

COLLABORATION AND ETHICAL PERSPECTIVES: DEFENSE AND PROSECUTORS WORKING TOGETHER IN TREATMENT COURTS

Presented by:
Jamie Kvistad, JD
Heidi Rettinghouse, JD

INTRODUCTION



Overview of Best Practices and Rules



Importance of team collaboration in Treatment courts



Prosecutors and Defense Attorney Roles



Ethical Considerations and Scenarios

Treatment Court Philosophy vs. Adversarial Traditional System

Treatment Court

- Best Practices
- Treatment Focus
- Defense Collaboration
- Voluntary
- Team Environment



Traditional Court

- Established legal procedure
- Punishment Focused
- Defense Zealous advocacy



Challenges in a Collaborative Legal Practice

Balancing advocacy with cooperation and collaboration

Risk of compromising participant's interests

Unequal power dynamics

Transparency and trust issues within a team

Navigating public perceptions

Tension between client loyalty and court goals

Protecting the integrity of the program

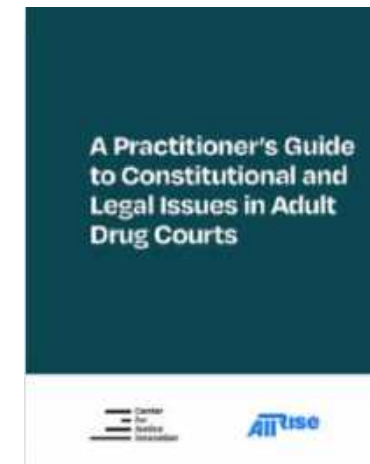
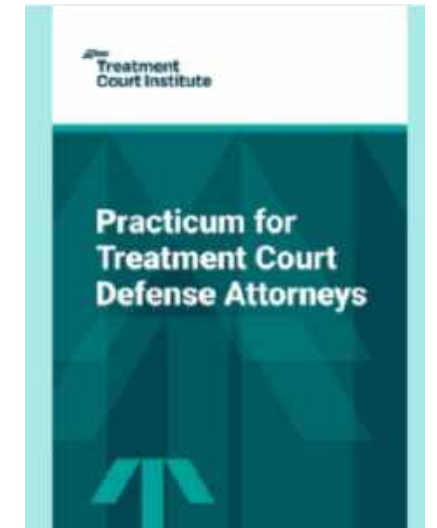
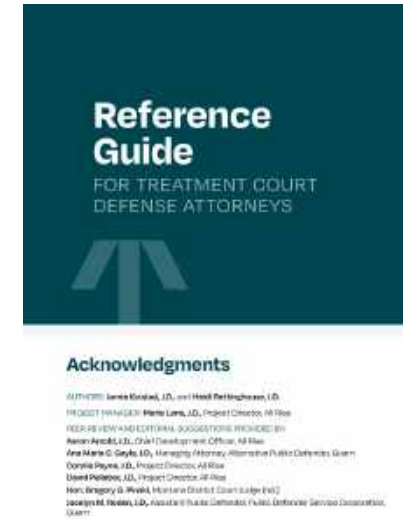
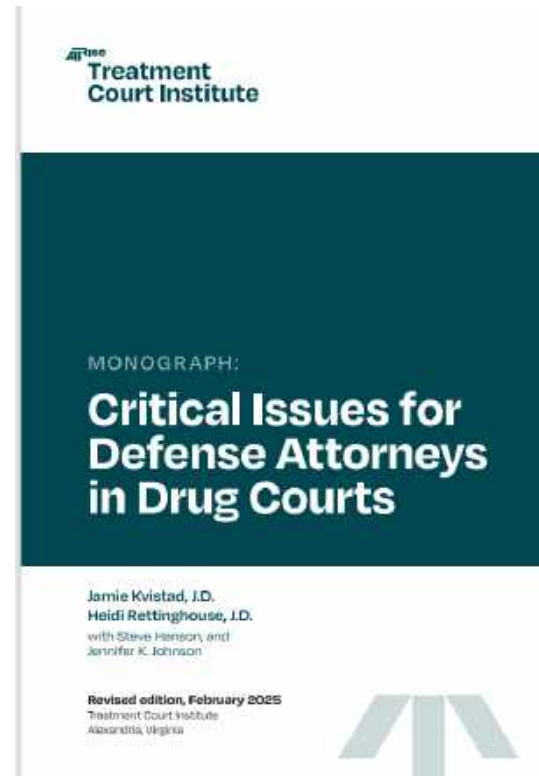
THERAPEUTIC COURTS

RCW 2.30.030

“...[T]he effectiveness and credibility of any therapeutic court will be enhanced when the court implements evidence-based practices, research-based practices, emerging best practices, or promising practices that have been identified and accepted at the state and national levels.”



