

Campbell Law Review

Volume 35

Issue 3 *Symposium 2013*

Article 5

2013

North Carolina's Wary Reception of Drug Treatment Court: The Myth of Inherent Ethics Violations Within Its Structure

Lily Van Patten

Follow this and additional works at: <http://scholarship.law.campbell.edu/clr>

Recommended Citation

Lily Van Patten, *North Carolina's Wary Reception of Drug Treatment Court: The Myth of Inherent Ethics Violations Within Its Structure*, 35 CAMPBELL L. REV. 367 (2014).

This Comment is brought to you for free and open access by Scholarly Repository @ Campbell University School of Law. It has been accepted for inclusion in Campbell Law Review by an authorized administrator of Scholarly Repository @ Campbell University School of Law.

North Carolina's Wary Reception of Drug Treatment Court: The Myth of Inherent Ethics Violations within its Structure

INTRODUCTION

Imagine that you are the Chief District Court Judge of a county in North Carolina. On the bench for several years, you grow accustomed to seeing many of the same non-violent criminal defendants in court. These courthouse regulars vary from manual laborers, to students, to even doctors. All of these people share one thing in common: they are addicts. It becomes frustrating to continually sentence the same people to prison, only to have them appear again at some point later. You grow tired of watching peoples' addictions to drugs and alcohol thrust them into the unforgiving and perpetual life of crime that the maintenance of addiction necessitates. Prison time for these regulars appears futile. Extensive periods of prison time seem to only avoid the problem temporarily, by incarcerating the offender at great expense to the rest of society, until the point where the individual is released back into the community and the same repetitive cycle of crime.

Does a district court possess any power to aid these members of the community? After research, it becomes apparent that North Carolina has already identified a solution to your conundrum—drug treatment courts, a judicial structure that mandates legal accountability, saves money, and provides rehabilitative services for addiction. You cannot help but wonder, however, why such a small percentage of North Carolina counties have a drug treatment court.

After asking several local colleagues, the discovery is surprising: some individuals react with enthusiastic praise of drug treatment courts while others, with raised eyebrows, divulge that although drug treatment courts are full of good intentions, they strive for an unobtainable goal. Then, there are the few who react with an adamant disapproval of such an avant-garde approach to the law, either with an assertion that latent ethical violations inevitably exist within the drug court structure or with a skeptical comment on the court's perspective that such a dubious set of people can really "change." What is the explanation behind such a divided response? Why is part of North Carolina's legal community resisting the newly emerging paradigm of drug treatment courts?

A. *Drug Treatment Courts: An Alternative Approach to the Traditional Criminal Justice System*

Drug treatment courts (“DTCs”) have operated in North Carolina since 1995.¹ Once a criminal defendant goes through an initial “screening” with the assigned DTC staff member, and meets the local eligibility requirements,² the defendant has two options. First, the defendant may plead guilty to the criminal charge,³ and instead of serving an extensive prison sentence, may participate in a year-long, court-mandated regimen of intensive substance abuse treatment, counseling, and other related rehabilitative services.⁴ Alternatively, the defendant may chose to forego the option of therapeutic court and instead play the odds of traditional criminal court.⁵ After an informed discussion with defense counsel, a defendant who voluntarily elects to enter the DTC begins working on the program’s stated goals—graduation and sobriety.⁶ Generally, in order to graduate a participant must: be nominated by the DTC team,⁷ be employed and making payments toward legal obligations such as child support or

1. See N.C. GEN. STAT. § 7A-793 (2011).

2. A candidate will be selected if: (1) he or she is diagnosed by an appointed screening staff member as either chemically dependent or borderline chemically dependent; (2) the candidate can be immediately punished for the pending criminal charge; and (3) the candidate meets all local eligibility requirements. Local requirements vary among courts and are created by the Director of the Administrative Office of the Courts in conjunction with the State Drug Treatment Court Advisory Committee. See DTC TARGETING DIRECTIVE § 3.1 (2011); N.C. GEN. STAT. § 7A-797.

3. While most DTCs are structured as a post-plea program, some North Carolina counties offer a pre-plea adult DTC program in addition to the typical post-plea adjudicative structure; those counties are as follows: Forsyth, Guilford, Mecklenburg, Person, and Caswell. See CHIEF JUSTICE I. BEVERLY LAKE, JR. & RALPH A. WALKER, N.C. ADMIN. OFFICE OF THE COURTS, ANNUAL REPORT ON THE STATUS OF NORTH CAROLINA’S DRUG TREATMENT COURTS, 2005-2006 Sess., at 31–32 (2005), available at <http://www.nccourts.org/Citizens/CPrograms/DTC/documents/NDlegRp2005.pdf>.

4. *Id.* at 2–4. Other rehabilitative services include education, vocational training, employment skill development, and housing. See generally *id.*

5. See *id.* at 1.

6. See generally *id.*

7. OFFICE OF JUSTICE PROGRAMS, U.S. DEP’T OF JUSTICE, DEFINING DRUG COURTS: THE KEY COMPONENTS 1 (1997) [hereinafter “DEFINING DRUG COURTS”] (“Realization of these goals requires a team approach, including cooperation and collaboration of the judges, prosecutors, defense counsel, probation authorities, other corrections personnel . . . an array of local service providers, and the greater community.”).

restitution, receive clean drug tests⁸ during the prior three out of six months, and successfully complete all required clinical treatment.⁹

The unfortunate truth is that most DTC participants are no strangers to the court system. Most DTC participants have past criminal charges due to underlying substance abuse and mental health issues, in addition to prior charges in various other courts such as truancy court, department of social services court, or child support court.¹⁰ By allowing the individual to receive treatment for the underlying cause of the criminal behavior under one judge in one court, DTC provides an alternative to the costly and time-consuming task of having different judges and other legal actors oversee each legal claim every time the individual is charged.

Indeed, a DTC judge has many functions, such as addressing the various legal problems of each individual, providing therapeutic legal solutions to those issues,¹¹ and simultaneously maintaining a perspective of the full breadth of the individual's legal problems.¹² The overall goal of North Carolina's DTC is to break the cycle of addiction that propels repeat criminal offenders.¹³ DTC addresses the facts that incarceration alone does very little to break an individual's perpetual cycle of drugs and crime and that prison is a scarce resource that should be reserved for those who are true threats to society—not people who could be safely dealt with outside

8. The treatment program generally involves the following phases: detoxification, stabilization, aftercare, and educational counseling. See Hon. Peggy Fulton Hora et al., *Therapeutic Jurisprudence and the Drug Treatment Court Movement: Revolutionizing the Criminal Justice System's Response to Drug Abuse and Crime in America*, 74 NOTRE DAME L. REV. 439, 475 (1999). Throughout the program, DTC staff will require the participant to submit frequent and random urine samples for drug testing. *Id.*

9. DEFINING DRUG COURTS, *supra* note 7, at 11, 15.

10. Interview with Hon. Joseph M. Buckner, Chief Dist. Court Judge of Orange Cnty., N.C., in Hillsborough, N.C. (Jan. 2, 2013).

11. The type of sanctions given to a DTC participant serve to underscore the therapeutic perspective: "A DTC's therapeutic orientation compels the court and its participants to pursue and utilize relationships, methods, and ideas which will reinforce and support the goal of getting the individual to stop using drugs." Hora et al., *supra* note 8, at 470.

12. See generally N.C. ADMIN. OFFICE OF THE COURTS, BEST PRACTICES FOR NORTH CAROLINA DRUG TREATMENT COURTS (2010) [hereinafter "BEST PRACTICES"], available at <http://www.nccourts.org/Citizens/CPrograms/DTC/documents/dtcbestpractices.pdf>.

