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DWI Courts Saving Lives

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For more than a decade, a quiet revolution has occurred within the criminal justice system. Dade County, Florida established the first drug court in the United States. Today, more than 2,100 drug courts can be found across the country with hundreds more in the planning stage. Although program specifics and populations vary depending upon community priorities and resources, the objective of every drug court is the same: to engage defendants charged with drug-related offenses in comprehensive, enduring programs that integrate adjudication, substance abuse treatment and close supervision.

All drug courts are part of an innovative judicial model whereby offenders are held accountable for their actions and afforded the tools they need to break the patterns of drug abuse that so damage their lives, as well as the lives of others. The major goals of drug courts have been established with the benefit of both offenders and the communities in which they live in mind. Typically, these goals are to reduce drug use and associated criminal behavior by engaging and retaining drug-involved offenders in treatment and intensive supervision; to concentrate staff expertise about drug cases into a single courtroom; to address other defendant needs; and to remove drug cases from traditional

courtrooms, freeing them to adjudicate non-drug cases.

Success of the Drug Court Model

Today there is irrefutable evidence that drug courts are achieving what they set out to do. After a decade of drug court research, scientists at the esteemed Treatment Research Institute at the University of Pennsylvania concluded that, "To put it bluntly, we know that drug courts outperform virtually all other strategies that have been used with drug-involved offenders." Columbia University's historic analysis of drug courts concluded that "drug use and criminal behavior are substantially reduced while offenders are participating in drug court." An extensive review of drug courts by the U.S. Government Accountability Office (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. More recently, a four-year study by the Northwest Professional Research Consortium, Inc. found that parents enrolled in family treatment drug courts were more likely than parents in traditional child welfare case processing both to complete treatment and to be reunified with their children.

DWI Courts and DWI/Drug Courts

To date, it has been left to the traditional courts and criminal justice system to deal with DWI cases, and it has become clear that the traditional process is not working for repeat offenders. Punishment, unaccompanied by treatment and

accountability, is an ineffective deterrent for the repeat DWI offender. The outcome for the offender is continued dependence on alcohol; for the community, continued peril. A new strategy exists to fight against repeat impaired driving. Generally called "DWI Courts" or "DWI/Drug Courts," offenders are held at the highest level of accountability while receiving long-term, intensive treatment and compliance monitoring. In 2004 there were 176 DWI courts—86 designated DWI, and 90 "hybrid" courts. (Hybrid drug courts are courts that

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started as a drug court which then added a DWI offender tract to the drug court program.) As of June 30, 2008, there were 138 designated DWI courts, and 307 "hybrid" drug courts for a total of 445. That is over a 250% increase in three years.

What Are DWI Courts?

A DWI court is a distinct court system dedicated to changing the behavior of the alcohol/drug dependant offenders arrested for Driving While Impaired (DWI). The goal of DWI court is to protect public safety by using the drug court model to address the root cause of impaired driving, alcohol and other substance abuse. With the repeat offender as its primary target population, DWI courts follow the Ten Key Components of Drug Courts and the Ten Guiding Principles of DWI Courts, as established by the National Association of Drug Court Professionals and the

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UPCOMING DATES



August 21 – September 7, 2009



Fourth of July Impaired Driving
Prevention Campaign
June 21 – July 5, 2009

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National Drug Court Institute.

Unlike drug courts however, DWI courts primarily operate within a post-conviction model. In a supported resolution by National Mothers Against Drunk Driving, "MADD recommends that DUI/DWI courts should not be used to avoid a record of conviction and/or license sanctions."

DWI courts utilize all criminal justice stakeholders (judges, prosecutors, defense attorneys, probation, law enforcement, and others) coupled with alcohol or drug treatment professionals. This group of professionals comprises a "DWI Court Team," and uses a cooperative approach to systematically change offender behavior. This approach includes identification and referral of participants early in the legal process to a full continuum of drug or alcohol treatment and other rehabilitative services. Compliance with treatment and other court-mandated requirements is verified by frequent alcohol/drug testing, close community supervision and ongoing judicial supervision in non-adversarial court review hearing. During review hearings, the judge employs a science-based response to participant compliance (or non-compliance) in an effort to further the team's goal to encourage pro-social, sober behaviors that will prevent future DWI recidivism.

