



Maintaining
Judicial
Independence
in Drug Courts



by Hon. Jeffrey S. Bagley

The judicial system is notorious for its tendency to be highly resistant to change. The courts and attendant legal procedures have experienced little change over the last 200 years as compared to other professions such as the medical and engineering disciplines. The concept of a court with rehabilitation as its primary focus has existed for only approximately 18 years.¹ In 1989, the nation's first drug court program was established, which ushered in the drug court revolution.²

Drug court judges are forced to remove themselves from the "comfort zone" of traditional criminal procedure. Judges, who are accustomed to making decisions alone, become part of a collaborative decision-making team made up of the district attorney, defense counsel, coordinator, law enforcement, treatment providers, as well as many others.³ This article is intended to focus on the drug court judge's challenge to maintain judicial independence while, at the same time, recognizing and participating in a coordinated team approach, which is vital to the drug court program's success.

Drug Courts: How Do They Work and Why Are They Necessary?

Any analysis of judicial independence in the context of a drug court setting requires a thorough review of how a drug court functions and why independence is necessary in courts processing felony drug cases. In such courts, the volume of drug cases processed may cause the judge to consider an alternative to traditional sentencing primarily due to the frustrations associated with the attempt to rehabilitate a drug addict.

Drug courts are unique in the criminal justice system. Before the



advent of the drug court movement, a defendant's typical sentence in a simple possession case, emphasizing rehabilitation, included as its primary component a substance abuse evaluation with treatment and counseling. This approach rarely succeeded because most addicts managed to feign compliance, all the while fully intending to return to their old lifestyle once they became free of probation supervision. Because the court would never see a defendant again unless he were arrested for a probation violation, there was never any direct court supervision and certainly no encouragement from the court to a defendant to make profound changes in his life. If the defendant could pass enough drug screens through deception, including adulteration of screens, he would be free to continue his lifestyle almost as if he had never been arrested. It is, however, inevitable that a defendant who continues in the same lifestyle will continue to burden the criminal

justice system as a recidivist.⁴

Because the traditional rehabilitative sentence of a drug addict rarely met with success, drug courts were therefore conceived to legitimize the rehabilitation function of the courts. The first drug court was conceived in Miami, Fla., where the courts were being overwhelmed with the cocaine trade and the prisons were not equipped to handle the rapidly-growing inmate population.⁵ It was there that the model of drug courts was tried and tested in an attempt to halt the cycle of addiction due to the failure of traditional penal-related methods.⁶ In the typical drug court model, treatment, which was always present, is combined with judicial accountability and is appropriately termed "coerced treatment."⁷ One notable author describes how drug courts function as follows:

In the context of treatment, the term coercion—used more or less interchangeably with "compulsory treatment," "mandated treatment," "involuntary treatment," "legal pressure into treatment," and "criminal justice referral to treatment"—refers to an array of strategies that shape behavior by responding to specific actions with external pressure and predictable consequences. Coercive drug treatment strategies are already common. Both the criminal justice system and the workplace, for example, have proven to be excellent venues for identifying individuals with drug problems, then exerting external leverage,

from risk of jail to threat of job loss, and providing powerful incentives for individuals to start and stay in treatment.⁸

That author specifically found that

addicts need not be internally motivated at the outset of treatment in order to benefit from it. Indeed, addicts who are legally pressured into treatment may outperform voluntary patients, because they are likely to stay in treatment longer and are more likely to graduate. Without formal coercive mechanisms, the treatment system would not attract many of the most dysfunctional addicts and surely would not retain them.⁹

As previously noted, drug courts have been proven to be effective in reducing recidivism.¹⁰ As a result of this success, drug courts have been established on a national level and are continuing to increase in number.¹¹ The Georgia General Assembly has recognized the importance and effectiveness of drug courts through the enactment of an enabling statute, which formalizes the creation of a drug court division of the superior court at the discretion of each circuit.¹²

How Do Drug Courts Procedurally Differ From Traditional Criminal Justice System Courts?

