



NEWSLETTER

Florida Association of Drug Court Professionals

FLORIDA Association of Drug Court Professionals

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Reminder:

2004 Forum for Florida Drug Court Professionals rescheduled for December 2nd and 3rd in St. Augustine. For more information contact: Michael Jewell,

Drug Court Coordinator
Seventh Judicial Circuit
101 North Alabama Avenue
DeLand, FL 32724
Phone: 386-740-5155
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Letter from FADCP Board Chair Jeffrey Rosinek, Drug Court Judge, 11th Judicial Circuit:

In the little more than two years that the Florida Association of Drug Court Professionals has been in existence, we have gone from a small start-up operation to a sophisticated advocacy group that embraces and fulfills the Legislature's intent with our creation. Let me give you a couple of examples: While last year we were the fiscal agent for the Florida Statewide Drug Court Conference, this year we are a key sponsor and coordinator of the event. We were very vocal in making sure that the Drug Court Coordinator positions were not lost in the Article V transition, and that Drug Courts would come through relatively unscathed. Our Legislative Committee worked very hard to bring the important issues facing Drug Courts to the attention of the Legislature, and we received significant support from it's members in proposing bills that, even though they did not pass last year, will be on the table again this year with a much better chance at passage. And we have continued to work closely with the Florida Office of Drug Control to ensure that Drug Courts continue to be the "crown jewel" of the Governor's statewide strategy to reduce substance abuse and crime in our communities. Oh, and by the way, our membership has grown to 235 drug court professionals and invested parties. We thank all of you for your support, and pledge to continue working diligently on your behalf to improve and expand our impact in every part of our State.

During this 2 year process of growth, a few of our members have given so much of their time and expended so much of their energy to improve our organization. And at this time, as I prepare to step down as our charter chairperson, I would like to take this opportunity to thank them for making my job so much easier.

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Letter from FADCP Board Chair Jeffrey Rosinek, Drug Court Judge, 11th Judicial Circuit (contd.):

To our vice chairperson, Marty Epstein, our secretary, Judge Melanie May and our treasurer Robert Koch, my sincere appreciation for their wonderful accomplishments for FADCP and the drug courts of the State of Florida.

Our committee system functioned well and for that we have to thank our chairpersons. Charlie Trotta performed a yeoman's job in helping to increase FADCP's membership by 15% over last year's membership. Judge May, our legislative chairperson, played a key role during the past two legislative sessions to make sure that our legislators were made aware of FADCP's legislative agenda and our membership informed as to what the Senate and House were discussing and passing.

Our Transfer Committee, Chaired by Judge Espinosa, set the standard for implementing the legislation allowing the transfer of venue of drug court cases. What this FADCP committee established is now state wide policy. And our Drug testing committee, co-chaired by Jim Santangelo and Mike Jewel provided us with research and information that hopefully someday soon will provide a unified testing program around the state. Finally, the 2004 Forum for Florida Drug Court Professionals was chaired by Mike Jewel. Without his leadership, we would never have had this information packed conference.

Thank you all for making our my tenure as Chairperson of FADCP a truly enjoyable and valuable experience.

2004 Forum for Florida Drug Court Professionals

by Eve Janocko, Consultant

We are gearing up for another great training forum which will be the fifth statewide conference since 1996! The Renaissance Resort Hotel at the World Golf Village in St. Augustine is a beautiful resort with excellent conference facilities. You will be pleased with the amenities the resort has to offer and its proximity to historic downtown St. Augustine.

We all need to give a huge round of applause to the Seventh Judicial Circuit and the leadership of the Florida Association of Drug Court Professionals (FADCP) who stepped up to the plate to make this statewide drug court conference a reality this year. Without their involvement and commitment, Florida drug court professionals would not be enjoying the benefits of this training forum. In particular, I want to recognize Judge Jeffrey Rosinek, Mike Jewell, Robert Koch, Judge Melanie May, and Director Jim McDonough for all their efforts in coordinating the conference and developing the program agenda. To the membership of the FADCP, thank you for your support of this worthwhile organization and for helping to defray the cost of administrating the conference.

We are excited about the caliber of the training program that has been developed. We are delighted that Governor Jeb Bush and Chief Justice Barbara Pariente will join us for the opening ceremony to help kick off the conference. Their participation in the conference demonstrates their commitment and support for drug court programs. We anticipate Legislative leadership participating in the opening session to discuss how to advance Florida's drug courts. There will be plenary sessions conducted by technical experts at the national and state level that will examine drug testing issues, sanctions and incentives, emerging trends and new drugs of abuse.

