

Chapter 11: Participant Handbooks

Overview

Participant Handbooks are distinct from Court Rules, Program and Personnel Policies, and Agency/Team Policy and Procedures Manuals. Early in the development of Healing to Wellness Courts, these courts used brochures for this purpose (see tribal examples below). With their growth and evolution, tribes are now starting to draft and use full-blown handbooks. The critical differences between Participant Handbooks and Policies and Procedures Manuals are the target audience – primarily the participant. Use simple, lay-friendly language. Use a tone of guidance and support for the individual in his or her wellness journey. Use a question and answer format where the questions are taken from the participants' perspectives as they move through the process. Cover an array of topics designed to provide full, informed consent, to advise about program rules, to give notice and information about rights with respect to confidentiality, application of incentives and sanctions, phase advancement/graduation and program termination, alcohol and drug testing, and treatment planning and service provision.

Participant Handbooks are an important tool to help ensure that potential participants are fully informed about the Wellness Court and their commitment to the program, including the amount of time the Wellness Court is expected to take. The Wellness Court requirements detailed in the Participant Handbook must be enforced, though not applied retrospectively. The Participant Handbook should provide a complete list of incentives and sanctions, along with a written policy on the application of incentives and sanctions. Additionally, the Participant Handbook can detail how the team will use hearsay evidence in determining noncompliant behavior, and how use of the evidence differs from criminal court.

Relevant Key Components

Key Component #2: Referral Points and Legal Process

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.

Key Component #3: Screening and Eligibility

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 Healing to Wellness Court.

Key Component #4: Treatment and Rehabilitation

Tribal Healing to Wellness Court provides access to holistic, structured, and phased alcohol and drug abuse treatment and rehabilitation services that incorporate culture and tradition.

Key Component #6: Incentives and Sanctions

Progressive rewards (or incentives) and consequences (or sanctions) are used to encourage participant compliance with the Tribal Healing to Wellness Court requirements.

Findings from the NIJ Tribal Wellness Court Study:⁷⁴ Key Components #2, #3, #4, and #6



Problems Identified:

- (1) Wellness courts had communication issues between the team and treatment providers due to intrinsic differences in the confidentiality of patient records versus court records.
- (2) Participants seemed surprised by the huge time commitment required by the Tribal Wellness Court and did not fully comprehend the Tribal Wellness Court requirements (no public defender or the public defender did not advise participant of his or her options before entering the Tribal Wellness Court).
- (3) Recidivism (post-program arrests) for alcohol- or drug-related offenses for a 3-year period following Tribal Wellness Court participation ranged from 50 to 59% in the adult courts and more than 90% in the juvenile courts.
- (4) Incarceration was often too readily used as a sanction, and participants could serve more time while in Tribal Wellness Court than if they had served their original sentence.
- (5) Participants complained that hearsay evidence was used in determining noncompliant behavior.
- (6) Participants complained about inconsistent application of sanctions and incentives (lack of graduated sanctions and incentives tied to specific behaviors).
- (7) Too much focus on sanctioning negative behavior and not enough on rewarding positive behavior.
- (8) Using incarceration too readily, rather than thinking of more therapeutic alternatives.

Lessons Learned:

- Use an “informed consent” approach with potential participants to ensure their due process rights are protected. In this approach, all benefits, risks, and alternatives of the Tribal Wellness Court are communicated early to the offender.
- Review the Tribal Wellness Court rules regularly with the participant while in the program.
- Choose participants who are motivated and ready to change their substance abuse behavior in order to maximize scarce resources and increase Tribal Wellness Court success. Participants who enter Tribal Wellness Court only to avoid incarceration may not “get with the program” and work to change their behavior.
- Have a clear termination policy in order to weed out participants who are not working the program after a reasonable time, if an inclusive admittance policy is used.
- Integrate culture and tradition into treatment, but do not require participants to do activities that can be perceived as religious rather than cultural because many tribes are religiously diverse.
- Emphasize culture – how to build a sweat lodge – not religion – participating in a sweat lodge ceremony – in order to avoid conflict with individual religious beliefs.

⁷⁴ Gottlieb, “Lessons Learned in Implementing the First Four Tribal Wellness Courts,” 12, 19, 24, and 35.