The missions, objectives and operations of a drug court that exclusively targets illicit drug abusers, a designated DWI Court that targets alcohol or other substance impaired drivers, and a hybrid DWI/Drug Court that targets a mix of DWI offenders and illicit drug abusers are nearly interchangeable. All are part and partial of the drug court model.

The major difference from traditional drug court is that in the designated DWI Courts or hybrid DWI/Drug Courts, the offenders come to the court as a direct result of an impaired driving arrest and a documented history of impaired driving. In contrast, in the more traditional drug court docket the targeted offenders are those who have engaged in non-traffic related criminal behavior (as opposed to illegal driving behavior) as a result of their use of illegal substances. Experience has shown, however, that the participants in these two treatment court environments are far more similar

than different. Although wholeheartedly endorsing the use of either of the above-noted applications of the drug court model, there are several advantages to operating designated DWI Courts, most notably because they allow for development of a more specialized treatment focus and a more case manageable network of relevant and supportive community resources. DWI Courts shine a spotlight on the triggers and consequences of non-responsible alcohol intake. They embrace the community of victims of DWI episodes and encourage the fair and sensitive inclusion of victim advocates in the treatment process. Most

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importantly perhaps, they serve as a potential unifying hub for the myriad of agencies and organizations that have been part of piecemeal attempts to plug the gaps in the drunk driver control system. DWI Courts can and should serve as a unifying venue of accountability for the repeat DWI offender. By partnering with the respective state's department of motor vehicles, Governor's highway safety commission, highway patrol, local law enforcement accident prevention squads, MADD and other accident prevention and victim support groups, DWI Courts can add teeth to the justice system's response to repeat drunk driving.

A DWI Court's coercive power is the key to admitting DWI offenders into treatment quickly and for a period of time that is long enough to make a difference. This proposition is unequivocally supported by the empirical data on substance abuse treatment programs. Data consistently show that treatment, when completed, is effective. However, most addicts and alcoholics, given a choice, will not enter a treatment program voluntarily. Those who do enter programs rarely complete them. About half drop out in the first three

months, and 80 to 90 percent have left by the end of the first year. Among such dropouts, relapse within a year is the norm.

Accordingly, if treatment is to fulfill its considerable promise as a key component of DWI reduction policy, DWI offenders not only must enter treatment but must remain in treatment and complete the program. If they are to do so, most will need incentives that may be characterized as "coercive." In the context of treatment, the term coercion - used more or less interchangeably with "compulsory treatment," "mandated treatment," "involuntary treatment," "legal pressure into treatment"- refers to an array of strategies that shape behavior by responding to specific actions with external pressure and predictable consequences. Moreover, evidence shows that substance abusers who get treatment through court orders or employer mandates benefit as much as, and sometimes more than, their counterparts who enter treatment.

DWI is the best vehicle within the criminal justice system to expedite the time interval between arrest and entry into treatment, and provide the necessary structure to ensure that a DWI offender stays in treatment long enough for treatment benefits to be realized.

Evaluation studies are vital in sustaining DWI Court programs. Courts conduct outcome evaluation studies to demonstrate the dramatic effect of DWI/Drug Courts on the community, to assess relative costs, and to maintain or seek funding.

With their rapid expansion and proven effectiveness, DWI Courts are changing the mindset of criminal justice professionals and effecting how DWI offenders are handled. Treatment with intensive supervision works with this population—and promises better long-term outcomes, through decreased recidivism.

DWI Court Outcome Statistics

As noted, DWI Courts are based on the proven Drug Court model. Drug Courts have been rigorously examined and found to be an effective method for reducing recidivism and drug addition. DWI Court is a recent innovation to change a high risk DWI offender's behavior.

