

may hinder the lawyer's ability to investigate and assess the defendant's case and provide the defendant with sufficient information to make a knowing and voluntary judgment about entering drug court. Second is the consequences of entry: defendants frequently waive significant rights by agreeing to enter drug court, even when entry is not predicated on a guilty plea. Third is the defendant's competence: compounding the pressures of time and consequences, addiction to alcohol or other drugs surely casts some doubt on defendants' ability to make a voluntary decision to enter drug court. As discussed in the commentary to Rule 1.4, these concerns about a defendant's consent to enter drug court do not render morally flawed the participation of defense counsel in drug court (or the drug court model itself). They do, however, suggest that counsel should not rely on a defendant's consent as an excuse to limit his or her scrutiny of drug court practices.

The fact that the decision to enter drug court belongs to the client does not mean that the lawyer should be indifferent about the client's choice. Consistent with a proper allocation of authority in the representation, the lawyer may strongly urge the client to enter (or refuse to enter) drug court, so long as the final decision is the client's. However, encouragement to the client to enter drug court must be predicated on counsel's judgment about the client's best interests in the matter at hand, rather than counsel's general support for the drug court program.⁴⁹

Limits on representation

In deciding whether to enter drug court, a defendant should be informed not only about the overall nature of drug court participation (*see* commentary to Rule 1.4) and the effect of participation on a defendant's expectations of confidentiality (*see* commentary to Rule 1.6) but also about the structure of legal representation in drug court. Some aspects of representation in drug court appear to be significant departures from normal criminal defense representation, especially the practice of direct communication between judges and participants in drug court.⁵⁰ While these differences require greater client counseling (*e.g.*, to understand the significance of disclosures in open court), they do not indicate material limitations on the lawyer's duties of competent, diligent, and loyal representation. The defense lawyer's protective function is not diminished, although primary exercise of this function may shift to staffing conferences, where counsel may question alleged violations and proposed sanctions without impairing the participant's recovery. Nonetheless, defense counsel should prepare their clients for drug court hearings and should

⁴⁹ For further discussion of the lawyer's counseling function, *see* the commentary to Rules 1.4 and 2.1, along with Defense Standard 4-5.1 (found in the commentary to Rule 1.4).

⁵⁰ Satel, MD, Sally L., *Observational Study of Courtroom Dynamics in Selected Drug Courts*, National Drug Court Institute Review, Vol. 1, Issue 1, Summer 1998.

insure that judicial questioning in drug court does not cross accepted lines.⁵¹ (*See also* the commentary to Rule 1.3 on representation agreements that release counsel from obligation to attend all drug court hearings with their participant-clients).

That said, the duty of zealous representation does not require counsel to challenge every proposed sanction for violations of drug court requirements. It is merely appropriate that such sanctions continue to serve the defendant's underlying interest in recovery, are consistent with sanctions imposed on other participants for similar violations and are reflective of the previously determined schedule of sanctions.

Advice on non-compliance

Rules 1.2(d) and (e) further define the counseling role. In drug court, the participant's lawyer should discuss the consequences of non-compliance with drug court rules but may not assist the participant to evade detection for non-compliance. Improper assistance will often be governed by Rule 3.3 (prohibiting fraud on the tribunal). The participant's lawyer should explain that the lawyer's inability to assist in evading sanctions for non-compliance has two bases. First, as in all litigation, the lawyer's duty of loyalty to the client does not override the lawyer's duty to obey the law and uphold the legal system. Second, and of equal importance, evading detection for non-compliance in drug court is self-defeating: if the client continues to believe that sobriety is the goal of the representation, then deceiving the court diverts the participant from that goal.

Rule 1.3: Diligence

A lawyer shall act with reasonable diligence and promptness in representing a client.

Relevant provisions from the ABA Standards for Criminal Justice

Prosecutors

Standard 3-2.9: Prompt Disposition of Criminal Charges

(a) A prosecutor should avoid unnecessary delay in the disposition of cases. A prosecutor should not fail to act with reasonable diligence and promptness in prosecuting an accused.

⁵¹ Defense counsel needs to ensure that the judge only speaks with his or her client about matters that are relevant to the participant's success in the drug court program. Defense counsel should delineate "rules" with the judge on the type of inquiries that are acceptable. If the judge crosses the boundaries of acceptable inquiries, counsel should interject himself or herself into the conversation between the judge and the client.