- Reward compliant behavior with incentives rather than emphasizing the punishment of noncompliant behavior with sanctions.
- Be judicious in levying non-therapeutic sanctions, such as incarceration, that are antithetical to the holistic healing philosophy underlying Tribal Wellness Courts.

**Strengths & Weaknesses Reported to First Four Tribal Wellness Courts:
Key Components #2, #3, #4, and #6⁷⁵**



<u>Strengths</u>	<u>Weaknesses</u>	<u>Strength or Weakness?</u>
<ul style="list-style-type: none"> • Policy & Procedure Manual used as a checklist • Presence of public defender • Participant Manual includes Frequently Asked Questions (FAQs) • Participants terminated with due consideration 	<ul style="list-style-type: none"> • Policy & Procedure Manual not approved by resolution • Program requirements not enforced • Potential participants not fully informed about Wellness Court • Hearsay evidence on noncompliance admitted • Program commitment not emphasized with potential participants • Program requirement changes applied retroactively 	<ul style="list-style-type: none"> • No clearly defined termination criteria
<ul style="list-style-type: none"> • Team members know potential participants • Participants drawn from several sources (tribal court, state court, and social services) 	<ul style="list-style-type: none"> • Drug dealers accepted into Wellness Court • Alternative court used to avoid incarceration where more time spent in Wellness Court than would have been spent in jail • No assessment of readiness to change • No individual treatment plan 	<ul style="list-style-type: none"> • Fast track to Wellness Court chemical dependency assessment completed after program acceptance • Inclusive and court-ordered participant selection with no assessment of readiness to change
<ul style="list-style-type: none"> • Parental involvement • Exclusive full-time chemical dependency counselor 	<ul style="list-style-type: none"> • Poor integration of cultural activities • No or too little family involvement in 	

⁷⁵ Taken from "Process and Outcome Evaluations of the Fort Peck Tribes Community Wellness Court" (December 30, 2005), "Process and Outcome Evaluations of the Blackfeet Alternative Court" (December 30, 2005), "Process and Outcome Evaluations of the Hualapai Wellness Court" (June 2010), "Process and Outcome Evaluations of the Poarch Band of Creek Indians Drug Court" (December 30, 2005).

<ul style="list-style-type: none"> • Culture integrated into Wellness Court • Family treatment center • Treatment as structure in participants' lives • Recognition of value of counseling and classes • Traditional healing practices incorporated 	<ul style="list-style-type: none"> • treatment • Lack of organized aftercare • No phases in juvenile treatment track • No aftercare program • Poor coordination of counseling • Available aftercare not utilized
<ul style="list-style-type: none"> • Provision of incentives • Recognition of progress • Therapeutic sanction for juveniles (sanctions that could be learning experiences) 	<ul style="list-style-type: none"> • Vague and incomplete incentives and sanctions list • Inconsistent application of incentives and sanctions • Non-therapeutic sanctions • Appellate court held Wellness Court did not follow the Policy and Procedures Manual • Lack of written policy on incentive and sanction application

Section A: Participant Handbook

Purpose

The purpose of a Healing to Wellness Court Participant Handbook is to help the participant fully and successfully participate in his or her wellness journey; to help the participant understand the mission, goals, and process; and to advise the participant of his or her legal rights, particularly with respect to confidentiality and potential sanctions and termination. The language and tone of the handbook should be lay-friendly, positive, and supportive. The handbook will be undermined by using vague or overly technical language. We recommend the use of pictures, flow-charts, stories, and quotations as much as possible.

Process for Developing Contents

We recommend developing a list of topics and then either soliciting participants' perspectives or having the team put themselves in the shoes of the participants to ask at least three questions per topic. The goal would be to use a question-and-answer format per topic to answer questions framed from the perspective of the participants.

