

# Unique Role of Judges in Healing to Wellness Court

Presented by the Tribal Law and Policy Institute

## Presenters:

Judge Joseph Flies-Away

Judge Carrie Garrow

Judge Charlene Jackson



# Our Presenters



**Judge Charlene Jackson,**  
Manager, Jackson Law Firm;  
Associate Judge, Town of  
Paradise Valley, AZ



**Judge Carrie Garrow,**  
Executive Director, Center  
for Indigenous Law,  
Governance & Citizenship at  
the Syracuse University  
College of Law; Chief  
Appellate Judge, Saint Regis  
Mohawk Tribal Court



**Judge Joseph Thomas Flies-Away,**  
Associate Justice, Hualapai  
Court of Appeals

# State 10 Key Components and the Tribal 10 Key Components

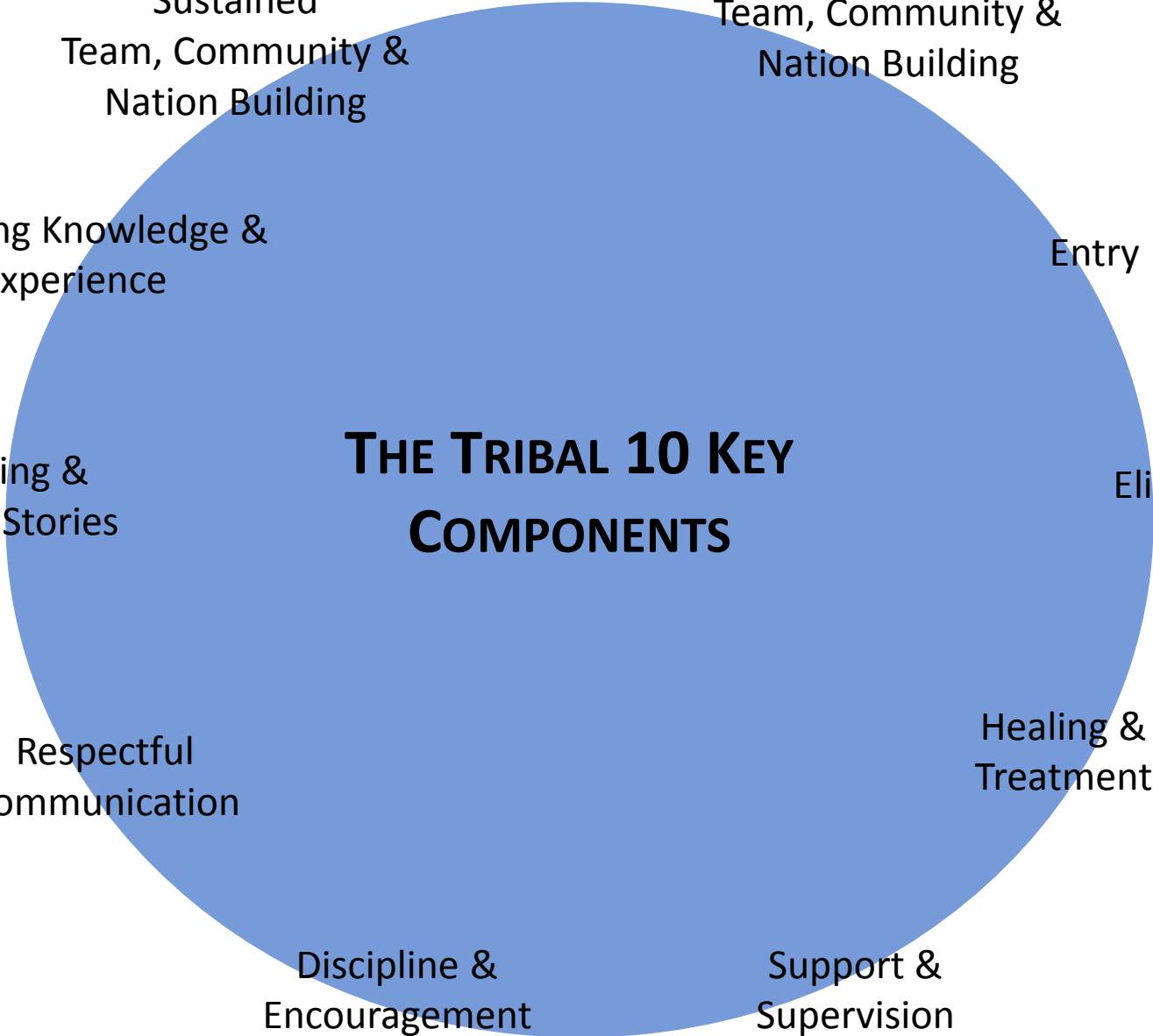
In 1997, the National Association of Drug Court Professionals (“NADCP”) developed *Defining Drug Courts: The Key Components*, a guide to prescribe the basic operational characteristics that all drug courts should share as benchmarks for performance.