Standard 3-3.1: Investigative Function of Prosecutor

(f) A prosecutor should not promise not to prosecute for prospective criminal activity, except where such activity is part of an officially supervised investigative and enforcement program.

Standard 3-3.8: Discretion as to Noncriminal Disposition

(a) The prosecutor should consider in appropriate cases the availability of noncriminal disposition, formal or informal, in deciding whether to press criminal charges which would otherwise be supported by probable cause; especially in the case of a first offender, the nature of the offense may warrant noncriminal disposition.

Standard 3-3.9: Discretion in the Charging Decision

(b) The prosecutor is not obliged to present all charges which the evidence might support. The prosecutor may in some circumstances and for good cause consistent with the public interest decline to prosecute, notwithstanding that sufficient evidence may exist which would support a conviction.

Standard 3-3.11: Disclosure of Evidence by the Prosecutor

(a) A prosecutor should not intentionally fail to make timely disclosure to the defense, at the earliest feasible opportunity, of the existence of all evidence or information which tends to negate the guilt of the accused or mitigate the offense charged or which would tend to reduce the punishment of the accused.

(b) A prosecutor should not fail to make a reasonably diligent effort to comply with a legally proper discovery request.

Defense counsel

Standard 4-1.3: Delays; Punctuality; Workload

(a) Defense counsel should act with reasonable diligence and promptness in representing a client.

Standard 4-3.2: Interviewing the Client

(a) As soon as practicable, defense counsel should seek to determine all relevant facts known to the accused. In so doing, defense counsel should probe for all legally relevant information without seeking to influence the direction of the client's responses.

Standard 4-3.6: Prompt Action to Protect the Accused

Many important rights of the accused can be protected and preserved only by prompt legal action. Defense counsel should inform the

accused of his or her rights at the earliest opportunity and take all necessary action to vindicate such rights.

Standard 4-4.1: Duty to Investigate

(a) Defense counsel should conduct a prompt investigation of the circumstances of the case and explore all avenues leading to facts relevant to the merits of the case and the penalty in the event of conviction. The investigation should include efforts to secure information in the possession of the prosecution and law enforcement authorities. The duty to investigate exists regardless of the accused's admissions or statements to defense counsel of facts constituting guilt or the accused's stated desire to plead guilty.

Standard 4-6.1: Duty to Explore Disposition Without Trial

(b) Defense counsel may engage in plea discussions with the prosecutor. Under no circumstances should defense counsel recommend to a defendant acceptance of a plea unless appropriate investigation and study of the case has been completed, including an analysis of controlling law and the evidence likely to be introduced at trial.

Commentary

Entry into drug court – prosecutor

The prosecutor's charging decision frequently has a determinative impact on a defendant's eligibility for drug court, and it is a decision over which the prosecutor frequently has discretion. Prosecutors should consider forgoing charges that might be appropriate in the absence of drug court where those charges would render a potential candidate ineligible for drug court. For example, offenses carrying mandatory minimum sentences will often bar drug court participation, especially in post-plea jurisdictions. The discretion afforded prosecutors in charging allows them to withhold charges that would prevent offenders from entering suitable diversionary programs. As noted in the commentary to Standard 3-3.8, "it has long been the practice among many experienced prosecutors to defer prosecution upon the fulfillment of certain conditions, such as a firm arrangement for the offender to seek psychiatric assistance where a disturbed mental condition may have contributed to the aberrant behavior."⁵²

As Key Component #3 indicates, timing of a participant's entry into drug court can be crucial to the success of the participant as well as of the drug court. "The period immediately after an arrest, or after apprehension for a probation

⁵² ABA Criminal Justice Standard 3-3.8, Commentary.

violation, provides a critical window of opportunity for intervening....”⁵³ The “window of opportunity” requires prompt action on the part of both prosecutors and defense counsel. Within this relatively short time, prosecutors need to review available information about the defendant’s case, determine the defendant’s eligibility for drug court, and, if eligible and suitable, file the necessary paperwork for the defendant’s enrollment. Whenever possible, prosecutors should seek to expedite both charging and drug court screening (especially lab testing). Failure to carry out these tasks in a timely fashion can delay entry and forfeit the therapeutic advantages of addressing the defendant in the crisis of arrest. The process of accelerating drug court admissions will vary depending on the drug court model in use. In pre-trial diversion jurisdictions, appropriate cases should be referred to drug court as soon as they are filed, subject to withdrawal from the program if lab tests prove negative. In the post-plea setting, immediate referral may not be possible, but the prosecutor should actively search for suitable drug court candidates and handle their cases in a manner that enhances their prospects for entering drug court.