Consider the following list of contents for a Wellness Court Participant Handbook:

- I. Vision/Mission of Wellness Court and Participant's Personal Wellness Journey
- II. A Description of the Wellness Court Program (i.e., "adult criminal," "juvenile," "family," etc.)
- III. Eligibility Criteria for Wellness Court Program Participation
- IV. The Journey to and through the Wellness Court Program (from tribal court to Wellness Court)
- V. Orientation and Entrance (with checklists of required tasks)
- VI. Wellness Court Phase Requirements
- VII. Testing
- VIII. Compliance and Incentives
- IX. Violations and Sanctions
- X. Treatment Services
- XI. Graduation and Termination
- XII. Pathways for Success (How do I make this work for me?)
- XIII. Wellness Court Program Rules
- XIV. Confidentiality Policy
- XV. Hearsay Policy
- XVI. Grievance Policy
- XVII. Fines, Fees, and Costs
- XVIII. Wellness Court Team Roles
- XIX. Forms (intake information, confidential contract, release of information, orientation checklist, etc.)

Menominee Wellness Court Outline for Drafting Participant Handbook

Chapter/Section	Participant Questions	Team Member Assigned to Draft
Vision/Mission -of Wellness Court Program -of Personal Wellness Journey	(1) What is this Wellness Court Program all about? (2) How am I supposed to do what I am expected to do? (3) Who is going to guide/help me do what I am expected to do?	Law Enforcement & Treatment (founding agencies)
Wellness Court Program Description	(1) Why/how does this Wellness Court Program apply to me? (2) How long is this going to take? (3) What do I have to do? (4) What is the Tribal Court's/Wellness Court's role/involvement with me?	Wellness Court Coordinator & Public Defender
Eligibility Criteria for Wellness Court Participation	(1) Am I in the Wellness Court Program or not? (2) Who is in the Wellness Court Program with me? (3) Why are we here?	Wellness Court Judge & Probation
Journey to and through Wellness Court (flow charts of Tribal Court to Wellness Court and Wellness Court process)	(1) Do I really have to go through all that? (2) Why is the jail time so long, and why are the phases so long? (3) What happens next?	Wellness Court Coordinator & Law Enforcement
Orientation & Entrance (checklist of tasks/requirements)	(1) Why do I get a lawyer? (2) Who is the Wellness Court Coordinator, and why is she here? (3) Who will be talking to me about my problems? (4) What is the plan/schedule going forward from here?	Wellness Court Coordinator & Public Defender
Wellness Court Program Phase Requirements (diagram/table of phases and requirements)	(1) What am I supposed to do in treatment? (2) What are these phases? (3) How do I move or promote through the phases? (4) How long do I spend in each phase?	Treatment & Law Enforcement
Testing	(1) What is the testing process and how does it work? (2) What do the numbers mean? (3) If I get tested in a given week do I still have to call in that week? (4) Can I cheat a UA sample?	Treatment & Law Enforcement

Chapter/Section	Participant Questions	Team Member Assigned to Draft
Compliance & Incentives	(1) What is an incentive? (2) Why do I care about incentives? (3) Why do other participants get an incentive and I don't?	Wellness Court Judge & Prosecutor
Violations & Sanctions	(1) How does this work? (2) Why do I get sanctioned and others don't? (3) Why am I sanctioned when I said I didn't do it/ not do it?	Wellness Court Judge & Prosecutor
Treatment Services	(1) What kind of counseling am I going to get? (2) What does being alcohol & drug free mean? (3) Why do I have to do all these other things (getting driver's license, job seeking, paying fines, etc.)?	Treatment & Law Enforcement
Transition & Termination	(1) What is transition (graduation)? (2) What am I transitioning to? (3) When and why would I be terminated? (4) Then what happens to me? (5) After transition, who helps me?	Prosecutor & Probation
Pathways for Success	(1) How do I make this work for me? (2) Can I really do this? (3) What does pathways to success mean to me?	Treatment & Probation
Wellness Court Program Rules	(1) What are the rules? (2) What happens if I break the rules? (3) Who can explain the rules?	Public Defender & Prosecutor
Confidentiality Policy	(1) What is it? (2) Who is going to know I am here? (3) What are you going to do with the information that I share? (4) How does what happens to me in the Wellness Court Program impact me in Tribal Court? (5) What does my password really mean? (6) How does it work? (7) What should I keep confidential?	Prosecutor & Probation
Fines, Fees, Costs	(1) How much are the fees? (2) Why do I pay fees in the Wellness Court Program? (3) Am I responsible for the cost of a UA? (4) What is the transition administration fee?	Wellness Court Judge & Wellness Court Coordinator