In traditional criminal jurisprudence, the determination of guilt and imposition of sentence essentially mark the end of the criminal law process. In the drug court division, the determination of addiction and referral to drug court signals the beginning of the process. Drug court procedures, while bearing many similarities, differ from jurisdiction to jurisdiction.¹³ Typically, drug courts are pre-adjudication courts where a defen-

dant, charged with a felony drug possession offense, enters a plea of guilty with sentencing postponed. The goal is for the defendant to graduate from the program, usually in 18 to 24 months, resulting in a complete dismissal of the charges by the district attorney.¹⁴

The Drug Court Standards Committee of the U.S. Department of Justice's Office of Justice Programs established the Ten Key Components, which form the basic foundation of most legitimate drug courts.¹⁵ The Ten Key Components were designed to serve as a benchmark of best practices to be employed within adult drug court programs.¹⁶ Key Component six emphasizes a collaborative team effort and approach. The drug court judge cannot manage and operate a drug court alone or in a vacuum. Yet, it is the collaborative team approach to the decisions regarding responses to participants' compliance, as emphasized by Key Component six, which appears to create a significant conflict with the drug court judge's duty to maintain judicial independence.

First, judicial independence is in jeopardy of being compromised in a drug court because drug court judges who attempt to comply with Key Component six may be pressured to make drug court decisions based upon a majority vote of the drug court team members. If the judge disagrees with the majority, he is subject to criticism from the rest of the team for not operating within the "team approach" concept as contemplated by Key Component six. This is especially true where drug court team members include social workers and treatment providers who bring valuable subject-matter expertise to the unique drug court judicial process. The judge must routinely rely on the input of these members. Decisions inconsistent with the recommendations of these experts typically create friction. Nevertheless, the judge must remain steadfast in the decision-

making process and not permit the team to exert unnecessary pressure and effectively invade the province of the judiciary.

Second, judicial independence may also be compromised as a result of another glaring departure from traditional criminal jurisprudence which characterizes most drug courts. Participants are typically not afforded the same level of due process as in traditional courts. The degree of diminished due process rights varies from court to court and from state to state; however, most drug courts require a waiver of certain rights in exchange for the privilege of entering the program. From the time that a drug court participant enters a knowing and voluntary guilty plea, until the time that he graduates from the program, the defendant's right to due process of law is usually severely diminished. The drug court judge, being the traditional guardian of truth and justice, including the protection of every person's right to due process of law under the U.S. Constitution and state constitution, must be ever mindful of the oath to uphold and defend these very constitutions and should guard against any attempt to undermine any of their precepts. The judge's duty, in this regard, is what causes the potential for conflict with the judge's desire to effect positive change in the lives of the participants.

In a country that generally takes great pride in ensuring that everyone who is before the bar of justice has due process of law, there must be a meritorious justification for such a departure from centuries-old tried and tested jurisprudence. There are three supporting reasons for this departure. Foremost, studies have shown that swiftness of sanction is critical to the effectiveness of such sanction in changing behavior.¹⁷ If the sanction had to be deferred for a month or more, its effectiveness may be lost.¹⁸ Second, lengthy hearings are not possible in a division of court that is not recognized in standard case counting

methodology. Finally, the district attorney may have agreed to dismiss felony drug charges upon the participant's successful completion of the drug court program.

In some drug courts, participants sign a formal drug court contract. The contract provides for bilateral consideration. The prosecutor gets the benefit of not having to prosecute a felony drug charge, which ultimately helps reduce the prosecutor's case management strains. The defendant gets the benefits of virtually free drug treatment, community support and the dismissal of charges. Given the significant benefits for the defendant, the district attorney may condition consent to the program on the elimination of due process hearings in drug court. This may cause a potential quandary for the court, as the court is required to retain its independence and ensure that a defendant's constitutional rights are protected yet, at the same time, observe the Ten Key Components, one of which requires a team approach to the application of sanctions.

