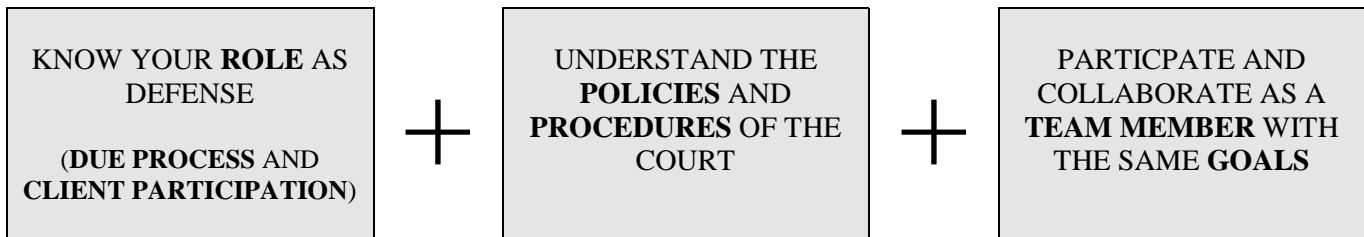


Attorney Guide
Avoiding Ethical Pitfalls for Defense Attorneys in Multi-disciplinary Team Settings

FORMULA FOR EFFECTIVE ADVOCACY IN PROBLEM-SOLVING COURTS (PSCs)



1. **Competence (1.1)**: *A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.*

Practice tip: This requires knowledge not only of criminal practice, sentencing ranges, and legal issues, but also procedures of the PSC, best practices, evidence based research, mental health diagnoses, substance use disorders, different treatment modalities, and available community resources.

2. **Scope of Representation (1.2)**: *A lawyer shall abide by a client's decisions concerning the objectives of representation and . . . shall consult with the client as to the means by which they are to be pursued.*

Practice tip: This includes your client's decision to enter a PSC, treatment planning, negotiation, and advice on non-compliance. Your duties are two part: explain the PSC to your client and guide their participation, while insuring their perspective is heard and their rights are protected within the team.

3. **Diligence (1.3)**: *A lawyer shall act with reasonable diligence and promptness in representing a client.*

Practice tip: Once your client enters a PSC, the goals of defense representation expands to include completion of the program. Determine if challenging a violation diverts your client from their goals.

4. **Communication (1.4)**: *A lawyer shall . . . promptly inform the client of any decision or circumstance with respect to which the client's informed consent . . . reasonably consult with the client about the means by which the client's objectives are to be accomplished; keep the client reasonably informed about the status of the matter. . . . A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.*

Practice tip: Establish a relationship with your client balanced by your role on the team. Prompt, frequent, and continuing communication will assist your ability to determine your client's objectives. Utilize communication skills to present information so that your client can make a genuine choice.

5. **Confidentiality (1.6)**: *A lawyer shall not reveal information relating to the representation of a client unless the client gives informed consent [or] the disclosure is impliedly authorized in order to carry out the representation*

Practice tip: Remind team members that confidentiality will transcend collaboration. At the start of representation, build trust with your client by explaining this duty. Encourage your client to participate, but do not be the conduit of confidential information to the rest of the team.

6. **Clients with Diminished Capacity (1.14)**: *When a client's capacity to make adequately considered decisions in connection with a representation is diminished, whether because of minority, mental impairment or for some other reason, the lawyer shall, as far as reasonably possible, maintain a normal client-lawyer relationship with the client.*

Practice tip: If your client cannot make a decision, determine if the disability is temporary or permanent and whether it is related to substance use or mental health. If necessary, take protective action under the rule and act in your client's best interest. Keep your client information confidential, but reveal it as reasonably necessary to protect your client's interests.

7. **Advisor (2.1)**: *In representing a client, a lawyer shall exercise independent professional judgment and render candid advice. In rendering advice, a lawyer may refer not only to law but to other considerations such as moral, economic, social, and political factors that may be relevant to the client's situation.*

Practice tip: Know the policies and procedures of the PSC to properly advise your client. Consider factors related to poverty, gender, race, trauma, mental health, and substance use. Address disparities that are harmful to your client, but balance competing interests between the group and the individual.

8. **Candor to the Tribunal (3.3)**: *A lawyer shall not knowingly make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer. . . [or] offer evidence that the lawyer knows to be false.*

Practice tip: You may develop a stronger bond with a client in a PSC, but you should never cross the line into dishonesty on your client's behalf. Confidentiality will supersede candor to the tribunal, if it is something that happened in the past. You should insist that your client be truthful in statements to the court, but this rule does not require full disclosure of information.

REFERENCES

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

Drug Court Best Practices:

<http://www.nadcp.org/wp-content/uploads/2018/03/Best-Practice-Standards-Vol.-II..pdf>

Ethical Considerations for Judges and Attorney in Drug Court, May 2001:

<https://www.ndci.org/wp-content/uploads/ethicalconsiderations.pdf>

Critical Issues for Defense Attorneys in Drug Court, April 2003:

<http://www.ndci.org/sites/default/files/ndci/Mono4.CriticalIssues.pdf>

Presenters:

Attorney, Jamie Kvistad: jamie.kvistad@kingcounty.gov

Attorney, Heidi Rettinghouse: heidi.rettinghouse@kingcounty.gov

King County Department of Public Defense, Seattle, Washington