There have been a number of evaluations done of DWI Courts; with favorable results, however, questions of their scientific rigor have been raised. A recent

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Overview of DWI (Driving While Impaired) Courts

David Wallace, Director
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Recognizing that treating hardcore DWI offenders (repeat offenders and offenders with a BAC of .15 or higher) is complex and requires a combination of countermeasures is just as important as understanding that the type and timing of the intervention is critical to curbing repeat offenders' illegal and dangerous behaviors (National Association of State Judicial Educators, 2004). This is consistent with a recent National Traffic Safety Board report which suggests the importance of quickly identifying and intervening with those drivers having the highest rates of alcohol-impaired driving (Quinlan et al., 2005).

Hardcore DWI offenders pose a threat to society in a way very different from other offenders; so many jurisdictions are establishing a distinct DWI Court or a Hybrid DWI/Drug Court. (A Hybrid DWI Court is a Drug Court that takes on a distinct DWI component.) A DWI Court is an accountability court dedicated to changing the behavior of the alcohol-dependant offenders arrested for

DWI. The goal of DWI Court or DWI/Drug Court is to protect public safety by using the highly successful Drug Court model that uses accountability and long-term treatment to address the root cause of impaired driving: alcohol and other substance abuse.

Number of DWI Courts per Year

Year	DWI Courts
2003	42
2004	176
2005	302
2006	330
2007	396
2008	526

With the hardcore offender as its primary target population, DWI Courts follow *Defining Drug Courts: The Key Components* (NADCP, 1997) and the more recent *Guiding Principles of DWI Courts*. Unlike Drug Courts, however, DWI Courts operate within a post-conviction model. This notion is supported in a resolution by National Mothers Against Drunk Driving (MADD) stating "MADD recommends that DUI/DWI Courts should not be used to avoid a record of conviction and/or license sanctions." DWI courts are also supported by the Governor's Highway Safety

Association (GHSA), the Highway Safety Committee for the International Association of Chiefs of Police (IACP), and the National Sherriff's Association (NSA).

DWI Courts utilize all criminal justice stakeholders (judges, prosecutors, defense attorneys, probation, law enforcement, and others) coupled with alcohol or drug treatment professionals. This group of professionals comprises a "DWI Court Team," and uses a cooperative approach to systematically change an offender's behavior.

According to a Michigan study released in late 2007, DWI Courts are effective in reducing recidivism and reducing drug and alcohol use while using less criminal justice system resources to accomplish these goals. In one of the courts studied, in a 2-year period, traditional court offenders in the comparison group were more than three (3) times more likely to be re-arrested for any charge and were nineteen (19) times more likely to be re-arrested for a DWI charge than the DWI Court participants.

As of December 2008, there are 382 Hybrid DWI/Drug Courts in operation. In addition, there are another 144 Designated DWI Courts bringing the total number of specialized courts dealing with hardcore impaired drivers to 526.

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meta-review of a number of DWI Court evaluations found some support that DWI Courts reduce recidivism; however, the review concluded that more research needed to be done before one could say scientifically that DWI Courts work. According to the review, the vast majority of studies done were insufficient in participant numbers; used participants that were inappropriate, i.e. included offenders from the initial development of the program, or the evaluation processes were considered incomplete.

However, shortly after the meta-review was completed, an evaluation in Michigan was published with sufficient scientific rigor. The Michigan evaluation examined three separate DWI courts to determine if they reduced an offender's recidivism. It determined that participants in the DWI courts were substantially less likely to be arrested for a new DWI offense or any new criminal offense than individuals sentenced in a traditional court within 2 years of entering the DWI Court. For example, in one court system, persons that did not go through the program were 3 times more likely to be rearrested for a new criminal offense and 19 times more likely to be rearrested for a DWI charge. In other

words, the recidivism rate was significantly lower for the DWI Court participants. The executive summary of the evaluation concluded with the following statement:

"Overall, these results demonstrate that the [DWI] Court is effective in reducing recidivism and reducing drug and alcohol use while using less criminal system resources to accomplish these goals."