ALL RISE BEST PRACTICES AND RESOURCES





Drug Court Key Component

Using a non-adversarial approach,
prosecutor & defense counsel promote
public safety while protecting participant's
due process rights.

Best Practice Standards

Defense representation should be encouraged rather
than discouraged in Drug Courts because doing so is
associated with significantly better outcomes and
ensures participants' due process rights are protected
(Hora & Stalcup, 2008;NADCP, 2009).

Use a collaborative approach , but balance and shift appropriately when more advocacy or accountability is required.

Collaborative



Adversarial

And take caution ...

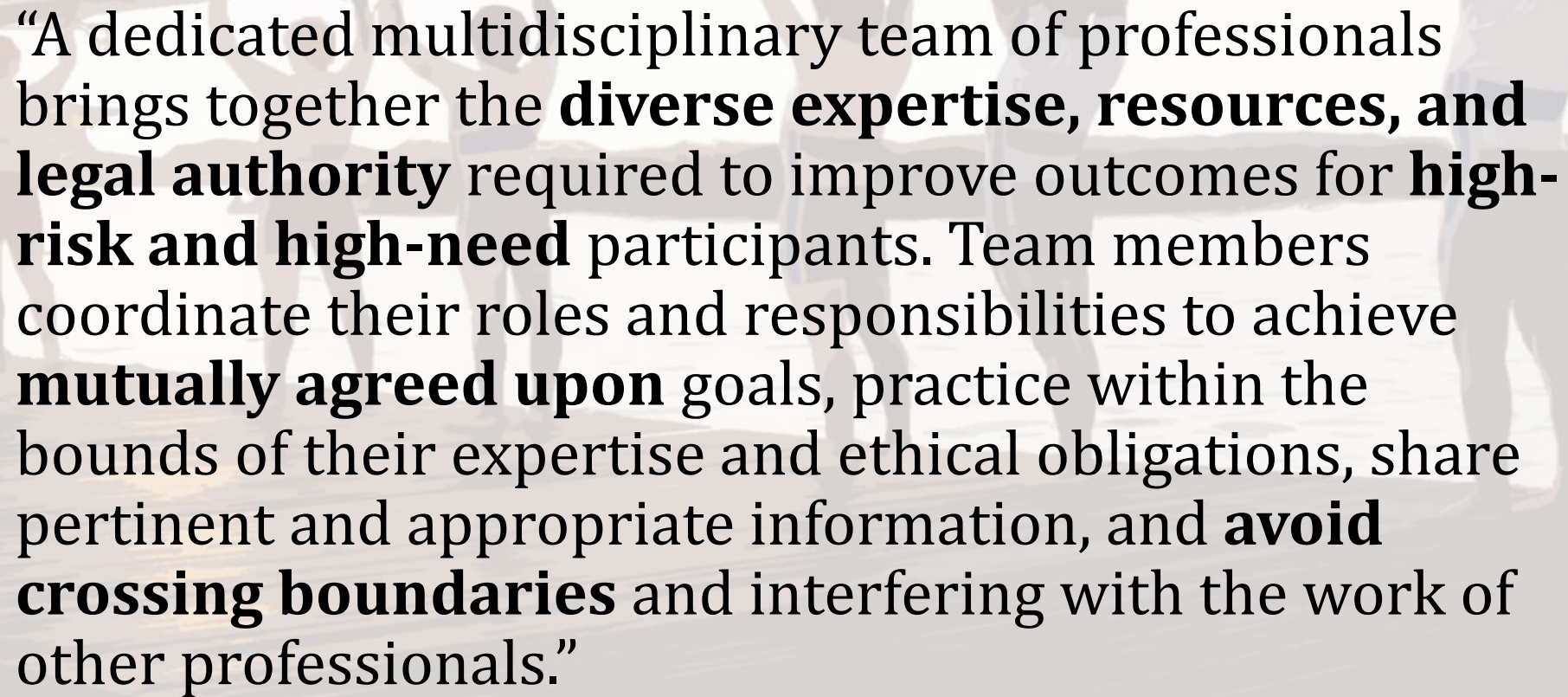
“Prosecutors and defense counsel should be conscious of the possibility that the close professional relationships and trust that frequently develop within the drug court team might dissuade them from pressing issues when appropriate to their distinctive roles.”