Entry into drug court – defense counsel and participants

The “window of opportunity” places an even greater demand on defense counsel, if they are to fulfill their professional obligations within the drug court context. The urgency contemplated by Key Component #3 admittedly creates some tension with respect to the lawyer’s duty under Rules 1.2 and 1.4 to insure that the client has the opportunity to make a fully informed choice about entering drug court.⁵⁴ However, it is quite simple for attorneys to reconcile these demands. The client’s informed choice depends on the lawyer possessing sufficient factual and legal information about the client’s case. Even if the client admits a history of alcohol and other drug (AOD) abuse and is eager to enter treatment, the lawyer still has a duty to investigate the charges pending against the client and determine the client’s full range of legal defenses to those charges. Where significant legal defenses are available, but the client desires drug treatment, the lawyer should advise the client that treatment outside of the criminal justice context of drug courts may have significant advantages, especially in heightened protections for confidentiality and the absence of criminal sanctions for relapse. If counsel cannot obtain the information necessary to provide the client with all of his or her options in the time allowed for entering drug court, the attorney should try to arrange for conditional enrollment. This will allow the client to withdraw or the court to determine whether or not this potential participant is, in fact, a good candidate for

⁵³ *The Key Components*, Key Component #3.

⁵⁴ Of course, at the onset, defense counsel should make an informed decision as to whether the client is competent to stand trial. For more detail, see pp. 37 in this publication (Rule 1.4, “Understanding, not just information”).

drug court. Whenever drug court enrollment requires irrevocable waivers of legal rights before counsel has an opportunity to make an adequate investigation and assessment of a defendant's case, counsel should not advise clients to enroll. See Defense Standard 4-6.1 (following this commentary). In practice, this concern about informed consent has not significantly limited lawyers' (or their clients') participation in drug court. Experienced defense counsel in drug court report that, in most cases eligible for drug court, they are able to gain sufficient information about the client's case within the "window of opportunity" contemplated by Key Component #3 to permit the client to make an informed choice about entering drug court.

Diligent representation in drug court – prosecutors

Criminal Justice Standard 3-3.1(f), which forbids prosecutors to "promise not to prosecute for prospective criminal activity" appears to conflict with a central feature of the prosecutor's role in drug court. The text of Drug Court Key Component #2 provides that the prosecuting attorney "agrees that a positive drug test or open court admission of drug possession or use will not result in the filing of additional drug charges based on that admission."⁵⁵ The conflict is only apparent, not real: drug court prosecutors do not agree not to prosecute future crimes of use or possession but simply agree to a form of use immunity for information obtained through drug court hearings or tests. Prosecutors may also, in the exercise of ordinary prosecutorial discretion, choose not to bring charges or seek convictions for offenses committed by drug court participants. They may even declare that they are inclined not to prosecute participants who commit certain types of offenses but are otherwise advancing in the recovery process. So long as prosecutors do not promise not to bring charges, but promise only not to use certain information against the participants, prosecutors do not violate Standard 3-3.1(f).

Diligent representation in drug court – defense counsel

Once the participant enters drug court, the goals of defense representation expand to include the participant's successful completion of the drug court program. As noted in this publication's commentary to Rule 1.2(c), this expanded understanding of representation, by itself, does not constitute a limitation on counsel's responsibility to the client/participant. Diligence in drug court representation requires counsel's continuing engagement with clients, monitoring, and keeping careful notes of the client's progress (or failures) in the drug court program.

⁵⁵ *The Key Components*, Key Component #2, Performance Benchmark 3.

Ideally, lawyers will be present at every staffing conference and drug court hearing in which their clients' cases are addressed and especially at every court appearance by their clients. At minimum, however, an attorney who, by prior consensual arrangement with his or her client, does not attend all proceedings involving the client should arrange to receive advance notice whenever the court contemplates sanctioning one of his or her clients. All attorneys, regardless of whether they plan to attend every proceeding, should brief their clients about the significance of disclosures in drug court proceedings. Attorneys should insist that their clients be truthful in all statements to the court, both because Rule 3.3 requires candor in statements to the tribunal and the client's therapeutic program depends on such honesty. Truthfulness does not, however, imply unrestrained confessions. Clients should be advised of possible consequences if they admit to serious crimes (although a client who is asked about such crimes may not falsely deny them). In addition, attorneys should inform their clients that some drug court personnel may not be covered by confidentiality restrictions (e.g., interns), so the client should be circumspect in communications with those personnel.