13. LAKE & WALKER, *supra* note 3, at ii. Additional codified goals of DTC include reducing alcohol dependency, reducing criminal and delinquent recidivism, reducing drug and alcohol-related court workload, increasing the personal, familial and social accountability of offenders, and promoting effective interaction and use of resources among criminal personnel. N.C. GEN. STAT. § 7A-792 (20121).

of prison.¹⁴ Through the coordinated efforts of the judiciary, defense bar, prosecution, and probation, DTC seeks to provide participants with the intensive treatment necessary “to become healthy, law abiding and productive family and community members.”¹⁵

In fact, the benefits of DTC are twofold. Not only does the structure of a specialized court increase judicial efficiency by removing those drug- and alcohol-related charges from the court docket, it also reduces harm to the community and criminal defendants.¹⁶ DTC minimizes criminal activity, highway injuries and death, healthcare and social welfare costs, domestic violence, and child abuse and neglect.¹⁷ Nationwide studies have shown that DTC reduces criminal activity in the surrounding community by as much as 45% more than traditional sentencing options while producing cost-savings ranging from \$3,000 to \$13,000 per participant.¹⁸ These cost-savings include reduced prison costs, arrests, trials, and victimization.¹⁹ Other studies have concluded that “for every dollar spent on treatment, about \$7 . . . [is] saved, mainly in reduction of criminal activity and in the hospitalizations for health problems.”²⁰ The national participation and retention rate in DTC programs stands at approximately 70%.²¹

The North Carolina DTC is modeled after the nation’s very first drug treatment court, which was instituted in Miami-Dade, Florida, in 1989, by

14. Hora et al., *supra* note 8, at 449.

15. *Adult Drug Treatment Court*, N.C. ADMIN. OFFICE OF THE COURTS, <http://www.nccourts.org/Citizens/CPrograms/DTC/Adult/> (last visited May 1, 2013); see LAKE & WALKER, *supra* note 3, at 59; N.C. GEN. STAT. § 7A-791 (“The General Assembly recognizes that a critical need exists in this State for judicial programs that will reduce the incidence of alcohol and other drug abuse or dependence and crimes . . .”).

16. See Candace McCoy, *The Politics of Problem-Solving: An Overview of the Origins and Development of Therapeutic Courts*, 40 AM. CRIM. L. REV. 1513, 1518 (2003).

17. See *About Us*, RECOVERYNC, <http://www.recoverync.org/about/> (last visited May 1, 2013).

18. *Drug Courts Work*, NAT’L ASS’N OF DRUG COURT PROF’LS, <http://www.nadcp.org/learn/facts-and-figures> (last visited May 1, 2013).

19. *Id.*

20. Hora et al., *supra* note 8, at 503 (quoting CTR. FOR SUBSTANCE ABUSE TREATMENT, U.S. DEP’T OF HEALTH AND HUMAN SERV., TREATMENT IMPROVEMENT PROTOCOL SERIES NO. 23, TREATMENT DRUG COURTS: INTEGRATING SUBSTANCE ABUSE TREATMENT WITH LEGAL CASE PROCESSING 1, 44 (1996)).

21. *Id.* at 502. For North Carolina re-arrest and recidivism rates, generally, see AMY CRADDOCK, NORTH CAROLINA DRUG TREATMENT COURT EVALUATION FINAL REPORT (2002).

the then-Chief Judge Wetherington of Florida's eleventh judicial district.²² The reasoning of the court's establishment was such: "The same people are picked up again and again until they end up in the state penitentiary and take up space that should be used for violent offenders. The Drug Court tackles the problem head-on."²³ The traditional, adversarial court model simply perpetuated the problem because it was unable to address the fact that substance abuse was an underlying cause of repetitive crime. Through the treatment-oriented mindset of therapeutic court, Judge Wetherington was able to create a judicial process that directly faced the root of the criminal activity. The Miami-Dade court's approach of combining substance treatment with the Florida judiciary quickly became popular in other states.²⁴ As of June 30, 2012, the United States had 2,734 drug courts operating within its territory.²⁵

Overall, DTC in North Carolina has been relatively successful²⁶ in producing sober and productive members of the community.²⁷ So why are there not more drug treatment courts? One of the prominent answers provided by legal scholars in opposition to therapeutic courts, such as DTC, is that the adjudicative structure places tension upon the role of a lawyer that inevitably results in unethical professional conduct.²⁸ These opponents allege that ethical violations necessarily flow from the relationship between the collaborative interactions required by the court and the participating

22. Hora et al., *supra* note 8, at 454–55.

23. *Id.* at 455 (citation omitted).

24. *What Are Drug Courts: Drug Court History*, NAT'L ASS'N OF DRUG COURT PROF'LS, <http://www.nadcp.org/learn/what-are-drug-courts/drug-court-history> (last visited May 1, 2013).

25. *Id.*

26. For annual outcomes of North Carolina DTCs, see N.C. ADMIN. OFFICE OF THE COURTS, ANNUAL REPORTS ON NORTH CAROLINA'S DRUG TREATMENT COURTS (2003–2011), available at <http://www.nccourts.org/Citizens/CPrograms/DTC/Legislative.asp>. To view biennial recidivism rates in North Carolina, including those of drug treatment courts, see *Research and Evaluation*, N.C. ADMIN. OFFICE OF THE COURTS, <http://www.nccourts.org/Citizens/CPrograms/DTC/Research.asp> (last visited May 1, 2013). For other alternative dispute resolution models within the North Carolina judicial system, see N.C. ADMIN. OFFICE OF THE COURTS, THE NORTH CAROLINA JUDICIAL SYSTEM 16 (2008), available at <http://www.nccourts.org/citizens/publications/documents/judicialsystem.pdf>.

27. See LAKE & WALKER, *supra* note 3, at 31.

28. See, e.g., Tamar M. Meekins, "Specialized Justice": The Over-Emergence of Specialty Courts and the Threat of a New Criminal Defense Paradigm, 40 SUFFOLK U. L. REV. 1, 2–3 (2006).

lawyers' duties to their clients, raising particular concern with the role of the criminal defense attorney.²⁹

This Comment argues that the ethical argument against DTC is significantly flawed. The opposition's logic rests on narrow definitions of lawyers' ethical obligations that are simply incompatible with those outlined in the *North Carolina Rules of Professional Conduct* ("NCRPC"). This argument also ignores the fact that these supposedly unethical components of DTC are no different from those traditional components of adversarial proceedings that have long-been recognized by the legal community as ethical.

Indeed, the ethical violations alleged by opponents misconstrue the true debate over North Carolina's DTC. This Comment posits that the real reason for the legal community's hesitation in embracing DTC is not simply a wariness to embrace a new and non-traditional paradigm in criminal adjudication; rather, the opposition is based on a reluctance that springs from the legal profession's historical unwillingness to deal with the public health problem of substance abuse and the accompanying social stigma of "addiction."

Part I of this Comment will provide the foundational concepts that form the obligations of the modern-day lawyer. This will be an essential portion that covers traditional theories of agency, fiduciary relationships, zealous advocacy, confidentiality, and scope of authority. Additionally, Part I will contain a brief discussion of how these theories are embodied within the NCRPC.

Part II will briefly introduce the reader to the alternative dispute resolution ("ADR") model and its underlying collaborative policies. This discussion will also include an overview of the ADR subsections of collaborative law and therapeutic justice, as well as a discussion of how these models inevitably led to the creation of drug treatment courts.

In Part III, this Comment will specifically focus on the role of the defense attorney within the unique collaborative approach of DTC "staffing" meetings, which are comprised of an open discussion of each client's background information and membership in the program. This Part will briefly outline how the defense attorney's role within these meetings offers the client advantages unique to the non-adversarial system.