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There are educational sessions that will examine cutting edge issues for treatment professionals such as the latest modalities and why they work. Another session will discuss the importance of identifying signs for Fetal Alcohol Syndrome (FAS), gambling, gang involvement and co-occurring disorders when screening clients. Educational sessions have been designed to address specific issues for judges, coordinators, state attorneys, public defenders, law enforcement and probation. There are also sessions focusing on termination of clients; confidentiality, ethics and HIPAA; the latest research findings and how to implement them programmatically; the importance of collaboration to access community and agency services; improving our system of care through broadened community perspectives; engaging the family as a resource in drug court; and yes, another enlightening session on trying to figure out how to transfer cases between jurisdictions.

Don't miss the highlight of the conference, the *Florida History Storytelling* presentation that will be held Thursday evening. How appropriate that the venue of the conference is in the nation's oldest city, St. Augustine! Judge Nelson Bailey is recognized as an authentic American storyteller and will give us a wonderful description of what Spanish Florida was like in the 1,500s/1,600s and Florida's unique history and multi-cultural heritage leading to today. He will be accompanied by friends who are native to St. Augustine who will be dressed in period clothing along with their Spanish bred, Peruvian Paso horses, Sua and Alvar.

The statewide conference proves to be an excellent training and networking opportunity for all of Florida's drug court professionals. I look forward to seeing everyone at the conference.

Justifying Preadjudicatory Jail Sanctions In Light Of Diaz v. State

By: Laura L. Collopy, MSW, Court Officer, Alachua County W.O. Beauchamp Drug Court Program.

A collective gasp was heard throughout the land last April when drug court practitioners got a look at the 2nd DCA opinion in *Emmanuel Diaz v. State of Florida*. The State of Florida quickly filed a Motion for Clarification, and the FADCP filed an amicus brief supporting the use of incarceration in a county jail as a Drug Court sanction.

Unfortunately, the relief for which we had all hoped was not forthcoming, and on August 18, the Court issued a clarification that recognized that "incarceration is a sanction vital to the success of drug court," but concluded that "breach of the terms of an agreement between the State and someone merely accused of a crime cannot generally be enforced by a term of imprisonment in the county jail." The opinion did not preclude a finding of criminal contempt. The Court went on to suggest that drug court administrators "give additional thought to the methods used to enforce pretrial intervention agreements," and conjectured that the legislature may need to review the "adequacy of the statutory enforcement provisions."

For the last four months, programs across the state have been scrambling to find justification for jail sanctions, or have been searching for sanctions that do not involve incarceration but will still be effective. In contrast, the Alachua County (Gainesville) program continues to stand by the legality of jail sanctions, but with a twist.

Alachua County's drug court program is modeled on the Miami-Dade program and has been in operation for over a decade. Unlike more recently established programs, Alachua's program does not involve a pretrial intervention contract, but instead uses a deferred prosecution agreement, and all drug court cases are considered to be "pre-sentence." When a client is sanctioned, rather than cite a violation of the drug court contract, a violation of pretrial release is alleged, and all orders include the wording "defendant agrees to continue participation in drug court." If a client decides to discontinue program

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participation, their case is immediately reverted to normal channels for prosecution, in accordance with section 948.08, Florida Statutes (2003). Since pretrial defendants are entitled to “reasonable bond,” they may bail out of jail at any time during the jail term, but jeopardize their continued participation in the program. Recognizance release is then reinstated when the terms of the sanction have been satisfied, thereby avoiding the “illegal sentence” pitfalls outlined in the *Morales* and *Carter* cases cited in *Diaz*.

The Honorable Frederick D. Smith, presiding judge of the Alachua County drug court, believes that this procedure is “clearly just a way of avoiding the problems in the *Diaz* case, but that sort of manipulation is justified by the benefit we get from using incarceration as a sanction.”

The Alachua drug court team also explored the use of criminal contempt to justify jail sanctions, but rejected the premise as having, in Judge Smith’s words, “a chilling effect on the treatment process.” A conviction for criminal contempt, a necessity for the imposition of a jail sentence, would go on the defendant’s criminal record, in direct opposition to one of drug courts’ guiding principles: we expect failure, but with relatively minimal and *not permanent* consequences. The drug court team formula for success would be completely sabotaged, and an adversarial proceeding would be substituted. To gain the full therapeutic effect of a drug court status hearing, “immediacy of consequences is essential” says Judge Smith, “in drug court, defendants are not encouraged to deny their culpability.” In an adversarial hearing, “immediacy is lost and participants throw procedural roadblocks and delays into the process. There is no longer a therapeutic alliance among the team when treatment providers become potential witnesses to criminality, and can provide testimony adverse to the client.” Instead of the hearing revolving around the profoundly therapeutic interaction of the participant and the judge, the focus would shift to attorneys and witnesses.

