

47th Annual National Tribal Judicial and Court Personnel Conference
Tribal Justice Matters: *Role of Tribal Courts in Upholding Indigenous Rights*
October 19-20, 2016
Morongo, CA

The Judge as Healer:

*The Role of the Judge in
Healing to Wellness Courts*



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Overview & Initial Considerations

- Role of the Wellness Court Judge
- Wellness Court Best Practices
 - The Key Components
 - The Drug Court Standards
- Judge in Action: The Bench Cards

Healing to Wellness Court



Collaborative Spirit

- Stepping away from adversarial
 - For the team members
 - For the participants
- The Judge as Captain
- The Judge as Coach

Practicing Customary and Traditional Law

- Supplementing punishment and retribution with restoration and healing
- Seeking harmony internally and externally
- Integrating traditional practices into the judiciary



Promoting Healing and Treatment

- Expanding expertise in
 - Pharmacology
 - Behavioral Health
 - Community Resources
- Reorienting docket from case to person
- Structured, phased treatment



***THE JUDGE AS HEALER:
Presiding over Restoration***

Sustained
Team, Community &
Nation Building

Team, Community &
Nation Building

Enduring Knowledge &
Experience

Entry

Keeping &
Telling Stories

Eligibility

Respectful
Communication

Healing &
Treatment

Discipline &
Encouragement

Support &
Supervision

Key #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.

- Judges must step into a position that promotes a partnership perspective, at times more captain than coach, and at other times, vice versa.
- The judge plays an active role in the treatment process

Standard #3: Roles and Responsibilities of the Judge

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

Consistency

- The judge presides for no less than two consecutive years
- Participants ordinarily appear before the same judge throughout their enrollment

Presence

- Judge regularly attends staffings
- Hearings are at least every two weeks on Phase 1
 - Hearings are at least every four weeks until participants are in the last phase.
- Judge spends sufficient time (at least 3 minutes) during hearings to review each participant's progress