Part IV will directly address the class of legal scholarship that contends that the structure of DTCs will inherently result in ethical violations. Specifically, it will address and rebut the main claim of this opposition argument—that the duties of a DTC lawyer impermissibly limit

29. *Id.* at 6.

the traditional obligations of zealous advocacy, confidentiality, and prevention of a client's waiver of rights.

This Comment will conclude with the contention that the legal community's resistance to DTC is not due to any alleged ethical violations but instead is a result of: (1) the legal profession's own issues with substance abuse; (2) the fact that the "therapeutic courts" label is essentially a dirty word to those who lack understanding of its structure or goals; and (3) social misconceptions concerning the nature of addiction. The Author implores North Carolina's legal community to reexamine its approach to DTC in order to provide our communities with the vast financial and social benefits that DTC has to offer.

I. THE ROLE OF A LAWYER: A NORTH CAROLINA PERSPECTIVE

The role of a North Carolina lawyer is largely shaped by traditional notions of agency, fiduciary obligations, and the *North Carolina Rules of Professional Conduct* ("NCRPC"). At a bare minimum, a lawyer owes his client care, competence, and diligence in his work.³⁰

A. *The Lawyer as a Fiduciary Agent of the Client*

In order to appreciate the principles underscoring the NCRPC, one must have an understanding of the law of agency. Most agency principles are either specifically codified in the NCRPC, or referenced in the accompanying comments.³¹ The law of agency provides the bedrock principles of a lawyer's obligations to his clients. In the most basic terms, agency law governs the relationship between an agent and a principal.³² The agent acts on behalf of the principal, for the sole benefit of the principal,³³ through the power vested in the agent by the principal.³⁴ In addition, an agent may also be vested with certain incidental powers implied on the basis of necessity or custom.³⁵ The relationship between agent and principal is a fiduciary one,³⁶ in which the agent is empowered

30. RESTATEMENT (THIRD) OF AGENCY § 8.08 (2006).

31. See N.C. RULES OF PROF'L CONDUCT R. 1.1–1.7, 1.15 (2003).

32. RESTATEMENT (THIRD) OF AGENCY § 8.01.

33. *Id.*

34. 2A C. J. S. *Agency* § 132 (2012).

35. See RESTATEMENT (THIRD) OF AGENCY § 2.02.

36. See Austin W. Scott, *The Fiduciary Principle*, 37 CALIF. L. REV. 539, 543–44 (1949).

with all of the rights and responsibilities of the principal, as outlined in their agreement to enter into the relationship.³⁷

The law of agency recognizes that the relationship between a lawyer and a client is a fiduciary one: a relationship of the utmost trust where the agent (the lawyer) owes the principal (the client) the highest standard of care.³⁸ The fiduciary owes the client a duty of care, control, competence, confidentiality, and loyalty.³⁹ Implicit within a lawyer's duty of "care" is the affirmative duty of diligence and safekeeping; this includes safekeeping of the client's property as well as his confidences.⁴⁰

Likewise, inherent in the duty of "loyalty" is the lawyer's responsibility to check for past, current, or potential conflicts with the client's representation, to communicate promptly and effectively with the client, and to account for the appropriate fees and expenses charged to the client.⁴¹ The lawyer is charged with these various affirmative obligations in order to protect the client from overreaching by the attorney.⁴² In this fiduciary relationship, the client places ultimate trust and risks significant vulnerability by deferring to the attorney to solve the client's legal troubles. In order to protect the client's interests from an abuse of power, the lawyer is, therefore, held accountable by the traditional ethical obligations of agency.

B. *Zealous, But Honorable*

Merriam-Webster's Dictionary defines the adjective "zealous" as "marked by fervent partisanship for a person, a cause, or an ideal."⁴³ The legal connotations of "zealous advocacy," however, have remained mainly undefined. The terminology sections of both the *ABA Model Rules of Professional Conduct* ("Model Rules") and the NCRPC are silent as to the term "zealous," and although North Carolina case law often cites the duty,

37. *Id.*

38. See *A. Gay Jensen Farms Co. v. Cargill, Inc.*, 309 N.W.2d 285, 290 (Minn. 1981) ("Agency is the fiduciary relationship that results from the manifestation of consent by one person to another that the other shall act on his behalf and subject to his control, and consent by the other so to act.").

39. RESTATEMENT (THIRD) OF AGENCY §§ 8.01, 8.08.

40. See N.C. RULES OF PROF'L CONDUCT R. 1.1, 1.3, 1.15 (2003).

41. See RESTATEMENT (THIRD) OF AGENCY §§ 8.07–8.12.

42. See, e.g., *Lagen v. Balcor Co.*, 653 N.E.2d 968, 975 (Ill. Ct. App. 1995) ("A fiduciary duty is the duty of an agent to treat his principal with the utmost candor, rectitude, care, loyalty, and good faith—in fact to treat the principal as well as the agent would treat himself.").

43. MERRIAM-WEBSTER'S COLLEGIATE DICTIONARY 1455 (11th ed. 2004).

it refrains from directly defining the term.⁴⁴ So what does a lawyer's obligation of "zealous advocacy" actually entail?

One common misconception is that a duty to "zealously represent" a client should trump all other obligations—a skewed perception that zeal is the one affirmative duty of a lawyer that must operate in the extreme.⁴⁵ Conventional wisdom suggests that criminal defense attorneys may—as an exception—be given more flexibility in pushing the limits of "zealousness" because of the high-stakes nature of criminal charges.⁴⁶ However, flexibility unequivocally does not stretch so far as to create an affirmative duty to ignore all other fiduciary obligations for the sake of unwavering zeal.

Rather, the obligation of "zealous advocacy" has historically been subject to other countervailing interests. In fact, the concept of a limited duty of zeal has been present since the days of the *ABA Model Code of Professional Responsibility* ("Model Code");⁴⁷ "The duty of a lawyer to represent his client with zeal *does not* militate against his *concurrent* obligation to treat with consideration all persons involved with the legal process"⁴⁸ Under the heading of "Representing a Client Zealously," the Model Code further explains that a lawyer is expressly allowed to exercise his professional judgment "to waive or fail to assert a right or position of his client" via compliance with reasonable requests by opposing

44. *Black's Law Dictionary* does not define "zealous" alone but does define "zealous witness" as follows: "A witness who shows partiality toward the litigant that called him or her to testify and who seems eager to help that side in the lawsuit." BLACK'S LAW DICTIONARY 1741 (9th ed. 2009). This definition suggests that the "zealous" modifier signifies a strong sense of partisanship. See also *State v. Anderson*, 513 S.E.2d 296, 306, 318 (N.C. 1999); *State v. Locklear*, 505 S.E.2d 277, 303 (N.C. 1998); *In re K.G.L.*, 698 S.E. 2d 150, 154 (N.C. Ct. App. 2010).

45. See Allen K. Harris, *The Professionalism Crisis—The 'Z' Words and Other Rambo Tactics: The Conference of Chief Justices' Solution*, 53 S.C. L. REV. 549, 569 (2002) ("Many attorneys believe that 'zealously representing their clients' means pushing all rules of ethics and decency to the limit. The phrase 'zealous advocacy' is frequently invoked to defend unprofessional behavior and a 'Rambo,' or 'win at all costs,' attitude.").

46. See N.C. RULES OF PROF'L CONDUCT R. 3.1 cmt. 3 (2003) (exempting criminal defense attorneys from the general rule regarding meritorious claims and contentions and allowing them to force the prosecutor to establish every element of the criminal claim).

47. Before today's Model Rules, the ABA model was the 1969 Model Code, which was preceded by the 1908 *Canons of Professional Ethics*. SUSAN R. MARTYN ET AL., *THE LAW GOVERNING LAWYERS: NATIONAL RULES, STANDARDS, STATUTES, AND STATE LAWYER CODES* 1 (2012).