In Alachua County, business will proceed as usual, at least until the next relevant DCA opinion is issued. Until then, as stated in the FADCP brief, “the coercive power of the court insures attendance at treatment and compliance with program requirements.”

Sources: *Carter v. State*, 786 So.2d 1173, 1178 (Fla. 2001); *Morales v. State*, 712 So. 2d 474, 474 (Fla. 2d DCA 1998); *Diaz v. State*, 2004 WL 1836311 (Fla. App. 2 Dist.)

2005 DRUG COURT LEGISLATION UPDATE

By: Judge Melanie G. May

We are off and running in our fourth attempt to have the legislature pass expanded drug court legislation. We owe a debt of gratitude to Senator Evelyn Lynn and Representative Sandy Adams for their herculean efforts last year and for their willingness to do battle for us again this year. Last year, Senator Lynn was successful once again in having the Senate pass the legislation. Despite incredible effort on the part of Representative Adams, the House did not pass the bill. Special thanks to Governor Bush and Director Jim McDonough for their continued support. And, we would be remiss if we didn’t thank Jennifer Grandal, Lisa Goodner, Pat Badland, and Brenda Johnson of the Office of State Courts Administrator, who pulled out all the stops in helping marshal the legislation through the session.

In case you need a reminder about the content of the proposed legislation, here it is. It includes early and continual assessment for substance abuse at each stage of a dependency proceeding. It permits the court to require participation in, and compliance with, treatment and when appropriate, treatment-based drug court treatment programs.

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It amends section 397.334 in several ways. It expands the definition of treatment-based drug court programs to include post-adjudicatory programs. It provides for drug court coordinators in each circuit contingent upon annual appropriations. It moves the drug court advisory committee from chapter 948 to a new home in chapter 397.

It adds the requirement of a plea prior to transfer of a drug court case within the state under section 910.035. It expands eligibility under 948.08(6) to include persons who had previously been admitted to a felony pretrial program. It eliminates the automatic disqualification of those who had “rejected” drug court. It further expands eligibility to first time nonviolent third-degree felonies for defendants assessed with a substance abuse problem, and for subsequent third-degree felonies with state attorney approval. And, it amends section 985.306 to conform the delinquency drug court statute with the adult drug court statute.

Significantly, it addresses the use of jail-based sanctions in response to the recent decision of the Second District Court of Appeal in *Diaz v. State*, 29 Fla. L. Weekly D1904 (Fla. Aug. 18, 2004). The following language is contained within the legislation:

While enrolled in a pretrial intervention program authorized by this section, the participant is subject to a coordinated strategy developed by a drug court team under s. 397.334(2). The coordinated strategy must include a protocol of sanctions that may be imposed upon the participant. The protocol of sanctions must include as available options placement in a secure licensed clinical or jail-based treatment program or serving a period of incarceration for noncompliance with program rules within the limits established for contempt of court. The coordinated strategy must be provided in writing to the participant at the time the participant enters into a pretrial drug court program.

It also adds that the court has the ability to place a participant in a “secure licensed clinical or jail-based treatment” program if the defendant does not successfully complete the pretrial intervention program. Both Senator Lynn and Representative Adams willingly added this to last year’s legislation.

And last, but not least, I call your attention to the Model Drug Offender Accountability and Treatment Court Act, drafted by a national committee, most ably chaired by our own Robert J. Koch, co-chair of NADCP’s Drug Policy Committee. It sets the stage for the future of drug courts as a process to be employed in every criminal proceeding involving a drug offender. “[A] drug offender should not be permitted to exit the criminal justice system until he or she has undergone an assessment and an appropriate form of treatment.”

We continue to be blessed with true, strong advocates in both the House and the Senate. This year, Senator Walter “Skip” Campbell has also agreed to help us insure our legislation passes. Please let these legislators know how much we appreciate their hard work by writing to them at the addresses listed below.

If you have any ideas on legislation for the future, please feel free to contact me at MAYMG@4dca.org.

Our Heroes:

Sen. Evelyn Lynn
140 S. Atlantic Ave., #201
Ormond Beach, FL 32176

Rep. Sandy Adams
2074 Winter Springs Blvd.
Oviedo, FL 32765

Sen. Walter G. “Skip” Campbell, Jr.
10094 McNab Road
Tamarac, FL 33321

Judge Melanie G. May, Fourth District Court of Appeal, is Secretary of FADCP, and is a member of both the Supreme Court Task Force on Treatment-Based Drug Courts, and the Advisory Council to the Florida Office of Drug Control.