Chapter/Section	Participant Questions	Team Member Assigned to Draft
Grievance Policy	(1) What is a grievance policy? (2) Can I challenge a test result? (3) Can I challenge a sanction? (4) Whom do I file a grievance with? (5) What if I have a problem with a team member or service provider?	Prosecutor & Public Defender
Wellness Team Roles	(1) Role of Wellness Court Judge?* (2) Role of Wellness Court Coordinator?* (3) Role of Probation Officer?* (4) Role of Law Enforcement Officer?* (5) Role of Treatment Provider?* (6) Role of Prosecutor?* (7) Role of Defense Counsel? *Who are these people; what do they do; whom do I go to for help?	All Team Members
Forms	(1) Participant Self-Reporting Form (for use in Wellness Court Hearings); (2) Notice of Appearance for Wellness Court Hearings; (3) Confidential Contract; (4) Orientation Checklist/To Do List upon entry to the Wellness Court Program; (5) Release of Information Form; and (6) Intake Information Form.	All Team Members

Sample Tribal Brochures

Blackfeet Tribal Alternative Court

The Blackfeet Tribal Court handles over 5,000 criminal cases each year. There are also over 3,500 traffic tickets processed through the Court. The Tribal Court staff along with the community have recognized the fact that the main contributors to this serious community problem is alcohol and drugs. We have also recognized that the old system of punishment was not working to deter crime or stop the use of alcohol and drugs. In January of 1998 the Blackfeet Alternative Court began operation due to the efforts of Susan Spotted Bear and James Olsen who successfully applied for a grant from the National Drug Court Association.

WHO IS ELIGIBLE?

Any person over the age of eighteen years old who has been charged in the Blackfeet Tribal Court, has been found to be chemically dependent through assessment, does not have a violent felony on record, is not currently being charged with a violent offense, and is accepted into the program by majority vote of the Alternative Court staff.

STAFF

The Blackfeet Tribal Alternative Court (BTAC) is a team of Tribal Court staff along with concerned community members.

Susan Spotted Bear is the BTAC Coordinator and Grant Manager. She is an acting member of the team.

Dan Minnis is the BTAC Judge. He is an acting member of the team and meets with the clients.

James Arnoux is also a BTAC Judge. He is an back-up member of the team.

James Olsen is the BTAC Probation Officer and Grant Manager. He is an acting member of the team who is responsible for drug testing and tracking of clients compliance and sobriety.

Wendy Running Crane is the BTAC Prosecutor. She is an acting member of the team with the responsibility of looking out for the public's safety and best interest.

Cheryl Guardipee is the BTAC Public Defender. She is an acting member of the team who looks out for the clients rights. Although there is a Defender on the team, whenever the Defendant's counsel is can represent him/her in BTAC.

Helen Gobert is the BTAC Clerk. She is an acting member of the team who is responsible for record keeping for the BTAC.

Don Mallo is the BTAC Treatment Provider. He is an acting member of the team who provides out-patient treatment and assessments to clients.

Teri Jo Calf Boss Ribs is the BTAC Officer. She is an acting member of the team and is responsible for transporting clients when needed and testing.

BLACKFEET TRIBAL



ALTERNATIVE COURT

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Phone: (406) 338-5061
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HERE'S HOW IT WORKS.....