The Independent Judiciary

The Code of Judicial Conduct of Georgia, which tracks the exact language of the ABA Model Code, necessitates an independent judiciary.¹⁹ This requirement appears to collide violently with Key Component six, which provides that "[a] coordinated strategy governs drug court responses to participant's compliance." The referenced coordinated strategy is the collaborative decision-making process in which members of the drug court team, including the judge, district attorney and defense attorney, convene, usually weekly or biweekly, to discuss the progress of the various participants in the program.

Often, and by design, the judge, prosecutor and defense attorney are not accustomed to collaborate with one another to accomplish a

collective goal. The collaborative approach requires the drug court team to reach a consensus concerning rewards and sanctions for behaviors discussed at these meetings. The team must be confident in its ability to reach a consensus and have some expectation that it will be followed by the judge in order for the program to work. The judge, on the other hand, cannot delegate judicial responsibility by permitting final decisions to be made by the team.²⁰

In deciding whether to implement a drug court, the judge can conclude that a drug court is absolutely inconsistent with judicial independence and thus continue to process criminal cases in the traditional manner. If this is the decision, there will be no risk of compromise to judicial independence. There will also be very little, if any, gain. Such an approach ignores the problem that initiated consideration of an alternative to traditional sentencing. Drug addicts will not get the help that they need, they will not return to the workforce, they will not regain their families, they may commit additional crimes and they will most likely die a premature death.²¹ Moreover, the prison door will continue to revolve because the board of pardons and paroles will not require drug addicts to serve their full prison terms for simple drug possession charges when there is such a pressing need for long-term imprisonment of violent offenders. On the other hand, the drug court judge can decide that the benefit to society merits creativity and thus deserves significant efforts to ensure its continued success.

Separation of Powers

Central to our U.S. Constitution are the checks and balances provided by the three branches of government, as well as the independence of each through the separation of powers doctrine. In addition to the challenge of compliance with the Code of Judicial Conduct requiring maintenance of an independent judiciary, there is the equally sacro-

sanct constitutional duty to keep the powers of government separate and independent.

In the context of the criminal justice system, the prosecution arm of government, the district attorney, is endowed with the power of the executive branch of government as the chief law enforcement officer of the judicial circuit and is charged with the duty to ensure that the laws are faithfully executed.

The Georgia Constitution²² vests exclusively the judicial power of this state in the various courts including the superior courts having general jurisdiction. The drug court judge, as a superior court judge, is endowed with the power of the judiciary and the accompanying duty to keep such power separate from the other branches of government. Separation of powers “preclude[s] the exercise of arbitrary power.”²³ Although absolute separation between the three coordinate branches is not realistic,²⁴ the powers delegated to these branches must remain functionally identifiable without being “‘hermetically’ sealed from one another.”²⁵ The separation of powers doctrine is violated when legislation “either accrete[s] to a single Branch[,] powers more appropriately diffused among separate Branches or undermine[s] the authority and independence of one or another coordinate Branch.”²⁶

Fortunately, in Georgia, the General Assembly is aware of the many benefits of a drug court and has therefore drafted a drug court enabling statute, which attempts to respect the coordinate branch powers and helps to establish boundaries within which the drug court judge can operate. Like most such statutes, it seeks to achieve a reduction in recidivism and substance abuse among non-violent substance abusing offenders. The enabling statute, O.C.G.A. § 15-1-15, provides for the creation and recognition of drug courts throughout Georgia. The enabling statute provides, in relevant part:

In any case which arises from the use, addiction, dependency, sale, possession, delivery, distribution, purchase, or manufacture or a controlled substance, noncontrolled substance, dangerous drug, or other drug or is ancillary to such conduct and the defendant meets the eligibility criteria for the drug court division, the *court* may assign the case to the drug court division:

(A) Prior to the entry of the sentence, if the prosecuting attorney consents;

(B) As part of a sentence in a case; or

(C) Upon consideration of a petition to revoke probation.

...