Staffing

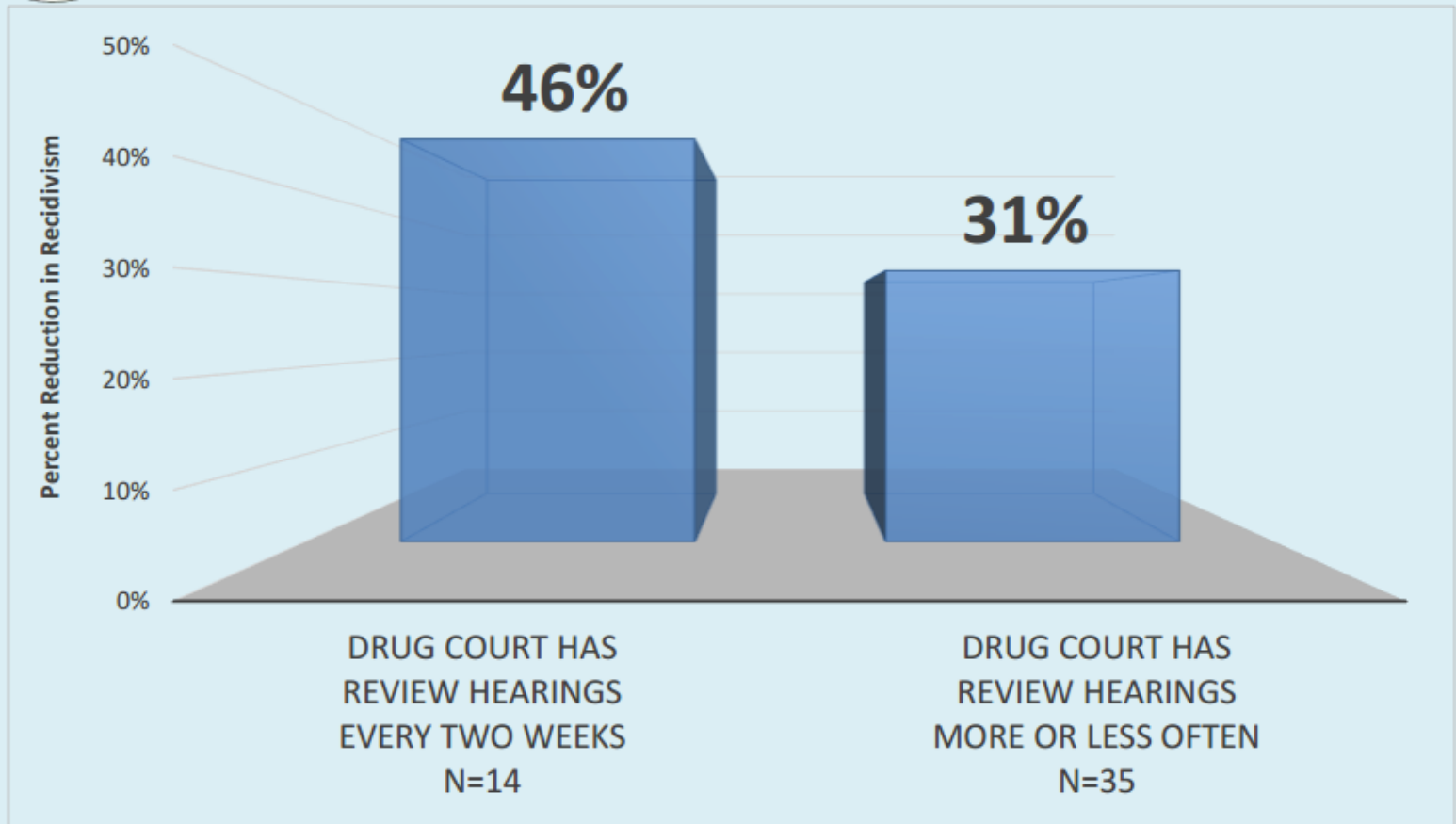
- Judge regularly attends
- Each participant's progress is reviewed, and potential consequences are discussed
- Judge ensures each team member's perspective is considered
- Through staffing, Judge is adequately informed and prepared for hearing

Hearings

- Hearings are at least every 2 weeks (may be reduced in later phases)
- Judge spends sufficient time with each participant (at least 3-7 minutes)
- Judge is supportive and optimistic, and allows the participant to be heard



Drug Courts That Held Status Hearings Every 2 Weeks During Phase I Had 50% Greater Reductions in Recidivism



Note: Difference is significant at $p < .1$

Judicial Decision Making

- Judge must retain independent discretion when resolving
 - Factual controversies
 - Administering incentives or sanctions that affect liberty interest
 - Ordering conditions of supervision
- May require expert input from treatment professionals to make treatment-related decisions