However, it became apparent that the state key components may be inappropriate the tribal context. Tribes and tribal courts can be radically diverse in their cultures, languages, needs, governance structures, and laws—making it very difficult to generalize or compare them to each other or to state drug courts.



Therefore, in 2003, the Tribal Law and Policy Institute (“TLPI”), with the funding and support of the U.S. Department of Justice, Bureau of Justice Assistance (“BJA”) reoriented and generalized the state key components as relevant to the tribal setting to allow for tailoring in different geographic, demographic, jurisdictional, and cultural tribal contexts.



The Judge as  
Community & Nation Builder  
(Communicator)

The Judge as  
Community & Nation Builder  
(Convener)

The Judge as Life-long  
Teacher & Learner

The Judge as  
Protector of Rights

## THE JUDGE'S ROLE

The Judge as Story  
Teller & Evaluator

The Judge as Sentry  
& Gate Keeper

The Judge as Team Member,  
Captain, or Coach

The Judge as Champion for  
Health & Wellness

The Judge as Enforcer  
& Encourager  
(case manager)

The Judge as Encourager  
& Enforcer  
(case manager)

# Tribal Key Components and the NADCP Judicial Core Competencies

- The Tribal Key Components are the basic operational characteristics of a Healing to Wellness Court.
- The NADCP Judicial Core Competencies are specific factors that the *Judge* should provide, reflecting the Judge's role as leader.
- The Judicial Core Competencies are based on state court research.

# Judge Core Competencies





# Judge as Community & Nation Builder

- Tribal Key Component #1:
  - Tribal Healing to Wellness Court brings together alcohol and drug treatment, community healing resources, and the tribal justice process by using a team approach to achieve the physical and spiritual healing of the individual participant and to promote Native nation building and the well-being of the community.
- NADCP Core Competency #5
  - The Judge “initiates the planning process by bringing together the necessary agencies and stakeholders to evaluate the current core processes and procedures and thereafter collaborates to coordinate innovative solutions.”



# Judge as Community & Nation Builder

- **Judicial Roles and Responsibilities**
  - **Court Capability:**
    - Gather healing resources to implement Wellness Court
    - Promulgate alternative processes and procedures
  - **Leadership:**
    - Organize team members
  - **Community Connection:**
    - Introduce and frequently present Healing to Wellness Court to community members and Tribal government



# Judge as Protector of Rights

- **Tribal Key Component #2:**
  - Participants enter Tribal Healing to Wellness Court through various referral points and legal processes that promote tribal sovereignty and the participant's due (fair) process rights.
- **NADCP Core Competency #7:**
  - The Judge “effectively leads the team to develop all the protocols and procedures of the program.”

# Judge as Protector of Rights

- **Formalized, Written Referral Process**
  - Process is institutionalized
  - Team members, community, and the participant are aware of how one enters Wellness Court
- **Participant Notice**
  - Participant's due process and civil rights are protected
- **Creative Referral**
  - Collaboration with other agencies
- **Exercise of Sovereignty**
  - Transfer protocols are followed with other sovereigns, including formulations of MOUs



# Judge as Sentry and Gate Keeper

- Key Component #3:
  - Eligible court-involved substance-abusing parents, guardians, juveniles, and adults are identified early through legal and clinical screening for eligibility and are promptly placed into the Tribal Wellness Court.
- NADCP Core Competency #4:
  - Judge is “knowledgeable of gender, age, and cultural issues that may impact the offender’s success.”

# Judge as Sentry and Gate-Keeper

- Process in place to effectively screen for target population, including *Readiness to Change*
- Timeframe is identified and monitored to ensure participants promptly enter Wellness Court
- Eligibility issues or changes are discussed expeditiously
- Legal screening, and clinical screening and assessment are distinguished

# Judge as Champion for Health and Wellness



- **Key Component #4:**
  - Tribal Wellness Court proves access to holistic, structured, and phased alcohol and drug abuse treatment and rehabilitation services that incorporate culture and tradition.
- **NADCP Core Competency #8:**
  - Judge is “knowledgeable and aware of the impacts of substance abuse on the court systems, in the community at large and on the lives of offenders and their families.”

# Judge as Champion for Health and Wellness

- Judge is familiar with treatment
- Judge is familiar with specific program and phased treatment
- Judge is a community role model



# Judge as Encourager and Enforcer

- Key Component #5:
  - While participants and their families benefit from effective team-based case management, participants are monitored through intensive supervision that includes frequent and random testing for alcohol and drug abuse.
- NADCP Core Competency #3:
  - Judge is “knowledgeable of addiction, alcoholism, and pharmacology generally and applies that knowledge to respond to compliance and/or noncompliance in a therapeutically appropriate manner.



# Judge as Enforcer and Encourager

- Judge provides effective case management through both encouragement and discipline
- Judge is familiar with drug testing
- Court's monitoring method is consistently practiced
- Judge encourages wellness activities and enforces case compliance
- Judge enforces random drug tests.