When notified of possible sanctions, the attorney should confer with the client to assess possible defenses or mitigating circumstances. During these consultations, the attorney should avoid interfering with the treatment process, which requires participants to take responsibility for relapse, while at the same time formulating appropriate defenses. For example, if a client denies new allegations of drug usage, the attorney might wish to request an on-site drug test to ascertain immediate results regarding the truth of the client's denials.

Rule 1.4: Communication

(a) A lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information.

(b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

Relevant provisions from the ABA Standards for Criminal Justice

Prosecutors

Standard 3-3.2: Relations With Victims and Prospective Witnesses

(c) The prosecutor should readily provide victims and witnesses who request it information about the status of cases in which they interested.

(g) The prosecutor should seek to insure that victims of serious crimes or their representatives are given timely notice of (i) judicial proceedings relating to the victims' case; (ii) disposition of the case,

including plea bargains, trial and sentencing; and (iii) any decision or action in the case which results in the accused's provisional or final release from custody.

Defense counsel

Standard 4-2.1: Communication

Every jurisdiction should guarantee by statute or rule of court the right of an accused person to prompt and effective communication with a lawyer and should require that reasonable access to a telephone or other facilities be provided for that purpose.

Standard 4-3.1: Establishment of Relationship

(a) Defense counsel should seek to establish a relationship of trust and confidence with the accused and should discuss the objectives of the representation and whether defense counsel will continue to represent the accused if there is an appeal.

Standard 4-3.8: Duty to Keep Client Informed

(a) Defense counsel should keep the client informed of the developments in the case and the progress of preparing the defense and should promptly comply with reasonable requests for information.

(b) Defense counsel should explain developments in the case to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

Standard 4-5.1: Advising the Accused

(a) After informing himself or herself fully on the facts and the law, defense counsel should advise the accused with complete candor concerning all aspects of the case, including a candid estimate of the probable outcome.

(b) Defense counsel should not intentionally understate or overstate the risks, hazards, or prospects of the case to exert undue influence on the accused's decision as to his or her plea.

Standard 4-8.1: Sentencing

(c) Defense counsel should also insure that the accused understands the nature of the presentence investigation process, and in particular the significance of statements made by the accused to probation officers and related personnel. Where appropriate, defense counsel should attend the probation officer's interview with the accused.

Prosecutors' duty of communication

Victims of crime are not the prosecutor's clients, of course, but many jurisdictions and the ABA Criminal Justice Standards require prosecutors to keep victims informed about the progress of the case in which they are involved. Because many drug courts focus on offenses for which there is no discrete victim, the prosecutor's duty to communicate with victims will not ordinarily arise. However, an increasing number of jurisdictions permit enrollment of those charged with offenses against identifiable victims. Victims of offenses committed by those enrolled in drug court deserve the same consideration that they would receive in other criminal or juvenile cases.

In communicating with victims, however, prosecutors must observe confidentiality requirements established by law, the drug court's rules, and the court's memorandum of understanding. In some instances, it will be necessary to provide information in general terms (e.g., "the defendant is doing well in probation," rather than "the defendant is doing well in drug court"). The potential for difficulty in balancing communication with victims against the confidentiality rules of the drug court provides another reason for appointing full-time drug court prosecutors (as recommended in this publication's commentary to Rule 1.1; *see also* Criminal Justice Standard 3-2.3).

Defense counsels' duty of communication

Effective representation in drug court requires ongoing and trusting communication between participants and their counsel. This requirement has both legal and therapeutic implications. First, the client's entry into drug court requires informed consent to a number of complicated measures, not just the disposition of charges facing the defendant but waiver of certain confidentiality protections otherwise afforded patients in treatment for alcohol and other drug (AOD) addiction. Without the assistance of counsel, the court (and the community more generally) would have much less reason to be confident that the defendant voluntarily and knowingly waived these protections. Second, defense counsel's duty to communicate with the client has therapeutic significance. By informing the client about the choices available to the client and the consequences that likely follow from those choices, the lawyer helps the client to participate in the process as a moral agent – a person responsible for his own conduct, rather than a passive object of the court's action. For further analysis of the lawyer's counseling function, see the commentary to Rules 1.2 and 2.1.