If the drug court division participant successfully completes the drug court division program prior to the entry of judgment, the case against the drug court division participant may be dismissed by the prosecuting attorney.²⁷

Although the Georgia statute recognizes the independence of the judiciary by making assignment to the drug court division discretionary on the part of the court, it may go too far in its delegation of executive powers, namely the decision to prosecute a felony drug charge to the judicial branch. On the other hand, the statute properly recognizes and attempts to balance the district attorney’s executive power to prosecute a felony drug case to the fullest extent of the law if the district attorney so desires and chooses not to consent to the assignment of a case to the drug court division.

There are three possible scenarios in which the statute could apply to a pre-adjudication drug court. In the first scenario, both the judge and the district attorney agree that a case should be assigned to the drug court division. The statute, in that scenario, properly permits the case to be assigned without run-

ning afoul of separation of powers principles as the judge and prosecutor agree, and neither side is attempting to invade the province of the other branch.

The second scenario involves a disagreement wherein the judge wishes to assign a case to the drug court division but the district attorney does not. In that scenario, the statute properly recognizes that the power to prosecute a felony drug charge rests exclusively within the executive branch; that is, the statute requires "consent of the prosecuting attorney" for the assignment of a case to the drug court division and, without the prosecutor's consent, it cannot be assigned.²⁸

Finally, in the third scenario, the district attorney seeks to assign a case to drug court but the judge does not. In this situation, the statute appears, under one potential interpretation, to rest final discretion within the judicial branch as the "court may assign" the case to the drug court division with the consent of the prosecutor. Therefore, the statute could be interpreted and applied in such a manner wherein the judge has the final and absolute discretion to determine whether a case will be assigned to the drug court division and override the district attorney's decision to not prosecute a felony drug charge. To interpret the statute in such a manner, however, would likely result in a separation of powers violation.

It is clear that the Georgia Legislature has attempted to appropriately recognize the separation of powers doctrine in the statute, and any interpretation of the statute that does not recognize the power of the district attorney to withhold consent for a referral to the program is inconsistent with the separation of powers doctrine. Simply stated, the district attorney cannot make decisions that invade the province of the judiciary. Likewise, the judge may not instruct the district attorney as to his duties in ensuring that the laws are faithfully executed. The district attorney may

prosecute the cases that he determines should be prosecuted in the manner that he determines the cases should be prosecuted, and the judge may not interfere. This is the classic "separation of powers" doctrine dating back to the very formation of our democracy. It is a necessary friction.²⁹

Given the current condition of the Georgia statute, in conjunction with the guidelines of Key Component six, does the drug court judge necessarily capitulate in violating separation of powers principles merely by participating in the coordinated strategy? No, but with careful delegation of powers within the drug court team context, the delicate balance of power can be properly maintained. At its essence, the team members, and especially the judge and prosecutors, must be ever mindful of their constitutional duties regardless of any internal pressures exerted by team members. It is not an exact science. Given the constantly evolving nature of drug courts, mistakes will be made. Nevertheless, every effort to maintain the balance must be made, regardless of the consequence or popular beliefs within the team.

In a classic pre-adjudication drug court, consistent with the separation of powers doctrine, the district attorney primarily decides which persons will be referred to the drug court. Once the participant has been accepted, however, the separation of powers tends to become less defined, thus jeopardizing the independence of the two branches. Decisions regarding sanctions and incentives are made by the team, with the final decision reserved for the judge. An order establishing the drug court, which incorporates the policies and procedures adopted by the drug court steering committee, should be entered by the court in the formative stages of a drug court.³⁰ By adopting the policies and procedures, the judge, having consented to those policies and procedures, is able to maintain his independence because he is satisfied with the

rules and procedures such that when a violation occurs, and it is covered by a rule, the judge has already approved the appropriate sanction, which applies uniformly. The policies and procedures appended to the order establishing the drug court should be meticulous in detail, outlining specific sanctions for violations of the rules.

When the drug court team faces the need to address a violation, the judge is able to uniformly apply the appropriate level of sanction(s). This is paramount as it helps to alleviate the appearance that the judge is unbending or unwilling to consider special knowledge of team members or facts that other team members believe are relevant to the sanction. This necessarily assists the judge in being able to maintain his independence while at the same time providing the judge flexibility to consider unique circumstances. If there is a special circumstance, the staff may request the judge to consider deviating from the rules; the final decision,

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however, always rests with the judge. Likewise, the district attorney does not give up any of the executive branch powers as he is the “gatekeeper,” with the final decision always resting with the district attorney, as to whether a person should be referred into the program.