There is no question that more studies need to be done to further demonstrate the effectiveness of DWI Courts. A similar concern was expressed about Drug Courts in the initial days of its development. But it is noteworthy that, thus far, what is being published finds DWI Courts making a difference.

DWI Courts: The Next Step

Judge Brian MacKenzie
Judicial Fellow, Michigan

Approximately 500,000 repeat drunk drivers are arrested each year for driving while intoxicated ("DWI").¹ A California study suggests that four out of ten convicted drunk drivers will be arrested again for DWI.² A Federal Bureau of Justice Statistics Study found that 51.5% of defendants sent to prison for a felony drunk driving reoffended after their release.³ This means that an estimated two million drunk drivers who have three or more convictions share our highways.⁴ Of course, sharing the road is not the problem. These repeat drunk drivers are eight times more likely to be involved in a fatal crash.⁵

In the last two and a half decades the criminal justice system has responded to this problem by increasing enforcement. Laws were passed lowering allowable breath/blood alcohol levels to a .08. Increased penalties were created for recidivistic drunk drivers. Police adopted more aggressive enforcement tactics including check lanes and holiday enforcement sweeps. Courts changed sentencing approaches consistent with the new laws and resultant increased arrests.

A recent study by the National Highway Traffic Safety Administration suggests that these changes saved lives.⁶ In 1982, 26,173 people were killed in alcohol related crashes. Each year through 1999, the number fell finally reaching 16,572. Then in 2000 the decline stopped as the number of deaths rose. The number of deaths remained above the 1999 level through 2005.⁷ Then suddenly the number of deaths fell in 2006 to 13,491 and further in 2007 to 12,998.⁸ What changed?

While the enforcement efforts continued, the major changes described above were in place prior to 2005. It is unlikely that those efforts suddenly caused a diminution in the number of deaths. Once again, what changed?

While there is no comprehensive study of all relevant factors, it is arguable that part, if not all of this reduction can be traced to the rise of a new type of specialty court known as a DWI/drug court or ("DWI Court"). The first DWI Court was created in Albuquerque New Mexico in 1997. A second followed in Charlotte, Michigan. Beginning slowly, the number of DWI Courts grew steadily. By the beginning of 2006 there were 299 nationally.¹⁰ By the end of 2008 the number of DWI Courts increased to 526.¹¹

Fundamentally, DWI Courts utilize intensive probationary techniques. A DWI Court is a form of drug therapy court which targets repeat drunk drivers. By blending focused court supervision and intensive treatment a structure is created for the defendant that helps them overcome their addictive behavior. The structure starts with daily alcohol and drug testing, a mandated 12 step program (in some courts), and alcohol/drug therapy. The defendants meet with their probation officer weekly and with the DWI court judge on a regular basis. There is a known set of rewards and sanctions. Failure to complete the program results in incarceration.

A comprehensive outcome evaluation study of Michigan DWI Courts established that defendants on traditional probation were up to nineteen times more likely to be rearrested than those defendants who entered a DWI Court.¹² As this study makes clear, completing a DWI Court sentence can change an alcoholic's behavior ending the cycle of recidivistic drunk driving.

While further study is needed, there appears to exist at least a correlative relationship between DWI Courts and the decline in the number of alcohol related deaths. DWI Courts target recidivistic drunk drivers, the most dangerous individuals on our highways. It is strongly believed that the approach used by DWI Courts is far more effective in ending this behavior than any approach used before. The combination of effectiveness and targeting suggest that DWI courts appear to be an integral factor in reducing alcohol related highway deaths.

