

Tribal Healing to Wellness Court Series

The Judicial Bench Book

TRIBAL HEALING TO WELLNESS COURTS: THE JUDICIAL BENCH BOOK



May 2016



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A product of the

Tribal Law and Policy Institute
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Tribal Healing to Wellness Court Publication Series

With support from the Bureau of Justice Assistance (BJA), the Tribal Law and Policy Institute (TLPI) has developed the following additional Tribal Healing to Wellness Court–specific resource publications to assist tribal governments and tribal justice systems in developing, enhancing, and sustaining Tribal Healing to Wellness Courts. These resources are available for free download at home.tlpi.org, on the Tribal Court Clearinghouse website (www.tlpi.org) and TLPI’s website, devoted solely to Healing to Wellness Courts: www.WellnessCourts.org.

Tribal Healing to Wellness Courts: The Key Components, 2nd ed.

This publication (*initially published in 2003; updated in 2014*) provides key components and recommended practices for tribal justice systems to consider as they design, develop, and implement a Tribal Healing to Wellness Court that meets the needs of their community. Organized around ten key components adapted for tribes, this publication describes the basic elements of a Healing to Wellness Court. The purpose of each component is explained, followed by lessons learned, and examples of real-world applications.

Overview of Tribal Healing to Wellness Courts

This publication (*initially published in 1999; second edition in 2002; third edition in 2014*) provides an overview of Tribal Healing to Wellness Courts. This overview discusses the history of the Drug Court movement and the adaptation of the Drug Court model for tribal justice systems. It provides an overview of some of the critical issues and challenges faced by Tribal Healing to Wellness Courts, including incorporating tribal custom and tradition, addressing the high volume of alcohol abuse cases, and addressing jurisdictional and resource limitations.

Tribal Healing to Wellness Court: The Policies and Procedures Guide

The Policies and Procedures Manual is the quintessential tool for the Healing to Wellness Court, documenting the structure and spirit of the Court. This publication (2015) provides an overview of the key considerations for what should be included in the manual, including team roles and responsibilities, phase systems, alcohol and drug testing, and statutory provisions. Rather than detailing one “model” manual, this publication provides excerpts from over fifteen operational manuals in order to preview the level of legal and cultural diversity that is possible within a Healing to Wellness Court.

Tribal Healing to Wellness Courts: Treatment Guidelines for Adults and Juveniles (update coming soon)

This publication (*drafted in 2002*) examines guidelines that have been developed to provide tribal communities with an overview of substance abuse treatment strategies as they have been developed by Drug Court programs. Tribal programs might consider applying these treatment strategies along with traditional healing practices. This publication examines key issues in developing treatment, creating a Tribal Wellness Court treatment program, adapting treatment program components, identifying special considerations regarding treatment services, evaluating strategies for maintaining sobriety (relapse prevention), and looking ahead.

Tribal Healing to Wellness Courts: Program Development Guide

This publication (*drafted in 2002*) provides step-by-step recommendations for the design, development, and implementation of Tribal Healing to Wellness Court programs from a practical standpoint. It is designed to assist steering committees and planning groups as they (1) use team-based approaches; (2) gain knowledge of Healing to Wellness Court concepts; (3) incorporate the ten key components; (4) help establish policies and procedures suitable to the needs of the tribal community; (5) guide the court to integrate available resources; (6) develop interagency agreements; (7) incorporate management information systems to track participants and services; and (8) identify possible problem areas.

Perceptions of Methamphetamine Use in Three Western Tribal Communities: Implications for Child Abuse in Indian Country

This publication (*published in 2007*) explores the increasing concerns raised by the emerging methamphetamine epidemic in Indian country. Professionals from three tribal communities detail their perceptions of meth use and implications for child abuse in the communities in which they work.

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Preface: Why a Bench Book?

Throughout our tenure as a technical assistance provider for the Bureau of Justice Assistance (BJA), the Tribal Law and Policy Institute (TLPI) is fortunate to meet and work with a number of Tribal Healing to Wellness Court judges and their teams.¹ In every site visit, webinar, training, or conference that we provide, we strive to share knowledge, update, and teach. Inevitably, however, the participants in our training and technical assistance activities, whether they are seasoned team members or just in the beginning stages, tend to do most of the teaching. Through our site visits, we have gained valuable insight as to why tribes are deeply interested in the Wellness Court process and have generally taken easily to its team-based approach. We also have discovered how these courts develop into unique and different forums from tribal nation to nation. This diversity, which is partially a result of the complicated legal landscape imposed on Indian Country, produces numerous unique tribal judicial structures with differing inter- and intra-governmental relationships. Suffice it to say, Healing to Wellness Courts and other “special” court dockets, such as Veterans’ Courts, DUI courts, and Mental Health Courts, have displayed tremendous tribal innovation in building government institutions. These judicial designs represent the best in ingenuity, leaving a long-lasting legacy for their communities and people.

Our work with tribes has given us a glimpse of a widely shared tribal vision for health, wellness, and peace. Tribal leadership on councils and judges in the courts stated their desires to develop new and different methods of processing cases involving alcohol and other drugs. TLPI is committed to this tribal vision and desires whole-heartedly to contribute to the growing body of knowledge. This Bench Book and our other TLPI Healing to Wellness Court publications are conduits for funneling this bulk of knowledge. We realize that Wellness Courts, their systems and processes, will continue to improve over time, and that we and others must continually contribute to the living body of knowledge that grows each and every day. We are honored to expand this body of knowledge through our publications and hope that our contributions will assist in the development and enhancement of Healing to Wellness Courts.

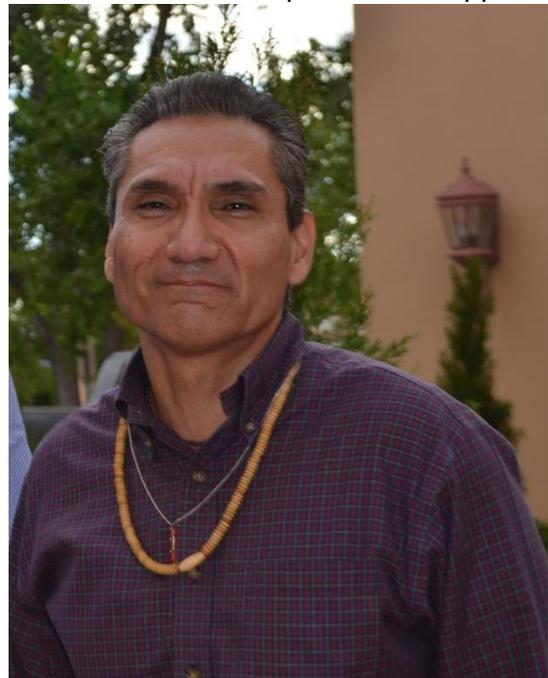
In presenting this Bench Book, we hope it accomplishes at least the following four objectives. First, we intend the Bench Book to provide judges general descriptions and guidelines of the principles and performance measures inferred from the Tribal 10 Key Components of Healing to Wellness Courts. Second, the Bench Book and Bench Cards are intended to concisely articulate key principles and performance examples, as well as universal Wellness Court processes and procedures. Third, the Bench Book and its Bench Cards are modifiable tools that are intended to provide quick information and references to assist Wellness Court judges in their unique role. For Word versions of the Bench Cards, please visit www.WellnessCourts.org. Finally, this Bench Book is written so that it can be used to educate Wellness Court team members, tribal leaders, partners, and the community about Wellness Court and the role of a Wellness Court judge. To realize these objectives, one significant difference from the first draft is that the Bench Book is

¹ TLPI has served as the U.S. Dep’t of Justice’s Bureau of Justice Assistance Tribal Healing to Wellness Court Training and Technical Assistance provider from 1998–2002, and from 2009–present.

written in first person. This Bench Book is intended to be more personable and interesting. This change is intended to further our sentiment, “We are in it together”; this is a text written to judges from other judges and technical assistance providers.

In my work over these many years, I have come to admire and respect all the judges I have met. They have demonstrated unyielding determination in their efforts to make good decisions, and do the right and most reasonable things that they hope generate a peaceful embrace for their jurisdictions. Most recently, my colleagues and I have seen this determination depicted and personified in the development of Healing to Wellness Courts. Taking what we have learned by working with judges, team members, and collaborating partners, TLPI happily presents this Bench Book to assist you, the Wellness Court judge, in playing the very important role you have. We hope this Bench Book contributes to the body of knowledge that serves to sustain the purposes and lead the fight Wellness Courts engage in each and every day. We contently add this Bench Book to the arsenal of tools collected in Tribal Healing to Wellness Court Technical Assistance Project Resource Publication Series.

Joseph Thomas Flies-Away, Chief Justice
Hualapai Court of Appeals



Introduction

A Tribal Healing to Wellness Court, also known as a Drug Court, is a vital institution of tribal government. A Wellness Court is not merely a tribal court that handles criminal and civil cases involving alcohol and other drugs. A Wellness Court is a collaborative tribal justice system that prescribes participants a comprehensive personal plan for wellness and holistically responds to their conduct over the course of months or even years. This customized judicial process creates a roadmap for its participants, their families, and the community. It is a path of diversion, utilizing both intensive support and intensive supervision. A Wellness Court serves as a weapon, a shield, and a stronghold for its clients to help them combat the diseases of addiction, alcoholism, and other adverse states of mind. By shielding, supporting, and arming clients one by one, a Wellness Court gives each participant a powerful and positive boost. The collective boost to the Wellness Court and clients over time can ultimately promote healing for entire communities, moving “the people” to a tribal vision of health, wellness, and peace. This backing is critical, for each tribal nation is only as steadfast as its citizens. Healing to Wellness Courts thereby contribute a significant force in each tribe’s on-going community and nation-building campaigns.

By applying a customized Drug Court approach, Healing to Wellness Courts enable each tribal community to cooperatively, aggressively, and precisely attack the source of devastation brought on by substance abuse and addiction. The strategies Wellness Courts apply in their efforts are unique and responsive to the issues and challenges particular to their home communities. Though there are similarities in the substance abuse struggles all communities and governments face, strategies that state courts utilize in their efforts simply cannot be carbon-copied and transferred to tribal court. The variety and diversity of Indigenous people(s) and Indian tribes in the United States necessitate Wellness Courts evolve in order to meet the needs of the people and communities they serve.

In the Healing to Wellness Court context, the judge or team of judges is relied upon to push the people toward gallant tribal visions. The judge serves as the captain or the coach of the team, or a general in times of battle, to draw elite forces together to defeat the known adversary. The judge is burdened with many expectations and responsibility because he/she is the voice and arm of law, of the court, and most importantly, of justice. A judge is revered, perhaps feared, because he/she is empowered to require certain conduct of individuals and can hold people accountable for their actions or inactions. A Wellness Court Judge, more poignantly, reinforces this judicial power by promoting and forging strong and formal links with various partners outside of the court, including the community’s healing and human services. The collaboration between judge and the Wellness Court team provides supportive and encouraging team-based case management, which results in a more powerful and valuable exercise of judicial supervision.

Tribal Healing to Wellness Courts: The Judicial Bench Book is formatted to pattern the Tribal 10 Key Components,² and is formatted to be useful in the various Wellness Court dockets, including adult, family, juvenile, DWI or DUI, and Veterans' Court. The Key Component framework is fitting not only for Wellness Court purposes, but can also be applied to any judicial system or dispute resolution process. The Key Components help to distinguish primary issues associated with judicial procedure, case management, and services. These issues are what create the critical nexus between justice, law, healing, and peace in tribal court.

The Bench Book consists of two primary sections. The first section provides examples of key component performance in relation to component principles. The second section portrays key Wellness Court processes and procedures. Both sections include Bench Cards intended to serve as tools that package relevant information in an abbreviated format. The Bench Cards are presented as examples, templates that can be tailored for your court. The information, prompts, queries, lists, reminders, and so forth can be customized to focus on central elements and unique characteristics of your court, such as its target population. Though your Wellness Court may work a little differently from others you visit, its overall battle objective is the same: to offer participants a stronghold to take cover, defy, and then—it is hoped—defeat the persistent and brute adversary: alcoholism, addiction, and other dysfunctions. A list of generally helpful resources that could not be included in the Bench Cards is appended.

This publication is also intended for non-judge team members. Consider translating the Bench Cards from the judge's perspective to different team members' perspectives in a narrative that speaks specifically to various roles in your Wellness Court. Whether you are a judge, team member, or partner, we are happy to present the Bench Book to you. We encourage you to adapt the Bench Cards for your specific purposes. We hope our final product assists you to serve as a compassionate, committed, and informed Healing to Wellness Court Judge. For modifiable Word versions of the Bench Cards, visit www.WellnessCourts.org.

² Joseph Flies-Away, Carrie Garrow, and Pat Sekaquaptewa, *Tribal Healing to Wellness Courts: The Key Components* (Tribal Law and Policy Institute, 2nd ed., 2014).

The Judge's Role in a Healing to Wellness Court

Presiding in a Healing to Wellness Court

As a Healing to Wellness Court Judge, you do not merely preside over a court case; you preside over a participant's healing journey. Depending on your jurisdiction, you are most likely responsible for myriad judicial, administrative, even mentoring duties. You are familiar with following appropriate court processes and procedures, and you require others to do the same. In Wellness Court, the Judge is accountable for similar responsibilities, but also for what is becoming more and more an unorthodox role of supporter, motivator, and champion. In the less-adversarial arena of Wellness Court, the neutral decision-maker judge demonstrates commitment to promoting wellness for each participant.

As Drug Courts were first being developed, many seasoned criminal court judges—our state court colleagues—were required to re-train from a non-adversarial perspective. It was—and may still be—a struggle for some assigned to state Drug Courts. Historically, the code of judicial conduct promoted a rigid adherence to distance and detachment from defendants and litigants. There could be no meeting of the minds and no softening of the heart between the judge and litigant. Judges were taught not to become involved with the thoughts, feelings, hopes, and dreams of the people who come before them. Subsequently, judges are often perceived as stiff, strict, and/or unbending from their “traditional” adversarial process. This state of mind, which is based on archaic Anglo Saxon rules and structure, bends toward retribution and incarceration; where there are winners and losers. Such thinking does not mesh with the mission of Healing to Wellness Courts.

Put simply, there are judges who are not suited for practicing with the compassionate and collaborative zeal that nurtures and sustains Drug Courts and Wellness Courts. Personalities, temperament, and too much time entrenched in the status quo contribute to whether a judge can commit to the goals and purpose of these specialty courts. If you are able to overcome the barriers separating you from a defendant/participant, first beginning by physically coming down off the bench at times to greet him/her, then you are a Wellness Court judge. There, in that shared space, you join the participant on the road to wellness, and your role is to support the participant's travels throughout the court-supervised healing journey.

In a Healing to Wellness Court, where the role of the judge and the nature of judicial leadership take this somewhat “out of the box” approach, your practice becomes less adversarial and argumentative, focused more on remedy and solution. Feeling more collaborative and cooperative, a Wellness Court forum functions less like a competition and more like a conference where discussion produces beneficial results. Consequently, this kind of forum extends your responsibilities and focus beyond the walls of the courtroom and court house; the playing field expands to include the community and neighboring jurisdictions, if necessary, to meet the court's goals and objectives and to serve its mission. The Wellness Court Judge is

more communicable with others outside of the court and appreciates the connections with programs that can help you make more meaningful decisions.

The Wellness Court judge is critically important to motivating participants to find a better path and to change their behavior and their lives. Wellness Court participants are generally in a debilitating situation due to alcohol and drug abuse. They have no power to take forward steps for themselves, their families, and their people. The range and depth of disempowerment is different for each participant. One participant might only “need a nudge from the judge,” while another requires a more forceful shove! For these individuals to have the best chance of continuing down a prosperous path, they must have the necessary support, skills, and defenses. You and your team help fashion these instruments and share insights with your participants in an attempt to enable them to lead a more fruitful life. Success emerges when the participant, in time, is motivated and can give back to his or her family, community, people, and tribe.



Justice Joseph Flies-Away, Hualapai Tribe; Judge Christine Williams, Shingle Springs Band of Miwok Indians Tribe; Judge Kimberly Martus; Judge Bradley Dakota, Keweenaw Bay Indian Community; Judge Chantel Cloud, Southern Ute Indian Tribe; Judge Theresa Barr, Prairie Band of Potawatomi Nation; Judge Charlene Jackson

The judge is accountable for not only keeping the participants on track; you are responsible for assuring that the Court keeps on course as well. In Indian Country there are a variety of team configurations, but the norm generally consists of the judge, court coordinator, prosecutor, public defender or advocate, treatment provider, probation officer, police officer, and other healing resources and human services staff. A team that wishes to be successful requires a practiced and strategic leader. The judge leads the team in its efforts to guide the participant in completing his/her program requirements and other court obligations, which together constitute his/her healing journey.

If you are the captain, a formidable player yourself, you create and call the plays and strategies of the game. If you serve as coach, you are responsible for guiding and directing only. We have seen Wellness Courts that are led by both captain and coach, and they work well in their jurisdictions and on their particular playing field. In either role, if you and your team are playing

well together, doing what is expected of each of you, it is easier to help direct participants' healing to wellness paths and journey.

You must strive to maintain the collaborative spirit and will to cooperate effectively, which is not only about player skill and competence. Team members must be generally familiar with each other's role and purpose in serving the Court's mission. You must ensure that every team member knows what each other team member does in order to find success. It is hugely important to gain the support of what can be likened to fans, which include tribal leaders and policy-makers, steering or advisory committee members, court partners, and community members. They must all have a general understanding of what your Wellness Court is attempting to do, the nature of the game, and the team members playing—and see a record of victories.

Through your own practice, you undoubtedly have realized that Wellness Courts promote healing, not punishment, by helping participants address addiction and other issues in order to lead healthier lives. From the participant's perspective, Wellness Court participation – the journey – is long and difficult. He/she may fail at first. Throughout their journey, the Court and the team have the goal to facilitate healing and restoration, which is only accomplished through collaboration.

You as judge play a pivotal role in the pursuit of justice in your jurisdiction. In this pursuit, you and your judicial counterparts everywhere exercise governmental authority on behalf of your nation and its "people." Your decisions not only impact individuals who come before you, but also can leave lasting impressions on families, communities, and government(s). This holds true whether you are appointed by the legislature to your position, or you are elected. No matter the path you took to sit as a judge in your respective jurisdictions, the role you play for the people – or your people particularly – demands diligence, discipline, dedication, and drive. Knowing this, you seek assistance from others and from tools such as this Bench Book, which can help you maintain high standards of performance that are founded on comprehensible and implementable principles.

NADCP Drug Court Standards³

The National Association of Drug Court Professionals (NADCP) has pooled numerous scientific studies concerning the best practices of adult Drug Courts. They have developed ten standards, peer reviewed by practitioners and researchers, that represent practices demonstrated to significantly improve outcomes. While none of these standards was based on research conducted in Indian country, we can nevertheless draw useful lessons to inform our own work.

III. Roles and Responsibilities of the Judge

The Drug Court Judge stays abreast of current law and research on best practices in Drug Courts, participates regularly in team meetings, interacts frequently and respectfully with participants, and gives due consideration to the input of other team members.⁴

³ *Drug Court Best Practice Standards, Volumes I and II* (National Association of Drug Court Professionals, 2013-2014).

