

ROLES OF THE PUBLIC DEFENDER IN DRUG COURT

INTRODUCTION

There are three primary ways a public defender might be involved with a drug court. The public defender might be a team member of the court, might have clients participating in the court, or both. In each of these areas the public defender will assume several roles. This paper looks at some of those roles. It is not meant to be exhaustive of the roles we as public defenders might play, but to identify and explore some of those roles.

PLANNING

The public defender, as a team member of a newly developing drug court, will assume several completely new and important roles in this specialized court. No role may be as important as participating in the planning and design of the drug court.¹ Involvement from the early stages of the development of the court will allow input on issues critical to our clients.²

With valuable input from the public defender in the planning stage, the drug court will hopefully become a court that is centered on the client's recovery. That is what the drug court is all about. Thus, integrated into the design of the court should be a recognition that relapses will occur and what will be important for the participant and for the court, is how the court responds to those relapses.³

As the design of the court is planned, the public defender will likely want to assure that the court includes comprehensive treatment so that serious addiction issues can be adequately dealt with.⁴ That alone will probably not be enough. What all public defenders realize is that these clients will likely have a host of problems. Therefore, the drug court must be prepared to help participants deal with mental health issues, health problems, housing, transportation, jobs and other life issues.⁵ The best time to assure that these types of resources are in place and available for the court's participants is during the planning stage.

The public defender will also want to assure that the court is designed so that it will be a fair court to our clients. This would include assuring that eligibility criteria, screening and assessment procedures are appropriate.⁶ Deciding who the participants will be will of course substantially affect what the drug court will end up looking like.⁷ The public defender is likely to argue for a more inclusive eligibility, thus expanding options for our clients.

¹ Defining Drug Courts: The Key Components

² Defenders In Drug Court: Lisa Schreibersdorf, Nov. 1997

³ The Design and Operation of Drug Courts: Critical Issues for Defenders: Michael P. Judge

⁴ Id.

⁵ Id.

⁶ Drug Court Standards Committee: 1997

⁷ Therapeutic Jurisprudence and the Drug Treatment Court Movement: Revolutionizing the Criminal Justice Systems Response to Drug Abuse in America: Notre Dame Law review, Peggy Fulton Hora, William G. Schma, John T. A. Rosenthal. Jan. 1999.

Flexibility will be important. Those planning for the drug court are likely to be doing so for the first time. Building an organization that can change when things aren't working, or can build on aspects of the program that are working, will help assure a more effective program. There are considerable resources available to the team in the planning stage, but despite that, the flexibility to change will be helpful.

While the planning stage is still underway, the public defender will want to act as a liaison with the private bar. It will be helpful to seek input from the members of the private bar and include their thoughts early on.⁸

Another important concern will be striving for a court that is designed to take into consideration the rights of the participants. The public defender will argue for a court that not only is as beneficial as possible to the client, but is sensitive to the rights of the client.⁹

As the planning progresses, there are substantial rights to be concerned about in drug court. Many drug courts require participants to waive most of their legal rights prior to entry into drug court. In a preadjudicative court the client will waive the fewest rights. The most important of these may be the right to a speedy trial.¹⁰ In a post adjudication system the client will waive the most rights including the right to a trial and the right to bring forth suppression motions.¹¹ Obviously the public defender will work towards a court that has the least negative effect on participants; however, many prosecutors are likely to be strong advocates for a post adjudication system.

The public defender will also want to assure that the court is a fair one in that it uses graduated responses to non-compliance. The goal of recovery, not punishment should be paramount.

The issue of confidentiality will also arise during the planning phase. We should assist in developing a plan that tries to assure that information learned in drug court will not be used against the participant in additional legal proceedings.¹² Furthermore, the team should recognize that they will be collecting a lot of private information about the participants. They will know more about a given participant than they have ever learned in any previous role. That information should be treated carefully and not disseminated further without the appropriate waivers.

As mentioned earlier there are opportunities for training in the planning and operation of drug courts. Thus the public defender that is on the team should avail themselves of training opportunities. This will help assure a strong voice on the team that is well versed in this specialized court.

