/uploads/6/3/0/0/63009324/dut_drug_court_best_practice_manual_scao.pdf

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25

THE LONGER THE BETTER

- Reduction in recidivism improved dramatically during the judge's second year;
- Judges require time and experience to learn how to perform their jobs effectively; and,
- For this reason, annually rotating assignments is contraindicated.

https://www.matcp.org/uploads/6/3/0/0/63009324/dut_drug_court_best_practice_manual_scao.pdf

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26

SHOWS UP

- The judge regularly attends staffing meetings where the recovery court team reviews each participant's progress; and,
- Research has consistently shown that when the drug court judge regularly attends staffing meetings recidivism is reduced.

https://www.matcp.org/uploads/6/3/0/0/63009324/dut_drug_court_best_practice_manual_scao.pdf

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27

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STAFFING

- Recidivism is reduced when all of the core members of the recovery court team regularly attend staff meetings;
- This helps to ensure that timely information about participants' is communicated to the team; and,
- The judge has the primary responsibility for ensure team member attendance.

https://www.matcp.org/uploads/6/3/0/0/63009324/adult_drug_court_best_practice_manual_scao.pdf

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28

REVIEW

- Recidivism is reduced when core members of the recovery court team regularly attend the review hearings.

https://www.matcp.org/uploads/6/3/0/0/63009324/adult_drug_court_best_practice_manual_scao.pdf

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29

FREQUENT

- Research demonstrates the importance of scheduling status hearings no less frequently than every two weeks during the first phase of a recovery court. Participants had significantly better treatment attendance, substance use abstinence, and graduation rates when they were required to appear every two weeks.

https://www.matcp.org/uploads/6/3/0/0/63009324/adult_drug_court_best_practice_manual_scao.pdf

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30

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DECISION MAKING

- Encourages team interaction with a goal of consensus. The collaborative nature of drug courts brings together experts from various disciplines. Their expertise and shared information allow the judge to make better-informed decisions.

<https://www.ndci.org/sites/default/files/ndci/Nara-Setup.pdf>

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31

DECISION MAKING

- However, the judge is the final arbiter of factual controversies and makes the final decision concerning the imposition of sanctions that affect a participant's legal status or liberty.

https://www.matcp.org/uploads/6/3/0/0/63009324/adult_drug_court_best_practice_manual_scao.pdf

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32

SANCTIONS

- When team members other than the judge can impose sanctions there is a smaller reduction in recidivism. Don't allow that to become part of the design.

https://www.matcp.org/uploads/6/3/0/0/63009324/adult_drug_court_best_practice_manual_scao.pdf

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33

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SANCTIONS

- Sanctions are imposed immediately after non-compliant behavior. Court imposes sanctions in advance of a client's regularly scheduled court hearing.

https://www.matcp.org/uploads/6/3/0/0/63009324/adult_drug_court_best_practice_manual_scao.pdf

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34

REWARDS

- At a review hearing appropriate, graduated and immediate rewards for compliance work better than sanctions. The impact of rewards is enhanced when the judge is the sole provider of those rewards.

https://www.matcp.org/uploads/6/3/0/0/63009324/adult_drug_court_best_practice_manual_scao.pdf

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35

EDUCATION

- Judge attends treatment training on judicial ethics, evidence-based practices, substance abuse and mental health treatment, behavior modification, and community supervision; and,
- As judge has such a substantial impact on outcomes, continued training is especially important.

https://www.matcp.org/uploads/6/3/0/0/63009324/adult_drug_court_best_practice_manual_scao.pdf

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36

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PROGRAM LEADERSHIP

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37

DEVELOP THE PROGRAM

- Initiates planning process;
- Bring together agencies/stakeholders to evaluate court processes/procedures;
- Collaborates to coordinate innovative solutions; and,
- Becomes a program advocate to create develop support for the program.

<http://www.wellnesscourts.org/files/ND01%200re%20Competencies%20Guide.pdf>

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38

ADJUST THE PROGRAM

- Review of the data and/or regular reporting of program statistics which results in modifications in recovery court operations leads to reduction of recidivism.

https://www.matcp.org/uploads/6/3/3/0/6/3309334/wslr_04ug_court_bent_practice_manual_v300.pdf

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39

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CONTINUING CONTACT WITH THE COMMUNITY

- Formal Partnerships With Community Organizations: 133% Greater Cost Savings;
- Continue to be in contact with the agencies who worked to set up the court;
- Develop and maintain resources; and,
- Improve interagency linkages.

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40

WRITE IT DOWN!

- Written policies and procedures are critical Policy and Procedure Manual;
- Participant Handbook;
- Client contract;
- Releases and orders;
- Incentives, Sanctions and Treatment Adjustments' Lists; and,
- Rules for phase movement.

<https://www.ndbc.org/wp-content/uploads/2018/05/Judicial-Benchbook-2017-4update.pdf>

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41

TEAM CONTINUING EDUCATION

- Ensures all new team members receives training;
- Ensures all team members participate in regular training; and,
- Employ evidence-based practices and focus on strengths-base approaches.

https://www.matcp.org/uploads/6/3/0/0/63009324/a_dut_ofng_court_ben_practice_manual_100a.pdf

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42

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BUILD A TREATMENT COURT THAT LASTS

- Maintain an institutional memory as assignments change;
- Maintain contact with former judges/other team members;
- Have a succession plan (after you stay at least two years); and,
- Create a legacy.

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43

BEING A TREATMENT COURT JUDGE...

IS THE BEST ASSIGNMENT OF YOUR LIFE



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44

Thank You For Your Kind Attention

FOR MORE INFORMATION

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45