Do you know your role on the TEAM?

- Everyone has their own ethical obligations.
- Everyone represents diverse professional philosophies and interests.
- Each team member must understand and respect the boundaries and responsibilities of other team members.

Best Practices Defines a Multidisciplinary Team:



“A dedicated multidisciplinary team of professionals brings together the **diverse expertise, resources, and legal authority** required to improve outcomes for **high-risk and high-need** participants. Team members coordinate their roles and responsibilities to achieve **mutually agreed upon** goals, practice within the bounds of their expertise and ethical obligations, share pertinent and appropriate information, and **avoid crossing boundaries** and interfering with the work of other professionals.”

Roles and Expectations

Prosecutor

- Protects Due Process
- Protects Public Safety
- Ensures eligibility
- Enforces compliance
- Maintains program integrity

Defense

- Protects Due Process
- Protects Confidentiality
- Encourages full participation
- Mitigates noncompliance
- Advocates for exceptions

Defense Attorney “non-adversarial”

- Obtains informed consent
- Encourages success
- Safeguards due process
- Advocates for participants’ interests
- Protects confidentiality
- Protects use immunity
- Advances equal protection



Defense Representation means:

- **Decision to enter treatment court**
- **Treatment planning and structure of supervision**
- **Advice on non-compliance**
- **Negotiation**
- **Violation hearings**

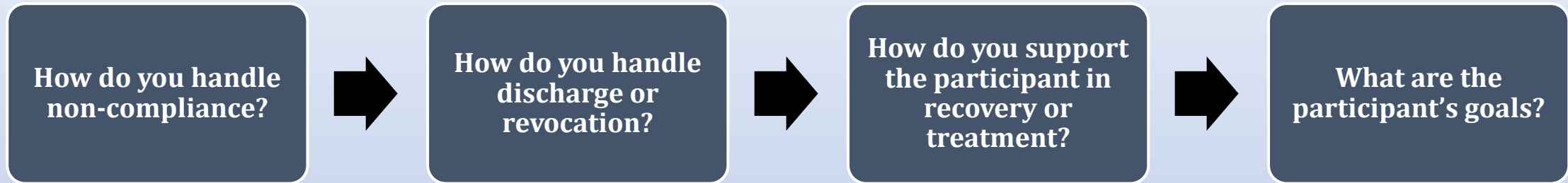


DEFENSE: Representation does NOT mean

- Relinquishes professional and ethical duty to client-participant.
- Places the commitment to the program above the commitment to client.
- Takes a passive role.