Drug Court Tidbits

Jackson County Drug Court Celebrates First Graduation

By: Jacquelyn Yglesias, Court Program Specialist

The Fourteenth Judicial Circuit is pleased to announce that the Jackson County Drug Court held its first graduation on June 30, 2004. After receiving a three year grant from OJP, DCPO, Jackson County started accepting felony offenders in its post-adjudication program in November, 2002. Three of the program's original members were honored in the first ever graduation ceremony. Since Jackson County Drug Court's inception, the team has been waiting for 18 months to celebrate the accomplishments of participants in the program. That day arrived on June 30, 2004. Jackson County went all out to honor three of its graduates in a ceremony that was an inspiration to all individual associated with the program. Participants and guests were invited to attend drug court the day of graduation. This afforded individuals, not familiar with drug court, the chance to see how the program works and what is expected of our graduates. Once everyone had an idea as to how the process works, the graduation ceremony began. Special guests included Reverend Emmon Smith, who started the ceremony off with a prayer. The crowd was then captivated by the motivational and heart felt story of our guest speaker. He spoke of his days as an addict and the toll it takes on one's life. His words of experience, encouragement and hope captivated the audience as he emphasized the message that drug abusers only end up in one of two places: dead or in jail. After recognizing our three graduates, Judge William Wright presented each with a brick complete with a commemorative plaque. On the brick, "to symbolize a strong foundation for your future", was inscribed to each in order to remind them of the accomplishment and hard work that went into getting them to where they are now. The graduation ceremony ended with a reception where participants and guests ate and talked about everything from drug court to cake recipes. It was more than anyone from Jackson County could have expected for our first graduation. We look forward to being able to honor more of our participants for their achievements and hard work!

John Walters, Director of ONDCP, visits Miami-Dade Drug Court

The Miami-Dade Adult Felony Drug Court received a special visit in April from John Walters, the Director of the Office of National Drug Control Policy, Executive Office of the President, who came to meet with the team and observe the Court in action. He also presented Judge Rosinek with a very nice plaque in recognition of Miami-Dade's innovative development of the Drug Court, and the ever expanding usage of this model to reduce substance abuse.

From the Thirteenth Judicial Circuit's "Corner" of the State

We lost David Kirby, Court Program Specialist II, and our Transfer Coordinator, that so many of you have pleasure of talking to and working with on transfers over the past 3 years. He moved to our Elder Justice Program and his drug court position is presently vacant. We were able to move, George Johnson, III, Juvenile Drug Court Specialist II, from a grant funded position to a permanent position as of July 1, 2004.

Our Juvenile Drug Court has added an Intensive Outpatient Treatment program to the standard tracks available in this Court. We now have 3 dedicated treatment providers offering, Assessments, a 6 month Intervention Program, a 12 month Outpatient Treatment Program, a Intensive Outpatient Treatment Program and a 4-6 month residential and a 6 month residential program for any participants over 18 years of age.

In January we reorganized our Post-Adjudication Drug Court to make it a plea court and one felony division instead of two. The reorganization appears to be working very well. However, due to the longer terms of sentences imposed and the residual cases remaining from before combining of two divisions, it will be a while before we can back up our observations with statistics.

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Cristina Ruizcalderon joins the Miami-Dade County Adult Felony Drug Court as an Administrative Assistant to Robert J. Koch. She comes to us with a lot of Drug Court experience due to her previous work with the Dependency Drug Court, and is a very welcome addition. She will be assisting in, and is the contact person, for all transfer cases. Her contact information is:

Cristina Ruizcalderon
Drug Court Program Office
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Miami, Fl 33125
(305) 548-5135 Fax:(305) 548-5140
CCalderon@jud11.flcourts.org

Editor's Note:

To use a football analogy (given the time of year) "You can slow us down, but you cannot stop us." After the worst hurricane season in Florida history, which caused postponement of the 2004 Forum for Florida Drug Court Professional scheduled for this past September, we are now back on track and ready to proceed with what we hope will be a very fun, informative, and educational experience December 2nd & 3rd at the World Golf Village Renaissance Resort in St. Augustine, Florida. FADCP is proud to be a sponsor of this great event, we hope that you are all planning to attend, and we look forward to seeing you there.

We hope that you enjoy the Second Edition of the FADCP Newsletter, and we thank those of you that took the time to submit articles. As we have all learned in Drug Court, teamwork is the key.

Robert J. Koch and Cristina Ruizcalderon
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