Judicial Ethical Considerations

- Professional decorum
- Report criminal activity?
- Ex parte communications

HEALING TO WELLNESS COURT KEY COMPONENT BENCH CARD		1
<p><i>The Judge as Team: Community & Nation Builder</i></p> <p>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.</p>		
Key Concepts, Considerations, & Questions		
Community & Nation Building	<p>Does the Wellness Court contribute to</p> <ol style="list-style-type: none"> 1) human capital/citizen development and 2) community peace and well-being? <p>Does the Wellness Court</p> <ol style="list-style-type: none"> 1) inspire innovation, and 2) require unique governmental institution(s), structure(s), and/or relationship(s)? 	"Excerpt from Statute, P & P, Court Rules, etc."
Healing Focus	<p>Does the Wellness Court cultivate collaboration between treatment, healing resources and the judicial system?</p> <p>Does the Wellness Court enhance the reach and impact of existing human resources and service providers?</p>	
Teamwork & Collaboration	<p>Does the Wellness Court promote and model teamwork?</p> <p>Does the Wellness Court stimulate and sustain team-building?</p>	"Alumni Quote"
JURIST – JUDICIAL ROLES & RESPONSIBILITIES		
Functions and Formalities	<p>Community Connection – Present Wellness Court to Community</p> <p>Tribal Council Connection – Solicit official approval from tribal leadership</p> <p>Court Capability – Assure adequate resources are gathered to implement Wellness Court</p>	<input type="checkbox"/>
Legal Process & Procedures	<p>Propose alternate procedures, particularly case transfer – between dockets/other Courts</p> <p>Promulgate alternative procedures by Court Rule</p> <p>Publish procedures thoroughly (recognizably distinct from the norm)</p>	<input type="checkbox"/>
Ethics & Protocol	<p>Identify and disclose potential conflicts of interest</p> <p>Allow for teaching and learning when apparent and applicable</p> <p>Distinguish between Court determinations and decisions entered for Defendants and Participants</p> <p>Assure knowledge, familiarity, and relationships with Citizens/Community cause no bias</p>	<input type="checkbox"/>
Legal Context & Considerations (Assure no conflict with existing law)	<p>Constitution <input type="checkbox"/></p> <p>Code <input type="checkbox"/></p> <p>Council Resolution <input type="checkbox"/></p> <p>Common Law <input type="checkbox"/></p> <p>Court Rule <input type="checkbox"/></p> <p>Custom <input type="checkbox"/></p>	
SUGGESTED	<p>Team Building Activity <input type="checkbox"/></p> <p>Practices Community Presentation <input type="checkbox"/></p> <p>Training Advisory/Steering/Community Committee Meeting <input type="checkbox"/></p> <p>Coaching Regular Team Meeting <input type="checkbox"/></p> <p>Support Training (update) <input type="checkbox"/></p> <p>MOUs/MOAs (update) <input type="checkbox"/></p>	<p>Related NADCP Core Competency</p> <p># 7 - Judge "effectively leads the team to develop all the protocols and procedures of the program."</p> <p>See Process & Procedure Bench Card 11 & 13</p>
Resources/Technology	<p>www.WellnessCourts.org, www.home.tlpi.org, www.ndci.org, www.american.edu/spa/poinitiatives/drug-court/, www.ndcjr.org, www.drugcourtonline.org</p>	
<p>"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 nation's future." Fries-Lewis, Garrow, & Jorgensen</p>		