ENDNOTES

- ¹ MADD Press Release, November 25, 2008.
- ² EFFECTIVENESS OF STRATEGIES FOR PREVENTING DUI RECIDIVISM, National Institute on Alcohol Abuse and Alcoholism December 1998
- ³ Recidivism of Prisoners Released in 1994, Federal Bureau of Justice Statistics, June 2002
- ⁴ NHTSA press release, November 25, 2008
- ⁵ NHTSA Traffic Safety Facts DOT HS 810 985, 2007
- ⁶ NHTSA Statistical Analysis of Alcohol-Related Driving Trends, 1982-2005, May 2008
- ⁷ NHTSA Statistical Analysis of Alcohol-Related Driving Trends, 1982-2005, May 2008
- ⁸ NHTSA Traffic Safety Facts DOT HS 810 985, 2007
- ⁹ The author notes that in Michigan, DWI Courts are referred as "Sobriety Courts".
- ¹⁰ Do DWI courts work? Future Trends In State Courts, 2008
- ¹¹ Ibid
- ¹² Michigan DUI Courts Outcome Evaluation, Michigan Supreme Court, State Court Administrative Office, October 2007

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Thanks to Judge Howell

We regret to announce that Judge Lynda Howell, Judicial Outreach Liaison representing NHTSA Region 9, has found it necessary to resign her position. We greatly appreciate Judge Howell's contributions to the program, and look forward to continuing to work with her in other capacities.

Suspended/Revoked Driver Working Group

Judge John M. Priester
Judicial Fellow, Iowa

Are all suspended and revoked drivers created equal? Are drivers whose driving privileges have been suspended or revoked more dangerous than other drivers? Those are the questions that a working group has been wrestling with for the past five years. The working group is sponsored by the American Association of Motor Vehicle Administrators (AAMVA) and the U.S. Department of Transportation, National Highway Traffic Safety Administration (NHTSA).

Federal Child Support Legislation

The Federal Government passed an amendment to the Social Security Act, the Personal Responsibility and Work Opportunity Reconciliation Act of 1996.¹ This Amendment directed the states to suspend driver's licenses for those who owed court-ordered child support payments.² This initial Federal mandate signaled to states that the threat of the suspension of a driver's license was an appropriate hammer to encourage driver's to act in a certain manner unrelated to driving. Thus, the floodgates were thrown open.

Soon, states were suspending driving privileges for, among other things, failing to appear in court, failure to pay a fine, truancy, fuel theft, making terrorist threats, graffiti, failure to register as a sex offender, and even littering and parking offenses.³ The addition of all these new categories of events that can result in a suspended license diluted the charge of Driving While Suspended.

Law enforcement officers found themselves stopping many whose license was suspended. However, the officers were unable to determine whether the driver was suspended or revoked for a dangerous driving-related offense (such as eluding a law enforcement officer or drag racing) or for a non-driving related offense (failure to pay a fine for an overdue library book). This confusion led officers to arrest and incarcerate drivers who were suspended for non-driving related offenses. This in turn filled up jails with non-dangerous drivers.

Working Group Meets In Albuquerque, New Mexico

Law enforcement officials began to seek assistance in dealing with this problem.

Thus, the Suspended/Revoked Driver Working Group was created. The Working Group was hosted by the AAMVA Law Enforcement Committee and sought to bring together members of all of the constituencies affected by this problem. State transportation officials, law enforcement officials, NHTSA, prosecutors, judges and private interest groups all converged in Albuquerque, New Mexico, in 2005 to establish the Working Group and develop strategies to address the issue.

During the discussions in Albuquerque Judge Lynda Howell, a well-respected district court judge from Phoenix, Arizona, and a former NHTSA Judicial Outreach Liaison, challenged the group to come up with research to back up the changes. As Judge Howell so aptly put it, if the working Group wanted judges to act differently, then there had to be empirical evidence for judges to rely upon if they were going to change their approach to suspended drivers.

The Working Group enlisted two researchers with an interest in this area. The researchers were Robert J. Eger, III, Ph.D. from RME Enterprises, Tallahassee, Florida (a tenured faculty member at Florida State University) and Jon A. Carnegie, with the Alan M. Voorhees Transportation Center, Rutgers, The State University of New Jersey, New Brunswick, New Jersey.