⁴ *Drug Court Best Practice Standards, Volume I*, 20.

NDCI Core Competencies⁵

The National Drug Court Institute (NDCI) has identified nine core competencies that describe the role of the Drug Court Judge. They are detailed below and are included in the Key Component Bench Cards. They offer another useful perspective of the role of the Drug Court Judge.

Core Competency 1. Participates fully as a Drug Court team member, committing him- or herself to the program, mission, and goals, and works as a full partner to ensure their success.

Core Competency 2. As part of the Drug Court team, in appropriate non-court settings (i.e., staffing), the judge advocates for effective incentives and sanctions for program compliance or lack thereof.

Core Competency 3. Is knowledgeable of addiction, alcoholism, and pharmacology generally and applies that knowledge to respond to compliance in a therapeutically appropriate manner.

Core Competency 4. Is knowledgeable of gender, age, and cultural issues that may impact the offender's success.

Core Competency 5. Initiates the planning process by bringing together the necessary agencies and stakeholders to evaluate the current court processes and procedures and thereafter collaborates to coordinate innovative solutions.

Core Competency 6. Becomes a program advocate by utilizing his or her community leadership role to create interest in and develop support for the program.

Core Competency 7. Effectively leads the team to develop all the protocols and procedures of the program.

Core Competency 8. Is aware of the impact that substance abuse has on the court system, the lives of offenders, their families, and the community at-large.

Core Competency 9. Contributes to the education of peers, colleagues, and judiciary about the efficacy of Drug Courts.

⁵ "Core Competencies Guide Adult DCPI Trainings," National Drug Court Institute, <http://www.ndcrc.org/sites/default/files/PDF/Core%20Competencies%20Guide.pdf>.

Practicing Customary and Traditional Law in Tribal Court

A critical first insight, which is verified anecdotally from our work with tribal judges and Wellness Court teams throughout Indian Country, is that the innovative judicial institution of Healing to Wellness Court is embraced by indigenous customary and traditional law. Healing to Wellness Court coalesces two divergent natures, allowing both to exist in harmony because the Wellness Court's rigor and direction is guided by each Indian nation's culture, tradition, and vision.

Always be mindful that you are not presiding over an adversarial arena in Wellness Court. Notions of punishment, retribution, and detention are not entirely replaced, but are supplemented with aspirations for peacemaking, restoration, healing, and peace. Similar to how you apply a law to a set of facts, endeavor to acknowledge and appreciate when these aspirations, attitudes, and cultural differences manifest in Wellness Court.

For example, teamwork and collaboration, as well as restoration and healing, are common tenets of indigenous custom and tradition. Recognition of the special connection between dispute resolution and peace, restoration, and healing encourages tribal courts to apply ancient practices to modern legal institutions like Wellness Court. Efforts in mediation, dispute resolution, and peacemaking have increased over the years, as tribes are encouraged and supported with funding to create institutions that "fit who we are and what we need." These judicial institutions and related procedures provide opportunities and impose requirements to practice customary and traditional law in tribal court.

Judges and team members have demonstrated how these modern institutions pursue wellness for their participants; how they help mend disconnections, seek harmony, and build balance in order to make people whole. These practitioners value the importance for traditional dispute resolution authorities to seek the underlying causes of disputes or sickness; to discern the real sources of hurt that create imbalance. Once the source(s) of the symptoms are known, which together form the basis of disease and dysfunction, potential remedies can be pursued. In the case of substance abuse, healing is described as not only a function of a regimented phased treatment, which often includes physical detox and fitness, but also involves mending broken relationships, finding one's center and/or inner strength, and forging new and stronger ties with the outer and inner worlds.

Interestingly, though not surprisingly, many of the mission statements we have seen in our work can be summarized as "the promotion of healing and restoration for clients, their families, and the community." This mission emphasizes the belief that healing and restorative justice are supported by indigenous custom and traditional legal perspectives. It is supportive of—and promotes aspirations for—individual and family wholeness, community wellness, and peace. Certainly similar Wellness Court procedures and processes have developed over time in each nation, but each court works a bit differently when striving to affect personal and communal balance in the physical, intellectual, spiritual, and emotional spheres of a participant's life. These aspirations originate in both traditional law and values that motivate individuals, families,

and extended families to support one another, work together, and appreciate their relationship with each other and all things of the world.

As you and other judges have realized from experience, many of the people who come before us lack positive motivation. They have lost their personal power, and no longer have a vision to sustain healthy living. There is little reverence for life, as theirs have been difficult, slow, and painful due to substance abuse and other issues. Wellness Court gives you and your team the opportunity to poignantly address a participant's problems by better knowing what motivates him or her. This knowledge makes it easier to develop a specific treatment or wellness plan that encourages and supports that person to begin living a productive and healthy life. For some, motivation is easily sparked by participating in healthy individual and community activities, like playing in sports or going to church. For others, motivation is reignited by engaging in ceremony.

In visits to tribal sites, we saw that the practice of ceremony is encouraged and sometimes expected by the Wellness Court. Ceremony is believed to promote healing for the body, mind, and heart. We heard about special and reverent ceremonies that soothe negative feelings, mend lost ties and disconnections, and again help make a person whole. Ceremony is used as a medicine to bring together a family, a clan, a band, or village of people; and heal a group that has experienced struggles and separation. Ceremony is coalescing perhaps because it might include the retelling or remembering of creation and migration stories that explain where the people originate from. These and other stories provide both the context for the listener and the invaluable opportunity to absorb the imbedded lessons and expectations of how "the people" should live together in productive and prosperous ways. It is exciting to contemplate how the multitude of tribal cultures in the United States may eventually re-create a set tribal ceremony. There is an incalculable range of potential practices; conduct based on each peoples' traditional values and philosophies. Be mindful, however, that ceremony may require formalities and respect, as well as acknowledgment of the person who facilitates the ceremony. As those of you who preside at home are aware, there may be a difference of opinion about what spiritual advisor to utilize. Be thorough, attentive, and thoughtful when adding ceremony to your court's healing resources.

Lastly, in your continued work with your Wellness Court, appreciate how your Court shares in the similar ideals of traditional dispute resolution methods. Keep in mind the cultural aspects and resources that are involved. Always listen, participate respectfully, and remember how your Healing to Wellness Court serves as a modern and culturally accordant means of practicing customary and traditional indigenous law.

Promoting Healing and Treatment

One of the defining features of Healing to Wellness Court is that it relies on the Judge to promote healing and treatment for clients. The stronger the union between the Court and treatment providers, the greater your access to resources to shepherd them through what may be the most difficult part of their lives. This accessibility requires communication with those outside the Court, which may feel odd or unnerving at first. In time, however, most judges find the work satisfying, especially after experiencing examples of participants reconnecting to a stronger personal will, his/her family, and the community. Judges tend to lose their apprehension after experiencing positive outcomes for their clients; when they forge and keep relationships with healing resources and people.

Wellness Court has been used as means for its clients to develop healthy relationships. Wellness Court may very well be a first viable and cohesive connection for clients, not only to others but also to themselves. The self-appreciation and self-esteem to be gained by a participant in Wellness Court may have never before been experienced. You and the team facilitate this reconnecting process. To operate as such a conduit, you must be willing and committed to finding resources that meet the basic needs that promote wholeness for participants. Doing so includes not only assuring treatment and healing services, but also determining what other basic human services are required to empower participant growth. Basic needs such as food, clothing, housing, medical attention, transportation, education, training, and employment all must be considered and eventually met to fully guide participants back onto a better path—a life journey that can start one step at a time.

Wellness Courts merge treatment and the justice system to facilitate healing and restoration. You are the first link to keep the two together. Although learning more about the treatment field and available modalities adds to your list of responsibilities, the requirement becomes less burdensome as you see the needs of your clients met. However, tribal treatment options can be limited, and so the Wellness Court can provide only what is available. Some Wellness Courts have been successful at modifying existing alcohol and drug education, counseling, and therapeutic processes so that they are relevant and effective in native communities. Such successful modifications include the use of the “Red Road” approach, which focuses on the historical use and impact of alcohol on native communities;⁶ the use of “Talking Circles” as group therapy;⁷ the use of “Sweat Lodges” for support groups; and the integration of ceremony throughout the treatment phases and graduation. Some courts have asked their participants to put together a family tree. Others have incorporated traditional clans or stories into their phases. Also successfully put to use are a variety of outdoor, wilderness adventure, or “Culture Camps,” also known as “experiential therapy” to incorporate traditional instruction in hunting, fishing, gathering, ranching, farming, and other subsistence and ceremonial activities. You must

⁶ See, e.g., White Bison Inc. ed., *The Red Road to Wellbriety in the Native American Way: Recovering and Healing from Addictions Utilizing Native Culture* (Coyhis Publishing & Consulting, Inc., 2002).

⁷ See, e.g., Wanda D. McCaslin, ed., *Justice as Healing: Indigenous Ways: Writings on Community Peacemaking and Restorative Justice from the Native Law Centre* (Living Justice Press, 2005).

get to know your community and the people to find specific ways that might work better with your Court and clients.

Described further in the Bench Cards below, and our other publications,⁸ a well-structured and phased treatment program is the foundation for a successful Healing to Wellness Court. You must take extra steps to educate yourself and to cross-train your team in the different components of your treatment process, and how they relate to the phases. Remember that treatment-specific components such as counseling can be supplemented by other wellness activities that can be included in each client's case plan. The initial planning of a Wellness Court must include inventorying all available healing resources and treatment options. This includes counseling, classes, groups, traditional activities, community activities, other educational and therapeutic activities, mentoring, and support groups. The inventory helps to supplement the standard-phased treatment calendar of activities for your clients.

Each phase of a Healing to Wellness Court focuses on a piece of the healing journey. Varying in number, most Wellness Courts process the participant through four phases, the first of which involves detoxification and cleansing the body and mind. The second phase focuses on growth, whereby the participant acquires new skills to help battle addiction. The third phase focuses on practicing these skills. The last phase consists of sustained use and aftercare, whereby the participant demonstrates that he/she knows what to do when the threat of relapse (renewed use of alcohol and/or drugs) occurs and can progress on the journey to wellness with less support from Wellness Court staff. It is a time when the participant confronts the fear and excitement of being on his/her own and being successful. Following aftercare, many Wellness Courts encourage continued contact with the Court by serving as mentors or engaging in sober activities with other alumni.

Cognitive treatment models appear to offer a greater likelihood of success than other models currently in use.⁹ Your team may choose to import Western-style group therapies such as cognitive behavioral therapies. These therapies consist of facilitated workbook exercises geared toward identifying and improving the decision-making skills of participants, and if a juvenile or family Wellness Court, for their parents and families. Alcohol and drug abuse impair and damage the decision-making areas of the brain; therefore, focusing on those areas may assist in the healing process. Group therapy also tends to be beneficial, providing positive peer pressure and support generated by others who share in similar experiences and know the problems in a way the counseling staff may not.

⁸ See the Tribal Healing to Wellness Court Publication Series, www.wellnesscourts.org/enhtraining.cfm.

⁹ Douglas B. Marlowe, J.D., Ph.D., and Judge William G. Meyer (Ret.) eds., *The Drug Court Judicial Benchbook* (National Drug Court Institute, 2011), 73, citing Jon Morgenstern and Richard Longabaugh, "Cognitive-Behavioral Treatment for Alcohol Depended: A Review of Evidence for its Hypothesized Mechanisms of Action," *Addiction* 95 (2000), 1475-1490. The National Indian Health Board has put together a list of evidence-based practices, practice-based evidence, and promising practices for suicide and substance abuse, including specifically for American Indian/Alaska Native. "Prevention Practices Implemented within the MSPI Project," National Indian Health Board, www.nihb.org/behavioral_health/prevention_treatment_practices_msipi.php.

It is evident that a Wellness Court judge holds firmly the belief that treatment can work. You must convey this belief to your team, in word and deed. The National Institute of Drug Abuse has shown that treatment—even when the criminal justice system makes the participant’s involvement involuntary—can significantly increase the ultimate success of drug treatment interventions.¹⁰ However, treatment is more complicated than we might have imagined. Alcohol and drugs may leave the body in as few as 30 days,¹¹ but the brain may be affected for years, particularly after many years of use.¹² Alcohol and drug use can coincide with the use of tobacco. Tobacco can cause devastating physical harm. Those who smoke tobacco tend to drink twice as much as non-smokers.¹³ This treatment issue is of the sort you and your team must understand and address in individual treatment plans. If you are a smoker yourself, as are some of your team members, be mindful of your use in the context of what is being taught to your court clients. It may appear hypocritical to expect certain behavior of clients while demonstrating the opposite, which can chip away at the Court’s integrity.

Treatment is an essential and an integral part of a Healing to Wellness Court. Without strong treatment components, the Healing to Wellness court is like any other criminal diversion or probation program. This means that to have true success, the judge must ensure that the whole team understands treatment, in general terms, and that team members have a common and shared philosophy about how to support the healing and wellness of Court participants. You and your team should attend trainings regarding treatment and healing services in order to advance their knowledge and expertise.

¹⁰ *Principles of Drug Addiction Treatment: A Research-Based Guide* (National Institute of Drug Abuse, 3rd ed., 2012), 5.

¹¹ *Treatment Improvement Protocol (TIP) Series, No. 47* (Center for Substance Abuse Treatment, Substance Abuse and Mental Health Services Administration, U.S., 2006), Appendix B.

¹² Marlowe and Meyer, eds., *The Drug Court Judicial Benchbook*, 69.

¹³ J. P. Britt and A. Bonci A, Alcohol and Tobacco: How Smoking May Promote Excessive Drinking, *Neuron* 79, no.3 (2013): 406–407.

Treatment Considerations

- Clinical screening (*Does it appear that the participant has a problem and is s/he suitable for the Court?*)
- Clinical assessment (*What is the participant's diagnosis and what specific types of treatment are needed?*)
- Treatment planning (*What tailoring must be done to fit the participant's specific needs? What are the participant's strengths and weaknesses?*)
- Treatment in phases (*What educational classes, counseling, group therapy, mentoring, traditional and other educational or therapeutic activities, and support groups to avoid relapse are available to include in treatment plan?*)
- Individual counseling (*What is its purpose and goal for each step or phase?*)
- Group therapy (*What type of group therapy is used and for what purpose?*)
- Relapse prevention (*What types of counseling, activities, and support groups are available to help a participant identify what causes the urge to drink or use drugs, and how can he or she plan to manage these urges?*)
- Family issues (*Are family or household members engaged in treatment activities with the participant? Are alcohol- and/or drug-abusing family or household members eligible and amenable to Wellness Court participation? Are other treatment services available to family or household members?*)

What's in a Name?

Drug Court is the name first utilized by state courts when adopting the restorative, team-based model. *Healing to Wellness Court* is the term suggested to better describe the Court's goals in Indian country. Some tribes named their process *Wellness Court* or *Alternative Court*, and others name their new judicial processes in their native languages. As tribal jurisdictions identify and brand their courts in their own way, they take ownership of these courts and become unique and special to their communities and people. When developing the Court's mission, vision, and goals, consider the name of the Court, how it relates to the rest of the tribal judiciary, and how it relates to the overall community.

The Judge's Role and the 10 Key Components: Principles and Performance

1. The Judge as a Team, Community, and Nation Builder (The Convener)

Key Component #1: Individual and Community Healing Focus

Tribal Healing to Wellness Court brings together alcohol and drug treatment, community healing resources, and the tribal justice process by using a team approach to achieve the physical and spiritual healing of the individual participant, and to promote Native nation building and the well-being of the community.

The principles and performance of Key Component 1 refer to teamwork, union, coordination, collaboration, and alliance. They entail gathering healing resources and convening key positions for the purpose of supporting healing, justice, wellness, and peace. If you have been the judge since the planning of Wellness Court, you are a Builder-Convener.

You, as a Builder-Convener for your Court, must take the necessary first steps with collaborators to address a community need. This means selecting team members from each discipline; scheduling planning meetings; and helping to develop a team structure. For purposes of Wellness Court, the action taken was specifically tailored to meet a need caused by substance abuse and addiction. The Judge as convener compels you to recognize the many allies and perspectives needed to sustain the remedial efforts of Wellness Court. For example, your diplomatic skills will be necessary for the government that shares jurisdiction over your Wellness Court participants. Sustainability of your Wellness Court calls for candid inter-sovereign communication that produces tools that contain the agreements that each side makes.

First, you must focus on what must occur inside tribal government – the necessary intra-communication – between various offices and agencies that agree to work with your Court. While in some tribal jurisdictions it may not seem necessary to create writings or documents to detail relationships and responsibilities, our experience has shown that it is certainly useful to describe clearly and early the manner of the relationship between the Court and your partners. One method of surviving the high staff turnover rate of tribal government is by maintaining written agreements that outline the partners' particular role(s) and your own. If agreements are made on handshakes, consider whether your partners' predecessors will have enough to continue the work. Or, perhaps, consider the impact of such an arrangement on a participant who loses some element of service due to the lack of a written contractual relationship. You should consider Memorandums of Understanding (MOUs) or like documents with non-tribal programs as well. Clear, concise statements that depict individual and collective duties not only support program operations, but also clarify commitment. Once you have written documents in

place, the work is not done. Such MOUs will need to be reviewed to determine if they still reflect the nature of the relationship.

The principles and performance of Key Component 1 accentuate the continuing motivational team building for your team, other court staff, and partners. In Wellness Court, it becomes necessary to reinvigorate the individual and collective dedication of your team and related court staff to their responsibilities and duties. You should integrate team building into your annual training schedules to help keep your team's spirit strong and mobilized. This is particularly crucial where staff turnaround is frequent, and there have only been a few of you working together for a long time. The work of a Wellness Court is time consuming and stressful. It tackles other peoples' issues, and on some days the negative overcomes the positive. This climate chips away at the spirit and can be harmful. One of the most important actions for you as a Wellness Court Judge may be to periodically assure yourself and your team to gather to refuel and reignite the flame that gives you strength to work diligently on your Court's success.

Your Wellness Court benefits from strong, stable, and strategic relationships with the state and local governments, and with non-profits, and other service providers. Inter-sovereign collaboration assures that the court—indeed, the tribe—provides the greatest range of services to its participants and their families. Regular information sharing among the court, the team, tribal leaders, and all partners will enhance overall communication and provide networking opportunities for service-provider representatives. Team-based and active inter-governmental relationships are valuable to assure that court-ordered services are available to program participants. Tribal-state collaboration helps to improve program operations and to inspire further program development. Scheduling an annual summit, for instance, of all Wellness Court partners can help facilitate the planning and coordination of requisite services. Involving an interactive social event such as a luncheon or potluck may set an even more collaborative mood and atmosphere.

The Court should continue nurturing strong relationships with all social service providers that are assisting participants and their families, when applicable. Open and continual communication with these agencies will strengthen interagency understanding and commitment. Periodic formal and informal presentations to these agencies will sustain the coordination to assure that participant families are supported, supervised, and monitored adequately. An overview to social services partners should review key Wellness Court policies and procedures that require their assistance and contribution. Greater awareness will foster support and appreciation for the Wellness Court, particularly for its healing intent.

HEALING TO WELLNESS COURT KEY COMPONENT BENCH CARD

1

Tribal Healing to Wellness Court brings together alcohol and drug treatment, community healing resources, and the tribal justice process by using a team approach to achieve the physical and spiritual healing of the individual participant, and to promote Native nation building and the well-being of the community.