1. Case is staffed after being referred to BTAC by the Prosecutor and Defender after completion of a record check by the Prosecutor and an assessment by the BTAC Treatment Provider.
2. A democratic vote is done with all staff members having one vote on whether or not the participant will be accepted into the program.
3. If accepted, the client then goes before the Judge and makes a guilty plea. A deferred sentencing agreement/contract is then signed by the Participant and Counsel, Prosecutor, and Judge.
4. The Participant enters Phase 1 of the program. To complete Phase 1 the participant must complete all treatment requirements for that Phase plus attend weekly AA meetings. The participant must attend weekly court appearances and submit to random drug testing during this period. He/she must have at least 10 consecutive negative drug tests in order to move to the next phase. If not a high school graduate, he/she must begin the GED process during this phase. It is also a requirement that he/she either find work or attend higher education during this time. If all requirements made by the team have been completed, the participant will then move up.
5. The Participant enters Phase 2 of the Program. To complete Phase 2 the participant must complete all treatment requirements for that Phase plus attend weekly AA meetings. Must attend court twice per month and submit to random drug testing. He/she must have at least 12 consecutive negative tests to move up. If all other requirements have been met, the Participant will move up.
6. The Participant enters Phase 3 of the Program. To complete, he/she must complete all treatment requirements and attend weekly AA meetings. Must attend Court once per month and have 12 consecutive negative tests to move up. When all requirements have been met, the Participant will move up.
7. The Participant enters Phase 4 of the Program. To complete, he/she must complete all treatment requirements and attend weekly AA meetings. Must attend Court once per month and have 12 consecutive negative tests to move up. The Participant must take an additional assessment at graduation for comparison. At the completion of this Phase, the Participant will graduate from the program.

SANCTIONS & INCENTIVES

Sanctions and incentives are based upon the teams discretion as to what sanction or incentive will best assist the Participant in his/her recovery.

SANCTIONS

- Monetary Fines
- Backward steps in Phase, weeks
- Increased treatment hours
- Increased AA meetings
- House arrest
- Weekends in jail
- Supervised personal time (exercise or activities ordered by the Court)
- Time in jail
- Removal from program (last resort)
- Other sanctions deemed appropriate by team

INCENTIVES

- Reduced conditions
- Deferral of sentence
- Accelerated progress
- Graduation
- Other incentives deemed appropriate by team



The main purpose of the Traditional Wellness Court is for the participant to:

- Learn to be alcohol / drug-free
- Reclaim pride in being HoChunk/Winnebago
- Improve family / friend relationships
- Build community support
- Stop criminal activity that hurts the person, community and Tribe while healing

For More Information:

**Traditional Wellness Court
of Winnebago, Nebraska**
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**WINNEBAGO, NEBRASKA
TRADITIONAL WELLNESS COURT
FOR JUVENILES**



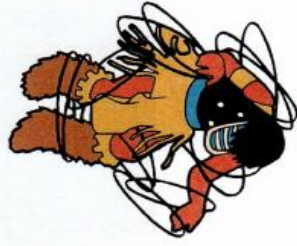
RAŠGUNİ KĪ

"MAKING HEALTHY"

MISSION STATEMENT

The mission is to aid youth in the Winnebago Community to better themselves through traditional values, cultural awareness and family involvement.

WINNEBAGO RAŠGUNI KI, WELLNESS COURT



... is a specialized program for first time offenders. The program requires a commitment to work with the Wellness Court Panel and to remain drug and alcohol free.

ELIGIBILITY

- 1st time juvenile offenders.
- Did not have a previous case before the Traditional Wellness Court.

Goal: To help participants walk a path to wellness with the support of family and friend.

A DIFFERENT WAY

In Rašguni Ki Traditional Wellness Court, a team joins together with the participants to provide structured monitoring and an individualized treatment plan for success. Team members are the Judge, Coordinator, Public Defender, Prosecutor, Probation Officers and TWC Panel of Elders.

**HOW IT WORKS**

A participant is accepted into the Traditional Wellness Court voluntarily by entering a plea. The participants understand that any violation of the case plan will result in an immediate consequence.

The case plan is a result of a collaborative effort to bring the participant's life back into harmony with himself / herself, family, Tribe and community. The participant is expected to meaningfully and actively participate.

Immediate consequences are a foundation of Rašguni Ki Traditional Wellness Court: rewards are given for compliance or progress and sanctions are immediately imposed for violations. Consequences are always focused upon assisting the participant to return to their wellness plan.