The judge should be satisfied that the defendant’s rights are protected because the defendant is apprised of his right to a trial or to plead guilty and receive a conventional sentence if he so desires. The defendant is also apprised before entry of his plea of guilty as to all the due process rights that he is giving up in exchange for the benefits that he will receive if he graduates from the program, namely a complete dismissal of all charges (in a pre-adjudication program). If the district attorney desires to have a drug court participant terminated from the program, there must be an evidentiary hearing, during which the judge acts as the finder of facts, makes conclusions of law, and, after which, the final decision to terminate always lies with the judge, thus promoting judicial independence.³¹

Conclusion

Drug courts can work without compromising judicial independence or the separation of powers doctrine. Is it worth the effort and risk? Each judge and district attorney will have to decide individually. In so doing, we should keep in mind that as members of the legal profession we have been given much, thus requiring much in return. In the words of the late Supreme Court of Georgia Justice J. Harold Hawkins, “the rendering of useful service is the common duty of mankind, and that only in the purifying fire of sacrifice is the dross of selfishness consumed, and the greatness of the human soul set free.”³²



Jeffrey S. Bagley is the chief superior court judge of the Bell-Forsyth Judicial Circuit located in Cumming. He is a

graduate of the Georgia Institute of Technology and the Emory University School of Law. He has served on the superior court bench since 2000. In addition to his regular superior court duties, he serves as the presiding judge of the Forsyth County Drug Court, and also serves on the Drug Court Standing Committee for the Judicial Council of Georgia. He has also recently been appointed to serve on the Congress of the National Association of Drug Court Professionals, representing the state of Georgia. 

Endnotes

1. See Drug Courts Program Off., U.S. Dep’t of Just., *About the Drug Courts Program Office 1* (2000) (explaining that first drug court program was established in 1989 in response to growing concerns about drugs and drug-related crime and effectiveness of existing treatment and enforcement programs) [hereinafter *Drug Courts Program Off.*].
2. Eric Cohen, *The Drug Court Revolution*, WEEKLY STANDARD, No. 15, at 20-23 (1999); see *Drug Courts Program Off.*, *supra* note 1.
3. The “others” category of this team approach also must include the local public. Although the public is not directly involved in the day-to-day operations of a drug court, its support is imperative. See, e.g., *Marshall v. State*, 276 Ga. 854, 858, 583 S.E.2d 884, 888 (2003) (Benham, J., specially concurring) (recognizing that public support is vitally necessary for both the creation and continued existence of drug courts because “[i]f citizens do more on the preventive side, the courts can be more effective on the punishment and rehabilitation side.”); see also Nat’l Drug Court Training & Technical Assistance Program (“NDCTTAP”) sponsored by the Bureau of Justice Assistance (“BJA”), Office of Justice Programs, U.S. Dep’t of Just., and the Office of Juvenile Justice & Delinquency Prevention website at <http://dcpi.ncjrs.gov/dcpi/index.html> (where DOJ’s NDCTTAP provides information related to a formal training initiative designed to help communities develop effective

adult, juvenile, family, and tribal drug court programs).