DEFENSE: COMPLICATIONS OF REPRESENTATION

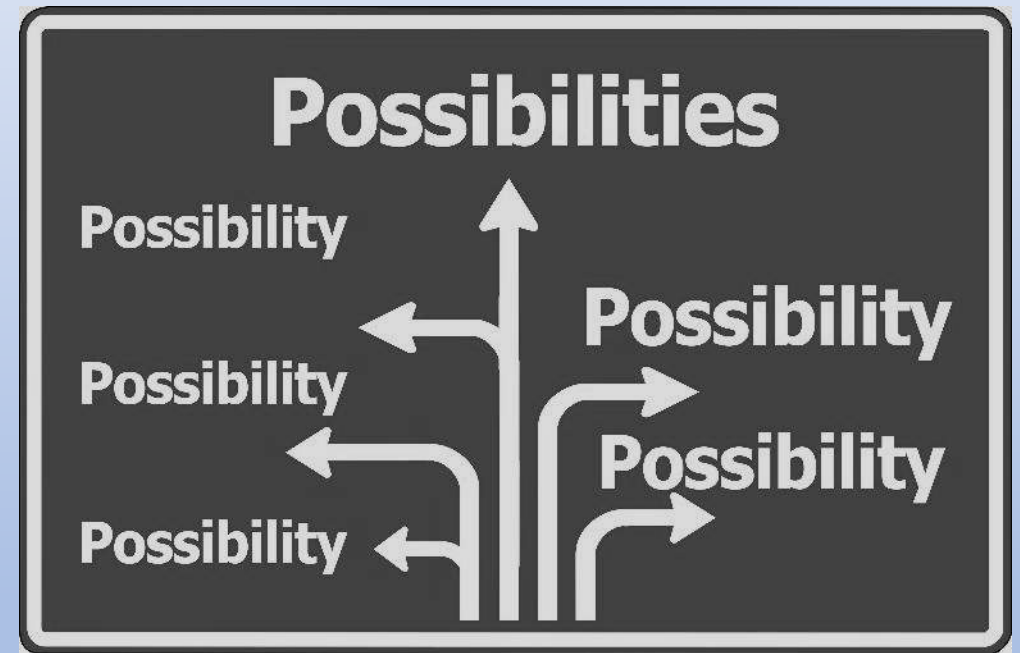


Once a defendant enters a treatment court, the goals of defense representation expand to include successful completion of the program.

DEFENSE IS THE MOTIVATIONAL INTERVIEWER

Consistently advise and counsel your Client on Participation:

- Long Term Goals
- Treatment options
- Consequences (sanctions and incentives)
- Policies and rules
- Rights and waivers
- Voluntariness



DEFENSE: FORMULA FOR EFFECTIVE ADVOCACY

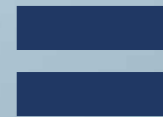
The Defense Role

DUE PROCESS and CLIENT PARTICIPATION



Knowledge and Competence

Understand the POLICIES and PROCEDURES



EFFECTIVE
ADVOCACY

Participate and Collaborate

Be part of the TEAM and know the GOALS



DEFENSE ATTORNEY RESEARCH

93%

Cost Savings

Defense attorney
attends staffing

Defense attorney
attends court sessions

Recidivism

35%

Recidivism reduction and cost savings relative to courts that do not follow these practices.
NPC Research Key Components Study 2006

PROSECUTOR “non-adversarial”

- Confirms eligibility
- Ensures informed consent
- Safeguards due process
- Advances equal protection
- Advocates for public interests
- Encourages success



Prosecutor Representation

Does mean:

- No new charges for use or admission of use
- Agrees continued enrollment based on performance in treatment and not facts of the underlying case



Does *not* mean:

- Failing to advocate for public safety based on new criminal behavior



Prosecutor Responsibilities:

Impartiality: Prosecutors must maintain impartiality, ensuring their decisions are based on the facts and law, without bias or conflict of interest.

Due Process: They must uphold the constitutional rights of participants, ensuring fair treatment throughout the court process.

Confidentiality: Prosecutors are required to handle sensitive information with confidentiality, sharing it only when legally permissible and necessary for the case.

Ethical Advocacy: They advocate for outcomes that balance accountability with opportunities for rehabilitation, ensuring that sanctions and incentives are applied fairly and consistently.

PROSECUTOR: FORMULA FOR EFFECTIVE ACCOUNTABILITY

The Prosecutor Role

DUE PROCESS, PARTICIPATION and PUBLIC SAFETY



Knowledge and Competence

Understand the POLICIES and PROCEDURES



Participate and Collaborate

Be part of the TEAM and know the GOALS



**EFFECTIVE
ACCOUNTABILITY**



PROSECUTOR RESEARCH



Prosecutor attends
court sessions



Recidivism reduction and cost savings relative to courts that do not follow these practices.
NPC Research Key Components Study 2008

