



A Practical Guide to Getting Your Client into Specialty Court

BY ORRIN JOHNSON, ESQ.

By now, you've read the other articles in this issue and should be sold on the concept of specialty courts. In my nearly 17 years of practicing criminal law in Nevada, as a defense attorney, a prosecutor, and now a private practitioner, I have championed these incredible programs and seen them work minor miracles for my clients. But like all government programs designed to help people, the devil can be in the details.

Public defenders are constantly dealing with specialty courts, and generally have an in-house expert on the nuts and bolts of those programs available, since an attorney from those offices helps staff them. But for those of us in private practice, even if criminal law is the primary focus of our work, we interact with these programs far less often. Here are some practical tips and tricks for setting your clients up for success.

Does Your Client Qualify?

Before spending a lot of time and effort trying to convince a judge to send your client to a specialty court, make sure your client actually qualifies. For most, including adult drug court, mental health court, and veteran's court, the qualifications are statutory. (See Nevada Revised Statutes (NRS) 176A.235, 176A.255, and 176A.280, respectively.) Whatever your plan is (and you must always make a plan), *always start by reviewing the statute(s) and/or local rules.*

First, the crime you are seeking diversion for must generally be probation

eligible. If your client is pleading guilty to a subsequent felony DUI, they can't go to DUI court. But don't give up – there are often exceptions to general rules. Domestic battery cases generally are not eligible for probation or diversion, but veterans eligible for Veteran's Court are the exception.

Plea bargaining can play a vital role – more often than you'd think, prosecutors want to see people succeed in programs as well. Craft your plea agreements carefully so you don't accidentally take options away from your sentencing judge.

Simply being a drug user doesn't necessarily make one an addict, and more importantly, it doesn't *prove* that someone is an addict. Likewise, not all mental illnesses are created equal. And even if it's obvious to you that your client is suffering from a condition in the Diagnostic and Statistical Manual

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of Mental Disorders (DSM-V), your own assertions aren't enough. In most cases, *you need an evaluation* ahead of time from a qualified person who can affirm that your client has a substance use disorder amenable to treatment and/or a qualifying mental health diagnosis. Most courts have lists of qualified evaluators for this purpose.

For veterans, there must be some connection between their service and their crime. Sometimes, that connection is obvious. In my practice, I see plenty of combat vets with PTSD who find themselves losing control and lashing out physically, usually at a family member. Sometimes the connection is difficult to ascertain. I've worked with vets who were sexually assaulted, or witnessed suicides, and suffer very real trauma as a result of their service, even if they never left the states. Surprisingly to some, drone pilots can be especially susceptible to life-altering trauma. On the other hand, I've also seen those who embellish or invent their service to gain sympathy or diversion. Do your homework, so you don't become an unwitting accessory to this stolen valor.

For vets, you need a copy of your client's DD-214, and something to corroborate that their military service is impacting their reintegration with civilian society. Sometimes you have Veterans Administration (VA) records already, but not always – too many vets shy away from seeking treatment at the VA (often that's why they're our clients), and you may need outside evaluations to find the service connection to their crime.

Local misdemeanor specialty courts may be more flexible – or less. But whatever the potential option may be for you, make sure you do your research before wasting a lot of time, or filling a client with false hope.

Does Specialty Court Make Sense for Your Client?

Assuming your client qualifies, you need to *ask if it makes sense*. Ideally, all our clients with mental health and substance abuse issues would embrace treatment. But we must practice law in the real world. Specialty court is a long-term commitment with real consequences for failure. If you think your client is unlikely to make that commitment, don't set them up for failure.

Sometimes, the math just doesn't work out. Maybe your client already has one or more felony convictions, and there is less incentive to avoid having a record. Maybe they have spent enough time in custody that they've effectively already served their time. Perhaps they have a warrant in another jurisdiction, which would prevent them from getting out of jail to go to rehab. If your client doesn't live locally, there may be no practical way for them to meaningfully participate. On the other hand, technology and lessons learned from COVID have allowed several of my clients to successfully participate in these programs remotely.

Not all jurisdictions have every specialty court. Most rural jurisdictions have access to a drug court, but not a veteran's court. Veteran's court exists because vets have struggled in regular drug court, because they had a hard time relating to civilians in the program who had not served. This challenge doesn't mean that vets should never go to a rural drug court, but it does introduce another variable to the pro/con list for you and your client to consider. The same can be true when there are challenging co-occurring mental health and substance use disorders – if there aren't sufficient mental health resources in your area, drug court alone could be insufficient, or even counter-productive.

Finally, while your client's personal cost-benefit ideas should be taken into consideration, don't forget that if they do have a qualifying problem/diagnosis, chances are good that their judgment is perhaps less than perfect when it comes to their own health. The fact that they're our clients to begin with suggests something has gone wrong in their lives, and they need outside help. Research has shown that those who enter treatment voluntarily have similar outcomes to those forced into it legally,¹ so don't let your client's initial pessimism or resistance to the idea of treatment be the end of the question.

How to Get In

The process to get accepted to a specialty court can vary pretty wildly, both by type of court and jurisdiction. And of course, things can change. *You must plan ahead* to avoid delay, or even rejection.

In Washoe County, for example, getting into Veteran's Court or Mental Health Court requires an advanced application process, whereas regular Adult Drug Court does not (although you will need a substance abuse evaluation with a treatment recommendation before formal acceptance). In Carson City, there is a standard motion filed prior to sentencing if you are seeking drug court for your client.

None of these application processes are terribly difficult, but some can be time consuming, especially if you need an evaluation prior to acceptance. In some jurisdictions, instructions and forms are available on the court's website. But if in doubt, call the applicable court well ahead of time and make sure you know which wickets to hit to set your clients up for success.

Ask for Help

Ultimately, what's true for our clients struggling with addiction and mental health is true for us all – none of us can do it alone. Don't be afraid to *reach out and ask fellow members of the defense bar for advice and help*. I do so frequently, and I am always grateful to my colleagues who are so generous with their time and expertise.

Your local public defender's office or full-time contract indigent defense attorney are always going to be the subject matter experts on specialty courts – not just on the letter of the law, but also on the unwritten rules and unique culture every judge and courtroom develops over time. Those of us who have been fortunate to work with specialty courts and see the results can be almost evangelical about the programs, and are happy to share knowledge, tips, and tricks to help you get your client in the "success" column.



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ENDNOTE:

1. National Institute on Drug Abuse. (January 2018). *Principles of Drug Addiction Treatment: A Research-Based Guide (Third Edition)*, pp 19-20.