48. MODEL CODE OF PROF'L RESPONSIBILITY EC 7-10 (1980) (emphasis added).

counsel, in avoidance of using offensive tactics, or in an attempt to treat with courtesy and consideration all persons involved in the legal process.⁴⁹

Thus, while it is an important aspect of a lawyer's overall role, zeal is, by no means, limitless. Reasonable checks on a lawyer's zeal have traditionally been recognized by codes and rules that, over centuries, have shaped doctrines of legal ethical responsibility. Whether these constraints come in the form of civility to opposing counsel or of deference to a coexisting duty, the absolutist perspective of "zealous advocacy" fails.⁵⁰

The NCRPC mirrors this interpretation of "zealous" advocacy. A lawyer is defined as a "representative of clients, an officer of the legal system, and a public citizen having special responsibility for the quality of justice."⁵¹ Placed within the context of the Preamble to the NCRPC, the lawyer's overall role as a "representative of clients" is divided into five subsections: (1) advisor, (2) advocate, (3) negotiator, (4) evaluator, and (5) and third-party neutral.⁵² As an "advocate," a lawyer "zealously" asserts the client's position.⁵³ Significantly, however, the responsibility of zealous advocacy is explicitly balanced against the joint obligations inherent in the other duties of "officer of the court" and "public citizen."⁵⁴ The NCRPC modifies the Model Rules (which simply read "zealous representation") to "zealous but *honorable representation*."⁵⁵ The associated comments within the NCRPC's Preamble emphasize that the addition of "honorable" is intended to highlight the accompanying ethical expectation that an attorney treat opposing counsel with dignity and respect—an indication that zeal should, at times, be offset by other concrete ethical duties.⁵⁶

In sum, a North Carolina lawyer's duty of "zealous representation" is satisfied by an attorney's expressed partisanship and support for the client's position, balanced against the attorney's coordinate ethical obligations as

49. *Id.* at DR 7-101.

50. *See supra* notes 48–49 and accompanying text. *See also* James M. Altman, *Considering the A.B.A.'s 1908 Canons of Ethics*, 71 *FORDHAM L. REV.* 2395, 2400–01 (2003) ("Consistent with that deliberate limitation on the lawyer's zealous representation of a client, the Committee placed less emphasis than did the Alabama Code on conflicts of interest and the zealous defense of criminal defendants.").

51. N.C. RULES OF PROF'L CONDUCT pmb1. 1.

52. *Id.* pmb1. 2–3.

53. *Id.* pmb1. 2.

54. *Id.* pmb1. 1.

55. *Id.* pmb1. 13 (emphasis added); *cf.* MODEL CODE OF PROF'L RESPONSIBILITY pmb1. (1983) (containing no modification to the term "zealous").

56. *See* N.C. RULES OF PROF'L CONDUCT pmb1. 13.

set forth in the NCRPC.⁵⁷ As seen above, a no-holds-barred perspective of zealous representation runs counter to traditional interpretations of professional ethics and is, therefore, flawed.

C. Confidentiality

The label “confidential information” casts a wide net over several forms of information obtained by an attorney during representation. A widely established understanding of “confidential information” is that it refers to information relating to professional representation of the client that is not otherwise generally known,⁵⁸ or information that the client specifically asks the lawyer to keep private (i.e., “client confidences or secrets”).⁵⁹ A lawyer has an affirmative duty to refrain from either using or revealing such confidential client information.⁶⁰ The NCRPC further narrows this definition to information that was “*acquired* during the professional relationship”⁶¹—rather than using the same “relating to” language as expressed in the Model Rules.⁶²

In line with traditional concepts of confidentiality, the NCRPC charges an attorney with keeping this information from any type of disclosure, intentional or inadvertent, and from using the information to adversely affect the client.⁶³ A lawyer is prohibited from revealing information acquired through the professional relationship with a client unless: (i) such disclosure is implicitly authorized in the representation of

57. See, e.g., Sherrill Colvin, *Professionalism: Redefining the Lawyer's Role*, 47 RES GESTAE 5, 5 (June 2004) (“[Z]ealous advocacy is constrained by a responsibility, not just to the client, but also to society. . . . Other considerations must be taken into account, including preservation of the legal system as a venerable means to dispense justice.”).

58. Information falls into this unprotected category if it is generally known in the relevant sector of the public or “obtainable through publicly available indexes and similar methods of access.” RESTATEMENT (THIRD) OF THE LAW GOVERNING LAWYERS § 59 (2000).

59. See N.C. RULES OF PROF’L CONDUCT pmbl. 11; see also MODEL CODE OF PROF’L RESPONSIBILITY Canon 4 (1980) (“A Lawyer Should Preserve the Confidences and Secrets of a Client”).

60. See RESTATEMENT (THIRD) OF THE LAW GOVERNING LAWYERS § 60 cmt. j (“The strict confidentiality duty . . . is warranted for prophylactic purposes. . . . There is no important social interest in permitting lawyers to make unconsented use or revelation of confidential client information for self-enrichment.”).

61. N.C. RULES OF PROF’L CONDUCT R. 1.6(a) (emphasis added).

62. See MODEL RULES OF PROF’L CONDUCT R. 1.6(a) (1983).

63. See N.C. RULES OF PROF’L CONDUCT R. 1.6(a) cmt. 17; see also RESTATEMENT (THIRD) OF AGENCY § 8.05 (2006) (stating that a lawyer, as the agent of her client, has a duty “not to use or communicate confidential information of the [client] for the agent’s own purposes or those of a third party”).

the client;⁶⁴ (ii) the client gives informed consent; or (iii) the disclosure falls within one of the exceptions enumerated in Rule 1.6.⁶⁵ In the interest of fairness, the justifications underpinning the exceptions to the duty of confidentiality reflect the common sense understanding that a lawyer should be permitted to prevent serious harm to a third party, protect himself, protect his client, and advance the client's interests in the representation, all at the cost of revealing only that confidential information necessary for such protection.⁶⁶

In line with this reasoning, a lawyer may elect to make an authorized disclosure of the client's confidential information even without the client's consent.⁶⁷ Note the language in Rule 1.6: "[U]nless the client gives informed consent, the disclosure is impliedly authorized in order to carry out the representation *or* the disclosure is permitted by paragraph (b)."⁶⁸ The "or" indicates that the lawyer may disclose the confidential information for *any* of those reasons, and therefore, the client's informed consent is not a mandatory prerequisite for an authorized disclosure or a Rule 1.6(b) disclosure.⁶⁹ Under the NCRPC, a lawyer may, therefore, make confidential disclosures to the extent that they are incidental to carrying out the representation of the client, including a disclosure that facilitates a satisfactory conclusion to the matter, regardless of the client's

64. A lawyer is impliedly authorized to reveal confidential information if the disclosure is "appropriate in carrying out the representation." N.C. RULES OF PROF'L CONDUCT R 1.6 cmt 5. This includes a broad category of circumstances such as admitting a fact that cannot be properly disputed or when lawyers in a firm disclose to each other information about a client to the entire firm. *See id.*

65. *See id.* R. 1.6. A lawyer may also reveal confidential information if it is necessary to comply with other rules of conduct, such as the responsibility of candor to the tribunal or the duty to be truthful in statements to others. *See, e.g., id.* R. 3.3 ("Candor Toward the Tribunal"); *id.* R. 4.1 ("Truthfulness in Statements to Others"); *id.* R. 1.13 ("Organization As Client"). Most of the exceptions to the prohibition against revealing confidential information enumerated in the NCRPC are almost identical to those proposed by Rules 1.6(a) and 1.6(b) of the Model Rules. *See* MODEL RULES OF PROF'L CONDUCT R 1.6(a), (b).