Key Concepts, Considerations, & Questions

Community & Nation Building	Does the Wellness Court contribute to 1) human capital/citizen development and 2) community peace and well-being?
	Does the Wellness Court 1) inspire innovation, and 2) require unique governmental institution(s), structure(s), and/or relationship(s)?
Healing Focus	Does the Wellness Court cultivate collaboration between treatment, healing resources and the judicial system? Does the Wellness Court enhance the reach and impact of existing human resources and service providers?
Teamwork & Collaboration	Does the Wellness Court promote and model teamwork? Does the Wellness Court stimulate and sustain team-building?

“Excerpt from Statute, P & P, Court Rules, etc.”

“Alumni Quote”

JURIST – JUDICIAL ROLES & RESPONSIBILITIES

Functions and Formalities	Community Connection – Present Wellness Court to Community Tribal Council Connection – Solicit official approval from tribal leadership Court Capability – Assure adequate resources are gathered to implement Wellness Court	<input type="checkbox"/>
Legal Process & Procedures	Propose alternate procedures, particularly case transfer - between dockets/other Courts Promulgate alternative procedures by Court Rule Publish procedures thoroughly (recognizably distinct from the norm)	<input type="checkbox"/>
Ethics & Protocol	Identify and disclose potential conflicts of interest Allow for teaching and learning when apparent and applicable Distinguish between Court determinations and decisions entered for Defendants and Participants Assure knowledge, familiarity, and relationships with Citizens/Community cause no bias	<input type="checkbox"/>
Legal Context & Considerations <i>(Assure no conflict with existing law)</i>	Constitution Code Council Resolution Common Law Court Rule Custom	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>

<u>SUGGESTED</u>			Related NADCP Core Competency
Practices	Team Building Activity	<input type="checkbox"/>	# 7 - Judge “effectively leads the team to develop all the protocols and procedures of the program.”
	Community Presentation	<input type="checkbox"/>	
Training	Advisory/Steering/Community Committee Meeting	<input type="checkbox"/>	
Coaching	Regular Team Meeting	<input type="checkbox"/>	
Support	Training (update)	<input type="checkbox"/>	
	MOUs/MOAs (update)	<input type="checkbox"/>	
			See Process & Procedure Bench Card 11 & 13

Resources/Technology www.WellnessCourts.org, www.home.tlpi.org, www.ndci.org, www.american.edu/spa/jpo/initiatives/drug-court/, www.ndcdr.org, www.drugcourtonline.org

“A Tribal Court is a critical player in the process of nation building; it advances sovereignty, helps uphold the constitution . . . preserves tribal customs . . . enhances a Native nation’s self-governance capabilities and expands the possibilities for the nations’ future.”
Flies-Away, Garrow, & Jorgensen

2. The Judge as a Protector of Rights

Key Component #2: Referral Points and Legal Process

Participants enter Tribal Healing to Wellness Court through various referral points and legal processes that promote tribal sovereignty and the participant's due (fair) process rights.

The principles and performance of Key Component 2 pertain to how clients and cases are referred to and enter your Healing to Wellness Court. They push to design legal procedures and identify other relevant tribal and non-tribal governmental processes. Most importantly, you play the lead role in assuring that your participants are afforded their due process rights and fully understand what rights they may waive by entering Wellness Court.¹⁴ This generally entails ensuring that your participants receive notice, the right to be heard, and a fair procedure. Overseeing this process is particularly important for instances of substantive impact, such as possible termination. You can support due process further by making every effort to assure that team members are equally clear on their programmatic and individual responsibilities to the Court and the participant.

Clarity and consistency in how things work in your Court and any court keep misunderstandings and consequent legal action to a minimum. Early and clear understanding from the multiple perspectives represented on your team mitigates later damage. A common problem experienced by Healing to Wellness Courts nationwide is that defendants-participants misunderstood that they relinquish certain rights as a result of participating in the Wellness Court. This misunderstanding can occur even at tribes where public defense is provided to all members. A common complaint is that participants did not understand that they were subject to sanctions for non-compliance that included detention. Whether your Court provides a public defender or not, due process requires you to make sure defendants facing charges and other misconduct are aware of their legal situation, their options, and the potential consequences of their decision. Once a defendant becomes a participant, you must take every means necessary to ensure that the participant, particularly one without counsel, understands the legal process he/she submits him/herself to as a participant in your Wellness Court.

Although Wellness Court operates differently from the status quo and appears to some to be too informal and personal, there nevertheless must be rules and procedures. By fashioning procedural rules to protect participants' rights, you simultaneously protect the integrity of your Court. As the judge, you must remind individuals that procedures are necessary for everyone's protection. You then must lead the way in consistently following those procedures. Clear rules of specific processes ultimately assist your Court's participants in following the healing path prescribed to them.

¹⁴ Tribal courts are required to ensure the due process of law. Indian Civil Rights Act of 1968, 25 U.S.C. § 1302(a)(8).

A Protector of Rights:

- Implements rules to preserve participants’ rights and keep them on their healing path;
- Implements rules to preserve the integrity of the court;
- Leads the way in consistently applying the rules.

The referral points, informal mechanisms, and legal procedures that direct candidates to your Wellness Court can affect the volume and size of the participant pool. When the number of candidates appears to be high, or begins to exceed the Court’s capacity, the conduit through which participants come to your Court can be constricted. If it seems that the Court can handle more participants, then the conduit(s) can be opened slightly. You open or restrict by outlining specific procedure for referrals. This procedure includes who and what cases your Court works with; what referrals the Court accepts. Issues of entry and eligibility, which are discussed in Key Component 3, require you to be clear in your descriptions and should be reviewed annually and when your participant numbers are low.

For defense counsel and advocates to adequately serve the interests of their clients, they must be explicitly familiar with your Court’s rules, regulations, policies, and procedures. Advocates must be clear about their role and responsibilities in your Wellness Court, particularly concerning how their role differs from that of the criminal court or other adversarial forum in your jurisdiction.

A good advocate will question how your Court assures its clients’ due process rights; how they are considered and safeguarded. Clarity in your process and procedures will increase participant participation. It is important for your participants, as well as your defense counselors, to be aware that the sanctions imposed by your Wellness Court are distinct from criminal court sanctions. If applicable, he/she should be informed that they may be terminated for any new charges files and prosecuted against him/her. Consent forms concerning confidentiality and searches, as well as a participant handbook detailing these waivers and Wellness Court requirements, are tools we can use to better ensure the participant is informed.

The responsibility of ensuring that your participants are aware of their due process protections does not end once the participant enters the Wellness Court. Due to the nature of substance abuse and its effect on the brain, new participants may still not adequately appreciate the consequences of non-compliance, including conduct that could result in termination. For long-time users, cognitive functions are impaired. These participants benefit from repetition—individually and collectively—through general refreshers given to all participants every now and then at a review hearing.

The Judge's Role in Protecting Participants' Rights: The Healing to Wellness Court Judge is responsible for motivating and guiding the healing journey of program participants, as well as for protecting their rights. To this end, the Judge must assure that the participant:

- Is treated fairly and respectfully by court staff, team members, and other participants
- Has his/her privacy protected in all aspects of the program and its procedures, particularly in the participant's treatment plan
- Is provided a means for expressing concerns and grievances regarding the Healing to Wellness Court processes and procedures
- Understands the rules and regulations of the Healing to Wellness Court
- Plays an active role in the creation of his/her own treatment plan
- Understands his/her treatment plan and all of its components
- Is fully aware of the consequences for noncompliance of the treatment plan, particularly sanctions that can result from noncompliance
- Is not denied an advocate so that his/her understanding of the various aspects of the Healing to Wellness Court Program is clear
- Understands the schedule of incentives and sanctions to be given for compliance or noncompliance to his/her treatment plan
- Graduates from the program if he/she completes all components of their treatment plan as well as other program requirements

HEALING TO WELLNESS COURT KEY COMPONENT BENCH CARD

2

Participants enter Tribal Healing to Wellness Court through various referral points and legal processes that promote tribal sovereignty and the participant's due (fair) process rights.

Key Concepts, Considerations, & Questions

Referral Points	Is the referral process formal or informal? (by word/paper?)
	Is the referral process institutionalized? (will it last?)
	Are referral points identified, associated with offices and/or individuals?
Legal Processes	What legal procedures are in place/needed?
	Do team members have working knowledge of related court procedures?
	Do procedures support due process and civil rights?
Inter-Sovereign Collaboration	Do other sovereigns exercise jurisdiction over Tribal members?
	Do intra and/or inter-sovereign transfer protocols require formulation?
	Are MOU/As feasible, or required to further Court's purpose?
Due Process	Are participants' due process rights fully protected?
	Are participants made aware of waivers of due process?

“Excerpt from Statute, P & P, Court Rules, etc.”

“Alumni Quote”

JURIST – JUDICIAL ROLES & RESPONSIBILITIES

Functions and Formalities	Community Connection – Familiarize community members on HOW one gets into Wellness Court Tribal Council Connection – Keep Tribal leadership informed of judicial policy and/or rule-making Court Capability – Maintain constant communication with team member agencies/partners	<input type="checkbox"/>
Legal Process & Procedures	Illustrate referral process in flow chart/diagram – [cite to responsible party/legal authority] Assure referred candidates completely understand the Wellness Court process Develop Court forms that facilitate referral process and other Court procedures For each procedure, collect the data that best assesses process and outcome	<input type="checkbox"/>
Ethics & Protocol	Discuss team member professional ethical standards where appropriate Maintain a referral process that protects candidate/participant confidentiality Respond readily to team member ethical concerns/complaints [document process and resolution] Respond to complaints regarding team member behavior swiftly [review grievance procedure]	<input type="checkbox"/>
Legal Context & Considerations <i>(Assure no conflict with existing law)</i>	Constitution <input type="checkbox"/> Code <input type="checkbox"/> Council Resolution <input type="checkbox"/> Common Law <input type="checkbox"/> Court Rule <input type="checkbox"/> Custom <input type="checkbox"/>	

SUGGESTED

Practices	Review referral process regularly <input type="checkbox"/>
	Maintain communication w/ referral points <input type="checkbox"/>
Training	Educate team/community about due process <input type="checkbox"/>
Coaching	Analyze police contact and arrest data w/ team <input type="checkbox"/>
Support	Respond to due process/other complaints <input type="checkbox"/>

Related NADCP Core Competency

7 - Judge “effectively leads the team to develop all the protocols and procedures of the program.”

See Process & Procedure Bench Card 11 & 13

Resources/ Technology www.WellnessCourts.org, www.home.tlpi.org, www.ndci.org, www.american.edu/spa/jpo/initiatives/drug-court/, www.ndcdr.org, www.drugcourtonline.org

“A Tribal Court is a critical player in the process of nation building; it advances sovereignty, helps uphold the constitution . . . preserves tribal customs . . . enhances a Native nation's self-governance capabilities and expands the possibilities for the nations' future.”

3. The Judge as Sentry and Gatekeeper

Key Component #3: Screening and Eligibility

Eligible court-involved substance-abusing parents, guardians, juveniles, and adults are identified early through legal and clinical screening for eligibility, and are promptly placed into the Tribal Healing to Wellness Court.

The principles and performance of Key Component 3 prompt you to consider and reconsider who and what cases are admitted into your Healing to Wellness Court. The eligibility criteria specify the target population and qualified cases and/or conduct upon which your Court concentrates its efforts. With precise understanding of the criteria, you and the other team members symbolically stand sentry at the Court's gate, allowing entry only to those the Court can serve.

Eligibility criteria impact your Court considerably. The criteria not only control the referral flow of eligible candidates at the gate of your Wellness Court, but also affect programming and treatment needs. Tightly tailored eligibility criteria adopted by Wellness Courts in order to solicit a specific clientele make the pool of eligible candidates small. More general requirements increase the pool. Research shows that drugs courts tend to have the most powerful effects for drug offenders who are both high risk and high need, meaning those with serious substance abuse disorders *and* a history of a poor response to standard treatment and/or antisocial personality traits.¹⁵

If you were not a convener judge and not involved with the initial determination of your Court's current eligibility criteria, you may be at a loss to understand the actual basis for the criteria. That should not impede your efforts. We have seen Wellness Courts continually rethink who and what conduct it allowed into their Court. It is beneficial and encouraged for you to discuss whether a change of participant focus is necessary due to changing community needs and the available healing resource you can provide. Your facilitation of periodic brainstorming, "quick-thinks," or conversations about participant population is a good planning and operating practice. Review, discussion, and change to your Court stir the sense of completion and can be used to motivate and encourage further progress.

Seek clarity in the terms you use to describe the Court's processes and procedures. Clear and carefully defined terms and processes, as well as a concise narrative explaining your Court's purpose and mission to the community are imperative to assure institutionalization. For instance, some Wellness Courts struggle to distinguish between legal and clinical screenings. You must make sure that your team and others understand that the screenings are initial determinations of whether a candidate is eligible and if he/she fits within the bounds of treatment services available at your court.

¹⁵ Marlowe and Meyer, eds., *The Drug Court Judicial Benchbook*, 32, citing Douglas B. Marlow, "Judicial Supervision of Drug-Abusing Offenders," *Journal of Psychoactive Drugs, SARC Suppl.* 3 (2006): 323–311.

Legal Screening refers to the process by which potential participants are identified as legally eligible to participate in Tribal Healing to Wellness Court.

Eligibility requirements vary by tribal court and type of Tribal Healing to Wellness Court (adult, juvenile, or family) but generally include a criminal charge, juvenile offense, or civil dependency petition involving alcohol and/or drugs. Other eligibility factors may include the number of similar offenses or alleged conduct over a period of time, or whether the offense(s) or conduct involves victims and/or serious property damage.

Tribes that receive federal dollars may be subject to limitations regarding the inclusion of violent offenders and where aggravated circumstances are present in child welfare cases. Tribes that are funded by the Bureau of Justice Assistance's Adult Drug Court Discretionary Grant Program may not admit "violent offender" participants.

Clinical Screening refers to the process by which potential participants are identified as suitable to participate in Tribal Healing to Wellness Court (both in terms of participant need and available treatment services) . . . Determining suitability begins with a screening for the presence, type, and severity of substance abuse before the participant enters the program. . . . [T]reatment professionals recommend the following intake process, in addition to screening for alcohol and drug abuse:

- (1) Assess the person's readiness for change and apply appropriate strategies to motivate the client to enter and participate in treatment;
- (2) Establish a collaborative relationship between intake personnel and the person being screened;
- (3) Identify and overcome barriers that discourage the person from engaging in treatment; and
- (4) Promote the development of individualized interventions that meet each.¹⁶

Clinical screening also includes screens for *prognostic risk*: those characteristics of offenders that generally predict poorer outcomes in standard rehabilitation programs, such as early onset of substance abuse or delinquency, prior felony convictions, previously unsuccessful attempts at treatment, a coexisting diagnosis of antisocial personality disorder (APD), and a preponderance of antisocial peers or affiliations (e.g., gang affiliations).¹⁷

¹⁶ Flies-Away, Garrow and Sekaquaptewa, *Tribal Healing to Wellness Courts*, 20–21.

¹⁷ Marlowe and Meyer, eds., *The Drug Court Judicial Benchbook*, 32.

It is also necessary that the difference between clinical screening and clinical assessment is fully comprehended, and that the terms are not used interchangeably. You must be diligent in requiring your Court's writings to be descriptively sharp, and that all of your team members are on the same page about the meaning of language in your policies and procedure documents, MOUs, program literature, client contracts, and so forth.

Clinical Assessments are characterized by treatment professionals as “ongoing” and vary depending upon a client’s history and needs. Clinical screening evaluates a person for the possible presence of a particular problem (alcohol and/or drug abuse), the seriousness of the problem, and whether and what types of further clinical assessments are needed. Clinical assessment is a process for defining the nature of a problem (going toward a diagnosis) and for developing specific treatment recommendations for addressing the problem. Clinical assessments in the state systems are undertaken by licensed treatment professionals.¹⁸

One controversial eligibility criteria that has evoked much debate in Healing to Wellness Courts is whether a participant must or should prove whether he/she wants to change his/her conduct and choices, also referred to as “readiness to change.” If you require that a readiness to change inventory be a factor in your Court’s admission, the standard applied should be straightforward and fully articulated to candidates and community. The various tools courts utilize may serve one court well but not another. If such a tool or questionnaire is utilized to quantify a candidate’s readiness to change, reference its efficacy, effectiveness, and use in program documents. As a practical matter, you might find it necessary to scrutinize a candidate’s desire to change if resources are limited. You and your team are burdened with making efficient and effective decisions regarding whom your Court serves in tandem with the healing resources you have to provide participants.

¹⁸ Marlowe and Meyer, eds., *The Drug Court Judicial Benchbook*, 32. See also “Validated Risk Need Assessment Tool” in *Drug Court Best Practice Standards, Volume I*, Appendix A.

HEALING TO WELLNESS COURT KEY COMPONENT BENCH CARD

3

Eligible court-involved substance-abusing parents, guardians, juveniles, and adults are identified early through legal and clinical screening for eligibility and are promptly placed into the Tribal Healing to Wellness Court.

Key Concepts, Considerations, & Questions

Court-Involved Person	What mechanism (policy/practice) assures that defendants, respondents, petitioners and/or juveniles are identified early?
Eligibility Criteria	Are eligibility criteria specified for minimum qualification?
Population Focus	Is a process in place to modify Target Population/Eligibility Criteria?
Screening	Are all team members familiar with of the Court's legal and clinical screening process?
Promptly Placed	Is timeframe monitored? (average # days from incident/arrest to: 1) Screening; 2) Initial Hearing; 3) Review; 4) Phase Change, etc.?) Do numbers indicate a faster pace in comparison to regular process?

“Excerpt from Statute, P & P, Court Rules, etc.”

“Alumni Quote”

JURIST – JUDICIAL ROLES & RESPONSIBILITIES

Functions and Formalities	Community Connection – Familiarize community members with WHO gets into Wellness Court Tribal Council Connection – Keep Tribal leadership informed of judicial policy and rule-making Court Capability – Monitor Court's quality of process and provision of treatment/ancillary services	<input type="checkbox"/>
Legal Process & Procedures	Maintain clear and transparent distinction between regular court procedure and Wellness Court Is referral form readily available to all referral point personnel? Distinguish Wellness Court file from defendant/respondent file (file with separate docket numbers)	<input type="checkbox"/>
Ethics & Protocol	Identify and deliberate timely judicial conflicts to assure Court momentum and consistency Assure consent forms are reviewed thoroughly with candidate-participant Review confidentiality rules and forms periodically with Team Members and participants	<input type="checkbox"/>
Legal Context & Considerations <i>(Assure no conflict with existing law)</i>	Constitution Code Council Resolution Common Law Court Rule Custom	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>

SUGGESTED	Foster relationship with Court partners	<input type="checkbox"/>	Related NADCP Core Competency
Practices	Monitor promptness of placement into Court	<input type="checkbox"/>	# 4 – Judge “is knowledgeable of gender, age, and cultural issues that may impact the offender's success.”
Training	Assess eligibility crit./target pop. periodically	<input type="checkbox"/>	
Coaching	Assure notice of changes to eligibility criteria/target population	<input type="checkbox"/>	
Support	Discuss eligibility issues or challenges Ensure team can distinguish legal/clinical screening	<input type="checkbox"/> <input type="checkbox"/>	See Process & Procedure Bench Card 13

Resources/Technology www.WellnessCourts.org, www.home.tlpi.org, www.ndci.org, www.american.edu/spa/jpo/initiatives/drug-court/, www.ndcdr.org, www.drugcourtonline.org

“95 percent of the crime is drug or alcohol related. Crime is the result of an addiction that is a result of trauma and you have to find out the trauma. Maybe there's historical trauma, individual or a family trauma that the person has to deal with. We in the justice system have to work in tandem with those who are trying to make the community well before we're going to see any progress. A (Wellness Court) is perfectly, ideally suited for tribes.” -- Hon. B. J. Jones

4. The Judge as Champion for Health and Wellness

Key Component #4: Treatment and Rehabilitation

Tribal Healing to Wellness Court provides access to holistic, structured, and phased alcohol and drug abuse treatment and rehabilitation services that incorporate culture and tradition.

