

# **Understanding Team Member Ethics in Treatment Court**

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# Ethics

- **Ethics** are a system of moral principles and a branch of philosophy which defines what is good and bad for individuals and society.
- Ancient Greek word *ēthikós* (ἠθικός), meaning "relating to one's character", which itself comes from the root word *êthos* (ἦθος) meaning "character, moral nature"

# 5 elements of Ethics

- Principle A: Beneficence and non-maleficence.
- Principle B: Fidelity and responsibility.
- Principle C: Integrity.
- Principle D: Justice (fairness).
- Principle E: Respect for people's rights/confidentiality and dignity.

- **Ethics is knowing the difference between what you have a right to do and what is right to do.**

Potter Stewart

# Scenario 1: Fred Forgot

- You are a treatment provider in drug court. One of your drug court clients, Fred Forgot has a moderate SUD with alcohol and cocaine. You have made significant strides with the cocaine, but he occasionally show positive Etg results. You learn in treatment he has an untreated STD. While out for dinner with a friend Gail Gullible, she tells you that she just met a great guy named Fred Forgot and they have their third date in 2 weeks tomorrow, Tuesday. You do what and why??????

# Fred Forgot

- What are the issues?
- Do you tell the Drug Court team?
- How do you resolve the issues?

## Scenario 2: Judge Day

- In your felony Veteran's Treatment Drug Court, Judge Day has gotten particularly close to participant Ernesto, a former Seal. He has had Ernesto over to dinner, helped fix Ernesto's stove. On one occasion, Judge Day showed Ernesto a functional but antique gun, which he allowed Ernesto to handle. In court and in the public, it seemed to Ernesto that the Judge held him out as a hero or an example—which made Ernesto feel uncomfortable. When you learned all of this, you (identify your job)....

# Judge Day

- Issues
- Resolution

In re Day, 362 Or 547, 413 P.3d 907 (2018)  
(judge suspended from office for fraternizing  
with Veteran's Treatment Court participant,  
among numerous other ethical and candor  
issues)

# Scenario 3 Sussex County Drug Court

- Your drug court statute and policy states anyone who is convicted of a possession drug offense and has a SUD is eligible for drug court. Sam Snort is convicted at jury trial of possession and the drug use evaluation finds he has a moderate SUD. The majority of the drug court team members, including the DA, say no way – jury trial—no acceptance of responsibility. The PD says he is eligible and gets ostracized from the team. You as (disclose function) say ..... Issue and Resolution

- State v. Vargas, (N.J. Appellate Div. 2017)  
(Denial of drug court application merely because defendant went to trial and was convicted was error because “a court cannot impose a "trial penalty" on a defendant who chooses to invoke that constitutional right.”)

# *Respect the Role of the Defense*

National Legal Aid and Defender Association:

**Nothing in the problem solving court policies or procedures should compromise counsel's ethical responsibility to...challenge evidence or findings and the right to recommend alternative treatments or sanctions.**

# *ABA Standards*

## *The Defense Function*

- The basic duty defense counsel owes to the administration of justice and as an officer of the court is to serve as the accused's counselor and advocate with courage and devotion and to render effective, quality representation. ABA Model Rule 1.2; (“Defense Function Guidelines”)
- To competently represent client in DTC must familiarize self with treatment, procedures, bases for sanctions or termination, etc. (ABA Model Rule 1.1)

# Scenario 4 —The Yore County Drug Court

You have just transferred into a drug court which is run by Judge Bygone. The court has only been operational for one week. Vicky Vicodin, convicted of obtaining drugs by fraud and deceit has been applied for the drug court. She has a 5 year severe SUD and has been prescribed buprenorphine by her physician along with regular weekly outpatient therapy. The Dr. says he has worked with her for 2 years and this is the only treatment that curbs her addiction

# Scenario 4—The Yore County Drug Court

- Judge Bygone says- “no drugs to treat drug addicts in my drug court—we are not switching one addiction for another. No access to Drug Court until clean and no MAT in Drug Court”
- Break out by with at least one of each in group, if possible:
  - Judges/Defense Counsel/Prosecutor
  - Case managers/Treatment Providers
  - Probation/Law Enforcement
  - Administrators/Evaluators

# TASK

- **Identify the ethical issues** of your profession that are implicated or those of another's profession
- **Develop a continuum of action** to try to rectify the Judge's stance
- **Report out** the ethical issues identified and the continuum of action

# Process\*

- Respect Colleagues
- Educate First, before adversarial position
- Raise issue informally, and then formally, before there is a case in dispute
- Clarify the nature of the ethical conflict
- Take reasonable steps to resolve the conflict
- Always be prepared to step back to education
- Abiding vs. contributing to sub-standard care and practices

\*From Doug Marlowe MAT, Ethics and Law

# Advocacy\*

- Develop a record and retain all correspondence
- Sample letters and forms: <https://lac.org>
- Prescribing Medical Practitioner:
  - Qualifications and experience
  - Personally examined the participant
  - Diagnosis of moderate to severe opioid use disorder
  - Prognosis with vs. without MAT (or agonists)
  - Failed efforts at drug-free counseling or other medications, or likelihood of failure
  - Benefits substantially outweigh risks for MAT (or agonists)
  - MAT is medically necessary (or medically indicated)
  - Denial or forced withdrawal is against medical advice and falls below the recognized medical standard of care
  - Involuntary cessation is likely to significantly increase the risk of relapse, overdose, and death

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# Formal Advocacy

## **Motion to modify conditions (mandamus if denied)\***

1. Participant has recognized disability under the ADA (applicable state law, due process, or Rehabilitation Act if a federal court or action)
2. ADA applies to probationers, parolees and inmates
3. Participant requests reasonable accommodations, which may include observed administration or similar measures
4. MAT prohibition not reasonably related to the goals of supervision (rehabilitation, recidivism, public safety)
5. Blanket prohibition or tapering requirement violates the Drug Court Best Practice Standards
6. Imminent risk of irreparable injury from relapse, ensuing legal consequences, overdose, and/or death
7. Attach and reference affidavit(s) from medical prescriber

\*From Doug Marlowe MAT, Ethics and Law