SANCTIONS MAY INCLUDE:

- DETENTION
- HEIGHTENED MONITORING
- BA OR UA TESTING
- COMMUNITY SERVICE
- RETURN TO COURT FOR SENTENCING

REWARDS MAY INCLUDE:

- RECREATION PASSES
- GIFT CERTIFICATES
- ADJUSTMENTS OF PROBATION
- DISPOSITION OF THE OFFENSE

FOUR PHASES

The Rašguni Ki Traditional Wellness Court Program can last for a few months to a year and consists of four separate phases. Each phase has specific requirements:

**Phase One**

- Court reviews weekly
- Contact with Coordinator once a week
- Employment or school attendance
- Develop a Spiritual-Cultural plan
- Treatment or counseling if needed
- Maintain sobriety
- Attend group cultural activity when offered

Phase Two

- Court reviews every 2 weeks
- Meet with Coordinator once a week
- Employment or school attendance
- Begin Spiritual-Cultural plan
- Continue with treatment / counseling if needed
- Maintain sobriety

Phase Three

- Court reviews every 3 weeks
- Less frequent contact with Coordinator
- Counseling as recommended
- Maintain sobriety

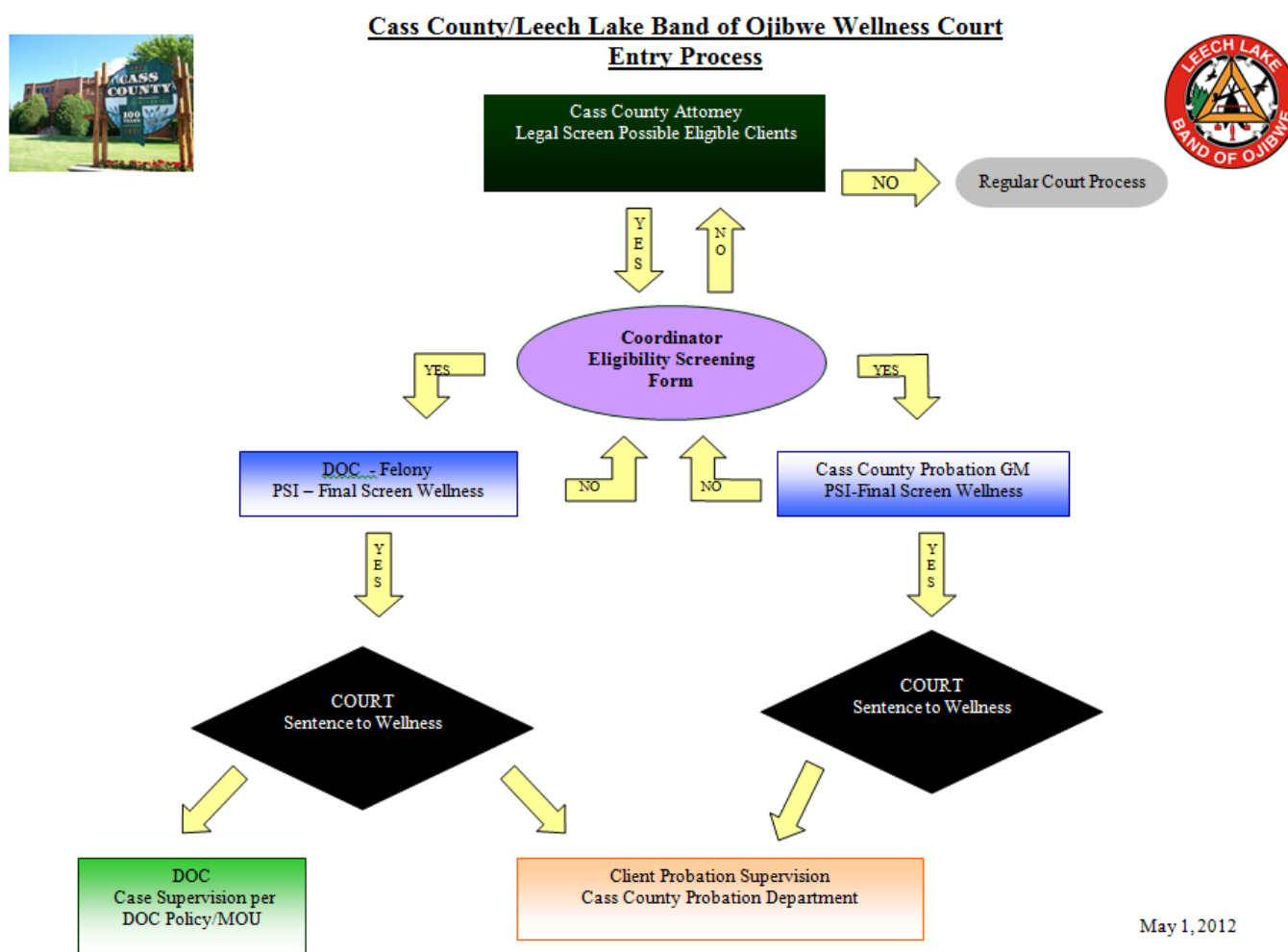
Phase Four

- Court reviews every 4 to 6 weeks
- Less frequent contact with Coordinator
- Employment or school attendance
- Continue with Spiritual-Cultural plan
- Counseling as recommended
- Maintain sobriety

Section B: Flow Charts of Process

Purpose

It is helpful to include flowcharts to ensure that the Healing to Wellness Court team members have agreed-upon standard processes, that they see the “flow” the same way, and that they share this information with potential and active participants so that they understand how the program works and what is expected of them. Consider charting two processes from the participant’s perspective: the process of moving into Wellness Court (see Flow Chart below) and the Wellness Court process itself.



Section C: Written Policies on Incentives and Sanctions

Purpose

The purpose of having written policies on incentives and sanctions is to make sure that the Team and the Participant are on the same page to maximize the therapeutic effect and to be fair to all participants. A written policy should be available and used at every team meeting reviewing participant progress and conduct. A written policy should also be included in the Participant Handbook so that Participants understand how it works and so that they can modify their conduct accordingly. A good written policy will have a section on incentives (rewards) and sanctions (punishments). The policy should list each type of anticipated bad conduct, for example:

- (1) testing positive for a controlled substance,
- (2) failing or refusing to test,
- (3) missing a court session without receiving prior approval for the absence,
- (4) being late to court with no prior approval,
- (5) failure to attend the required number of AA/NA meetings or support group meetings,