The principles and performance of Key Component 4 concern how your Court promotes and motivates healing and wellness for its participants. These principles merge courts and treatment to afford better treatment outcomes. Performance is exemplified by the resulting partnerships developed between the healers (treatment) and the hearers (judiciary). Key 4 principles and performance also characterize the nature and atmosphere of the participant's prescribed healing to wellness journey. They provide you, the Judge, a platform to more effectually champion health and wellness for your Wellness Court participants, their families, and the community. Consequently, the bulk of your role is inspired by the treatment and healing aspects that make Wellness Court different from the status quo.

Not only should you have precise knowledge and understanding of your Court's practices and procedures, but you also must be educated and trained generally in all areas of substance abuse and addiction.¹⁹ Moreover, you should be familiar with specific alcohol and drug abuse issues experienced in Indian Country and appreciate the difficulties and challenges Native participants may face in their journey toward wellness.

Important to your role as a Wellness Court jurist is to learn about healing processes and the importance of the desire to be healed, which involves the readiness for change assessment mentioned above. You must know exactly what treatment is available in the community and the process to engage alternative treatment providers when circumstances warrant. You and the team should visit a treatment facility. By actually seeing the treatment environment, you will gain a better appreciation for the therapeutic process.

Just as you are expected to learn about treatment, you must assure that all treatment providers are versed in your Wellness Court's policies and procedures, particularly the mechanics of the phased process you practice. If treatment providers understand the phased system, or assisted in its creation, they can more easily develop complementary treatment plans that follow or adapt to the phase schedule. You must also make clear to each participant how the phased process works; how one advances to the next phase; and when a participant may be required

¹⁹ For more information about addiction and treatment services, see Jeffrey N. Kushner, Roger H. Peters, and Caroline S. Cooper, *A Technical Assistance Guide for Drug Court Judges on Drug Court Treatment Services* (Bureau of Justice Assistance Drug Court Technical Assistance Project, 2014); Caroline S. Cooper, Richard D. Frantis, Rebecca E. Hooker, Kenneth D. Robinson, Pat Sekaquaptewa, Sarah M. Stuckey, and Ann M. Wallace-Filosa, *Tribal Healing to Wellness Courts: Treatment Guidelines for Adults and Juveniles* (Tribal Law and Policy Institute, 2002); Steven Hanson, "Addiction and Treatment Services," in *The Drug Court Judicial Benchbook*, ed. Douglas B. Marlowe et al. (National Drug Court Institute, 2011), 63.

to repeat a phase/level, if that is a practice you follow in your Court. Providers must be aware of their roles and responsibilities to your Wellness Court. For example, duties of team members may include report writing and/or attendance and participation data that are submitted to the participant's file and reviewed, when necessary, at staffing meetings.

The exchange of information on a participant's Wellness Court performance must conform to tribal, federal, and state confidentiality laws. Confidentiality, specifically the Health Insurance Portability and Accountability Act (HIPAA)²⁰ is frequently cited as a barrier to a team member's participation on Wellness Court. However, this reticence often stems from fear and misunderstanding. HIPAA protects all records relating to the identity, diagnosis, prognosis, or treatment of any patient in a substance abuse program. However, information can be shared where there is a proper written consent acknowledging that information will be used by Wellness Court team members for Wellness Court purposes.²¹ Like the overall requirements of Wellness Courts, this consent should be written and orally reviewed with the participant. Generally, the Wellness Court is concerned with understanding a participant's progress on his/her treatment plan. Thus, the treatment provider can share whether a participant attended his/her treatment sessions, and whether or not he/she was engaged, but will not share the details of what was discussed while in treatment.

Finally, as a Judge, you should be familiar with the latest recommended and best practices for treatment, including Medically-Assisted Treatment (MAT).²² MAT is an evidence-based substance abuse treatment protocol, supported by the federal government. MAT is the use of counseling and behavioral therapies along with FDA-approved medications for substance abuse disorders (such as methadone, buprenorphine products, and naltrexone products). The use of medications have been shown to reduce opioid use and drinking for drug court participants, so long as the medication is used as an adjunct to treatment, at the recommendation of an attending physician, and under specified protocols. Federally-funded drug court grants often require that drug courts at least not restrict access to MAT, nor deny eligibility to clients because of their use of FDA-approved medications for their substance use disorders.

Throughout this process, continue to exhibit your *judgely* traits: be competent, consistent, and committed.

²⁰ Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191, 110 Stat. 1936.

²¹ For more information on HIPAA and HIPAA consent forms, see *Confidentiality and Communication, A Guide to the Federal Drug & Alcohol Confidentiality Law and HIPAA* (Legal Action Center, 2006); and William G. Meyer, "Confidentiality," in *The Drug Court Judicial Benchbook*, ed. Douglas B. Marlowe et al. (National Drug Court Institute, 2011), 181.

²² For more information about MAT, see Jeffrey N. Kushner, Roger H. Peters, and Caroline S. Cooper, *A Technical Assistance Guide for Drug Court Judges on Drug Court Treatment Services* 16 (Bureau of Justice Assistance Drug Court Technical Assistance Project, 2014); Sally Friedman and Kate Wagner-Goldstein, *Medication-Assisted Treatment in Drug Courts: Recommend Strategies* (Center for Court Innovation, State of New York Unified Court System, Legal Action Center, 2015).

HEALING TO WELLNESS COURT KEY COMPONENT BENCH CARD

4

Tribal Healing to Wellness Court provides access to holistic, structured, and phased alcohol and drug abuse treatment and rehabilitation services that incorporate culture and tradition.

Key Concepts, Considerations, & Questions

Healing Resources	Are all available healing resources in use by Court? Listed? Effective?
Treatment & Rehabilitation	Does the team have working knowledge regarding service providers (treatment & ancillary)?
	Are MOUs in place for each service provider on an updated roster?
	Does the Court receive timely status report of client compliance for week?
Holistic (Self & Family)	Do treatment plans involve health, wellness, and empowerment? Do they include education, employment, housing, life-skills, etc.?
Structured & Phased	Do team/participants clearly understand how phases operate?
Culture & Tradition	Is the Court's overall process and treatment services complimented by cultural component?

“Excerpt from Statute, P & P, Court Rules, etc.”

“Alumni Quote”

JURIST – JUDICIAL ROLES & RESPONSIBILITIES

Functions and Formalities	Community Connection – Determine whether new community healing resources are available Tribal Council Connection – Keep Tribal leadership informed of all partnerships serving Court Court Capability – Monitor caseload to assure maximum attention is provided participants	<input type="checkbox"/>
Legal Process & Procedures	Regularly evaluate information sharing protocol with service providers/partners Regularly assess whether confidentiality rules are understood and adhered to by team Ensure provider and participant clearly understand how information in assessments are utilized	<input type="checkbox"/>
Ethics & Protocol	At staffing, focus team on issues of compliance. Leave issues of Tx to treatment provider. Periodically review Tribal, federal, and applicable state confidentiality laws/rules with Team	<input type="checkbox"/>
Legal Context & Considerations <i>(Assure no conflict with existing law)</i>	Constitution Code Council Resolution Common Law Court Rule Custom	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>

SUGGESTED	Study addiction, pharmacology, relapse, etc.	<input type="checkbox"/>	Related NADCP Core Competency
Practices	Review phase requirements w/ team	<input type="checkbox"/>	# 8 – Judge “is aware of the impact that substance abuse has on the court system, the lives of offenders, their families and the community at-large.” See Process & Procedure Bench Card 13
Training	Gauge participants’ ownership of treatment plan	<input type="checkbox"/>	
Coaching	Gauge level of family involvement in participant plans	<input type="checkbox"/>	
Support	Keep an up-to-date list of available healing resources	<input type="checkbox"/>	
	Periodically review key data points re: <input type="checkbox"/> hrs. ind. Tx/wk <input type="checkbox"/> hrs. grp. Tx/wk	<input type="checkbox"/>	

Resources/ Technology www.WellnessCourts.org, www.home.tlpi.org, www.ndci.org, www.american.edu/spa/jpo/initiatives/drug-court/, www.ndcdr.org, www.drugcourtonline.org

“95 percent of the crime is drug or alcohol related. Crime is the result of an addiction that is a result of trauma and you have to find out the trauma. Maybe there’s historical trauma, individual or a family trauma that the person has to deal with. We in the justice system have to work in tandem with those who are trying to make the community well before we’re going to see any progress. A (Wellness Court) is perfectly, ideally suited for tribes.”

Hon. B. J. Jones

5. The Judge as Encourager and Enforcer

Key Component #5: Intensive Supervision

Tribal Healing to Wellness Court participants are monitored through intensive supervision that includes frequent and random testing for alcohol and drug use, while participants and their families benefit from effective team-based case management.

The principles and performance of Key Component 5 demonstrate how your Court monitors participants, collects and records data, and maintains participant files. Together with the principles and performance of Key 6, these components shape how your Court practices co-case management and the techniques used. Your lead role in the behavior modification of your Wellness Court participants requires that you be both encourager and enforcer.

The success of our interventions depends on the reliability of our monitoring of behaviors. If you, the Judge, do not have accurate information about a participant's Wellness Court compliance, you cannot effectively apply incentives or sanctions—or ultimately hold the participant accountable and praise his/her achievements.

The primary monitoring of Wellness Court participants is accomplished through drug testing. Drug testing is a critical element of Wellness Court. It not only provides information you and your team require for participant conduct and accountability, but also keeps participants on their toes and serves as a useful deterrent during a critical time of recovery. You must learn how drug testing helps in the healing process and how it assists in restoring client responsibility.

Questions, issues, and concerns about drug testing are more easily discussed with participants when you, team members, and staff are knowledgeable and informed. To that end, it is critical that you be cognizant of your Court's specific drug-testing procedure. Though it is incumbent upon those who actually administer the test to be crystal clear about the process, it helps that you and the team understand the procedures generally. This knowledge will allow all of you to respond to participant questions and concerns, especially when sanctions are levied for positive tests. You and the team should explain to your participants the therapeutic value of drug testing, for example, accountability. You must understand the drug testing procedure following a positive test.

Aim to conduct urine drug testing randomly and no less frequently than twice per week, at least in the first phase of the Wellness Court.²³ While Wellness Courts typically decrease in intensity as the participant advances through phases, drug testing is still performed in order to monitor the potential for relapse. Because weekends are often the most likely times to use, some drug testing occurs on weekends. To learn more about the fundamentals of drug testing, see Chapter 6 of the National Drug Court Institute's *The Drug Court Judicial Benchbook*.²⁴

Ideally, your Wellness Court enjoys a cooperative relationship with law enforcement. Though not always possible or practicable, police involvement contributes a forceful respect for your Court. A healthy relationship with law enforcement also enhances and enriches judicial services. They may be able to assist with drug testing, home visits, arrests, and other supervision out in the community. Positive relationships are strengthened and sustained with a thorough understanding of the roles and responsibilities of each partner and each entity a team member represents. Periodic training presentations to the law enforcement community about your Court will promote a better understanding of what the program is attempting to do for its participants and the community.

Supervision is also accomplished through frequent court hearings. Research suggests that Drug Courts are optimized when participants appear in court no less frequently than every two weeks, at least during the first three to six months of the court.²⁵ Many Wellness Courts meet more frequently, perhaps every week. These frequent court visits allow you and the team to respond to participants' accomplishments and infractions in a reasonably short amount of time.

**Consider NADCP Drug Court Standard III(E)
Frequency of Status Hearings**

Participants appear before the judge for status hearings no less frequently than every two weeks during the first phase of the program. The frequency of status hearings may be reduced gradually after participants have initiated abstinence from alcohol and illicit drugs and are regularly engaged in treatment. Status hearings are scheduled no less frequently than every four weeks until participants are in the last phase of the program.²⁶

²³ Marlowe and Meyer, eds., *The Drug Court Judicial Benchbook*, 142.

²⁴ Paul Cary, "The Fundamentals of Drug Testing," in *The Drug Court Judicial Benchbook*, ed. Douglas B. Marlowe et al. (National Drug Court Institute, 2011), 113.

²⁵ Marlowe and Meyer, eds., *The Drug Court Judicial Benchbook*, 144, citing Shannon M. Carey, Michael W. Finigan, and Kimberly Pukstas, *Exploring the Key Components of Drug Courts: A Comparative Study of 18 Adult Drug Court on Practices, Outcomes, and Costs* (NPC Research, 2008).

²⁶ *Drug Court Best Practice Standards, Volume I*, 21.

Wellness Courts thrive by using superior case management. You probably have a sense from regular court work of the detriments of inadequate case management. It is not merely a matter of keeping a tally of the number of contacts, treatment sessions, wellness activities, and so forth; case management, or co-case management, is about developing a system wherein your participants are fully supported and supervised, disciplined and encouraged in a manner that promotes individual healing as well as community accountability and cost-effective resource management. Be thoughtful about your Court's case management philosophy and paradigm, and how it contributes to greater appreciation for the Court and its purpose. You and team members should be trained in case management basics. You should be able to describe the character and substance of your Wellness Court's case management policy and processes and periodically consider how enhancements can be made.

HEALING TO WELLNESS COURT KEY COMPONENT BENCH CARD

5

Tribal Healing to Wellness Court participants are monitored through intensive supervision that includes frequent and random testing for alcohol and drug use, while participants and their families benefit from effective team-based case management.

Key Concepts, Considerations, & Questions

Case Management Co-Case Management	Is Court's monitoring method clear to team; consistent?
	Do team members know their case management role and responsibility?
	Is the method evidence-based to support recovery and healing?
Intensive Supervision	Are participants busy with wellness activities and held accountable often?
	Does supervision occur when community activity peaks? (Evening and weekends?)
Drug Testing	Do team members have working knowledge of testing procedure?
	Do team members have working knowledge of how challenges are tested and confirmed?
	Does testing data help tell informative and consequential stories?
Frequent & Random	Do participants expect to be tested at any time and at any place?

“Excerpt from Statute, P & P, Court Rules, etc.”

“Alumni Quote”

JURIST – JUDICIAL ROLES & RESPONSIBILITIES

Functions and Formalities	Community Connection – Demonstrate a caring case management style to the community Tribal Council Connection – Ensure Council is aware of Court search and seizure policies Court Capability – Maintain ample supply of drug testing equipment and supplies	<input type="checkbox"/>
Legal Process & Procedures	Describe primary case-management activities in Wellness Court Policies & Procedures manual Identify case-management practices that may require judicial rule-making and/or legislation Ensure participants are fully informed of testing policies and consequences for positive tests	<input type="checkbox"/>
Ethics & Protocol	Be familiar and facilitate discussion with team members' ethical concerns and considerations Conduct business and co-case manage in ways that reflect the Court's sincerity and integrity	<input type="checkbox"/>
Legal Context & Considerations <i>(Assure no conflict with existing law)</i>	Constitution <input type="checkbox"/> Code <input type="checkbox"/> Council Resolution <input type="checkbox"/> Common Law <input type="checkbox"/> Court Rule <input type="checkbox"/> Custom <input type="checkbox"/>	

<u>SUGGESTED</u>	Regularly review case management role with team <input type="checkbox"/>	Related NADCP Core Competency # 3 Judge “is knowledgeable of addiction, alcoholism, and pharmacology generally and applies that knowledge to respond to compliance in a therapeutically appropriate manner.”
Practices	Promote formal information-sharing practices <input type="checkbox"/>	
Training	Review w/ clients the value of busy/intense schedule <input type="checkbox"/>	
Coaching	Assure team members are familiar with testing process <input type="checkbox"/>	
Support	Maintain swift response to negative tests <input type="checkbox"/>	
	Monitor the frequent nature of participant testing <input type="checkbox"/>	
	Monitor the random nature of participant testing <input type="checkbox"/>	See Process & Procedure Bench Card 15 & 16

Resources/ Technology	www.WellnessCourts.org , www.home.tlpi.org , www.ndci.org , www.american.edu/spa/jpo/initiatives/drug-court/ , www.ndcdr.org , www.drugcourtonline.org
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“The drug court model is the kind of thing we’re looking for. The speeded decision-making aspect of it appeals to us. To ring more minds to the table is something that really makes sense to us in our communities.”
Judge P.J. Herne

6. The Judge as Enforcer and Encourager

Key Component #6: Incentives and Sanctions

Progressive rewards (or incentives) and consequences (or sanctions) are used to encourage participant compliance with the Tribal Healing to Wellness Court requirements.

The principles and performance of Key Component 6 stimulate the strategy your Court uses to modify participant behavior by instilling ownership, accountability, and responsibility. This strategy, taken together with the principles and performance of Key 5, shapes how your Court practices co-case management. Your lead role in the behavior modification of your Wellness Court participants requires you to be both an enforcer and encourager.

Behavior modification has been proven to be most effective when Drug Courts closely monitor their participants' conduct and impose certain and immediate rewards for achievements and sanctions for infractions.²⁷ In practice, publications, conferences, and trainings, there is a tendency to think of sanctions first. Perhaps given the criminal arena in which Drug Courts began, and the initial key component heading of "Sanctions and Incentives," it is natural to start with the negative. Here we make the effort to discuss incentives first. Given that it is not a practice most of us use in "regular" court, and it is one of the main differences that observers first notice about Wellness Court, it seems appropriate to do so.

By reading this far into the Bench Book, we know that you must want your participants to do well in your Wellness Court; that you want them to follow the elements of their case plan and follow all the rules; and, most importantly, that you want them to take a healing to wellness journey that will help them in their life thereafter. Showing admiration, praise, and approval for your participants enforces their belief in themselves and their ability to go on in their journey. Some of your participants might never have been encouraged or told, "I'm proud of you." To them, it seems like no one ever noticed the good in them. Their first applause might occur right there in your Wellness Court and the feeling—though odd and uncomfortable at the time—helps them take the next step, meet the next day and the next week. Continued commendation and complimenting your participants for their compliance and their clean choices provide the little extra that nurtures the behavior modification you envisioned and expect your Court to support. We hear more often than not that it is far more satisfying to award incentives that motivate participants to keep them moving forward than to impose sanctions.