# Judge as Enforcer and Encourager

- Key Component #6:
  - Progressive rewards (or incentives) and consequences (or sanctions) are used to encourage participant compliance with the Tribal Wellness Court requirements.
- NADCP Core Competency #2:
  - “As part of the Wellness Court Team, in appropriate non-court settings (i.e. staffing), the judge advocates for effective incentives and sanctions appropriate for program compliance or lack thereof.”

# Judge as Encourager and Enforcer

- Judge ensures compliance reports are made available to the court seamlessly
- Sanctions and incentives deemphasize punishment
- Sanctions and incentives are distributed fairly and consistently
- Sanctions and incentives are tailored to suit participant's motivations and circumstances
- Sanctions include a transparent and fair process
- Sanctions are made immediately



# Judge as Team Member and Captain

- Key Component #7:
  - Ongoing involvement of a Tribal Wellness Court judge with Tribal Wellness Court team and staffing, and ongoing Tribal Wellness Court judge interaction with each participant are essential.
- NADCP Core Competency #1:
  - The Judge “[p]articipates fully as a Wellness Court Team Member, committing him or herself to the program, mission and goals and works as a full partner to ensure success.”

# Judge as Team Member and Capitan

- Significance of three minutes
- Confidentiality is ensured
- Judge facilitates Team
- Judge ensures procedural fairness



# Judge as Story-Teller and Evaluator

- Key Component #8:
  - Process evaluation, performance measurement, and evaluation are tools used to monitor and evaluate the achievement of program goals, identify needed improvements to the Tribal Wellness Court and to tribal court process, determine participant progress, and provide information to governing bodies, interested community groups, and funding sources.
- NADCP Core Competency #5:
  - The Judge “[i]nitiates the planning process by bringing together the necessary agencies and stakeholders to evaluate the current court processes and procedures and thereafter collaborates to coordinate innovate solutions.”

# Judge as Story-Teller and Evaluator

- Judge is familiar with evaluation and reporting requirement
- Judge ensures court responds to data
- “What stories to tell?”



# Judge as Life-long Teacher and Learner

- Key Component #9:
  - Continuing interdisciplinary and community education promote effective Tribal Wellness Court planning, implementation, and operation.
- NADCP Core Competency #9:
  - The Judge “[c]ontributes to the education of peers, colleagues and judiciary in the effectiveness of wellness court.”



# Judge as Life-long Teacher and Learner

- Teacher = Learner
- Responsive to Team Members
- Continue individual and team training

# Judge as Community and Nation Builder



- **Key Component #10:**
  - The development and maintenance of ongoing commitments, communication, coordination, and cooperation among Tribal Wellness Court team members, service providers and payers, the community and relevant organizations, including the use of formal written procedures and agreements, are critical for Tribal Wellness Court success.
- **NADCP Core Competency #6:**
  - The Judge “[b]ecomes a program advocate by utilizing his/her community leadership role to create interest and develop support for the program.”

# Judge as Community and Nation Builder

- Leader over Manager
- Sharing of Success Stories
- Meet with community members and Tribal Government
- Written Commitments and Collaborations

# BJA Seven Design Strategies

- The Bureau of Justice Assistance (BJA) and the National Institute of Justice (NIJ) have identified seven evidence-based program design features that effective drug courts should utilize. Beginning in 2011, BJA began evaluating drug court grant funding using these seven design features and providing priority consideration for applicants who propose designs and strategies consistent with these design features.
- For more information on BJA Seven Design Features:  
[www.research2practice.org/index.html](http://www.research2practice.org/index.html)

# Tribal Law and Policy Resources

[www.tribal-institute.org/lists/drug\\_court.htm](http://www.tribal-institute.org/lists/drug_court.htm)

- Tribal Healing to Wellness Court Publications
  - Tribal 10 Key Components
  - Overview
  - Judicial Bench Book
  - Policies and Procedures
- Judicial Bench Cards
- Training Calendar

# Upcoming Events

**19<sup>TH</sup> ANNUAL  
TRAINING CONFERENCE**

**DRUG COURTS:  
A PROVEN BUDGET SOLUTION**

GAYLORD NATIONAL RESORT & CONVENTION CENTER

July 14-17, 2013      Washington, DC



**SAVE THE DATE**

## **Tribal Healing to Wellness Court Enhancement Training**

*September 11-13<sup>th</sup>, 2013*

*Renaissance Hotel*

*Agua Caliente Reservation, California*

*(pending OJP conference approval)*

[enhtraining.tlpi.org](http://enhtraining.tlpi.org)

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# Questions?





# Tribal Law and Policy Institute

The Tribal Law and Policy Institute (TLPI) is a Native American owned and operated non-profit corporation organized to design and deliver education, research, training, and technical assistance programs which promote the enhancement of justice in Indian country and the health, well-being, and culture of Native peoples.

Tribal Court Clearinghouse

[www.tlpi.org](http://www.tlpi.org)