The researchers' objectives were to:

1. Determine the number of drivers that are suspended/revoked under state laws that allow a driver's license to be suspended/revoked for non-driving offenses;
2. Determine the number of those drivers that are subsequently cited for driving while suspended;
3. Determine the extent of crash involvement by those drivers; and
4. Explore the relationship between driving behavior and violations of those laws.⁴

The study made three interesting findings. First, that approximately 30% of drivers suspended for driving reasons commit a moving violation while under suspension compared to approximately 15% of drivers suspended for non-driving reasons. Second, approximately 3.4% of drivers suspended for driving reasons are convicted of driving while suspended compared to 2.7% of drivers suspended for

non-driving reasons. And third, less than one percent (0.09%) of drivers suspended for non-driving reasons are involved in a crash while their driver's license is suspended and over three percent (3.4%) of drivers suspended for driving reasons are involved in a crash while their driver's license is suspended.⁵

Williamsburg Meeting and the Future

The Working Group reconvened in Williamsburg, Virginia, in March of 2009 to discuss the Final Report of the researchers' and determine the next steps to be taken. After reviewing the Final Report, the group decided that three sub-committees should be created to continue the Working Group. The sub-committees consisted of a Research Team to expand upon the initial research, a Model Legislation Team to develop a legislative outreach package to further the goals of the Working Group, and a team to create a Best Practices Guide.

These three sub-committees are working over the summer on the goals outlined in Williamsburg. The Working Group is set to reconvene in San Diego, California, in August after the AAMVA Annual Meeting, to continue the discussions.

The hope is that the Working Group will be able to show legislatures and courts that drivers suspended for non-driving offenses are not as dangerous as those drivers suspended for driving behavior. After this has been established the group hopes to come up with a new lexicon, such as Driving With Privileges Withdrawn, that will identify those drivers whose privileges have been taken away for non-driving activity. This new lexicon will hopefully make it easier for the law enforcement officers on the street to differentiate who are dangerous drivers who should be arrested and taken off the streets, and who are non-dangerous drivers who should be cited and released.

ENDNOTES

¹ 42 U.S.C. 666, § 466(a)

² 42 U.S.C. 666, § 466(a)(16)

³ Carnegie, J. & Eger, R., *Reasons for Drivers License Suspension, Recidivism and Crash Involvement among Suspended/Revoked Drivers*, (Final Report, 2009), AAMVA and U.S. Department of Transportation, National Highway Traffic Safety Administration.

⁴ *Id.*, at iii.

⁵ *Id.*, at v.

Ethical Considerations of Judicial Interaction

Senior Judge Karl Grube
Judicial Outreach Liaison, Florida

Are judges ethically forbidden to talk to prosecutors, defense attorneys, and members of law enforcement about impaired driving issues? What are the ethical limits governing cooperation? Do we have ethical obligations to personally confront attorneys and officers whom we believe may not be carrying out their responsibilities properly? This article will briefly explore some of the opportunities and limitations that judges have in interacting with prosecutors, defense attorneys, and law enforcement officers who appear before them.¹

To Communicate or Not, That is the Question

We begin with the basic premise that if discussions involve pending or impending cases, interaction with attorneys and officers is not ethical. Canon 3B(7)(b) provides: "A judge shall accord to every person who has a legal interest in a proceeding, or that person's lawyer, the right to be heard according to law. 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 concerning a pending or impending proceeding..." There are some limited exceptions to this Canon, generally related to scheduling.

But what if the discussions do not involve pending or impending cases that will come before your court? Canon 4C(1), Governmental, Civic or Charitable Activities, provides: "A judge shall not appear at a public hearing before, or otherwise consult with, an executive or legislative body or official *except* on matters concerning the law, the legal system or the administration of justice..." Judges can consult with those who work in the executive branch of government (prosecutors and police) other than on pending or impending cases when the matters concern "the law, the legal system, or the administration of justice."