Additional Skills for Prosecutor and Defense

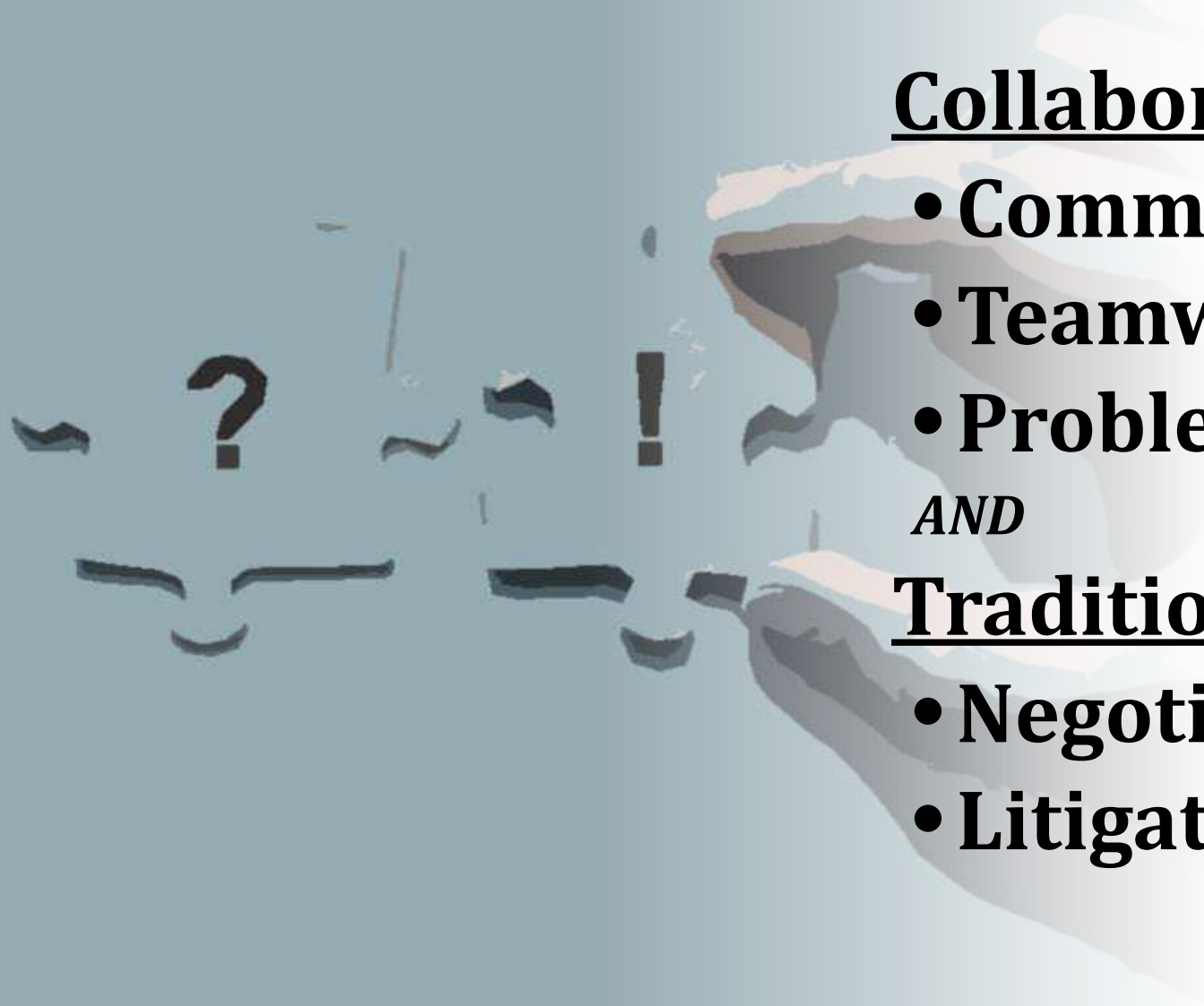
Collaborative Skills

- Communication
- Teamwork
- Problem-solving

AND

Traditional Skills

- Negotiation
- Litigation



Things for you to consider when on the Treatment Court Team:

- Team participation and Roles
- Acknowledging personality types
- Respecting roles and “Staying in your lane”
- Advocacy v. Adversarial
- Communication and overcoming challenges
- Allow different problem-solving styles
- Collaborate by thinking divergently
- Negotiate assertively to assist with TEAM decisions
- Team trainings and change behaviors



TREATMENT COURT TEAM RESEARCH

Studies about Team Composition in Drug Courts reveal:

- a substantial influence on outcomes
- possibility to produce **significantly greater** reductions in criminal recidivism
- more **cost effective**
- “when . . . professionals are dedicated members of the Drug Court team and **participate regularly in pre-court staff meetings and status hearings**”
- (Carey et al., 2008, 2012; Cissner et al., 2013; Rossman et al., 2011; Shaffer, 2010):



What are the behaviors of the TEAM members?