Three aspects of the defense counsel's duty to communicate require additional attention: first, the duty to promote understanding, rather than just

providing information; second, the duty, at the client's choice, to enter drug court; and third, the duty while a client participates in drug court.

Understanding, not just information

The legal and therapeutic benefits of defense counsel's communication depend on the client's comprehension. To promote understanding, defense counsel should be attentive to the range of barriers that impede full communication in the drug court context. A particularly significant barrier for drug court defense counsel, also reviewed in the commentary to Rule 1.14, is participant's history of AOD abuse. Particularly at an early interview, the client may be under the influence, preventing the full communication contemplated by this Rule. In addition, counsel should also recognize symptoms of a client's withdrawal from AOD addiction, which may impede communication as much as intoxication.

Language and reading skills pose additional obstacles to communication. A significant number of drug court participants do not read at their age level. Thus, attorneys discussing written waivers with their clients should read all documents aloud or at least be sensitive to the possibility that such readings may be necessary. Defense counsel should be especially attentive to the vocabulary used in waiver documents and in their own conversations with clients. To the extent possible, concrete examples (*e.g.*, a scenario in which the client relapses) should be used to help explain the alternatives facing the client. As in contexts outside drug court, counsel for clients who do not speak English should make sure that a translator is available for both attorney/client communications and the drug court program.

The client's decision to enter drug court

As reviewed in the commentary to Rule 1.2, the decision to enter drug court typically belongs to the client, but defense counsel plays a crucial role in informing (or ensuring that others have informed) the client about this choice. Specifically, defense counsel must help the client understand the charges pending against him or her, criminal sanctions that the client faces and treatment possibilities available to the client outside of drug court, the rules of drug court and the consequences for breaking those rules, the benefits obtained by completing drug court, and the penalties imposed on the client should he or she fail to complete the drug court program.⁵⁶ Defense counsel also should ensure that the client has a sufficient understanding of the therapeutic process and how that process is carried out in drug court.

⁵⁶ See *the Key Components*, Key Component #2, Performance Benchmark 4 (on defense counsel's duty to inform the client).

Communicating with the client in drug court

Defense counsel's duty to communicate with a client does not end when the client enters drug court. Because clients do not attend drug court team meetings (*i.e.*, staffings) at which their cases are discussed, counsel should meet periodically with clients in order to bring the client's perspective and concerns to the team meetings and also to explain and interpret for the client the court's perception of the client's progress. Because clients are expected to speak directly with the judge in drug court hearings, it is especially important for counsel to remind clients about the expectation of, and limits on, candor in open court. Candor with respect to AOD use is both necessary and appropriate in drug court, and counsel can ethically encourage clients to be truthful in such disclosures because of the prosecutor's commitment not to use those admissions for further prosecutions. However, counsel should also inform clients that this immunity is limited – not all disclosures of criminal conduct in treatment or open court are so protected. While clients may not lie (*see* Rule 3.3), clients should be informed and reminded of the need to limit harmful disclosures (absent a broader agreement on immunity for admissions made in treatment or open court). Finally, counsel should explain the privilege against self-incrimination and the extent to which that privilege may be asserted in drug court hearings.

Client assessments

For attorneys with large drug court practices (especially public defenders), periodic anonymous surveys of clients may prove useful in improving communication in particular and drug court representation in general. A sample survey follows.

SAMPLE MEMBER INPUT SURVEY

Team DC:

Name (Optional - May be done anonymously):

Month:

Program:

Please tell us what you do in your program:

Comments/Criticism:

Has this program helped you? Yes _____ No _____

In what ways?

How, if at all, would you change it?

What comments/criticism do you have for drug court?

Overall, how would you say your recovery is progressing?

Do you have problem areas that aren't being addressed?

Can you see problems other participants have that should be handled differently?

Do you have questions or concerns about which we should know? (If yes, do you wish to speak to us privately?)

What do you think should constitute grounds for termination from drug court?

How can participants show sincerity to allow them to stay in after relapsing or otherwise demonstrating poor behavior in drug court?

RULE 1.6: Confidentiality of Information

(a) A lawyer shall not reveal information relating to representation of a client unless the client consents after consultation, except for disclosures that are impliedly authorized in order to carry out the representation, and except as stated in paragraph (b).