66. *See* RESTATEMENT (THIRD) OF THE LAW GOVERNING LAWYERS § 61 cmt. b (2000); *see also* N.C. RULES OF PROF'L CONDUCT R. 1.6 cmt 5 (noting that a lawyer is "impliedly authorized to make disclosures about a client when appropriate in carrying out the representation").

67. *See* N.C. RULES OF PROF'L CONDUCT R. 1.6(b); *see also* Memorandum of Understanding, Orange Cnty. Pilot Drug Treatment Court 4 (Oct. 15, 2004), available at <http://www.dtcintranet.nccourts.org/documents/Resources/Orange/Adult/dtcmou-revised2.doc> (highlighting the expectation of a public defender to "explain[] all of the rights that the defendant will temporarily or permanently relinquish").

68. N.C. RULES OF PROF'L CONDUCT R. 1.6(a) (emphasis added).

69. *See id.*

consent.⁷⁰ A more in-depth discussion of NCRPC's definition of an "authorized disclosure" will be laid out in Part IV of this Comment.

D. Allocation of Authority and How North Carolina Makes Room for a Collaborative Approach

According to Rule 1.2 of the NCRPC, a client ultimately controls the objectives of the representation.⁷¹ The lawyer has control over the means of reaching those objectives as long as the client is informed and the means are objectively reasonable.⁷² Common sense dictates this allocation of authority between client and lawyer—people hire lawyers for their legal expertise and experience, and therefore, it is logical to defer to the lawyer's judgment on strategy and other methods of achieving the client's overall goal.

Because of legal expertise, a lawyer has the ultimate authority to make decisions that the lawyer reasonably believes are required either by law or the tribunal.⁷³ These types of judgment calls by the lawyer are usually allowed on the condition that either the lawyer consults with his client or the action is subsequently ratified by the client.⁷⁴ These decisions fall within the recognized exceptions to Rule 1.2.⁷⁵ In the same right, the client has the last word on matters of plea agreements, jury trials, and whether or

70. This implied authorization is obviously subject to the limitations of the scope of authority that a lawyer possesses during a representation under Rule 1.2 of the NCRPC. *See id.* R. 1.2 (discussing "Scope of Representation"). However, the language of Rule 1.6 accommodates for a lawyer's professional and reasonable belief that a confidential disclosure is authorized, or necessary, instead of operating as a blatant prohibition. *See id.* R. 1.6; *see also* MODEL CODE OF PROF'L RESPONSIBILITY EC 7-7 (1983) ("In certain areas of legal representation not affecting the merits of the cause or substantially prejudicing the rights of a client, a lawyer is entitled to make decisions on his own.").

71. N.C. RULES OF PROF'L CONDUCT R. 1.2(a).

72. *See id.* R. 1.2 cmts. 1, 7.

73. *See* RESTATEMENT (THIRD) OF THE LAW GOVERNING LAWYERS § 23 (2000). The section states, in pertinent part:

As between client and lawyer, a lawyer retains authority that may not be overridden by a contract with or an instruction from the client . . . to make decisions or take actions in the representation that the lawyer reasonably believes to be required by law or an order of a tribunal.

Id.

74. *See id.* § 21.

75. *See* N.C. RULES OF PROF'L CONDUCT R. 1.2(a) cmt. 3 ("At the outset of a representation, the client may authorize the lawyer to take specific action on the client's behalf without the need for further consultation. Absent a material change in circumstances . . . , a lawyer may rely on such an advance authorization.").

not to testify; this is appropriate given that these decisions have the most potential to significantly influence whether or not the client will be successful in his overall intended end.⁷⁶

Moreover, it is significant to note that North Carolina has placed an additional emphasis on attorneys' expected cooperation with all other legal actors in the same proceeding⁷⁷—an emphasis absent from the Model Rules. As emphasized earlier, North Carolina diverges from the Model Rules so much as to allow a lawyer the choice to refrain from advocating a position of his client, without client permission, if doing so would not prevent or unduly burden the pursuit of the overall legal objective.⁷⁸ The predominant rationale for the NCRPC's modification is the importance of collaboration. "Lawyers are encouraged to treat opposing counsel with courtesy and to cooperate with opposing counsel when it will not prevent or unduly hinder the pursuit of the objective of the representation."⁷⁹ To the extent that the client's interests are not substantially burdened, a lawyer is effectively encouraged to take actions in the interest of fostering civility and collaboration.

II. THE REALM OF ALTERNATIVE DISPUTE RESOLUTION

In order to understand the unique role of the DTC attorney, one must first have a grasp on the alternative dispute resolution ("ADR") approach to the role of a lawyer. Within the ADR model, cases are sought to be resolved short of a full-blown trial.⁸⁰ Through these methods, ADR fosters and enhances relations between parties by offering more opportunities for input during the overall process.⁸¹

76. See *id.* R. 1.2(a)(1).

77. See, e.g., *id.* R. 1.2(a)(2). The NCRPC states that

A lawyer does not violate this rule by acceding to reasonable requests of opposing counsel that do not prejudice the rights of a client, by being punctual in fulfilling all professional commitments, by avoiding offensive tactics, or by treating with courtesy and consideration all persons involved in the legal process.

Id.

78. See *id.* R. 1.2 cmt. 1.

79. *Id.*

80. See 1 JAY GREINIG, ALTERNATIVE DISPUTE RESOLUTION § 1:1 (3d ed. 2012).

81. See *id.*; see generally JEROLD S. AUERBACH, JUSTICE WITHOUT LAW?: RESOLVING DISPUTES WITHOUT LAWYERS (1st ed. 1983) (providing an in-depth discussion on the historical development of alternatives to formal adversarial processes).

The umbrella of ADR incorporates various methods,⁸² including the process of “collaborative law.”⁸³ Under the collaborative law system, a lawyer encompasses all of the principles found in the adversarial system—fiduciary duties, competence, diligence, and confidentiality—but there is an additional heightened expectation of cooperation and discussion with other legal actors involved in the proceeding.⁸⁴ This additional level of cooperation is partly due to the fact that the lawyers are no longer pitted directly against each other as in an adversarial system; rather they are working along with the prosecution, judge, and opposing party in an effort to reach the client’s objective of the representation.⁸⁵ The lawyers in a collaborative approach are advocates and creative problem-solvers that are given flexibility to reach their clients’ goals. This model is premised on the combination of an overriding commitment to settlement outside of the traditional adversarial litigation scheme and an individualized focus on legal advocacy.⁸⁶ The bottom line of both collaborative law and ADR is simply that the systems seek an outcome that is seemingly less destructive to human relationships than an adversarial system, all while encouraging civility, compromise, and mutual respect.⁸⁷

Within the collaborative outlook, the dynamic of the attorney-client relationship is admittedly different from the adversarial process. Here, the lawyer is the bearer of information concerning the available alternatives, processes, law, and potential consequences of the client’s ultimate decision, essentially leaving the control of selecting both the process and the outcome entirely with the client. Zealous advocacy remains present

82. With the effectiveness of DTC, it is no surprise that other ADR methods of adjudication are instituted in North Carolina—mediation, family financial settlement programs, court-ordered arbitration, mini trials, summary trials, and collaborative law proceedings are just a few of the many examples of ADR that are alive and well in North Carolina’s judicial practice. See *Special Courts*, N.C. ADMIN. OFFICE OF THE COURTS, <http://www.nccourts.org/Courts/Trial/Special/Default.asp> (last visited May 1, 2013); *Councils and Commissions*, N.C. ADMIN. OFFICE OF THE COURTS, <http://www.nccourts.org/Courts/CRS/Councils/Default.asp> (last visited May 1, 2013).