- 1) **Adversarial** – combative, argumentative, challenging everything
- 2) **Collaborative** – due process and working together for client participation and support
- 3) **Apathetic** – lack of concern or interest (going along to get along or burnt-out)



COMMUNICATION IS THE FOUNDATION

“Participants and staff rate communication among team members as one of **the most important factors for success** in Drug Courts”

(Frazer, 2006; Gallagher et al., 2015; Lloyd et al., 2014).



WHY WE NEED TO AVOID BEING APATHETIC



- Team members have an obligation to contribute relevant observations and insights and to offer suitable recommendations based on their professional knowledge, experience, and training.
- A team member who remains silent in staffings or defers habitually to group consensus is violating his or her professional obligations to participants and to the administration of justice

Caution: Do not allow group-think to interfere with due process

(Freeman-Wilson et al., 2003; Holland, 2010; NACDL, 2009; Tobin, 2012).

BUILDING COMMUNICATION SKILLS

Communication Skills to Consider:

- Listening
- Empathizing
- Asking Questions
- Finding and Telling Stories
- Painting a Picture
- Giving Information
- Implying through Tone of Voice and Body Language
- Making Arguments



COLLABORATION: knowing when to argue, when to let it go, or take a completely different approach entirely.

AVOID COMMUNICATION PITFALLS

Cognitive Bias – A pattern of thought that causes someone to reason unrealistically



- **Availability Bias** – the tendency to judge the likelihood of an event by the ease with which relevant examples come to mind
- **Anchoring Bias** - chains you to an idea simply because that idea is present
- **Confirmation Bias** – Causes you to focus on information that confirms your preconceptions while ignoring information that challenges them
- **Search satisfying** – Tendency to stop searching for explanations once you have found one
- **Confidence Illusions** – Frequently infect professionals conscious of their own expertise.

COMMUNICATION AND COLLABORATION SOLVES PROBLEMS

As a team member FOCUS ON:

- Being Idea Driven
- Finding Inclusive solutions
- Having a Growth Mindset
- Using Divergent Thinking



PROBLEM SOLVING PRACTICE TIPS



Different Styles:

- Learn from experience
- Treat the entire problem as an integrated whole
- Identify the few things that really matter
- Identify the decisive event
- Don't be afraid to take calculated risks
- Help your mind wander
- Resist the temptation to act on nonstrategic motivations



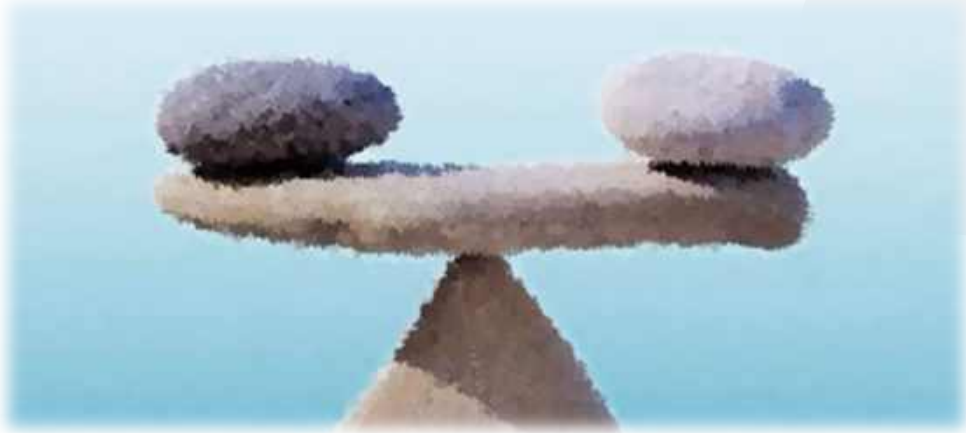
DUE PROCESS STILL APPLIES



- **Procedural fairness**
- **Violation Hearings**
- **Preventative Detention**
- **Jail Sanctions**
- **Scientific Challenges**
- **Termination**
- **Restrictions on Freedom**

What are some others?