4. See *supra* note 3.
5. Office of Justice Programs, NDCT-TAP, *Looking At A Decade of Drug Courts*, available at <http://www.ncjrs.gov/html/bja/decade98.htm>.
6. See *supra* note 3.
7. See Sally L. Satel, M.D., *Drug Treatment: The Case For Coercion*, 3 NAT’L DRUG COURT INST. REVIEW 1 (Winter 2000).
8. *Id.*
9. *Id.*
10. Government Accountability Office (“GAO”), GAO-05-219, *Adult Drug Courts: Evidence Indicates Recidivism Reductions and Mixed Results Outcomes* (Feb. 2005) (where GAO concluded that adult drug court programs substantially reduce crime by lowering re-arrest and conviction rates among drug court graduates well after program completion, providing overall greater cost/benefits for drug court participants and graduates than comparison group members); see National Association of Drug Court Professionals, *The Facts: The Facts on Drug Courts*; see also OJP Drug Court Clearinghouse at American University, *Implementation Status of Drug Court Programs* (Sept. 2003).
11. Office of Justice Programs, NDCT-TAP, *Looking At A Decade of Drug Courts*, *supra* note 5.
12. O.C.G.A. § 15-1-15 (2005).
13. Just as traditional state court procedures vary from jurisdiction to jurisdiction, so do drug courts. The NADCP have published model standards that promote the Ten Key Components. Drug court procedures vary from state to state, and county to county, and can be quite different depending upon whether the court is in a rural, suburban or urban environment. Also, not every court adheres to all of the Ten Key Components suggested in the model standards. Georgia’s Judicial Council has adopted standards that each court is urged to incorporate and adopt into its individual drug court program. See *Georgia Drug Court Standards*, <http://www.georgiacourts.org/aoc/publications/Georgia%20Drug%20Court%20Standards.pdf>.
14. This is accomplished pre-indict-

- ment or post-indictment by the District Attorney, and with the approval of the court if post-indictment, via nolle prosequi. *See, e.g., State v. Hanson*, 249 Ga. 739, 744, 295 S.E.2d 297, 302 (1982).
15. *See* Ten Key Component benchmarks as specifically set forth in the U.S. Department of Justice, Office of Justice Programs, Drug Court Program Office's publication entitled *Defining Drug Courts: The Key Components* (Jan. 1997).
 16. *Id.* at 3.
 17. *See* Hon. William Meyer (ret.), *Developing and Delivering Incentives and Sanctions*, NAT'L DRUG COURT INST. (Apr. 3, 2007).
 18. *Id.* at 9 (citing MOTIVATING BEHAVIOR CHANGE AMONG ILLICIT-DRUG ABUSERS 334 (Stephen T. Higgins & Kenneth Silverman eds. 1999)).
 19. GA. CODE OF JUD. CONDUCT Canon 1.
 20. *See In re Briggs*, 595 S.W.2d 270 (Mo. 1980); *see In re Bristol*, N.Y. Comm'n on Judicial Conduct (1992).
 21. *See, e.g., J.T. Morey, Lifting the Cover on Drug Courts: Evaluation Findings and Policy Concerns*, OFFENDER SUBSTANCE ABUSE REPORT at 73-74 (Sept./Oct. 2007).
 22. *See* GA. CONST. art. VI.
 23. *See Myers v. United States*, 272 U.S. 52, 84 (1926) (Brandeis, J., dissenting) (explaining that separation of powers doctrine was not adopted to promote an efficient government but, instead, to create friction, which inevitably prevents an autocracy).
 24. Crossover is allowed where it provides for "convenience and efficiency." Charles S. Abell, *Ignoring the Trees for the Forests: How the Citizen Suit Provision of the Clean Water Act Violates the Constitution's Separation of Powers Principle*, 81 VA. L. REV. 1957, 1965-1966 (1995) (discussing Supreme Court's traditional view of separation of powers doctrine) (citing *Mistretta v. United States*, 488 U.S. 361, 380 (1989)).

25. *INS v. Chadha*, 462 U.S. 919 (1983).
26. Abell, *supra* note 24, at 1966; *see Mistretta*, 488 U.S. at 382.
27. O.C.G.A. § 15-1-15(a)(2), (b)(2) (2005) (emphasis added).
28. *See, e.g., State v. DiLuzio*, 90 P.3d 1141 (Wash. Ct. App. 2004) (where court held that district attorney's referral power was proper and did not violate separation of powers principles).
29. *See Myers v. United States*, 272 U.S. 52, 84 (1926) (Brandeis, J., dissenting) (explaining that the doctrine of separation of powers was not adopted to promote an effi-

- cient government, but, instead, to create friction which inevitably prevents an autocracy).
30. *See* Order Establishing Drug Court as appended to this article.
 31. *See, e.g., Wilkinson v. State*, 283 Ga. App. 213, 641 S.E.2d 189 (2006).
 32. DAVID A. DOSSER, SR., LET JUSTICE BE DONE: THE LIFE AND TIMES OF JUSTICE J. HAROLD HAWKINS 212 (Indigo Custom Publishing, LLC 2007) (speech to the Georgia Bar Association, Savannah, Ga., June 1952, quoting, in part, John D. Rockefeller, Jr.'s radio broadcast of July 8, 1941).