The difficult question, however, that stifles many if not all Wellness Courts, is what to offer as incentives, especially when resources and sources are limited. While the most important praise is personal—such as applause, hugs, words, and cards—incentives of monetary value are encouraging as well. Your community may not be in a place where gift cards are utilized and town is some fifty miles away. Of course, sources for incentives of monetary value are more

²⁷ Marlowe and Meyer, eds., *The Drug Court Judicial Benchbook*, 141.

available in urban areas where there are movie theatres, restaurants, and bookstores. You must do your best to guide the team in canvassing your community and places near for sources of incentives and do so again in time to refill your coffers. If you are lucky to have a range of items or have the ability to provide gifts yourself such as in gift cards, be sure to award consistently for similar positive conduct and substantial progress. Note that if your Wellness Court receives federal funding, your funds may have limitations on what types of incentives may be purchased, such as gift cards for limited items, or ensuring that you monitor that your participants do not sell their gift cards for cash.

Likewise, your Wellness Court participants are expected to follow the rules. In fact, they must. As Judge, you maintain order and discipline in your Wellness Court, which includes requiring participants to adhere to agreed-upon rules and imposing sanctions when necessary. Depending on your Court's structure and team design, the Judge is the most influential member, having been placed in a position of significant power by "the people" directly or by the legislature. Your participants see you as the one in charge and where "the buck stops." Even if it is your Court's practice that the team makes decisions collectively, because it's a Court, your participants will see you as the person who makes all the decisions. Your skills in managing the judicial power that you do possess in conjunction with the input of a collaborative and thoughtful team strengthen your ability to enforce the rules in a positive way.

With sanctions, you must expect the addiction's influence and effect on a participant's will to contribute to a participant "breaking the rules," particularly early on in his/her program. The consequence you give should take this into account. It might take more for some participants to "get it" than for others. It is not uncommon to issue a participant both a sanction and an incentive in the same hearing. Consider that the "proximal" (near) and "distal" (far) goals will be different for each participant, and will change over time. A new participant will have proximal goals of honesty and attendance, while gainful employment and even sobriety will be distal goals. The magnitude of a sanction should be higher for proximal behaviors and lower for distal behaviors. The reverse applies to incentives.

Repeating the Court's rules and consequences for violating those rules is useful, as participants' minds remain foggy. Reminders can be undertaken, for example, by periodically having everyone bring his/her Wellness Court contract to the hearing and reviewing the collective requirements together. Do more than you think is necessary to ensure knowledge of the rules given the concurrent changes taking place in their state-of-mind. Sanction only according to your rules with the goal of inducing positive change in their behavior.

It may not be surprising to you that throughout Indian country, a common complaint of Wellness Court participants is that the team applies sanctions and/or gives incentives inconsistently, or "they're not fair." Most of the time, it is participant perception and not actual common team practice. Nevertheless, you should strive to do your best to maintain a consistent practice in order to model fairness and equality. Explain to the participant, as well as to the other observing participants, why the sanction (or incentive) is being given, including reviewing the severity of their substance abuse problem. Participants are more likely to

perceive a decision as being correct and appropriate if they believe that the Wellness Court, and specifically the Judge, used fair procedures in reaching the decision.²⁸ To monitor your team's consistency in levying sanctions, review for a period of time whether you applied sanctions in line with the sanctioning schedule published in your policies and procedures manual.²⁹ Along with the types of sanctions for the various negative conduct and incentives for positive conduct, check to see whether they are immediate, graduated, and fair under the circumstances. Remember that sanctions have more affect when received immediately. The affect may lose its power if imposed far after the action for which it is given.

Consider allowing your participants to take part in developing a portion of their own sanction and/or incentive schedules. If a participant helps create the schedule, it promotes a sense of ownership and clear awareness of what to look forward to and what to dread. Their ownership further pushes them to be accountable not just to the Court, but to him/herself.

Example of Court Rules

- Attend all Healing to Wellness Court status hearings and be on time
- Submit to any reasonable request of rehabilitative, medical, psychological program(s) or diagnostic(s) as directed by the Wellness Court team or treatment provider
- Attend and participate in all counseling sessions on time
In the event that a participant is unable to make his/her scheduled session, he/she should call his/her counselor or probation officer at least two hours in advance and make up missed sessions within seven days
- Submit to random drug screens and/or breathalyzers
- Keep probation officer, or designated office, informed of his/her address, phone number, and activities away from home or job
- Attend school full-time, maintain full-time employment, or a combination of the two. Participants should provide proof of school or work. If a participant is not employed or in school, then proof of an employment search must be provided to the Wellness Court team at the status hearing
- Make satisfactory progress in the Wellness Court Program, as measured by phase or point requirements (by meeting the requirements to graduate from each required treatment phase)
- Complete all sanctions imposed by the Wellness Court
- Pay all court costs, restitution, fines, and/or victim's compensation fee as ordered by the Wellness Court

²⁸ Marlowe and Meyer, eds., *The Drug Court Judicial Benchbook*, 147, citing Kevin Burke and Steve Leben, "Procedural Fairness: A Key Ingredient in Public Satisfaction," *Court Review* 44 (2007): 4-24.

²⁹ For a list of incentives and sanctions, see www.wellnesscourts.org/sanctions-incentives.cfm.

HEALING TO WELLNESS COURT KEY COMPONENT BENCH CARD

6

Progressive rewards (or incentives) and consequences (or sanctions) are used to encourage participant compliance with the Tribal Healing to Wellness Court requirements.

Key Concepts, Considerations, & Questions

Charting Compliance	Are provider compliance reports swiftly received through a seamless process?
	Are clients aware of all general Court requirements not included in the Tx plan?
Progressive/ Graduated	Do incentives/sanctions increase in intensity?
	Are incentives/sanctions coordinated with Court phases?
Incentives/ Sanctions	Are incentives/sanctions tailored to suit participant's personal motivations and circumstances?
	Do incentives/sanctions serve as learning steps; fulfill therapeutic purpose?
	Do incentives/sanctions have some connection with the triggering act?
Graduation	What connection to the Court does participant maintain after completion?
Termination	What conduct causes disconnection from Court?
	Is termination process clearly described? Potential for re-entry?

“Excerpt from Statute, P & P, Court Rules, etc.”

“Alumni Quote”

JURIST – JUDICIAL ROLES & RESPONSIBILITIES

Functions and Formalities	Community Connection – Highlight the Court's behavioral modification practices	<input type="checkbox"/>
	Tribal Council Connection – Ensure Tribal leadership can distinguish a sanction and a criminal penalty	
	Court Capability – Constantly seek sources of both incentives and sanctions	
Legal Process & Procedures	Monitor application of sanctions and incentives for consistency and certainty	<input type="checkbox"/>
	Include in participant consent forms, contracts, docs, etc., acknowledgement of sanction potential	
	For sanctions affecting liberty, ensure determination process is transparent and fair	
Ethics & Protocol	Facilitate fair and consistent application of sanctions and incentives	<input type="checkbox"/>
	Respond to participant concerns, complaints, and grievances immediately and expeditiously	
Legal Context & Considerations <i>(Assure no conflict with existing law)</i>	Constitution	<input type="checkbox"/>
	Code	<input type="checkbox"/>
	Council Resolution	<input type="checkbox"/>
	Common Law	<input type="checkbox"/>
	Court Rule	<input type="checkbox"/>
	Custom	<input type="checkbox"/>

SUGGESTED	Review reporting obligations with team	<input type="checkbox"/>
Practices	Detail information-sharing policies in MOUs	<input type="checkbox"/>
Training	Review incentive/sanction schedule regularly	<input type="checkbox"/>
Coaching	Search for creative sanctions/incentives	<input type="checkbox"/>
Support	Maintain familiarity of research/best practices	<input type="checkbox"/>
	Track/evaluate time from act to application	<input type="checkbox"/>

Related NADCP Core Competency
2 – The judges “as part of the drug court team, in appropriate non-court settings (i.e., staffing), the judge advocates for effective incentives and sanctions for program compliance or lack thereof.”

See Process & Procedure Bench Card 15 & 17

Resources/ Technology www.WellnessCourts.org, www.home.tlpi.org, www.ndci.org, www.american.edu/spa/jpo/initiatives/drug-court/, www.ndcdr.org, www.drugcourtonline.org

“Growing up in an Indian community, knowing the people, knowing the community, knowing the problem . . . I think tribal judges are more problem-solvers than, say state judges, I don't think we have to be law-trained to be problem-solvers. I don't think we have to be law-trained to be healers. I don't think we have to be law-trained to administer justice or provide due process.”

Hon. Judge D. Raach

7. The Judge as Team Member, Captain, and/or Coach

Key Component #7: Judicial Interaction

Ongoing involvement of a Tribal Healing to Wellness Court Judge with the Tribal Wellness Court team and staffing and ongoing Tribal Wellness Court Judge interaction with each participant are essential.

The principles and performance of Key Component 7 prescribe a Wellness Court judge to communicate respectfully to everyone involved with the Court. Whether you are more the captain, a key member of the team, or the team's coach, you are exercising judicial leadership and must demand proper decorum where respectful communication is expected of everyone.

To be instrumental as a Wellness Court Judge, you must step out of the traditional robe of the adversarial court judge with which you are familiar. The role seems strange, as you must manage the Wellness Court team that consists of employees not in your charge. Interaction is greatest at staffing and hearings, but also indirectly everyday as team members work with your Court's participants. In Wellness Court, your sole-source orders are replaced by your ability to gain consensus among team members regarding a participant's healing journey. You are put in the position to inspire team members to fulfill their roles in relation to the Wellness Court process; make them truly see that what they do is productive so that they continue to fulfill the purpose of helping participants move through their healing journey. You need their help, their insight, and their recommendations to monitor participant success and impose your judicial authority carefully either for bad or good behavior.

Require that all of your team members attend and participate in staffings. To facilitate staffing meeting discussions that lead you to decision-making, instruct your team members to submit any required written reports and recommendations prior to the meeting, especially when there is a known issue to discuss. Staffing meetings are more productive when you and all team members are prepared. When only verbal input is required, focus team member comments on 1) participant's compliance with court rules and treatment plan; 2) recommended incentive for good works; and 3) recommended consequences for misconduct. Do not allow excessive discussion of extraneous details and irrelevant story-telling, as that takes time away from your work. This is especially crucial as the capacity of your Court expands to accept a greater number of participants.

**Consider . . . NADCP Drug Court Standard III(D)
Participation in Pre-Court Staff Meetings**

The judge regularly attends pre-court staff meetings during which each participant's progress is reviewed and potential consequences for performance are discussed by the Drug Court team.³⁰

Similarly, your role as leader for your participants has proven to be of critical importance. The Wellness Court Judge is trained in addiction, understands how to motivate behavior change, and exhibits simple empathy.³¹ American University's Drug Court Clearinghouse found that "[e]ighty percent of drug court participants [surveyed] indicated they would not have remained if they did not appear before a judge as part of the process."³² NPC research reports that judges who spend three or more minutes with the participant during status hearings have greater programmatic outcome savings than those courts where judges spent less time.³³

You as the leader, the captain, or the coach must model commitment to your Wellness Court's vision and mission. The team will look to you for guidance. What might seem like small gestures, like arriving at staffings, hearings, meetings, and other events on time, set examples for the team. Good team dynamics often boil down to team members having empathy for each other—including their roles—and fostering healthy communication for all members. It is the role of the judge to foster these two factors within their team. Valuing everyone on your team is imperative for success, and you must be willing to guide accordingly. Exercise patience in your team's efforts to participate and promote the team-based process of Wellness Court.

As a judge, you are bound by a judicial code of conduct in your work. It is your ultimate responsibility to ensure your participants receive a fair and dignified hearing. Even if your jurisdiction has not adopted the American Bar Association's Model Code of Judicial Conduct,³⁴ or other such ethical code, by being a judge you are given a significant role and place in society, and your decisions have consequences and affect the lives of many. It should not be necessary to impose a code on you dictating that you are expected to behave a certain way; for example, in a more refined and respectful manner.

³⁰ *Drug Court Best Practice Standards, Volume I*, 20.

³¹ Marlowe and Meyer, eds., *The Drug Court Judicial Benchbook*, 51, citing William G. Meyer and A. William Ritter, "Drug Courts Work," *Federal Sentencing Report* 14 (2002): 183-184.

³² Marlowe and Meyer, eds., *The Drug Court Judicial Benchbook*, 51, citing *Summary Assessment of the Drug Court Experience* (Bureau of Justice Assistance Drug Court Technical Assistance Project, 1996).

³³ Shannon M. Carey, Michael W. Finigan, and Kimberly Pukstas, *Exploring the Key Components of Drug Courts: A Comparative Study of 18 Adult Drug Courts on Practices, Outcomes and Costs* (NPC Research, 2008), 9.

³⁴ ABA Model Code of Judicial Conduct, American Bar Association (2007), www.americanbar.org/content/dam/aba/migrated/judicialethics/ABA_MCJC_approved.authcheckdam.pdf.

A common issue of concern is whether the Judge, and the entire Wellness Court team, must report criminal activity disclosed in Wellness Court. In the absence of tribal code/statute stating otherwise, all states that have addressed the issue have held that a judge has no ethical obligation to report such criminal activity, unless serious, the practice of which is often reflected in the Wellness Court’s participant agreement.³⁵

Similarly, judges are often concerned about the ex parte communications, or communications about the participant that take place outside of the participant’s or the participant’s defense counsel’s presence, during staffings. However, Drug Courts/Wellness Courts are slowly being recognized as exceptions to this ethical rule. Generally, while Wellness Court utilize a team-based approach, the concern for ex parte communication is not diminished. You should be vigilant in reporting any ex parte communication of which the defense counsel and/or participants are not aware.

ABA Model Code of Judicial Conduct, Rule 2.9(A)

(A) A judge shall not initiate, permit, or consider ex parte communications, or consider other communications made to the judge outside the presence of the parties or their lawyers, concerning a pending or impending matter, except as follows:

...

(5) A judge may initiate, permit, or consider any ex parte communication when expressly authorized by law to do so.

Comment

...

[4] A judge may initiate, permit, or consider ex parte communications expressly authorized by law, such as when serving on therapeutic or problem-solving courts, mental health courts, or drug courts. In this capacity, judges may assume a more interactive role with parties, treatment providers, probation officers, social workers, and others.³⁶

³⁵ Marlowe and Meyer, eds., *The Drug Court Judicial Benchbook*, 51, citing Cynthia Gray, “A Judge’s Obligation to Report Criminal Activity,” *Judicial Conduct Reporter* 18 (1996): 3. For more information on drafting Participant Agreements and Participant Handbooks, see Pat Sekaquaptewa and Lauren van Schilfgaarde, *Tribal Healing to Wellness Courts: The Policies and Procedures Guide* (Tribal Law and Policy Institute, 2015).

³⁶ ABA Model Code of Judicial Conduct, Rule 2.9.

For Wellness Courts, given the force of the team and how it sits at a table—and in some ways sits as judge—the same expectation is transferred to each team member. Team members cannot appear contradictory by acting in ways that would otherwise be sanctioned if conducted by a participant. You must always be mindful of a written or merely spoken code of conduct by which you and the team must abide. Setting standards for team member conduct promotes program cohesion and confidence within both the court and the community. Ultimately, however, the Judge gives up neither their discretion nor independence.³⁷

A Captain and/or Coach:

- Manages team and court staff to assist them in fulfilling their roles
- Manages team meetings, weekly staffings, and weekly status hearings
- Manages participants' journeys through the healing process by serving as authority figure, monitor, mentor, and motivator

³⁷ For more information about the ethical obligations of Wellness Court Judge, see William G. Meyer, "Ethical Obligations of Judges in Drug Courts," in *The Drug Court Judicial Benchbook*, ed. Douglas B. Marlowe et al. (National Drug Court Institute, 2011), 195.

HEALING TO WELLNESS COURT KEY COMPONENT BENCH CARD

7

Ongoing involvement of a Tribal Healing to Wellness Court judge with the Tribal Wellness Court team and staffing, and ongoing Tribal Wellness Court judge interaction with each participant are essential.

Key Concepts, Considerations, & Questions

Contact & Interaction	Does the Court maintain a consistent schedule for facilitating, presiding over, and preparing hearings, staffings, planning/issue meetings, evaluations, presentations, reports, etc.?
Judicial Leadership	Is the length of contact/communication sufficient to engage/lead/instruct?
Respectful Communication	Are the relevant reports and information reviewed prior to contact?
	Are there sufficient written rules or regular practices to address conflict?
	Is each individual's voice heard at all times?
Ethics & Canons	Is the Court restricted by any judicial condition or professional responsibilities?
	Is the tone of communication formal or familiar?

“Excerpt from Statute, P & P, Court Rules, etc.”

“Alumni Quote”

JURIST – JUDICIAL ROLES & RESPONSIBILITIES

Functions and Formalities	Community Connection – Promote community knowledge of the Healing to Wellness Court Tribal Council Connection – Provide updates to the Council and orientation to new members Court Capability – Periodically review the quality of court supervision with respect to the case load	<input type="checkbox"/>
Legal Process & Procedures	Inform and update team members of written Court procedures for meetings, hearings, etc. Initiate communication protocols with supervisors of team's non-judicial staff Declare and consistently practice the role of captain or coach of the Wellness Court team	<input type="checkbox"/>
Ethics & Protocol	Be mindful of the judicial code of conduct and distinction between criminal and Wellness Court Be aware of any specific set of professional standards that apply to team members Document Court responses to ethical inquiries	<input type="checkbox"/>
Legal Context & Considerations <i>(Assure no conflict with existing law)</i>	Constitution Code Council Resolution Common Law Court Rule Custom	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>

SUGGESTED

Practices	Have consistent hearing and staffing schedule	<input type="checkbox"/>
Training	Schedule team meetings for issue discussions	<input type="checkbox"/>
Coaching	Place/frame issues in P&P context	<input type="checkbox"/>
	Review team member/org/ commitments regularly	<input type="checkbox"/>
Support	Maintain contingency plan for unavailability	<input type="checkbox"/>
	Review team member contingency plan regularly	<input type="checkbox"/>
	Review Court procedures periodically with team	<input type="checkbox"/>

Related NADCP Core Competency

1 – Judge “participants fully as drug court team member, committing him or herself to the program, mission and goals, and works as a full partner to ensure their success.”

Resources/ Technology www.WellnessCourts.org, www.home.tlpi.org, www.ndci.org, www.american.edu/spa/jpo/initiatives/drug-court/, www.ndcdr.org, www.drugcourtonline.org

“Judging is like being a referee. It’s not about popularity; it’s about being effective, fair, and evenhanded. It’s about respect for yourself, for those who appear before you and for your special position of public trust.”

8. The Judge as Storyteller and Evaluator

Key Component #8: Monitoring and Evaluation

Process evaluation, performance measurement, and performance evaluation are tools used to monitor and evaluate the achievement of program goals, identify needed improvements to the Tribal Healing to Wellness Court and to tribal court process, determine participant progress, and provide information to governing bodies, interested community groups, and funding sources.

The principles and performance of Key Component 8 emphasize improvement, growth, and development. Like all institutions, courts evolve and improve as communities and court-users change. Effective change occurs by having specific knowledge of reported problems and deficiencies. Your role as storyteller and evaluator make you a hero/heroine for quality assurance and enhancement, which should remain a constant mantra throughout your tenure as a Wellness Court Judge.