83. GREINIG, *supra* note 80, § 2:74.

84. See generally Andrea K. Schneider, *The Intersection of Therapeutic Jurisprudence, Preventative Law, and Alternative Dispute Resolution*, 5 PSYCHOL. PUB. POL’Y & L. 1084, 1085–89 (1999).

85. BEST PRACTICES, *supra* note 12, at 19.

86. Larry R. Spain, *Collaborative Law: A Critical Reflection on Whether a Collaborative Orientation Can be Ethically Incorporated into the Practice of Law*, 56 BAYLOR L. REV. 141, 143 (2004).

87. See Douglas H. Yarn, *The Attorney as Duelist’s Friend: Lessons From the Code Duello*, 51 CASE W. RES. L. REV. 69, 73–77 (2000).

because it is a representation requirement that applies to all advocates.⁸⁸ Within the collaborative framework, zealous advocacy results when the client elects to “direct the attorney in a specific and explicit fashion as to the objectives of representation, and the [collaborative law] means by which those objectives are to be pursued.”⁸⁹ The collaborative lawyer remains free, therefore, to zealously advocate for his client while still operating within a cooperative structure.

Similarly, in collaborative law, there is an “‘absolute commitment’ on the part of ‘each attorney and party to negotiate a mutually agreeable settlement,’”⁹⁰ comparable to the traditional win-win balance that has long been familiar in mediation proceedings. While a collaborative lawyer will likely have alliances with a multitude of legal players, this does not detract from the lawyer’s obligations to his client. Rather, those connections that were previously viewed as “obstacles” to the client when in adversarial processes are now transformed into unique opportunities for the client to favorably meet the objective of the representation.⁹¹ Due to the collaborative law structure, the client’s opposing party has already committed himself to a collective approach toward settling the dispute with the client. In the context of a criminal charge, the favorable advantages to a client are significant—the prosecuting attorney and the judge are bound to be willing to negotiate and consult with the client in order to reach a mutually satisfactory end to the issue.⁹²

A further subsection of collaborative law is “therapeutic jurisprudence.” Therapeutic jurisprudence focuses on the socio-psychological ways in which legal processes affect individual citizens involved in the justice system.⁹³ Under this paradigm, the law operates as a therapeutic agent and a tool for seeking information needed to promote certain laws or legal processes.⁹⁴ When utilized in a court structure, therapeutic jurisprudence implements an individualized treatment plan that

88. See Sandra S. Beckwith & Sherri G. Slovin, *The Collaborative Lawyer as Advocate: A Response*, 18 OHIO ST. J. ON DISP. RESOL. 497, 498 (2003).

89. GRENIG, *supra* note 80, § 21:60.

90. Beckwith & Slovin, *supra* note 88, at 499 (quoting Patricia Gearity, *ADR and Collaborative Lawyering in Family Law*, MD. BAR JOURNAL, May–June 2002, at 2, 7).

91. See Hora et al., *supra* note 8, at 469.

92. *Id.* (“DTCs exist as ‘a marriage between communities that have been traditionally at odds and foreign to each other.’” (quoting DRUG STRATEGIES, CUTTING CRIME: DRUG COURTS IN ACTION 21 (1997), available at <http://www.drugstrategies.com/pdf/CuttingCrime97.pdf>)).

93. *Id.* at 444.

94. *Id.*

identifies the antecedent causes for a participant's legal issues and then seeks to overcome these antecedent causes with constant monitoring and encouragement from the court.⁹⁵

III. THE DRUG TREATMENT COURT ATTORNEY

An illustration of the collaborative law/therapeutic jurisprudence perspective on the role of a lawyer can be found within the unique collaborative approach of North Carolina's DTC "staffing meetings," which occur prior to the opening session of a drug treatment court and after a participant has already voluntarily entered the program.⁹⁶ The meetings consist of an open discussion of each client's information and membership in the DTC program.⁹⁷

Indeed, staffing meetings begin with a roster of all participants' names, listing the months of sobriety, most recent criminal charges, and health reports since entering the program.⁹⁸ This information is available to only those authorized meeting attendees and the client; no other drug court participants or third parties are given access to the content of the staffing meeting discussions.⁹⁹ Decisions concerning the client's progress in the program and consequences for noncompliance are discussed amongst the judge, defense attorney, assistant district attorney, probation officer, guardian ad litem, the DTC court coordinator, and the client's assigned mental health or substance abuse counselor.¹⁰⁰

Next, participants give their perspective on the improvement, if any, of the participant, as well as their professional opinion concerning the client's progress; the discussion focuses on which particular treatment methods should be implemented in order for each individual to reach the asserted end goal of sobriety and DTC graduation.¹⁰¹ For the probation

95. McCoy, *supra* note 16, at 1518.

96. See Interview with Hon. Joseph M. Buckner, Chief Dist. Court Judge, Orange Cnty., N.C., in Hillsborough, N.C. (Jan. 2, 2013).

97. See *id.*; see also Interview with Marie Lamoureux, Programs and Special Projects Manager for Orange Cnty. Drug Treatment Court, in Hillsborough, N.C. (Mar. 4, 2013).

98. N.C. ADMIN. OFFICE OF THE COURTS, THE MINIMUM STANDARDS FOR THE NORTH CAROLINA DRUG TREATMENT COURTS (2010) [hereinafter MINIMUM STANDARDS], available at <http://www.nccourts.org/Citizens/CPrograms/DTC/documents/dtcguidelines.pdf>.

99. See Interview with Marie Lamoureux, Programs and Special Projects Manager for Orange Cnty. Drug Treatment Court, in Hillsborough, N.C. (Mar. 4, 2013).

100. BEST PRACTICES, *supra* note 12, at 4–6.

101. Hora et al., *supra* note 8, at 469 ("DTC proceedings focus on the treatment needs of the offender and not the legal formalism of traditional courts.").

officer, this suggestion may be a work placement program so that the participant can pay off his remaining debts. For the drug counselor, this proposal may be for more group therapy sessions to help the participant deal with trust issues. Staffing meetings conclude with the decisions to impose either graduated sanctions or incentives upon each DTC participant in order to help stimulate the movement through the drug treatment process.¹⁰²

Notably, the defense attorney is the only staffing meeting attendee who plays a significantly different role from the rest.¹⁰³ As the others offer compliance updates and professional opinions, the defense attorney continues to operate as his client's representative by responding to each suggested plan in alliance with his client's objective of sobriety and DTC graduation. The defense attorney articulates the client's wishes in terms of the methods used to reach that goal.

In fact, the staffing meeting gives the client a great advantage that cannot be similarly offered in a traditional criminal case. Rather than take the gamble of criminal court,¹⁰⁴ the client has volunteered to allow his defense attorney to advocate and bargain for the client while the client receives care for underlying substance abuse problems. In the same vein, the cooperative atmosphere of the staffing meetings gives defense attorneys greater ability to both convince a prosecutor to dismiss any outstanding criminal charges against the client for lack of probable cause and to also suggest the methods of treatment most favored by the client. The defense attorney is also given a unique chance to openly and directly address allegations against the client, as compared to the typical adversarial setting. For example, during a staffing meeting, one of the client's treatment providers may allege that the client violated curfew last week. Even before the group begins addressing proper sanctions for the client, the defense counsel has the opportunity to ask questions of the treatment provider, probation officer, and the DTC coordinator to get to the bottom of the problem. Because of the various sources of information present at staffing

102. Randy Monchik, *North Carolina Drug Treatment Court Program*, NORTH CAROLINA LAWYER ASSISTANCE PROGRAM, <http://www.nclap.org/article.asp?articleid=150> (last visited May 1, 2013).

