

TO: Winnebago County Safe Streets Committee

FROM: Drug Court Team

RE: Recommendations Regarding Drug Court Judges

DATE: June 29, 2023

I. SELECTION OF THE DRUG COURT JUDGE

HISTORY

In the almost 18 year existence of the Winnebago County Drug Court, this is only the second anticipated transition of a drug court judge. Judge Woldt and Judge Key were the first drug court judges. After approximately 10 years, they ended their judicial assignment and it transferred to Judge Seifert and Judge Jorgensen in 2016. In January 2021, Judge Seifert retired and Judge Jorgensen remained as the sole drug court judge.

The procedure for selection of the next judges was informal. The drug court judges found their replacement. The Safe Streets Committee has asked for a recommendation for a more formal process in selection of the next drug court judge.

PROCESS TO REPLACE OTHER TEAM MEMBERS

The Winnebago County Drug Court team consists of a judge, prosecutor, public defender, treatment representative (counselor), case manager and 3 probation agents. Throughout the years, there has been numerous changes to personnel from each areas. Each respective agencies selected their representative to the team. For example, the district attorney appointed the prosecutor, the supervising public defender appointed the public defender, and the Department of Corrections appointed the probation agents. The counselor was recommended by DHS representative and informally interviewed by the judges.

JUDICIAL ASSIGNMENTS

Supreme Court Rule (SCR) 70.19(1) states that “(t)he chief judge is the administrative chief of the judicial administrative district. The chief judge is responsible for the administration of judicial business in circuit courts within the district, including personnel and fiscal management. The general responsibility of the chief judge is to supervise and direct the administration of the district, including the judicial business of elected, appointed and assigned circuit judges.”

SCR 70.23(3) appoints the Chief Judge of the District to assign circuit court judges to “...assignments in multijudge circuits within the district.”

Winnebago County belongs to Judicial District 4. Presently, the Wisconsin Supreme Court appointed Judge Guy Dutcher from Waushara County as the Chief Judge of this district.

SEPARATION OF POWERS

The Wisconsin and Federal Constitution recognizes the separation of powers between the branches of government: executive, legislative and judicial. Each branch protects its authority and can not be beholden to the other as to its duties. This system provides checks on the powers of the other branches.

One option is that the drug court team or the Safe Streets Committee appoints the next drug court judge. However, if a non-judicial committee can appoint the judge, then it stands to reason that the committee can remove the judge.

The drug court judge is then beholden to this non-judicial committee. The judge’s duties and obligation, if the judge does not want to be removed, would be to make decisions that are in-line with the legislative and the executive branch (the members of Safe Streets Committee or the team). This is problematic as a judge needs to be independent.

PROPOSAL

The proposal of the Winnebago County Drug Court Team to the Safe Streets Committee is that the Chief Judge of the Judicial District makes the assignment of the drug court judge. The Chief Judge has the authority to establish the procedure to be used in selection of the next Winnebago County Drug Court Judge.

II. DURATION OF THE ASSIGNMENT AND NUMBER OF JUDGES

BEST PRACTICES

The National Association of Drug Court Professionals, in their publication *Adult Drug Court Best Practice Standards*, Volume I (December 2018) on page 22 states the following:

“Length of Term: A study of approximately seventy Drug Courts found nearly three times greater cost savings and significantly lower recidivism when the judges presided over the Drug Courts for at least two consecutive years (Carey et al., 2008, 2012). Significantly greater reductions in crime were also found when the judges were assigned to the Drug Courts on a voluntary basis and their term on the Drug Court bench was indefinite in duration (Carey et al., 2012). Evidence suggests many Drug Court judges are significantly less effective at reducing crime during their first year on the Drug Court bench than during ensuing years (Finigan et al., 2007). Presumably, this is because judges, like most professionals, require time and experience to learn how to perform their jobs effectively. For this reason, annually rotating assignments appear to be contraindicated for judges in Drug Courts.

Consistent Docket: Drug Courts that rotated their judicial assignments or required participants to appear before alternating judges had the poorest outcomes in several research studies (Finigan et al., 2007; National Institute of Justice, 2006). Participants in Drug Courts commonly lead chaotic lives, and they often require substantial structure and consistency in order to change their maladaptive behaviors. Unstable staffing patterns, especially when they involve the central figure of the judge, are apt to exacerbate rather than ameliorate the disorganization in participants’ lives.”

In regards to best practice, the team has had experience with two judges assigned to drug court and with one judge. The team found more consistency, understanding, and efficiency with one judge assigned. The sole drug court judge was able to better know the participants, remember what was said to them the previous weeks and follow-through. With alternating weeks for two judges and with the participants in different phases, there were times the participant wouldn’t appear in front of one judge for months. The team’s experience with one judge is consistent with the best practice standards mentioned above.

PROPOSAL

The Drug Court Team recommends that one judge be assigned to drug court for a minimum of a 5-year term. The appointment shall be reviewed by the chief judge after the initial five years and every two years thereafter.