Canon 4 encourages judges to work with others to improve the law and the administration of justice. The following judicial ethics opinions are examples: Illinois 98-1, South Carolina 23-2006, and Florida 2004-14. These opinions point out that "A judge is encouraged to participate in activities designed to improve the law, the legal system, and the administration of justice," and that

they can join with other criminal justice stakeholders at meetings to discuss, in general, problems and solutions to traffic-related criminal justice matters including impaired driving cases.

Confronting Unprofessional Conduct

A more complicated issue arises when a judge believes that a prosecutor, defense attorney, or an officer is not acting in accordance with the law. Does a judge have to avoid contact and refer the matter to a higher authority for investigation? The answer depends on the seriousness of the situation. Canon 3D(2) provides,

"A judge who receives information indicating a substantial likelihood that a lawyer has committed a violation of the Rules of Professional Conduct should take appropriate action. A judge having knowledge that a lawyer has committed a violation of the Rules of Professional Conduct that raises a substantial question as to the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects shall either communicate directly with respect to the violation with the lawyer who has committed the violation or report the violation to the appropriate authority."

Accordingly, a judge may personally confront an attorney, discuss, and even counsel on matters that the judge believes constitute a professional conduct violation. Even if the matter raises a substantial question as to honesty, trustworthiness, or fitness, Canon 3D(2) still provides the option of direct contact.

If a judge believes that an officer has acted irresponsibly, direct confrontation and discussion should be avoided. With respect to dealing with members of law enforcement, a judge's approach is different because law enforcement officers, unlike attorneys, are not officers of the court. They are not governed by specific rules that relate to their professional function within the justice system. In most cases they have appeared before the court as witnesses. For this reason, it is best to avoid direct contact unless the issue relates to a matter covered by Canon 3B(7)(a) which permits ex parte communication for "...scheduling, administrative purposes or emergencies that do not deal with substantive matters or issues on the merits..." Discussing an officer's tardiness or lack of legible penmanship would probably fall under this category of permissible communication.

Judicial communication with officers and others who are likely to appear as witnesses is not specifically addressed by the Canons of

Judicial Conduct, but at least one state's judicial ethics advisory committee did opine that a judge may write a letter to a law enforcement officer's supervisor(s) criticizing or applauding said officer's conduct, disposition, demeanor, etc. in the courtroom. The opinion cautioned that the judge "...should limit what he says to what he actually knows and avoid grandiose endorsements which he cannot support." See Kentucky Judicial Ethics Opinion JE - 87, August 1996.

Often it is not What is Said, But How it is Said

Dealing with complicated cases (such as impaired driving) while maintaining a current docket in a high-volume court can be frustrating and stressful. The Pennsylvania Court of Judicial Discipline recently removed a judge for, among other things, being impatient, undignified, and discourteous to court reporters, court administration, court clerks, deputy sheriffs, attorneys, witnesses, victims, parties, and probation officers. One State Commission on Judicial Conduct recently publicly admonished one judge and publicly reprimanded a second judge for impatient, undignified, and discourteous conduct. Allegations included yelling a profanity at the acting city chief of police at the court administrator and a court employee. The second judge told an assistant city attorney, "Hey, shut up. Lower your voice." That judge also interrupted a defense attorney's pretrial motion and yelled at her in front of her client, "Shut up. I'm telling you to shut up."

As with all communications governed by the Canons of Judicial Conduct, it is often not the content of the communication itself, but the manner, style, and emotion with which it is delivered that draws unwanted attention. Judges are permitted, and even encouraged, to communicate with lawyers and law enforcement. The appropriate time, place, and style is often what delineates that which is acceptable from that which is not. For further information and resources concerning judicial communications and free speech visit the website of the American Judicature Society at www.ajs.org.

EDITOR'S NOTES

¹ The opinions expressed in this article are those of the author personally and are not expressed in any professional or official capacity. They are based on the author's personal interpretation of the Canons of Judicial Conduct. This article should not be interpreted as providing legal or ethical advice concerning judicial conduct.