(b) A lawyer may reveal such information to the extent the lawyer reasonably believes necessary:

(1) to prevent the client from committing a criminal act that the lawyer believes is likely to result in imminent death or substantial bodily harm; or

(2) to establish a claim or defense on behalf of the lawyer in a controversy between the lawyer and the client, to establish a defense to a criminal charge or civil claim against the lawyer based upon conduct in which the client was involved, or to respond to allegations in any proceeding concerning the lawyer's representation of the client.

Relevant provisions from the ABA Standards for Criminal Justice

Defense counsel

Standard 4-3.1: Establishment of Relationship

(a) Defense counsel should seek to establish a relationship of trust and confidence with the accused and should discuss the objectives of the representation and whether defense counsel will continue to represent the accused if there is an appeal. Defense counsel should explain the necessity of full disclosure of all facts known to the client for an effective defense, and defense counsel should explain the extent to which counsel's obligation of confidentiality makes privileged the accused's disclosures.

Commentary

Defense counsel's duty of confidentiality

Just as in other contexts of representation, the duty of confidentiality provides the moral and practical foundation for the relationship between defense counsel and his or her client. The full conversation contemplated by Rules 1.2, 1.4, and 2.1 depends on trust that the substance of that conversation will not be disclosed, absent the client's consent, outside of the attorney/client relationship. Nothing in the structure of drug court, including defense counsel's membership in the drug court team, weakens this duty of confidentiality. Although counsel should encourage participants to be truthful in drug court treatment and hearings, counsel should not be the conduit of confidential information about the client, unless the client consents to the particular disclosures. Of course, the traditional attorney/client privilege remains in tact, and it transcends any role that the drug court defense counsel has as a member of the drug court team. As in traditional cases, defense counsel must explain this privilege, and any circumstances that justify its breach, to his or her client.

Counsel's duty to protect confidential information about the client is enhanced by federal and state laws on confidentiality of alcohol and other drug (AOD) treatment information, along with the court's rules and memorandum of

understanding. Defense counsel should learn the extent of these protections⁵⁷ and ensure their observance by the drug court team. In addition, because participation in drug court requires waiver of protections afforded by these regulations, counsel should advocate for the narrowest possible waivers consistent with effective functioning of the drug court. Participants should not, and cannot under federal law, be asked to execute blanket waivers of their rights to confidentiality in AOD treatment.

Ethics rules provide two relevant limitations on counsel's duty of confidentiality.⁵⁸ The first, found in Rule 3.3(a)(2), requires the lawyer to rectify a client's fraud on the court even if doing so would involve disclosure of confidential information. Thus, a lawyer who knows that his client has submitted adulterated urine for a urinalysis would be required to counsel the client to disclose the fraud, and if the client refused to do so, to disclose the fraud to the court. *See* Rule 3.3 for further analysis. Second, the lawyer may disclose a client's intention to commit a criminal act that is "likely to result in imminent death or substantial bodily harm." For example, a lawyer would be permitted (but not required under the Model Rules) to disclose his or her knowledge of a client's intention to harm a fellow drug court participant or treatment provider. Importantly, the limitation in Rule 1.6(b)(1) does not apply to the lawyer's knowledge of past criminal acts by the client, only to future crimes. Knowledge of past crimes, except for a fraud on the court under Rule 3.3(a)(2), remains confidential.

The defense counsel may waive his or her attendance at staffings or status hearings. However, such waiver prevents his or her full participation in the team approach to working with each participant. As delineated under Rule 1.3 of this text, it is advisable to obtain the informed, written consent of the participant prior to counsel's non-appearance.

The prosecutor's duty of confidentiality

Like the defense counsel, the prosecutor owes drug court participants a duty of confidentiality. However, the prosecutor's duty does not arise out of Rule 1.6. Instead, this duty arises from the web of federal and state rules protecting information about recipients of AOD treatment and the drug court's rules and memorandum of understanding. With few, narrowly defined exceptions, these rules generally prohibit redisclosure of confidential treatment information to

⁵⁷ *See Confidentiality Laws*, National Drug Court Institute, 1999.

⁵⁸ Lawyers should pay special attention to their own jurisdictions' limitations on the duty of confidentiality, which differ substantially from one another. *See generally*, Morgan & Rotunda, 2001 *Selected Standards on Professional Responsibility* 134-51 (detailing differences among state ethics rules on client confidences).