HEALING TO WELLNESS COURT PROCESS/PROCEDURE BENCH CARD		11
<p>Transfer (in)</p> <p>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).</p>		
Path – Process		Protocol – Procedure
		<p>Motion or Order to Transfer Filed in Wellness Court <input type="checkbox"/></p> <p>Wellness Court File prepared, Docketed <input type="checkbox"/></p> <p>File Motion/Order Forwarded for Review <input type="checkbox"/></p> <p>Motion/Order Reviewed <input type="checkbox"/></p> <p>Motion to Transfer Granted/Denied/Other Order Granting/Denying/Other Served <input type="checkbox"/></p> <p>If Granted, Participant Ordered to Appear to Initial Hearing <input type="checkbox"/></p> <p>Per original Order to Transfer <input type="checkbox"/></p> <p>Per granted Motion to Transfer <input type="checkbox"/></p>
ACTION		JUDGE'S RESPONSE – RESPONSIBILITIES
<p>Transfer Motion Filed in Wellness Court; File Prepared; Forwarded For Review</p>		<p><input type="checkbox"/> Ensure Wellness Court maintains up-to-date transfer rules and requirements, and are readily available to all parties.</p> <p><input type="checkbox"/> Verify the required documents are attached to the Motion (plea document/application/support materials, etc.)</p> <p><input type="checkbox"/> Confirm eligibility; review results of legal and clinical screening to confirm target population match.</p> <p><input type="checkbox"/> Return incomplete Motion to movant with directions to file the required documents/submit information.</p>
<p>Tribal Court Transfer Order Filed in Wellness Court Docket (from criminal/civil dockets)</p>		<p><input type="checkbox"/> Ensure all required documents are attached to the Order; if incomplete, instruct movant to file requisite docs/info.</p> <p><input type="checkbox"/> If case stems from plea agreement, check for participant consent to Wellness Court participation.</p> <p><input type="checkbox"/> Confirm eligibility; review results of participant's legal and clinical screening to confirm target population match.</p> <p><input type="checkbox"/> Accept transfer and draft Wellness Court Initial Hearing Order, instructing participant when to appear for 1st hearing</p>
<p>Court Decides Motion (Court Considerations); Court Issues Order</p>		<p><input type="checkbox"/> Ensure there is space for a new participant in the Wellness Court.</p> <p><input type="checkbox"/> Ascertain if there are any participation issues in regards to the transfer that requires team input. Set for staffing.</p> <p><input type="checkbox"/> Confirm participant was informed of the rights/responsibilities of Wellness Court participation and impact on due process.</p> <p><input type="checkbox"/> Check status of participant's clinical assessment. If not complete or outdated, schedule assessment immediately.</p> <p><input type="checkbox"/> Produce Order: granting or denying Motion, with relevant findings to support decision.</p>
<p>Wellness Court Order Served; New Participant Ordered to Appear to Initial Hearing</p>		<p><input type="checkbox"/> If Denied, state relevant findings supporting decision (i.e., lack of space, criminal record, Tx needs cannot be met)</p> <p><input type="checkbox"/> If Granted, serve order to team members prior to next staffing for their review and introduction of new participant.</p> <p><input type="checkbox"/> If Granted, serve order to participant with Initial Hearing Order stating the date to appear for the 1st hearing.</p> <p><input type="checkbox"/> Include in Initial Hearing Order instructions to the new participant of what to expect at the Initial Hearing.</p>
Record, Research & Rule References		
Data Points & Performance Measures		Wellness Court Policies & Procedures
<p># of Transfer Motions filed in Court quarterly</p> <p># of Transfer Motions granted/denied</p> <p># of candidate requests or self-referrals to the Court</p> <p># of candidate requests granted/denied</p> <p># of days from date of filing motion to initial hearing</p> <p># of days from date of filing motion to court decision</p> <p># of days from date of filing motion to review Hearing</p>		Court Rules
		Code/Statute Sections
<p>Resources/Technology: www.WellnessCourts.org, www.home.tlpi.org, www.ndci.org, www.american.edu/spa/poinitiatives/drug-court/, www.ndcjr.org, www.drugcourtonline.org</p>		

The Bench Cards

The Key Components 1-10

- Intended for bigger picture
- Ideal for Retreats, Advisory Committees, annual reviews of Policy & Procedure Manual, etc.

Key #2: The Judge as a Protector of Rights

- Judge must ensure that participant
 - Receives notice
 - Is heard
 - Has a fair procedure
- Ensure participant understands what Wellness Court *is*
- Ensure team members understand Wellness Court rules and procedures

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 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

	Review referral process regularly	<input type="checkbox"/>	<p>Related NADCP Core Competency</p> <p># 7 - Judge “effectively leads the team to develop all the protocols and procedures of the program.”</p> <div style="border: 1px solid black; padding: 10px; margin: 10px auto; width: 80%;"> <p>See Process & Procedure Bench Card 11 & 13</p> </div>
Practices	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"/>	

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

Process Cards: 11-20

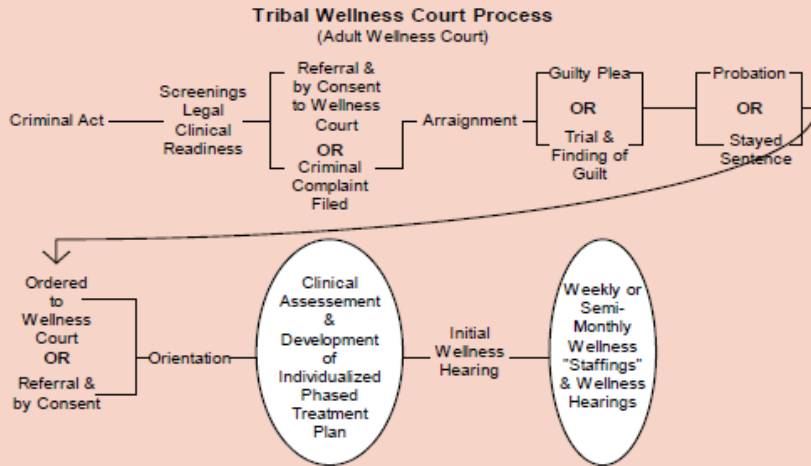
- Intended for use while on the Bench
- Must be modified to meet your Court's unique process and services