Courts, indeed everything and everyone, should be subject to constant improvement and refinement. But this dedication is particularly true when we embark on bringing together multi-disciplinary teams, with ever-improving provisions of services for the ever-changing needs of our participants. While on site with judges and teams, we have heard many stories of how circumstance stifled their court's development and forced quick reformation of how they did things, procedure, and how they thought of things, policy, which was reflected thereafter in a revision of court documents. You should expect similar situations and be prepared for how you will address them. As a preventative step, you can review Court processes periodically and assure, if effective, that they are accurately and comprehensively described in your Court's policies and procedures manual.³⁸ Encourage suggestions from your team that seek to remedy issues and/or improve the Wellness Court or their specific area of service.

Your evaluator role includes at least two main parts: you monitor and evaluate each participant's progress and you facilitate evaluation of the Court's performance. This effort includes how the Court is working and to what results. Internal evaluation should be a continuous task and always in the background of everyone's mind. The continuous efforts of each team member are consolidated to provide information you need to see how the Court is working. Over longer periods of time, an independent and external evaluation should be conducted.

To further both internal and external evaluation efforts, encourage team members to engage in their own positional evaluation processes if this has not already been done. Relevant performance measures and benchmarks should be identified for use to evaluate team or positional performance. Reviewing performance measures with your team helps to enhance

³⁸ For further guidance on drafting and enhancing your policy and procedure manual, see Pat Sekaquaptewa and Lauren van Schilfgaarde, *Tribal Healing to Wellness Courts: The Policies and Procedures Guide* (Tribal Law and Policy Institute, 2015).

their comprehension of your Court’s purpose and import. Additionally, you must identify with each team member what data points and information he/she is responsible for tracking.

Court records and participant files house critical information, and data captured by numbers or events support efficient case management and evaluation. This information describes how your Court works—the process(s)—and whether expectations are being met—the outcomes. Smooth operation of your Wellness Court requires a viable and user-friendly method for keeping records and maintaining a database. The information is most useful when it is readily available for review and analysis by both your Court and an outside evaluator immediately, which may require an electronic process and/or a specific software or program. Additionally, consider the process of transferring and preserving these records, should the Court experience turnover in its coordinator, case manager, or other record-keeper.

Lastly, numbers, facts, and statistics alone do not fully reflect your Wellness Court’s success and benefits to the community. There is another and more culturally accordant way, but you need permission and the good kind of sanction to do so. It is simply to tell stories. Personal stories are best, but you need the permission of participants and graduates to tell them. You can still tell stories that compile positive efforts, such as the number of graduates each month, how many advancement of stages, and number of incentives; or quantify the total number of community service hours accomplished each month to show contribution to others. These kinds of stories or fact bits can positively affect the image of the court. Storytelling also is related to the principles and performance of Key 10.

An Evaluator:

- Evaluates participant’s progress
- Evaluates the work of the Court staff and the services that each team member and other tribal staff provide through internal and outside evaluation
- Works with the team to identify what data should be collected and how it should be analyzed

HEALING TO WELLNESS COURT KEY COMPONENT BENCH CARD

8

Process measurement, performance measurement, and evaluation tools are used to monitor and evaluate the achievement of program goals, identify needed improvements to the Tribal Healing to Wellness Court and to the tribal court process, determine participant progress, and provide information to governing bodies, interested community groups, and funding sources.

Key Concepts, Considerations, & Questions

Process Evaluation	Is the process depicted in a diagram to guide evaluation efforts?
	Are all programs/ partners included in the process? Provide data?
Performance Measures	Are measures/data points identified and data collection policies set?
	Are responsible persons identified to collect specific data/info?
Evaluation Tools	Are team members familiar with evaluation tools and instrument?
	Do the tools include funder specific requested data?
Participant Progress	Do measures monitor participant progress in quantitative terms?
	Are participant surveys used to gather data from them specifically?

“Excerpt from Statute, P & P, Court Rules, etc.”

“Alumni Quote”

JURIST – JUDICIAL ROLES & RESPONSIBILITIES

Functions and Formalities	Community Connection – Publish evaluation summaries and publicize program improvements	<input type="checkbox"/>
	Tribal Council Connection – Report evaluation findings and Court’s responses	
	Court Capability – Establish and maintain constant communication with (external) evaluator	
Legal Process & Procedures	Assure participants have signed releases of information for both monitoring and evaluation	<input type="checkbox"/>
	Establish process for alleged violations of confidentiality and other improper conduct.	
	Verify commitment to providing information/data and assuring confidentiality	
Ethics & Protocol	Assure confidentiality of participant information is kept by all team members and Court staff	<input type="checkbox"/>
	Identify relevant professional ethics of all team members and their applicability to Court process.	
Legal Context & Considerations <i>(Assure no conflict with existing law)</i>	Constitution	<input type="checkbox"/>
	Code	<input type="checkbox"/>
	Council Resolution	<input type="checkbox"/>
	Common Law	<input type="checkbox"/>
	Court Rule	<input type="checkbox"/>
	Custom	<input type="checkbox"/>

SUGGESTED	Identify data points for critical Court procedures	<input type="checkbox"/>
Practices	Identify data/statistics important to judicial function	<input type="checkbox"/>
Training	Include evaluation in yearly training schedule	<input type="checkbox"/>
Coaching	Review team member responsibilities by-yearly	<input type="checkbox"/>
Support	Practice “Get 10” with team periodically	<input type="checkbox"/>
	Review relevant best practices with team	<input type="checkbox"/>
	Share program/participant success stories	<input type="checkbox"/>

Related NADCP Core Competency
5 – Judge “initiates the planning process by bringing together the necessary agencies and stakeholders to evaluate the current court processes and procedures and thereafter collaborates to coordinate innovative solutions.”

Resources/ Technology www.WellnessCourts.org, www.home.tlpi.org, www.ndci.org, www.american.edu/spa/jpo/initiatives/drug-court/, www.ndcdr.org, www.drugcourtonline.org

“We need to be very careful when we adopt one model and impose it somewhere else. We can borrow an idea, but how we flesh it out might be very different. And it needs to be different. And people need to be encouraged to understand and to look at the differences.”
Judge Abby Abinanti

9. The Judge as Life-Long Teacher and Learner

Key Component #9: Continuing Interdisciplinary and Community Education

Continuing interdisciplinary and community education promotes effective Tribal Healing to Wellness Court planning, implementation, and operation.

The principles and performance of Key Component 9 accentuate relentless learning, teaching, and more learning. We should all embrace the role of life-long teacher and learner in order to make solid changes in our souls, communities, and societies.

Importantly here though, continuing training and interdisciplinary education contribute to improved performance in your role as a Wellness Court judge. Once again, our greatest asset in Wellness Court—bringing together so many different skilled professionals—can also serve as our greatest challenge as we struggle to understand and appreciate each other’s role and expertise. The services you provide are enhanced by better understanding, appreciation, and knowledge of how things work. You and the entire team must continue learning about Wellness Court, law, addiction, treatment, behavior modification, case management, justice, and so much more. Community members and tribal leaders must be continuously informed of governmental systems such as your Wellness Court and how they are designed to serve them. Constantly develop a list of preferred training needs for yourself and team members and create a schedule to follow throughout the year.³⁹

Providing training and education to your team is valuable and can be accomplished in various ways. Bring in outside trainers to facilitate learning and open it up to others, including service providers, court partners, leadership, and the community. Share literature regarding tribal courts, Healing to Wellness Courts, administration of justice, and other pertinent subjects with your team and review if warranted at staffing. In fact, time should be set aside once a month at staffing to review issues of interest to your Court. It is also enlightening and uplifting to see how other courts operate, such as what works and does not work with them. Interaction with other judicial staff provides reinforcement and support to your personal convictions and commitments. Identify, contact, and then consult other operating Wellness Courts to coordinate observation and/or training efforts that can be done together.

It helps keep you motivated to hear updates on new developments, promising practices, and jurisdictional news, for both adversarial courts and Wellness Court. Useful studies, articles, and reports or their summaries can be disseminated to court staff, program participants, leadership, and the community. Articles can be placed in tribal and local newsletters and newspapers to educate the public about tribal courts in general and on your Wellness Court in particular.

³⁹ Find the Healing to Wellness Court training calendar at www.wellnesscourts.org/events/. Major annual training events include the Tribal Law and Policy Institute’s annual Tribal Healing to Wellness Court Enhancement Training, www.wellnesscourts.org/enhtraining.cfm; and the National Association of Drug Court Professional’s Annual Training Conference, www.nadcp.org.

Consider posting notices on upcoming graduations, or featuring short articles about successful participants. To further educate the community, provide mini trainings that focus on the purpose and mission of your Wellness Court.

The learning process requires staff dedication and specific time allotted on a regular basis. In the bustle of our daily activities, it is easy to lose sight of these larger picture items. You and the team must be committed to learning as much as possible about changes or issues of law and any new information about Wellness Court development.

ABA Model Code of Judicial Conduct, Rule 3.1

Comment

[2] Participation in both law-related and other extrajudicial activities help integrate judges into their communities, and furthers public understanding of and respect for courts and the judicial system.⁴⁰

⁴⁰ ABA Model Code of Judicial Conduct, Rule 3.1.

Continuing interdisciplinary and community education promote effective Tribal Healing to Wellness Court planning, implementation, and operation.

Key Concepts, Considerations, & Questions

Interdisciplinary Education	Do team members receive a diverse set of training opportunities?
	Are team members familiar with their team members' job descriptions?
Collaborators	Are all partners aware of each other's contribution/responsibilities?
	Have partners' resources been shared with the team?
Community Nation	Is the Wellness Court a recognizable tribal institution in the Nation/Tribe?
	Is the community aware of the team's diversity and member duties?
Citizens—People	Are the appropriate people targeted and informed of the Court's mission?
	Are trainings provided to citizens periodically to inform/educate?

“Excerpt from Statute, P & P, Court Rules, etc.”

“Alumni Quote”

JURIST – JUDICIAL ROLES & RESPONSIBILITIES

Functions and Formalities	Community Connection – Widely publicize and post training announcements/invitations	<input type="checkbox"/>
	Tribal Council Connection – Provide yearly leadership training objectives for Court/community	
	Court Capability – Balance use of on-site and destination trainings for greatest reach of funds	
Legal Process & Procedures	Document team member training that qualify for professional CLE certification	<input type="checkbox"/>
	Maintain list of team member professional license status and standing for grant apps/evaluations	
	Periodically discuss with team minimal training requirement for members; include content and frequency	
Ethics & Protocol	Coordinate team member training plans/requirements with team member supervisors/agencies	<input type="checkbox"/>
	Assure general and professional ethics are included in yearly training objectives/plan	
Legal Context & Considerations <i>(Assure no conflict with existing law)</i>	Constitution	<input type="checkbox"/>
	Code	<input type="checkbox"/>
	Council Resolution	<input type="checkbox"/>
	Common Law	<input type="checkbox"/>
	Court Rule	<input type="checkbox"/>
	Custom	<input type="checkbox"/>

SUGGESTED	Solicit team member training interests and needs	<input type="checkbox"/>	<p>Related NADCP Core Competency</p> <p># 9 – Judge “contributes to education of peers, colleagues, and judiciary about the efficacy of drug courts.”</p>
Practices	Seek out on-site training resources/opportunities	<input type="checkbox"/>	
Training	Urge team to review Wellness Court research	<input type="checkbox"/>	
Coaching	Foster working relationship and visit neighboring courts	<input type="checkbox"/>	
Support	Develop Bench Book that includes training essentials	<input type="checkbox"/>	
	Identify alumni who can serve as mentors and teachers	<input type="checkbox"/>	

Resources/Technology www.WellnessCourts.org, www.home.tpi.org, www.ndci.org, www.american.edu/spa/ipo/initiatives/drug-court/, www.ndcdr.org, www.drugcourtonline.org

“The law, in its procedural as well as its substantive aspects, is essentially made and administered by persons whose views and interpretations are buffeted by the winds of change through the years, so that it has become a ‘truism that the quality of justice depends more on the quality of the [persons] who administer the law than on the content of the law they administer.’”
Henry J. Abraham, *The Judicial Process*, 6th Ed.

10. The Judge as Team, Community, and Nation Builder (Communicator)

Key Component #10: Team and Community Interaction

The development and maintenance of ongoing commitments, communication, coordination, and cooperation among Tribal Healing to Wellness Court team members, service providers and payers, and the community and relevant organizations, including the use of formal written procedures and agreements, are critical for Tribal Wellness Court success.

The principles and performance of Key Component 10 emphasize longevity, continuity, and sustainability. They rekindle the nature of your role as builder-convener who helped bring the justice system and healing resources together. Now, in order to keep the court moving, your role is one of builder-communicator. Continued and constant communication with everyone involved is needed to continue the important work of your Wellness Court. With as much energy and power you might have spent on gathering healing resources and fashioning the necessary legal procedures, you now must apply energy to keeping things tied together and maintaining momentum. The Judge, as team-, community-, and nation-builder (communicator), concentrates on developing new writings, reviewing existing writings, and consolidation.

Keep focus on the Court's paramount purpose of healing and restoration. Keep in constant view how your Wellness Court functions to facilitate the healing of its participants, as well as how your Wellness Court affects the healing of participant families, the community, and the entire tribal nation.

Similar to the principles and performance of Key Component 9, community education and updates about the scope and purpose of your Wellness Court helps to cultivate and sustain tribal ownership and support. Extended community understanding about how your Court works and how its processes and procedures are intended to comprehensively address substance-related crime builds knowledge and generates interest. You must demonstrate how your Wellness Court addresses participants' needs, how helping them in the long run will have a positive effect on the community, and how, even in relapse, our participants possess greater skills and resilience. Communicating this connection helps community members assess the value of your Court for the community and themselves. This connection may even motivate community members to support the Court in thought, and in some cases contribute to its success in deed by participating in various ways.

If you have not already done so, begin formulating a means of documenting your Court's history. This historical document of the Court's formation and development should include significant events and milestones in its evolution. Your story is not only valuable to your Court but it can also help other fledging Wellness Courts in their development efforts, if only to show them it can be done. The story and time line should include important individuals and groups who have contributed to your Court's existence and life. It should be a story to tell over and over, growing with chapters of the story yet to be told. Be mindful that a Wellness Court is not

a stagnant entity nor is it “owned” by its founders. Wellness Courts evolve with the change of the participation of its team members. Its story should reflect this natural and healthy evolution.

As a practical matter, a document such as this—your history—can be used to generate interest and respect for the Tribal Court, which both can be used to solicit grant funding for further development and operating funds. If you can illustrate how your Wellness Court resembles customary and traditional law, you may help gain interest, support, and contribution from traditional tribal members of your community who are looking for ways to apply culture in a modern context.

If you are grant funded, you should begin early to plan for subsequent tribal assumption of the funding need of your Court. You must consider long-term sustainability even from the beginning. Tribal leadership should begin developing a funding plan to indicate how the Court will be supported with tribal resources after grant funds are no longer available.

HEALING TO WELLNESS COURT KEY COMPONENT BENCH CARD

10

The development and maintenance of ongoing commitments, communication, coordination, and cooperation among Tribal Healing to Wellness Court team members, service providers and payers, the community and relevant organizations, including the use of formal written procedures and agreements, are critical for Tribal Wellness Court success.

Key Concepts, Considerations, & Questions

Sustained Community & Nation Building	Does the Court demonstrate a durable commitment and dedication?	<p>“Excerpt from Statute, P & P, Court Rules, etc.”</p> <p>“Alumni Quote”</p>
	Does the Court maintain steady and constructive communication?	
Collaboration	Does the Court practice cooperation?	
	Does the Court cultivate and encourage collaboration between government, community organizations, and citizens?	
Sustainability	Does the Court memorialize understandings/agreements with healing and human resources, and with service providers?	
	Does the Court <ol style="list-style-type: none"> 1) generate innovation and 2) exemplify unique governmental structure(s) relationship(s), and/or understanding(s)? 	

JURIST – JUDICIAL ROLES & RESPONSIBILITIES

Functions and Formalities	Community Connection – Continue to make contact with the community/Nation/Tribe/Village	<input type="checkbox"/>
	Tribal Council Connection – Continue to keep in contact with the Tribal Council	
	Court Capability – Continue to build capacity in not only the Wellness Court, but the entire judiciary	
Legal Process & Procedures	Memorialize key legal procedure(s) in codes, court rules, and policies and procedures	<input type="checkbox"/>
	Publicize the recognizable distinctiveness of Wellness Court from the regular criminal procedure(s)	
	Review transfer protocol yearly to assure mechanism is adequate or requires modification	
Ethics & Protocol	Review the judicial code of conduct with other judges	<input type="checkbox"/>
	Maintain a clear conflict of interest(s) disclosure/process; assess for adequate application	
	Scrutinize transfer of cases between dockets to assure they are distinguishable from each other.	
Legal Context & Considerations <i>(Assure no conflict with existing law)</i>	Constitution	<input type="checkbox"/>
	Code	<input type="checkbox"/>
	Council Resolution	<input type="checkbox"/>
	Common Law	<input type="checkbox"/>
	Court Rule	<input type="checkbox"/>
	Custom	<input type="checkbox"/>

SUGGESTED	Practices	Plan for annual community presentations	<input type="checkbox"/>	<p>Related NADCP Core Competency</p> <p># 6 – The judge “becomes a program advocate by utilizing his or her community leadership role to create interest in and develop support for the program.”</p>
	Training	Review/revise MOU/As periodically	<input type="checkbox"/>	
	Coaching	Identify need, and draft new MOU/As	<input type="checkbox"/>	
	Support	Propose writings that institutionalize Court	<input type="checkbox"/>	
		Update Advisory/Steering Committee regularly	<input type="checkbox"/>	
		Utilize tribal media to highlight Wellness Court	<input type="checkbox"/>	

Resources/Technology www.WellnessCourts.org, www.home.tlpi.org, www.ndci.org, www.american.edu/spa/jpo/initiatives/drug-court/, www.ndcdr.org, www.drugcourtonline.org

“Conflict itself is not the problem. Conflict is woven into the fundamental fabric of nature. The sea and the land meet in violent conflict and make waves together. The plow turns the meadow and wheat springs forth. Conflict is liable to be present wherever we go. It shows up at family reunions departmental meeting, sales calls, budget sessions, crowded parking lots, PTA meetings, checkout lines, counseling sessions, church meetings, football games, funerals, and motel rooms. Conflict is evidence that human beings are engaging in something interesting.”

Brian Muldoon, The Heart of Conflict

The Judge's Role in Wellness Court Proceedings and Practices: Process and Procedure Bench Cards

To truly make this Bench Book your own, we encourage you to compile and add to it the particulars and the unique characteristics of your Wellness Court. Place contents in the sections that make the best sense to you or as an appendix. The combined information will be useful to instruct new judges, team members, and others about your Court and provide guidance and reference to promote consistent practices. Specifically, descriptions of your Wellness Court procedure will help guide a new judge or judges pro tempore when stepping in in your stead.

The Bench Cards were designed so that you can add the relevant eligibility criteria, entry process, phases, and other specifics of your Wellness Court. Relevant court orders and opinions, minute-order templates, and examples of forms you use in your court can be added as appendixes. A flow chart or charts that diagram and describe your Wellness Court and procedures can be added to the appropriate Bench Cards. Create new Bench Cards that record how you and the court respond to pressing issues.

The following Bench Cards 11–20 are intended to feature the processes and procedures in a typical Healing to Wellness Court. They are intended to be modified by you to reflect the idiosyncrasies and individualities of your Wellness Court.