LEARN TO PICK YOUR BATTLES AND WHEN AND WHAT TO NEGOTIATE



Problem-Solving approach – focuses on the interests of the party

- **Assertive**
- Integration of resources each side brings to the table so that each side ends up better off

OR

Adversarial approach – focuses on the rights and powers of the parties

- **Aggressive**
- Zero-sum, distribution of limited resources
- Each party takes a position of entitlement

What do you think gets the best results in a treatment court?

BUT BE ADVERSARIAL WHEN NECESSARY

An adversarial approach can be used in several circumstances: when a participant's liberty is at risk, when there is disagreement over a sanction, when there is a discrepancy in information, when there is a need to challenge a drug test result, when termination is being considered, or at any point where there are questionable legal or evidentiary issues.



**PROTECT
DUE PROCESS
AND CREATE
A RECORD**

EVERYONE CAN WIN: PARTICIPANT SUCCESS IS THE GOAL

When collaborating:

Put Your Bias Aside

- A problem-solving approach should get more for the participant and public safety
- Don't choose always choose the obvious answer

Be willing to compromise

- Think of alternative solutions and other options
- Focus on interests of everyone not just on the role they play
- Don't let your ego drive your position

Remember that your opponent is also your team member



“The only limits that exist are the ones in your own mind.”

PRACTICE TIPS FOR COLLABORATION



Clear role definitions and boundaries



Regular cross-training and joint workshops



Open communication channels



Shared commitment to justice and equity



Documenting agreements and decisions

CONCLUSION

COLLABORATION STRENGTHENS JUSTICE

DEFENSE ATTORNEYS ARE ESSENTIAL TO PROTECTING RIGHTS IN DRUG COURTS

BALANCING ADVOCACY WITH COLLABORATION IS KEY

ONGOING EDUCATION IS CRITICAL

CONTINUED DIALOGUE AND REFLECTION ARE ESSENTIAL

Thank You! Please share your feedback and any questions.



Jamie Kvistad

Assistant Chief of the King County Prosecuting Attorney's Office Juvenile Division, All Rise Faculty member, Adjunct Professor at Seattle University School of Law, Pro Tem Judge, and former Lead Defense Attorney, King County Drug Diversion Court.

jkvistad@kingcounty.gov



Heidi Rettinghouse

Chair and Supervisor of the Collaborative Justice Unit in the King County Prosecuting Attorney's Office, All Rise Faculty Member, Adjunct Professor at Seattle University School of Law, and Former Lead Defense Attorney, King County Mental Health Court and Veterans Court.

hrettinghouse@kingcounty.gov

REFERENCES

- ▶ Reference Guide for Defense Attorneys in Treatment Courts, 2025: [Reference Guide for Treatment Court Defense Attorneys - All Rise](#)
- ▶ Critical Issues for Defense Attorneys in Drug Courts, 2023, Revised 2025: <https://allrise.org/publications/monograph-series-critical-issues-for-defense-attorneys/>
- ▶ ABA Model Rules: https://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/model_rules_of_professional_conduct_table_of_contents.html
- ▶ All Rise Drug Court Best Practice Standards: <https://allrise.org/publications/adult-drug-court-best-practice-standards/>
- ▶ Ethical Considerations for Judges and Attorney in Drug Court, May 2001: <https://allrise.org/publications/ethical-considerations-for-judges-and-attorneys-in-drug-court/>
- ▶ Essential Lawyering Skills, Stefan Krieger and Richard K. Neumann Jr., (6th ed., Wolters Kluwer 2020).
- ▶ Therapeutic Justice: Crime, Treatment Courts and Mental Illness, Karen A. Snedker, (Palgrave Macmillan 2018).