HEALING TO WELLNESS COURT PROCESS/PROCEDURE BENCH CARD

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	
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	Eligibility Criteria
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	
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		<u>Statutes/Code Sections</u>
# of Eligible Applications/Candidates Denied Entry		
# of Candidates Presented as High Risk/High Need		
# of High Risk/High Need Candidates Denied Entry		

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

Initial Hearing

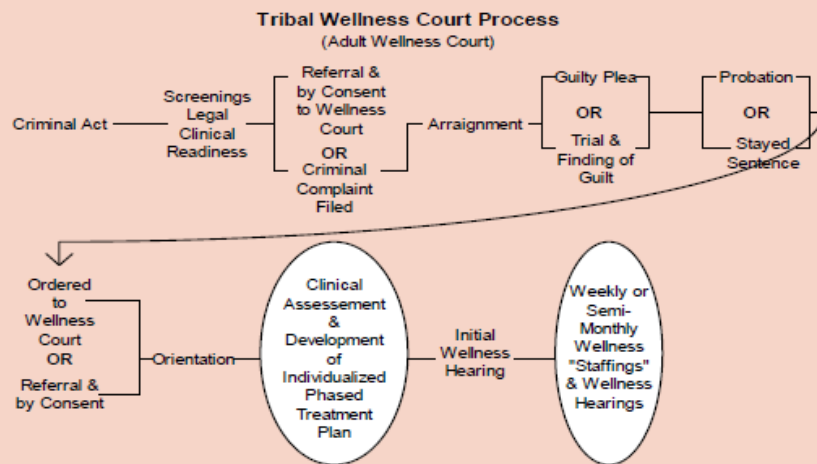
HEALING TO WELLNESS COURT PROCESS/PROCEDURE BENCH CARD

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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	<input type="checkbox"/> Welcome/introductions; quick announcements, etc. (unless done at Review Hearing) <input type="checkbox"/> Proceed with prearranged order of new clients	
Review of Case File & Contents with Participant	<input type="checkbox"/> Review with participant the case file's primary documents (Order, Contract, receipt of Handbook, etc.) <input type="checkbox"/> Check documents for participant signature <input type="checkbox"/> Check documents for counsel or parents/guardian signatures	
Review of Wellness Court Process with Participant/Counsel	<input type="checkbox"/> Review procedural history/participant's criminal or other court status <input type="checkbox"/> Review important rules/ policies and procedures with participant <input type="checkbox"/> Review general components of Treatment/Wellness Plan (Phase Requirements) <input type="checkbox"/> Review sanctions and termination policy <input type="checkbox"/> Review the week's tasks (what is to be done by the 1 st Review Hearing)	
Team Comments & Client Questions	<input type="checkbox"/> Solicit welcome/comments from team <input type="checkbox"/> Solicit comments/questions from participant's counsel, family, support persons <input type="checkbox"/> Ask participant for any questions	
Court Closes Initial Hearing	<input type="checkbox"/> Encouragement/Guidance/Direction/Warning	
Record, Research & Rule References		
<u>Data Points & Performance Measures</u> # 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	<u>Wellness Court Policies & Procedures</u>	<u>Court Rules</u> <u>Code/Statutes Sections</u>
Resources/Technology: www.home.tlpi.org , www.wellnesscourts.org , www.ndci.org , www.american.edu/spal/jpo/initiatives/drug-court/ , www.ndcdr.org , www.drugcourtonline.org		

Thank you!