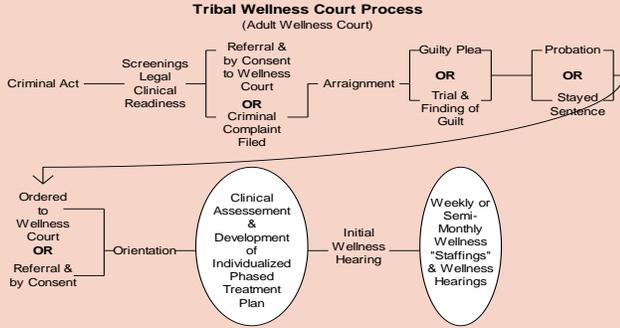
Find modifiable Microsoft Word versions of each of the Bench Cards 1–20 at www.WellnessCourts.org.

HEALING TO WELLNESS COURT PROCESS/PROCEDURE BENCH CARD

A Healing to Wellness Court’s consent to transfer and accept a case from a sister docket or foreign jurisdiction requires formal legal procedures that are pronounced in court rules or statutes and include provisions for complete transfer and transfer for a particular purpose (e.g.: assuming supervisory jurisdiction of a participant whose case originated elsewhere).

Path – Process

Protocol – Procedure



- Motion or Order to Transfer Filed in Wellness Court
- Wellness Court File prepared, Docketed
- File Motion/Order Forwarded for Review
- Motion/Order Reviewed
- Motion to Transfer Granted/Denied/Other
- Order Granting/Denying/Other Served
- If Granted, Participant Ordered to Appear to Initial Hearing
- Per original Order to Transfer
- Per granted Motion to Transfer

ACTION

JUDGE’S RESPONSE – RESPONSIBILITIES

Transfer Motion Filed in Wellness Court; File Prepared; Forwarded For Review

- Ensure Wellness Court maintains up-to-date transfer rules and requirements, and are readily available to all parties.
- Verify the required documents are attached to the Motion (plea document/application/support materials, etc.)
- Confirm eligibility: review results of legal and clinical screening to confirm target population match.
- Return incomplete Motion to movant with directions to file the required document(s)/submit information.

Tribal Court Transfer Order Filed in Wellness Court Docket (from criminal/civil dockets)

- Ensure all required documents are attached to the Order; If incomplete, instruct movant to file requisite docs/info.
- If case stems from plea agreement, check for participant consent to Wellness Court participation.
- Confirm eligibility: review results of participant’s legal and clinical screening to confirm target population match.
- Accept transfer and draft Wellness Court Initial Hearing Order, instructing participant when to appear for 1st hearing

Court Decides Motion (Court Considerations); Court Issues Order

- Ensure there is space for a new participant in the Wellness Court.
- Ascertain if there are any participation issues in regards to the transfer that requires team input. Set for staffing.
- Confirm participant was informed of the rights/responsibilities of Wellness Court participation and impact on due process.
- Check status of participant’s clinical assessment. If not complete or outdated, schedule assessment immediately.
- Produce Order: granting or denying Motion, with relevant findings to support decision.

Wellness Court Order Served; New Participant Ordered to Appear to Initial Hearing

- If Denied, state relevant findings supporting decision (i.e., lack of space, criminal record, Tx needs cannot be met)
- If Granted, serve Order to team members prior to next staffing for their review and introduction of new participant.
- If Granted, serve order to participant with Initial Hearing Order stating the date to appear for the 1st hearing.
- Include in Initial Hearing Order instructions to the new participant of what to expect at the Initial Hearing.

Record, Research & Rule References

Data Points & Performance Measures

Wellness Court Policies & Procedures

Court Rules

- # of Transfer Motions filed in Court quarterly
- # of Transfer Motions granted/denied
- # of candidate requests or self-referrals to the Court
- # of candidate requests granted/denied
- # of days from date of filing motion to initial hearing
- # of days from date of filing motion to court decision
- # of days from date of filing motion to review Hearing

Code/Statute Sections

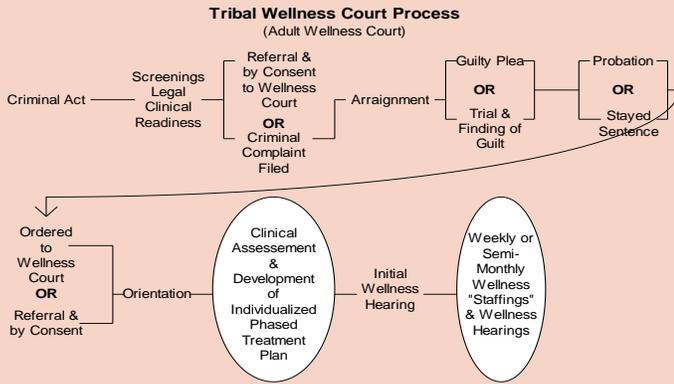
Resources/Technology: www.WellnessCourts.org, www.home.tlpi.org, www.ndci.org, www.american.edu/spa/jpo/initiatives/drug-court/, www.ndcd.org, www.drugcourtonline.org

HEALING TO WELLNESS COURT PROCESS/PROCEDURE BENCH CARD

Successful identification and recommendation of potential participants require prompt, plentiful, and informed referral points and legal procedures, which are followed by user-friendly application and review processes.

Path – Process

Protocol – Procedure



- Candidate (potential participant) identified by referral point**
- Candidate referred to Wellness Court; or**
- Candidate makes inquiry to Court- self referral**
- Wellness Court process reviewed with candidate (application and other forms provided to candidate)**
- Candidate screened**
- Candidate submits application/Motion**
- Candidate's file created**
- Candidate's file forwarded to Judge/team (Staffing)**

ACTION

JUDGE'S RESPONSE – RESPONSIBILITIES

Candidate Identified & Referred to Wellness Court

- Ensure Wellness Court maintains up-to-date referral rules and requirements, and are readily available to all parties.
- Review with team and Court staff the referral process periodically to assure consistent referral practice.
- Maintain up-to-date referral forms, and make sure all referral points are provided in the Court's referral forms.
- Direct Court staff and team members to gather data that details referral timeline (# of days between steps).

Candidate Inquiry From Referral Or Self-Referral; Application Provided

- Review 1st contact process with Court staff and team to support consistent practice.
- Develop and maintain check list of items to be discussed with candidate in 1st formal Wellness Court introduction.
- Require staff or team member to be available to screen candidates during or after 1st contact.
- Develop and maintain a check list for all key parts of the Wellness Court application to assist in review.
- If team member referral or Tribal Court Transfer, encourage that candidate be legal and clinical screened prior to visit.

Application submitted

- Review application with check list.
- Confirm eligibility: review results of legal and clinical screening.
- Review plea documents/orders and other support materials with application to gain insight into the candidate.
- Confirm candidate was made aware of rights/responsibilities of Wellness Court participation (change of rights).

Staffing

- Present candidate file to team at staffing for review, or introduce new participant admitted by motion/order.
- Review with team any issues or concerns of candidate's eligibility and participation in Wellness Court.
- Confirm the total number of participants in Wellness Court each meeting.
- Acknowledge verbal notices of team member referrals.

Record, Research & Rule References

Data Points & Performance Measures

Wellness Court Policies & Procedures

Court Rules

- # of referrals made by government/private parties per qtr.
- # of referrals initially screened eligible candidates per qtr.
- # of applications filed by referred candidates per qtr.
- # of candidate applications accepted/denied per qtr.
- # of days from Arrest/Incident to filing referral
- # of days from referral filing date to acceptance
- # of days from accepting application to Initial Hearing

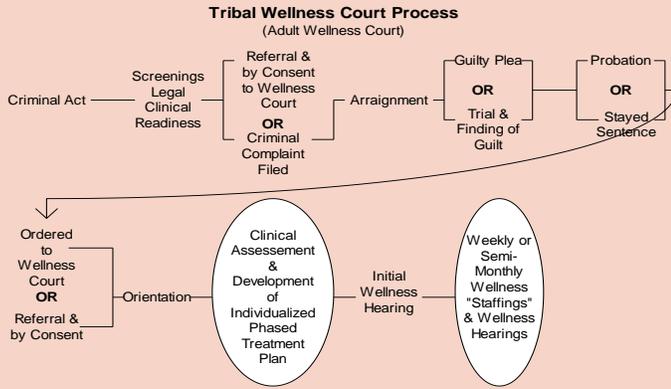
Code/Statute Sections

Resources/Technology: www.WellnessCourts.org, www.home.tlpi.org, www.ndci.org, www.american.edu/spa/jpo/initiatives/drug-court/, www.ndc.org, www.drugcourtonline.org

Clear and concise eligibility criteria of the target population promote fluid referral and screening processes, and facilitates decision-making on who to accept.

Path – Process

Protocol – Procedure



- Court receives application, motion/petition or order (Referral)
- Initial conversation w/ participant – introducing Wellness Court
- Legal screening conducted
- Clinical screening conducted
- Participant found eligible
- Participant’s file prepared, set for review at staffing
- Participant file reviewed by Judge/Court/Team
- Participant accepted into Wellness Court [or denied]
- Participant scheduled for initial hearing
- Participant scheduled for clinical assessment

ACTION

JUDGE’S RESPONSE

Eligibility Criteria

Court Coordinator	<input type="checkbox"/> Processes/forwards Motions/Requests to Transfer to the Judge/Team <input type="checkbox"/> Assures file contains requisite documents/forms <input type="checkbox"/> Practices consistent case management	
Prosecutor	<input type="checkbox"/> Reviews Motions/Requests To Transfer <input type="checkbox"/> Files Response to Motion timely	
Public Defender Defense Counsel	<input type="checkbox"/> Files Motion/Request to Transfer <input type="checkbox"/> Files Response to Motion Timely <input type="checkbox"/> Assures Defendant/Participant is fully informed of the rights and responsibilities of Wellness Court	<input type="checkbox"/> Reviews Motions/Requests to Transfer
Probation	<input type="checkbox"/> Reviews Motion/Request to Transfer if Motion includes Supervisory Support/Services <input type="checkbox"/> Files Response to Motion timely	
Police	<input type="checkbox"/> Provides input/comment at staffing/initial hearing	
Tx-Healing Resource	<input type="checkbox"/> Provides input/comment at staffing/initial hearing	
Social Services	<input type="checkbox"/> Provides input/comment at staffing/initial hearing	

Record, Research & Rule References

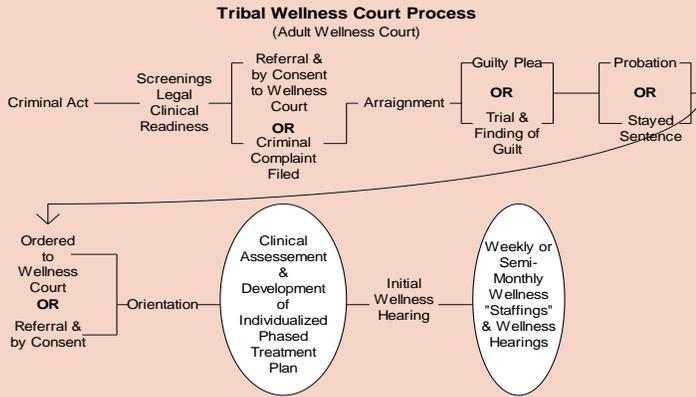
<u>Data Points & Performance Measures</u>	<u>Wellness Court Policies & Procedures</u>	<u>Court Rules</u>
# of Applications/Motions Filed in Court/Time Frame # of Applications Found Legally Eligible/Time Frame # of Applications Found Clinically Eligible/Time Frame # of Applications Found Legally and/or Clinically Ineligible # of Eligible Applications/Candidates Denied Entry # of Candidates Presented as High Risk/High Need # of High Risk/High Need Candidates Denied Entry		<u>Statutes/Code Sections</u>

Resources/Technology: www.home.tlpi.org, www.wellnesscourts.org, www.ndci.org, www.american.edu/spa/jpo/initiatives/drug-court/, www.ndcdr.org, www.drugcourtonline.org

The participant's first hearing with the judge, team and peers sets the tone for his/her comprehensive, court-supervised healing process. The participant leaves the initial hearing fully informed of participation requirements and of all other pertinent aspects of the Healing to Wellness Court.

Path – Process

Protocol – Procedure



- Court Convenes Initial Hearing**
- Court Calls New Participant**
- Court Reviews Case File & Contents with Participant**
- Court's Reviews Wellness Court Process with Participant/Counsel**
- Court Considers Comments from Team**
- Inquire if Participant has Questions**
- Court Closes Initial Hearing**

ACTION

JUDGE'S RESPONSE – RESPONSIBILITIES

Initial Hearing Convened; Court Calls New Participant

- Welcome/introductions; quick announcements, etc. (unless done at Review Hearing)
- Proceed with prearranged order of new clients

Review of Case File & Contents with Participant

- Review with participant the case file's primary documents (Order, Contract, receipt of Handbook, etc.)
- Check documents for participant signature
- Check documents for counsel or parents/guardian signatures

Review of Wellness Court Process with Participant/Counsel

- Review procedural history/participant's criminal or other court status
- Review important rules/ policies and procedures with participant
- Review general components of Treatment/Wellness Plan (Phase Requirements)
- Review sanctions and termination policy
- Review the week's tasks (what is to be done by the 1st Review Hearing)

Team Comments & Client Questions

- Solicit welcome/comments from team
- Solicit comments/questions from participant's counsel, family, support persons
- Ask participant for any questions

Court Closes Initial Hearing

- Encouragement/Guidance/Direction/Warning

Record, Research & Rule References

Data Points & Performance Measures

Wellness Court Policies & Procedures

Court Rules

- # days from referral/transfer to acceptance of client
- # days from acceptance to Initial Hearing of client
- # of types of charges/conduct presenting for client
- # of new participants appearing per month/qtr.
- # of Wellness/Tx Plans created/revised per month
- # of types of charges dismissed/deferred per client

Code/Statutes Sections

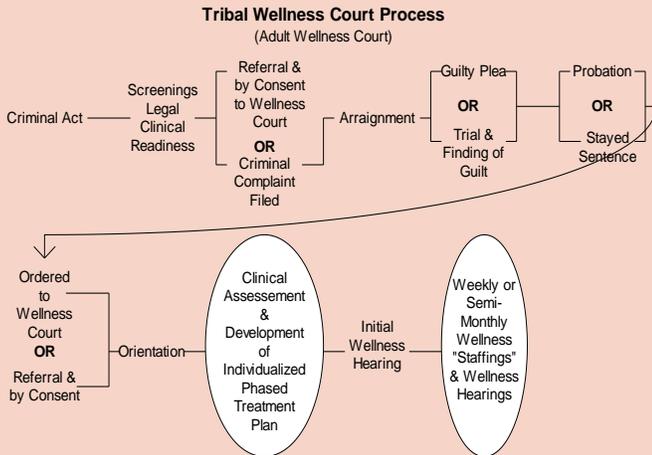
Resources/Technology: www.home.tlpi.org, www.wellnesscourts.org, www.ndci.org, www.american.edu/spa/jpo/initiatives/drug-court/, www.ndcdr.org, www.drugcourtonline.org

HEALING TO WELLNESS COURT PROCESS/PROCEDURE BENCH CARD

The staffing is where the Healing to Wellness Court collectively champions health and wellness for its participants, participant families, and the community. Staffing is the conduit for team communication and corroboration regarding participant conduct and is the source of the Court's jointly conceived and coordinated strategic support and supervision.

Path – Process

Path – Procedure



- Welcome/Team Member (Partner) Announcements**
- Identify Participants to be Graduating**
- Review Candidate Applications (potential participants)**
- Review Participant Tx Plan-Compliance/Activity**
 - Counseling: Individual Group
 - Wellness Activities: Individual Group
 - Self-Sufficiency: Work School
 - Probation: Check in Home/Site-Visit
 - Court Obligations: Fees Fines/CS
 - Family Obligations: Visitations Maintenance
 - Court Action: Incentive Sanction
- Team Issues**
- Training/Teaching Items**
- Review Hearing Preparation**

ACTION

JUDGE'S RESPONSE – RESPONSIBILITIES

- | | |
|--|--|
| Welcome & Team Member/Partner Announcements | <input type="checkbox"/> Start staffing on time and prepared
<input type="checkbox"/> Inquire of team members/partners if there are any programmatic announcements
<input type="checkbox"/> Offer judicial information /announcements if pertinent to Wellness Court |
| Review Clients to be graduating | <input type="checkbox"/> Inquire of Coordinator of any participants who have completed or will complete all requirements to graduate
<input type="checkbox"/> Solicit comments from team members regarding clients preparing for graduation – concerns or issues
<input type="checkbox"/> Set graduation date for clients ready to graduate – begin preparation for graduation (after care?) |
| Review Candidate Applications (potential clients) | <input type="checkbox"/> Inquire of Coordinator of any applications submitted of candidates for Wellness Court
<input type="checkbox"/> Inquire of team members of any history/background of candidate and of any concerns/questions
<input type="checkbox"/> Hear statements of team regarding any issues
<input type="checkbox"/> Decide whether applicant shall be accepted, denied, or need for further information |
| Review Client Compliance | <input type="checkbox"/> Start review of Wellness Court participants
<input type="checkbox"/> Review each general component consistently with each participant; followed by any special conditions
<input type="checkbox"/> Schedule subsequent meeting/discussion time for participant issues that require further information/consideration |
| Discuss Team Issues and/or Training Needs | <input type="checkbox"/> Discuss issues previously set aside/scheduled to be discussed at staffing
<input type="checkbox"/> Inquire of team any training issues and needs that are affecting Court process and procedure |
| Prepare for Review Hearing | <input type="checkbox"/> Note what specific information to inquire of client at review hearing
<input type="checkbox"/> Note Incentives and/or Sanctions to be issued at review hearing
<input type="checkbox"/> Prepare for any sanction issues requiring further security or detention officers
<input type="checkbox"/> Determine strategically what order participants will be reviewed at review hearing |

Record, Research & Rule References

Data Points & Performance Measures

Wellness Court Policies & Procedures

Court Rules

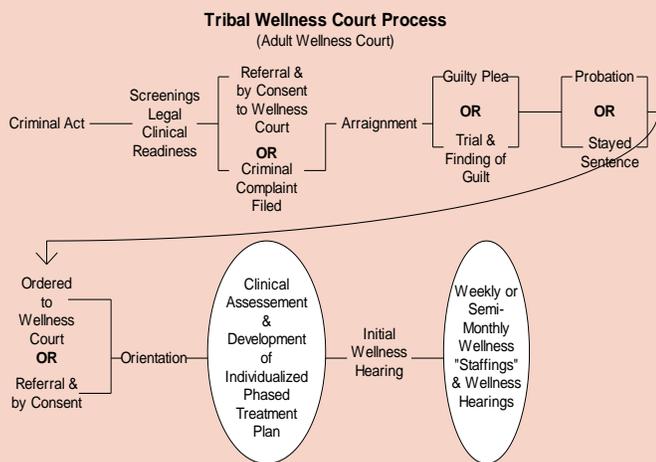
- # of cases managed/staffed per meeting
- # of current clients/participants – phase breakdown
- # of drug tests taken in last week (period)
- # of dirty tests – phase breakdown
- # community service hours performed
- # of Tx hours/participant in last week (ind/grp)
- # of days sober/participant in last week

Code/Statute Sections

Discipline and encouragement provide balanced pressure and praise that promote productive healing to wellness journeys for participants.