SAMPLE ORDER

IN THE _____ COURT OF _____ COUNTY
STATE OF GEORGIA

ORDER ESTABLISHING DRUG COURT

Pursuant to O.C.G.A. § 15-1-15 (effective July 1, 2005), a Drug Court Division of the _____ Court of _____ County is hereby established. The Drug Court shall be a post-plea, pre-adjudication court pursuant to O.C.G.A. § 15-1-15 (b)(2). A Steering Committee whose members are appointed by the Chief Superior Court Judge and comprised of the Chief Superior Court Judge, Drug Court Coordinator, District Attorney, a representative from the _____ County Criminal Defense Attorney Association, a representative from the Office of State Probation, a representative from the _____ County Sheriff's Office, a treatment provider representative, the _____ Judicial Administrative District Court Administrator, the Director of the _____ County Office of Indigent Defense, and a representative from the _____ County Department of Pre-Trial Services, shall meet from time to time to establish policy and procedure recommendations for the operation of said Drug Court.

A copy of the currently adopted Drug Court Policies and Procedures (hereinafter "Policies and Procedures") is attached hereto as Exhibit "A." The Court hereby approves of the Steering Committee recommendations which are contained within the Policies and Procedures outlined in Exhibit "A." These Policies and Procedures reflect the Drug Court's intent to comply with the Ten Key Component benchmarks as specifically set forth in the U.S. Department of Justice, Office of Justice Programs, Drug Court Program Office's publication entitled *Defining Drug Courts: The Key Components* (January 1997).

The Court, being cognizant of Canon I of the Code of Judicial Conduct, which provides that "a judge should uphold the integrity and independence of the Judiciary," has adopted the Policies and Procedures recommended by the Steering Committee. Therefore, any factual situation covered in the Policies and Procedures shall be dealt with as provided therein. Any factual situations not expressly dealt with in the Policies and Procedures shall be discussed by the Drug Court Team, which shall be comprised of numerous key individuals from departments who have representatives serving as members of the Steering Committee, consistent with the concept of "coordinated strategy" as addressed under Key Component Number 6. *See* Office of Justice Programs, Drug Courts Program Office, *Defining Drug Courts: The Key Components* at 23-25 (January 1997). However, in keeping with Canon I of the Code of Judicial Conduct, the final decision shall always rest with the presiding Drug Court Judge.

In the event that a factual situation presented is covered by the Policies and Procedures adopted by the Drug Court and there arise certain extreme or otherwise unusual circumstances, as determined by the Steering Committee and/or the Drug Court Team, in which a deviation from the rules may be warranted, the presiding Drug Court Judge shall first confer with the Drug Court Team, in keeping with Key Component Number 6, which provides that "[a] coordinated strategy governs [D]rug [C]ourt responses to participants' compliance." Following a discussion with the Drug Court Team, the presiding Drug Court Judge shall make the final decision as to whether a deviation from the Policies and Procedures is warranted under such extreme and/or unusual circumstances. As recognized by the Office of Justice Programs, Drug Courts Program Office, because "the field [of Drug Courts] is still too new to codify policies, procedures, and operations" to fit every situation that might arise during the treatment program, the Steering Committee and/or the Drug Court Team must be granted the discretion to determine and define the parameters and contours of what shall qualify as an extreme or unusual circumstances and to fashion an appropriate remedy. *Id.* at 3.

So ORDERED, this ____ day of _____, 20__.

Judge, _____ Court of
_____ County