103. See MINIMUM STANDARDS, *supra* note 98, at 28. A defense attorney signs this memorandum that specifically articulates that the lawyer's duty to the DTC client is to "[a]dvocate for the rights and best outcomes for the offender" and to "[a]id in the achievement of the offenders' long-range rehabilitative goals." *Id.*

104. It is important to note that the DTC defense attorney will still identify cases in which charges should be dropped for lack of probable cause. See Hora et al., *supra* note 8, at 479. A DTC lawyer is by no means stripped of his advocating abilities. *Id.*

meetings, the defense counsel is able to double-check the legitimacy of the sanctions imposed on her client with accuracy and efficiency.

IV. THE MYTH OF ETHICS VIOLATIONS INHERENT WITHIN THE DTC STRUCTURE

DTC undoubtedly provides North Carolina communities with a plethora of social and financial benefits. Despite these numerous benefits, however, some of North Carolina's legal community still resist embracing this newly emerging legal paradigm. Most negative responses to DTC are premised on the myth that the DTC adjudicative structure inevitably results in ethical violations.¹⁰⁵ There exists a specific class of legal scholarship that contributes to this misconception.¹⁰⁶ This particular class argues that the collaborative role of the lawyer present in therapeutic courts limits the traditional concept of a lawyer's ethical obligations.¹⁰⁷ This legal philosophy is premised on the idea that the duties of a collaborative law attorney impermissibly limit the obligations of zealous advocacy, confidentiality, and prevention of a client's waiver of rights. This Comment rebuts each of these claims, in turn.

A. *Public Citizen—A Vital Character of the Ethical Lawyer Overlooked by Opponents*

Opponents to therapeutic courts believe that the very essence of the structure over-promotes the role of the “peacemaker” at the cost of the zealous advocate.¹⁰⁸ Zeal and a cooperative adjudicative structure are presumed to be inherently in discord and, thus, impossible to balance.

The first error in this logic is the presumption that “zealous advocacy” is an absolute license to madcap zeal—a duty unfaltering to any other ethical obligation. This view is blatantly incompatible with the “zealous advocacy” encouraged in the NCRPC. As mentioned earlier, the NCRPC charges a lawyer with three *equally* important roles: (1) “representative of clients,” (2) “officer of the legal system,” and (3) “public citizen.”¹⁰⁹

105. See, e.g., Spain, *supra* note 86, at 148.

106. See, e.g., *id.*

107. See generally Mae C. Quinn, *Whose Team Am I on Anyway? Musings of a Public Defender About Drug Treatment Court Practice*, 26 N.Y.U. REV. L. & SOC. CHANGE 37 (2000) (questioning the likelihood that drug treatment courts comport with traditional ethical standards of criminal defense attorneys).

108. See, e.g., Meekins, *supra* note 28, at 3.

109. N.C. RULES OF PROF'L CONDUCT pmb1. 1 (2006).

Within the various obligations of a “public citizen” lies the lawyer’s duty to aid the public interest. A lawyer must use his skills to help citizens reach their goals by navigating their way through the justice system.¹¹⁰ For instance, the NCRPC provides that a lawyer “should devote professional time and resources and use civic influence to ensure equal access to our system of justice for all those who . . . cannot afford or secure adequate legal counsel.”¹¹¹ Additionally, a lawyer should “aid the legal profession in pursuing these objectives and should help the bar regulate itself in the public interest.”¹¹² The NCRPC further emphasizes that the legal profession is a group of people who are united in a “learned calling for a public good.”¹¹³ The NCRPC, therefore, specifically encourages the collaboration and cooperation among all legal actors of a proceeding.

In the interest of fostering cooperation among members of the bar, the lawyer should provide “zealous but honorable representation.”¹¹⁴ Zealous representation, therefore, is broad enough to encompass collaborative action. The position of absolute zeal not only ignores North Carolina’s position on a “zealous but honorable” lawyer but also flies in the face of the lawyer’s equally important role as a “public citizen” who works for the public welfare and reputation of the profession.

In contrast, the role of the “public citizen” is alive and well in North Carolina’s DTC. By aiding the citizens of the community with substance abuse treatment, providing solutions to criminal legal troubles, and protecting the safety and health of the rest of society, the DTC lawyer is fulfilling the duties of the “public citizen” as outlined by the NCRPC. Simultaneously, the zealous but honorable defense attorney effectively fosters civility amongst his colleagues while advocating for the client’s interest in sobriety and DTC graduation.

B. Authorized Disclosures of Confidential Information within the Therapeutic Court Scheme

Critics of therapeutic courts further contend that the types of cooperative discussions encouraged among DTC professionals breed a tendency to unethically disclose confidential information.¹¹⁵ Opponents assume that it is impossible for a lawyer within a therapeutic court setting

110. *Id.* at 6.

111. *Id.*

112. *Id.* pmb1. 6.

113. *Id.* pmb1. 8.

114. *Id.* pmb1. 13.

115. See Quinn, *supra* note 107, at 56–58.

to comply with the responsibility of confidentiality because the collaborative efforts allegedly necessitate disclosure not protected under Rule 1.6 of the NCRPC. However, nothing could be further from the truth.

For opponents, the ethical argument arises when the interest of the client allegedly conflicts with what the team determines to be in the best interest of the client. The hypothetical most often used to highlight this situation goes as follows: During a staffing meeting, a discussion of a participant named "Adam"¹¹⁶ arises. Adam, a client of the defense attorney, has tested positive on last week's random drug test. After much deliberation with the defense attorney, the DTC "team," as a whole, renders its decision. Adam will be sent to jail for forty-eight hours as a consequence, but he will be allowed to remain in the DTC program. Is it ethically permissible for a defense attorney to participate in such a collective adjudication of Adam's forty-eight-hour jail stint?

Yes. First, it is immediately important to remember that within the specific context of DTC, the client volunteered to participate only after an informed explanation of the program, its risks, and available alternatives.¹¹⁷ With knowledge of the DTC's procedure, the client agreed to authorize the attorney to represent the client throughout the program.¹¹⁸ Note that under the NCRPC, the client may authorize the lawyer to take specific action on the client's behalf at the outset of representation without the need for further consultation.¹¹⁹ Absent a material change in circumstances, a lawyer may rely on such an advance authorization.¹²⁰ Adam's DTC attorney, therefore, may rely on Adam's initial authorization of disclosure to the extent necessary to advance his ultimate goal of sobriety and DTC graduation.

Second, DTC's procedural safeguards protect against potentially unethical confidentiality disclosures by Adam's defense attorney by requiring Adam's informed consent.¹²¹ DTC protocol requires the client's attorney to counsel the client about the DTC model and what a court outcome might look like for the client.¹²² The legal consequences of

116. A hypothetical name is given here.

117. See *supra* notes 3–4 and accompanying text.

118. The informed DTC participant has agreed to the stated objective of sobriety and graduation, instead of a particular legal outcome. See Hora et al., *supra* note 8, at 469.

119. See N.C. RULES OF PROF'L CONDUCT R. 1.2.

120. *Id.* R. 1.2(a) cmt. 3.

121. See *supra* notes 62–63 and accompanying text.

122. For many of North Carolina's DTC programs, the public defender's office must sign a memorandum pledging to advise its client as to the nature, purpose, and consequences of DTC, the rights the client will relinquish, and a discussion of other legal options. See,

volunteering to undergo DTC are contrasted with the likely outcome of traditional criminal court. The client is also shown the court's sanctions grid, which lists specific types of unacceptable behavior and the corresponding sanction that will be imposed.¹²³ The client is, therefore, well aware of the possible reprimands in store if there are behavioral issues. This voluntary election only occurs after an informed discussion of the risks, procedures, and objectives of the program. By selecting DTC under these procedures, the client has given informed consent for the lawyer to employ his legal expertise to keep the client within the program until sobriety and graduation.¹²⁴ This perspective is bolstered by a North Carolina Ethics Opinion, which suggests that the collaborative structure of various models of alternative dispute resolutions comply with professional ethical standards as long as the client is aware of the court procedures and gives informed consent.¹²⁵ Since the DTC structure provides for the client's informed consent at the very outset of the program, the staffing meeting disclosures alluded to by opposition fall within the "informed consent" exception to the rule of confidentiality.¹²⁶

e.g., Memorandum of Understanding, Orange Cnty. Pilot Drug Treatment Court 4 (Oct. 15, 2004), available at <http://www.dtcintranet.nccourts.org/documents/Resources/Orange/Adult/dtcmou-revised2.doc>.