- (6) failure to attend and complete the assigned treatment program,
- (7) failure to keep in contact and/or cooperate with the Court Coordinator, Probation Officer, or Case Manager,
- (8) being convicted of a new crime,
- (9) violence or threats of violence directed at staff or other participants,
- (10) lack of motivation to seek employment or continue education,
- (11) refusing to terminate association with individuals who are using,
- (12) failure to comply with court directives,
- (13) lack of motivation to seek safe housing, etc.

For each type of conduct, there should be a list of standard sanctions and standard treatment responses. For example, if the Participant tests positive for a controlled substance, the standard increasing sanctions would include: increased supervision, increased urinalysis, community service, a written assignment, incarceration (1–10 days on first; 1 week on second), or discharge from the program. The standard treatment responses would include: a review of the treatment plan for appropriate treatment services, the writing of an essay about relapse and the things the participant would do differently, the writing of a list of why the participant would want to stay clean and sober, etc.

Eastern Band of Cherokee Nation Tribal Drug Court Participant Handbook

Incentives

Incentives may be provided during drug court sessions and may include, but are not limited to:

- promotion to the next phase, certificates, and tokens;
- decreased supervision; increased privileges and responsibilities;
- praise from the Tribal Drug Court Judge and Team;
- Extended curfews and other individual incentives approved by the Tribal Drug Court Team.

Although some tangible incentives may be given, you will come to recognize that natural incentives are occurring throughout your time in Tribal Drug Court that include re-establishing relationships, and trust with the family, obtaining employment, meeting educational goals, becoming current on financial obligations, and other rewards gained as a result of becoming a productive member of the tribe and maintaining drug-free, crime-free lifestyle.

Sanctions

You are expected to comply with all requirements and other conditions established by Tribal Drug Court. Failure to comply will result in Tribal Drug Court Judge imposing sanctions upon you.

Sanctions may include, but are not limited to:

- Reprimand from the Tribal Drug Court Judge;
- Increased level of outpatient treatment or residential drug treatment, community service, phase demotion;
- Increased contacts with the Tribal Drug Court Staff;
- Home confinement;
- Jail;
- Termination from the program.

Graduated sanctions may be used for continuous non-compliance. All sanctions will be appropriate, consistent, and immediately applied. Participants will be responsible for payment each time they are remanded to county jail for non-compliance.