Path – Process

Protocol – Procedure



Notice of Conduct that Warrants Sanction/Incentive

Formal (document) Informal (Verbal) Per Policy

Notice forwarded to Team

Positive Conduct = Set on Staffing Agenda

Negative Conduct = Immediate Sanction per Policy

Present to Team at Staffing for Discussion

Review Incentive Sanction History

Assure Progressive Practice/Pace

Solicit Team Recommendations

Initial Decision (pending Info. Received at Review/Special Hearing)

Hear Participant's Response at Review/Special Hearing

Final Decision

ACTION

JUDGE'S RESPONSE

Court Coordinator	<input type="checkbox"/> Maintains communication/connection between Court/Team/Partners <input type="checkbox"/> Gathers data for Court/Team prior to staffing	<input type="checkbox"/> Rec: _____
Prosecutor	<input type="checkbox"/> Maintains communication/connection between Court/Team/Partners <input type="checkbox"/> Gathers data for Court/Team prior to staffing	<input type="checkbox"/> Rec: _____
Public Defender Defense Counsel	<input type="checkbox"/> Maintains communication/connection between Court/Team/Partners <input type="checkbox"/> Gathers data for Court/Team prior to staffing	<input type="checkbox"/> Rec: _____
Probation	<input type="checkbox"/> Maintains communication/connection between Court/Team/Partners <input type="checkbox"/> Gathers data for Court/Team prior to staffing	<input type="checkbox"/> Rec: _____
Police	<input type="checkbox"/> Maintains communication/connection between Court/Team/Partners <input type="checkbox"/> Gathers data for Court/Team prior to staffing	<input type="checkbox"/> Rec: _____
Tx-Healing Resource	<input type="checkbox"/> Maintains communication/connection between Court/Team/Partners <input type="checkbox"/> Gathers data for Court/Team prior to staffing	<input type="checkbox"/> Rec: _____
Social Services	<input type="checkbox"/> Maintains communication/connection between Court/Team/Partners <input type="checkbox"/> Gathers data for Court/Team prior to staffing	<input type="checkbox"/> Rec: _____

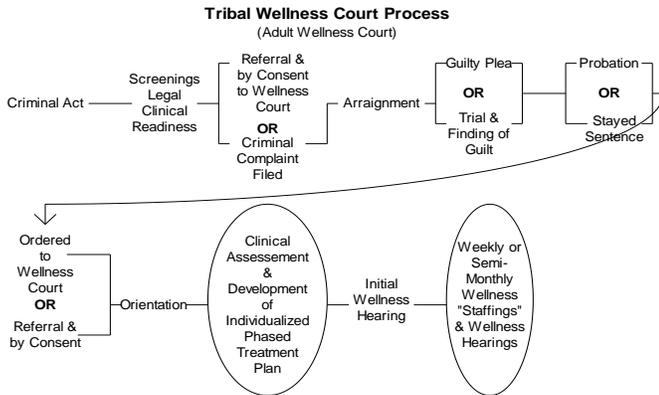
Record, Research & Rule References

<u>Data Points & Performance Measures</u>	<u>Wellness Court Policies & Procedures</u>	<u>Court Rules</u>
# of incentives/sanctions awarded each hearing		<u>Code/Statute Sections</u>
# of contested incentives/sanctions per qtr.		
# of severe sanctions issued per qtr.		
# of community service hrs.- total \$ per month		
# of sanctions affecting phase period		
# of incentives in gift cards – amount per month		

Resources/Technology: www.WellnessCourts.org, www.home.tlpi.org, www.ndci.org, www.american.edu/spa/jpo/initiatives/drug-court/, www.ndcdr.org, www.drugcourtonline.org

HEALING TO WELLNESS COURT PROCESS/PROCEDURE BENCH CARD

The Review Hearing is mindful of the journey aspect of Healing to Wellness. It emphasizes that recovery and/or restoration is forcefully accomplished in supportive steps and stages. As much as a Review Hearing is the platform where participants are held accountable, it also is the place where praise and appreciation is afforded to clients for progress and achievement.



Welcome/Announcements

New Participant Introductions

Participant Review (Tx Plan-Compliance/Activity)

- | | | | | |
|----------------------|-------------|--------------------------|-----------------|--------------------------|
| Counseling: | Individual | <input type="checkbox"/> | Group | <input type="checkbox"/> |
| Wellness Activities: | Individual | <input type="checkbox"/> | Group | <input type="checkbox"/> |
| Self-Sufficiency: | Work | <input type="checkbox"/> | School | <input type="checkbox"/> |
| Probation: | Check in | <input type="checkbox"/> | Home/Site-Visit | <input type="checkbox"/> |
| Court Obligations: | Fees | <input type="checkbox"/> | Fines/CS | <input type="checkbox"/> |
| Family Obligations: | Visitations | <input type="checkbox"/> | Maintenance | <input type="checkbox"/> |
| Court Action: | Incentive | <input type="checkbox"/> | Sanction | <input type="checkbox"/> |

Team Member Announcements/Info. for Participants

Closing/Adjourn

ACTION

JUDGE'S RESPONSE – RESPONSIBILITIES

Welcome

- Welcome those present to Review Hearing (reminder of what is generally done at Review Hearing)
- Identify the Team present for the Hearing
- Preside over special event/introduce speaker (when applicable)
- Proceed with participants (call new participants first)

New Participants

- Welcome new participant to the Healing to Wellness Court, give your rendition of how the Court works
- Review with participant his/her acknowledgement of the Court's rules and its policies and procedures
- Review with participant any signed documents in the file indicating his/her consent to Wellness Court participation
- Leave participant with final words of encouragement for his/her Wellness Court experience (expectations for next hearing)

Participant Review

- Proceed with special actions (incentives or sanctions issues handled at the beginning of client review)
- Begin review of Wellness Court participants in prearranged order
- Review with participant his/her activity with each general component of the Tx plan; then any special conditions
- Reward participant for progress any incentive decided upon at Staffing; offer personal comments and insight
- Review with participant any issues or concerns the Team has identified; issue sanction as decided upon at Staffing.
- If circumstance warrant, modify decisions made at Staffing to suit the situation and to maximize behavioral modification

Team Member Announcements

- Ask Participants/Community Members/Team Member to make any announcements regarding community events.
- Ask Team Member for any special Information/directions/guidance regarding program operations, schedule changes, etc.

Closing

- Offer final comment regarding any issues that arose during Review Hearing (both positive/negative)
- Make any judicial announcements related to the Wellness Court (space, schedule, staffing matters, etc.)
- Offer final words of encouragement to participants for the next week/review period.

Record, Research & Rule References

Data Points & Performance Measures

Wellness Court Policies & Procedures

Court Rules

- # of participant/client reviews (total enrolled)
- # of new participants appearing for Initial Hearing
- # of participants appearing from phase 1, 2, 3, 4
- # of compliant participants – noncompliant
- # of sanctions and incentives given

Code/Statute Sections

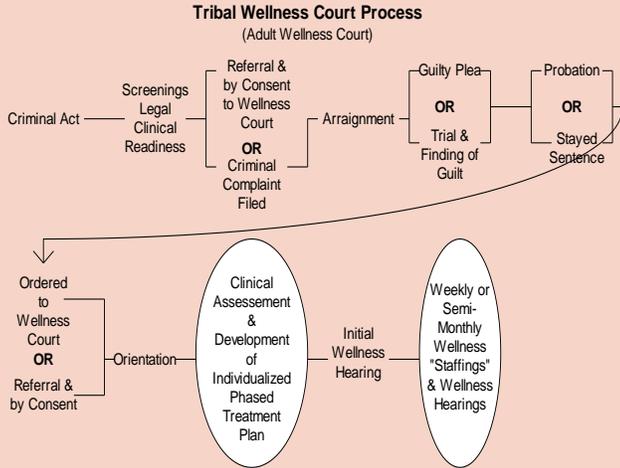
Resources/Technology: www.home.tlpi.org, www.wellnesscourts.org, www.ndci.org, www.american.edu/spa/jpo/initiatives/drug-court/, www.ndcdr.org, www.drugcourtonline.org

HEALING TO WELLNESS COURT PROCESS/PROCEDURE BENCH CARD

Termination from Healing to Wellness Court is the ultimate sanction. Termination must be decided according to existing rules and procedure that assure the participant is afforded due process.

Path – Process

Protocol – Procedure



- Court receives notice of potentially terminable conduct, or Court receives notice or participant's arrest/detention
- Court finds conduct terminable by rule/hearing not required
- Court finds it necessary to hold termination hearing
- Court schedules termination hearing/notifies team
- Court provides participant with notice of hearing and allegations
- Court informs participant to file written response prior to hearing
- Court hold hearing and team make recommendations
- Court makes decision
- Court produces Order and delivers to:

<input type="checkbox"/> Wellness Court Case File	<input type="checkbox"/> Participant
<input type="checkbox"/> Prosecutor	<input type="checkbox"/> Defense Counsel
<input type="checkbox"/> Tx/Healing Resources/Counselor	<input type="checkbox"/> Police
<input type="checkbox"/> _____	<input type="checkbox"/> _____
- Court closes Wellness Court case due to termination

ACTION

JUDGE'S RESPONSE – RESPONSIBILITIES

Wellness Court receives notice of potentially terminable conduct

- Review statement(s) describing conduct and court rules referenced in statements
- Determine if conduct requires automatic termination or discretionary
- Review participant's Contract/Agreement to verify participant's knowledge of termination policies

Wellness Court receives notice of a participant's arrest/detention

- Review notice/complaint stating conduct and charges for participant's arrest and detention; hearing date(s)
- Determine if arrest requires automatic termination or discretionary
- Review participant's Contract/Agreement to verify participant's knowledge of termination policies

Wellness Court finds conduct terminable by rule - hearing not required; or Court finds hearing is required

- Verify conduct
- If terminable conduct, prepare Termination Order
- If not terminable conduct, determine if termination hearing must be held or first discussed at staffing
- Set termination hearing, or put on the next Staffing agenda (subsequent scheduling of termination hearing)

Wellness Court issues Notice of Hearing and deadline for submitting written response

- Serve Notice of Hearing to participant and team and copies of participant's signed contracts/consent forms.
- Inform participant to submit a written response prior to the hearing
- Inform team members to submit written recommendations prior to the hearing

Wellness Court holds hearing and makes decision

- Conduct hearing according to tribal court procedures

Wellness Court produces Order; Delivers Order and closes case if termination

- Provide written order for both Wellness Court case file and originating criminal file
- Close Wellness Court case file

Record, Research & Rule References

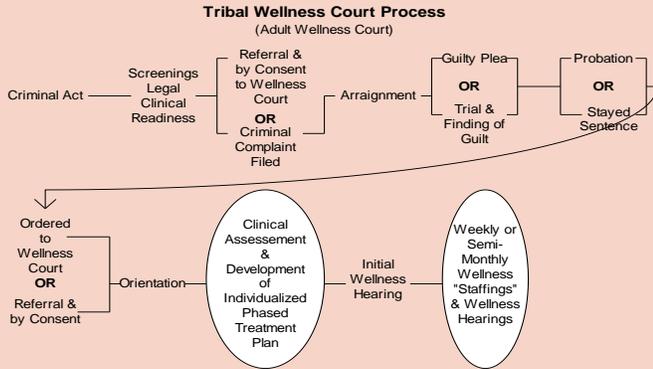
<p>Data Points & Performance Measures</p> <p># of participants recommended for termination</p> <p># of hearings for termination conducted</p> <p># of participants terminated</p>	<p>Wellness Court Policies & Procedures</p>	<p>Court Code</p> <p style="text-align: center;"><u>Code/Statute Sections</u></p>
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Resources/Technology: www.WellnessCourts.org www.home.tlpi.org, www.ndci.org, www.american.edu/spa/jpo/initiatives/drug-court/, www.ndcdr.org, www.drugcourtonline.org

Graduation is held to honor a participant who successfully completes all Wellness Court requirements and obligations. The graduation ceremony marks the end of a chapter of one's life and the start of another.

Path – Process

Protocol – Procedure



- Participant completes Wellness Court- files graduation application
- Court/Team review Application at Staffing
- Schedule Graduation Date – If completion confirmed
- Prepare for Graduation Ceremony – solicit speaker(s)
- Hold Graduation
- Award Graduate with Certificate of Graduation
- Forward Certificate of Graduation to interested parties
- Close Case

ACTION

JUDGE'S RESPONSE – RESPONSIBILITIES

Participant submits Graduation Application

- Confirm participant completed all graduation requirements
- Review participant's file to assure it contains all requisite documents/forms to complete record.
- Set review of application with Team on the next Staffing agenda

Court/Team review Application at Staffing

- Inquire of comments / concerns regarding participant's application to graduate
- Confirm participant completed all graduation requirements
- Confirm all fees/fines/community service is completed
- Inquire of memorable participant conduct (stories); and whether participant is to continue with After Care

Schedule and Prepare for Graduation Ceremony

- Review participant file to assure it contains all requisite docs/forms to complete Wellness Court record
- Set Graduation date; cross check with community calendar and events
- Solicit potential speaker(s) with team and others for graduation
- Assure every team member is assigned a task or responsibility for the graduation ceremony

Hold Graduation Present Graduate with Certificate and Final Incentive

- Work with team/Coordinator to draft agenda for Graduation Ceremony
- Allow for time in ceremony for participant and/or family to speak
- Include community as much as confidentiality concerns allow and to the extent waived by participant
- Provide food to graduation participants (if possible)
- Present participant with certificate/diploma/card to signify graduation

Forward Certificate of Graduation and initiate case closure

- Forward record of graduation/order to interested parties
- Initiate case closure and forward order to interested parties or jurisdiction where case originated
- Forward Final Order to After Care provider (if applicable)

Record, Research & Rule References

Data Points & Performance Measures

Wellness Court Policies & Procedures

Court Rules

- # of clients who graduated within program term
- # of clients who graduated 4, 8, 12 mths past term
- # of graduation ceremonies held per month
- # of days between graduation ceremonies
- # of days from actual completion to graduation day
- # of graduates who go on to Aftercare (%/month)
- # of family members/others attending graduation

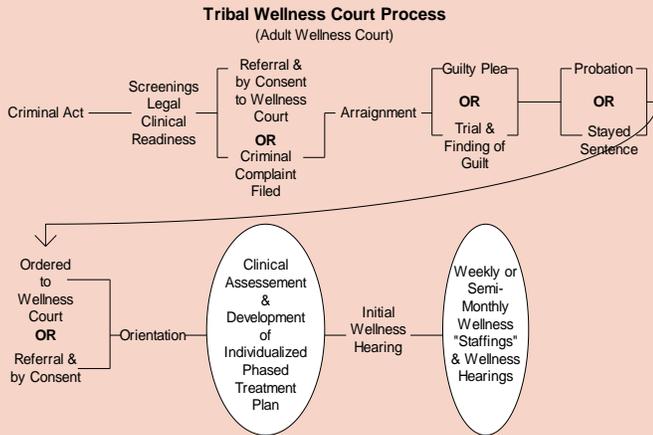
Code/Statute Sections

HEALING TO WELLNESS COURT PROCESS/PROCEDURE BENCH CARD

Specific and clear legal transfer procedures promote sound and transparent case processing between dockets and from Court to Court.

Path – Process

Protocol – Procedure



- Court terminates Transfer participant from Wellness Court
- Court produces Order stating the bases of closure and transfer
- Court enters Order (signed/file stamped)
- Court delivers to:
 - Wellness Court case file
 - Prosecutor
 - Tx/Healing Resource/Counselor
 - Client
 - Defense Counsel
 - Police
- Court delivers Order to referral jurisdiction
- Court delivers Order to participant's After Care provider file

ACTION

JUDGE'S RESPONSE – RESPONSIBILITIES

Wellness Court Receives Motion/ Request to Close Case and Transfer

- Review Motion and any support documents
- Review participant's Wellness Court file for status (docs showing status, completion, withdrawal, termination, etc.)
- Review Order Accepting Transfer (w/original motion) to determine if any conditions of transfer are met

Wellness Court Receives Notice of Graduation w/Motion to Close Case

- Review Motion and support documents
- Review participant's Wellness Court file for pertinent documentation
- Write final comment in file and/or to participant

Wellness Court Terminates Transfer Client

- Prepare Order of Termination (which could include Order to Close Case and Transfer if not done separately)
- State in Order how termination was decided and how due process was afforded participant
- Review defendant's Original Order, if any, to assure Termination Order is delivered to appropriate jurisdiction

Wellness Court Prepares Closure and Transfer

- State short procedural history leading to case closure, including if case was transferred from sister jurisdiction
- State the circumstances of closure, if participant completed process, withdrew, or was terminated
- State whether all conditions of transfer were completed and that case is closed

Court Enters Order And Delivers

- Assure the Order includes the names of those it must be delivered
- Forward Final Order with your signature to Clerk/Coordinator for file stamp
- Instruct court staff of any special and immediate deliveries of the Order
- Assure Order is delivered to After Care provider, if applicable

Record, Research & Rule References

Data Points & Performance Measures

Wellness Court Policies & Procedures

Code/Statute Sections

- # of case closures by graduation per month
- # of case closures by termination per month
- # of case closures by client withdrawal per qtr.
- # of open spots below program max. per qtr.
- # of eligible participants on a waiting list per qtr.
- # of cases transferred (intra-tribal court) per qtr.
- # of cases transferred (sister jurisdiction) per qtr.

Code/Statute Sections

Resources/Technology: www.WellnessCourts.org, www.home.tlpi.org, www.ndci.org, www.american.edu/spa/jpo/initiatives/drug-court/, www.ndcib.org, www.drugcourtonline.org

Resource Materials for Healing to Wellness Courts

Drug Court Best Practice Standards, Volumes I and II. 2013. National Association of Drug Court Professionals. www.nadcp.org/Standards

Flies-Away, Joseph, Carrie Garrow, and Pat Sekaquaptewa. 2014. *Tribal Healing to Wellness Courts: The Key Components*, 2nd ed. Tribal Law and Policy Institute. www.wellnesscourts.org/HWC_Publication_Series.cfm

Kushner, Jeffrey N., Roger H. Peters, and Caroline S. Cooper. 2014. *A Technical Assistance Guide for Drug Court Judges on Drug Court Treatment Services*. Bureau of Justice Assistance Drug Court Technical Assistance Project. <http://jpo.wrlc.org/handle/11204/3511>

Marlowe, Douglas B., JD, PhD, and Judge William G. Meyer (Ret.), eds. 2011. *The Drug Court Judicial Benchbook*. National Drug Court Institute. http://www.ndci.org/sites/default/files/nadcp/14146_NDCI_Benchbook_v6.pdf.

Sekaquaptewa, Pat and Lauren van Schilfgaarde. 2015. *Tribal Healing to Wellness Courts: The Policies and Procedures Guide*. Tribal Law and Policy Institute. www.wellnesscourts.org/HWC_Publication_Series.cfm

For modifiable Word versions of the Bench Cards visit:
www.wellnesscourts.org/HWC_Publication_Series.cfm.

For additional Healing to Wellness Court information,
visit the Wellness Court website:

www.WellnessCourts.org

“Providing resources and technical assistance for Tribal Healing to Wellness Courts”