⁸ Specialized and Problem-Solving Courts: Trends in 2002: The Ethics of Problem Solving: Published in Report on Trends in State Courts, 2002.

⁹ Critical Issues for Defense Attorneys in Drug Court: National Drug Court Institute .p 61 April 2003.

¹⁰ Therapeutic Jurisprudence and the Drug Treatment Court Movement: Revolutionizing the Criminal Justice Systems Response to Drug Abuse in America: Notre Dame Law review, Peggy Fulton Hora, William G. Schma, John T. A. Rosenthal. Jan. 1999.

¹¹ Id.

¹² Confidentiality and Drug Treatment Courts: Defenders in Drug Court, Nov. 1997. Robert L. Ward

EDUCATION

Once the planning is completed, but before the drug court is in operation, it would be useful for the public defender to educate the private bar on the drug court. The private bar will need to know about the court's organization, procedures, eligibility criteria, and other relevant information. This effort will assure that the option of the drug court becomes possible for all eligible defendants. Furthermore, it will help assure a smoother beginning for the new court if all or most defense attorneys are generally familiar with the court.

It will also be helpful to educate the community about the drug court. While the most likely person to perform this function is perhaps the Judge, the public defender and other team members should assist in this endeavor. It will be important to get community support of the drug court.¹³

When the court is operational, the public defender will want to be a voice of reason on the team. The public defender must be ready with the literature and the research to counter many of the standard beliefs of drug addiction. When necessary, the team may need to be reminded what the mission of the court is; recovery of the participant.

REPRESENTATION OF CLIENTS IN DRUG COURT

The public defender will represent clients that may be eligible for drug court. For attorneys not on the team, they will need to familiarize themselves with the process of the court. This will be imperative so that defense counsel can adequately explain the risks and benefits of the program.¹⁴ Additionally, in order to help the client make a decision about drug court, the attorney will want to know exactly what treatment options are available through the drug court. Furthermore, from a treatment perspective, defense counsel will want to explore all treatment options available to the client to determine if drug court is the best option available for the client.

In order to assure these decisions are made based on adequate knowledge the attorney will have to investigate the case and do so fairly quickly. Drug court often requires early entry soon after arrest.¹⁵ A decision that the attorney will want to assist the client in making is whether or not drug court makes sense from a legal standpoint.¹⁶ What legal benefit is gained by successful completion of the drug court? Are there motions or trial issues that outweigh the benefit of drug court? What will the consequences be if the client fails the program? These are obviously critical questions that will need to be explored thoroughly with the defendant prior to a decision being made about the drug court. Furthermore, clients should fully understand the rights they are waiving by entering drug court. While many clients are familiar with the criminal justice system, the drug court is likely to be completely unfamiliar to them. It will be important to assure that clients understand that in many cases they are making irrevocable waivers.

¹³ Ethical Considerations for Judges and Attorneys in Drug Court, May 2001.

¹⁴ Id. P. 21

¹⁵ Rehabilitative Punishment and the Drug Treatment Court Movement; Wash.Univ. Law Quarterly, vol. 176:1205 Richard C. Boldt

¹⁶ Whose Team Am I on Anyway? Musings of a Public Defender about Drug Court Practice; Mae Quinn

When the client enters drug court the role of defense counsel is not complete. Counsel should remain a strong advocate for the client.¹⁷ It will be helpful to the client if their attorney monitors their progress in both treatment and court. Counsel should be at the very least prepared to assist the client concerning sanctions and other problems that may arise in drug court. Defense counsel should prepare the client for appearances in drug court so the client knows what to expect. Counsel should also provide encouragement and support to the client in their treatment endeavor.

In summary, the roles of the public defender will depend on how any given drug court is structured and the level of participation the agency has committed to the drug court. In the planning stage the public defender should have a strong voice for a court that will help and benefit clients. Once the court is operational we should work to assure that the court remains true to the drug court philosophy and its mission statement. As defense counsel we should continue to be advocates for our clients and avoid simply abandoning them to the drug court program.

¹⁷ Whose Team Am I on Anyway? Musings of a Public Defender about Drug Court Practice; Mae Quinn