The Public Defender in Drug Treatment Courts: Advocacy Role

Advocate for the Defendant:

Advocate for the Program

Advocate for the Justice System

What Are Drug Courts? Four Definitions

(insert slides from Wednesday with Key Components – Judge Klein)

(insert slides re: What Role does the public defender play (two slides)

Advocacy Role in addition to Legal Roles: What is Entailed?

Advocate for the Defendant:

- protecting “due process”
- protecting fundamental rights
- protecting confidentiality of client information
  - attorney/client communications
  - information discussed with team
  - information revealed at hearings
- carrying out duties associated with representing impaired individuals

Advocate for the program

- ensuring equal access:
  - to the drug treatment court
  - to services
- program design, policies and operations promote:
  - protection of individual rights
  - carry out the mission of the program
- program operates as intended
- services provided comply with best practices

Advocate for the Justice System

- defense has a “seat at the table” – participates in discussions, decisions that affect clients
- program promotes the goals of the justice system: to do justice
- program adheres to and protects constitutional and legal rights

Public Defender as Advocate

Advocating FOR THE DEFENDANT

- Protecting “Due Process”
- Protecting Fundamental Rights

FOR THE PROGRAM: Program Design, Policies and Operations

- Ensuring Equal Access:
  - to the drug treatment court
  - to services

- Program Eligibility Criteria:
  - Clearly Articulated
  - Consistently and Transparently Applied

- Program Requirements:
  - Clearly Explained
  - Consistently Carried Out

- “Sanctions and Incentives”
  - Therapeutic
  - Defendant has Notice/published in advance
  - Consistently applied

- Outcomes are Reasonable
  - Incentives offered for participation
  - Special Benefits are offered for those who complete the program
  - “Failure” is not punished

The Ten Tenets of Fair and Effective Problem Solving Courts:

   National Legal Aid and Defender Association

   {summary excerpt}

1. Indigent defense bar has opportunity to meaningfully participate in the design, implementation and operation of the court, including determining participant eligibility and selection of service providers
2. Indigent defense bar has opportunity to meaningfully participate in developing policies and procedures for the problem-solving court that ensure confidentiality and address privacy concerns
3. Problem solving courts should afford resource parity between the prosecution and the defense.
4. The individual’s decision to enter a problem solving court must be voluntary
5. The individual shall not be required to plead guilty in order to enter a problem solving court
6. The individual shall have the right to review with counsel the program requirements and possible outcomes.
7. The individual shall be able to voluntarily withdraw from a problem solving court at any time without prejudice to his or her trial rights.
8. The court, prosecutor, ..or other appropriate entity shall implement a policy that protects the individual’s privilege against self-incrimination.
9. Treatment or other program requirements should be the least restrictive possible to achieve agreed upon goals. upon successful completion of the program, charges should be dismissed with prejudice and the individual have his/her record expunged.
10. Nothing in the problem solving court policies...should compromise counsel’s ethical responsibility to zealously advocate for his/her client, including the right to discovery, challenge evidence, and recommend alternative treatments or sanctions.