Role of the Advocates

Hon. Carrie Garrow, Chief Judge, St. Regis Mohawk Tribal Court
Charlene Jackson, Jackson Law Firm, PLLC
What is our role in Traditional Court?

Prosecutors
- Public Safety
- Charges
- Plea Offers
- Sentencing Recommendations
- Victim’s Rights

Defense Counsel
- Individual Representation
- Due Process
- Zealous Advocacy
- Protection of Rights
What’s the Difference??

Traditional Court
- Focus: The crime
- Defendant removed from community
- Punishment
- Adversarial

HTWC
- Focus: Motivation/Behavior as cause of the Crime
- Defendant stays in the community
- Treatment/Rehabilitation
- Non-adversarial
Shared Core Competencies – All Disciplines

- Committed to program, mission and goals and fully participates
- Operate in non-adversarial manner, promoting a sense of unified presence
- In staffing, advocates for effective sanctions and incentives
- Monitor participant progress within boundaries
- Knowledgeable about addiction
- Participate in community education about program and efficacy

Source: NDCI - Core Competencies of Adult DCPI Trainings
Focus: Prosecutors and Defense Counsel

My role is ________.
OFFICE OF THE PROSECUTING ATTORNEY
Organizational Planning and Development

- Policies and Procedure Development
  - New Offenses
  - Proper Use of Information
  - Termination from HTWC
- Primary Contact with Law Enforcement

Source: The Role of Prosecutors in Drug Treatment Courts, American University, December 2016
HTWC Role

- Gatekeeper
- Promotion of non-adversarial approach, promoting public safety and protecting due process rights of the participant
- Sanctions and Incentive Recommendation
- Compliance with policies, procedures and participant’s rights including confidentiality.
- Victim’s Rights
- Compliance with Participant’s right to confidentiality

Source: NDCI - Core Competencies of Adult DCPI Trainings
Gatekeeper – Who’s In and Who’s Out

- Early days: Those who got in were based on who the prosecutor agreed to divert.
- Present:
  - Target population with pre-determined eligibility criteria
  - Participant evaluation using evidence-based assessments
- Monitor compliance during HTWC
- Commencement or Termination from HTWC

Source: The Role of Prosecutors in Drug Treatment Courts, American University, December 2016
Why Evidence Based Assessments?

- Target population
- Risk-Need
- Risk is contagious
- Consistency and Objectivity

Source: www.NDCI.org
Defense Counsel

- Represent and advocate for individual clients
- Protection of constitutional rights
- Zealous and individual representation
- Commitment to the program BUT still dedicated to individual representation
- Challenging position

Source: The Role of Defense Counsel in Drug Court: How to Provide Effective Representation from Initial Contact Through Program Completion, NDCRC.org webinar.
Organizational Planning and Development

- Develop Policy and Procedures
- Identify Target Population
- Identify Eligibility Criteria
  - Equal Access
  - Legal, Clinical and Suitability
- Sanctions and Incentives
- Identify Resources
Pre-HTWC Individual Representation

- Merit review of the case
  - Due Process
  - Trial or Plea Agreement
- Initial Screen
  - Client
  - Case
- Referral
- Entry into HTWC

- Explaining the Program: Expectations, Rules, Sanctions and Incentives
- Explaining Drug Testing
- Treatment aspects
- Consent Forms
- Waivers
- Honor/Respect Decision
Staffing

- Represent individual in staffing
- Notes – object to decisions and protect the record
- Probation contact – awareness of client progress
- Appropriate services
- Sanctions and Incentives
- Protection of Due Process – detention and/or termination
- Non-adversarial manner
Termination

- Due Process Protections
- Protection of Confidential Information
- Termination Hearing Rights protected
Once participant is accepted into HTWC – focus is on participant recovery, compliance with the law and reintegration into the community; not case merits, although procedure still important

Maintain distinct roles but have shared goal of addressing dependence and reduction/elimination of defendant’s presence in criminal justice system

- Prosecutor – Public Safety – eligibility and program compliance
- Defense – Due Process protections and encouraging full participation
Ideal Team Members - HTWC

- Experienced - Not a training ground or pre-retirement position
- Knowledge and understanding of addiction, treatment, and mental health
- Understanding of confidentiality requirements and privileged communication
- Ability to collaborate
We don’t have Defense Counsel!
Challenge of HTWC

- Primary responsibilities for defense counsel – protect the right to counsel ....
- ICRA and many tribal constitutions include the right to counsel, “at your own expense”
- All parties need to be mindful of rights in event they are deemed applicable – For example extended jurisdiction under TLOA
- Cultural and tradition - healing, peacemaking and restorative justice

Liaison vs. Direct Representative

- Direct rep:
  - Serves as participant's advocate prior to Wellness Court, during Wellness Court, and after Wellness Court
  - Interacts directly with participant

- Liaison
  - Multiple defense advocates represent and work directly with participants; one liaison serves on the team
  - While in Wellness Court, one defense advocate represents all participants, and collaborates with their other defense counsel if relevant
Works Cited

- Core Competencies Guide Adult DCPI Trainings.
- Yvonne Smith Segars and Mike Loeffler, *The Role of Defense Counsel in Drug Court: How to Provide Effective Representation from Initial Contact Through Program Completion*, NDCRC.org webinar