123. The sanctions grid attempts to ensure equal treatment amongst DTC participants; it holds the DTC Team members to their own guidelines in order to ensure that each instance of impermissible behavior is met with the same range of sanctions, regardless of who the person is. See Interview with Marie Lamoureux, Programs and Special Projects Manager for Orange Cnty. Drug Treatment Court, in Hillsborough, N.C. (Mar. 4, 2013). Examples of unacceptable behavior are testing positive for drug tests, missing required treatment or support groups, curfew violations, or any other noncompliance with court requirements. *Id.* Some examples of sanctions include additional community service, a writing assignment to be read before the DTC judge, or a short twenty-four- to forty-eight-hour "dip" in jail. *Id.*

124. See Hora et al., *supra* note 8, at 523 ("Before treatment was available to criminal defendants through DTCs, defense counsel's job was to minimize harm through reduction in incarceration. With DTCs, defense counsels' job evolves into a total improvement of the lives of their clients."); see also N.C. RULES OF PROF'L CONDUCT R. 1.0(f) ("Informed consent" denotes the agreement by a person to a proposed course of conduct after the lawyer has communicated adequate information and explanation appropriate to the circumstances.").

125. Ethics Comm., N.C. State Bar, RPC 107 (1991) [hereinafter N.C. Ethics Comm.], available at <http://www.ncbar.com/ethics/ethics.asp?page=114&keywords=6> ("Such agreements would be appropriate assuming that the nature of the alternative dispute resolution procedures is fully disclosed to the client and the client is given full opportunity to consult independent counsel relative to the wisdom of foregoing other possible remedies in favor of alternative dispute resolution.").

126. N.C. RULES OF PROF'L CONDUCT R. 1.6(a).

Alternatively, even if the procedural safeguards were absent from DTC, the disclosures suggested above nonetheless fall within the NCRPC's "impliedly authorized" exception to confidentiality.¹²⁷ The language of Rule 1.6 specifies that "a lawyer may be impliedly authorized to admit a fact that cannot properly be disputed," and additionally, may make any "disclosure that facilitates a satisfactory conclusion to a matter."¹²⁸

In fact, the types of disclosures most often noted by therapeutic court opponents fall squarely within both of the specified exceptions in Rule 1.6. For instance, as indicated by the hypothetical discussed above, information such as a client's criminal background¹²⁹ is often discussed by the DTC team because it is a factor taken into consideration when determining what type of treatment should be offered to the participant, if housing should be provided, and what type of job placement programs should be utilized.¹³⁰ Acknowledgment by the defense attorney of such a criminal background is hardly an unethical confidential disclosure. The criminal background, attainable with any public document search, is easily produced by the prosecutor. Legal research databases (e.g., Westlaw or LexisNexis) provide prosecutors with an accurate and ready determination of an individual's background and are accurate beyond a reasonable question.¹³¹ Taking notice of a client's criminal background and then steering the discussion of various treatment options available to the client clearly falls

127. *Id.* R. 1.6 cmt. 5.

128. *Id.*

129. The defense attorney does not typically provide this information. Rather, the district attorney or assistant district attorney at the staffing meeting will typically just pull up the client's criminal information on the computer via the district attorney's information database network. Interview with Hon. Joseph M. Buckner, Chief Dist. Court Judge, Orange Cnty., N.C., in Hillsborough, N.C. (Jan. 2, 2013).

130. *Id.*

131. Although under no legal duty to respond to questions about a client's criminal background, a lawyer may certainly acknowledge the client's record. A lawyer is prohibited from disclosing the record but not from accepting a district attorney's production of the record. See N.C. Ethics Comm., Formal Op. 5 (1998) (emphasizing that a "lawyer may not reveal confidential information about a client's prior criminal record to the court *but may not misrepresent the client's criminal record*") (emphasis added) (citing Ethics Comm., N.C. State Bar, RPC 33); Ethics Comm., N.C. State Bar, RPC 33 (1988) ("Obviously, trial court events may give rise to a conflict between this duty to deal honestly with the court, and the duty to deal confidentially with the client . . . in response to a specific and direct question to counsel by the court, *counsel may not misrepresent the defendant's criminal record . . .*") (emphasis added).

within the parameters of “admi[ssion] of a fact that cannot be properly disputed.”¹³²

Additionally, a lawyer is impliedly authorized to disclose confidential information that “facilitates a satisfactory conclusion to a matter.”¹³³ This language suggests a rational relation between the means (method of disclosure) and the ends (the satisfactory conclusion of sobriety and graduation as elected by the client). Since the client ultimately controls the objective of representation and has chosen to pursue the express program objective of sobriety and DTC graduation, most disclosures that meet this end will be “satisfactory conclusions” and thus ethically sufficient.¹³⁴

Overall, the few authorized disclosures that occur during DTC are no different from disclosures that the legal community has traditionally recognized as ethical. These disclosures include those in the context of plea bargaining, probation violations, traffic court ticket negotiations, family court child support payment negotiations, and probation court fee payment negotiations.¹³⁵ For example, many defendants in child support court are significantly behind in child support payments.¹³⁶ Once brought into court, defendants would prefer serving a short period of time in jail in exchange for an extended period of deferred payment rather than paying money towards their outstanding balance.¹³⁷ In each of these cases, the lawyer is advocating on behalf of the client for a step that may, from an objective observer, seem damaging to the client’s interests but is, in fact, a position in furtherance of the client’s objective. In all of these adversarial contexts, the lawyer is most often negotiating for the client to serve a brief time in jail in order to reach a satisfactory outcome for the client—whether

132. N.C. RULES OF PROF’L CONDUCT R 1.6 cmt. 5.

133. *Id.*

134. *See id.* pmb1. 6.

135. Involuntary commitment cases fall into this category as well. These clients are arguably different than DTC participants because the medical community traditionally recognizes them as mentally “impaired,” while society has expressed reluctance to accept substance addiction as a medical disease, as opposed to a self-destructive choice. Lawyers of these clients are, therefore, given greater flexibility in asserting positions antithetical to the interests expressed by their client. It is still important, however, to note the similarities with DTC. In involuntary commitment cases, it is ordinary operating procedure for the lawyer to negotiate for a step that may, from an objective observer, seem damaging to the client’s interests but is, in fact, a position in furtherance of the client’s objective (e.g., to mentally improve enough to leave the hospital). Interview with Hon. Joseph M. Buckner, Chief Dist. Court Judge, Orange Cnty., N.C., in Hillsborough, N.C. (Jan. 2, 2013).

136. *Id.*

137. *Id.*

it be more community service, a charge dropped, or a child support payment deadline pushed back six months.¹³⁸

C. Prerequisite of a Guilty Plea is not Per Se Unethical

The opposition's argument further assumes that the DTC plea agreement requirement is *per se* unethical. This contention stems from a suspicion that a client does not "truly know" what benefit she is pleading guilty for, regardless of whether the defense attorney explains the material risks, alternative options, and consequences of those options to the client prior to the plea.¹³⁹ This argument for *per se* unethical waiver of rights essentially presumes an ever-present collusive motive of DTC team members. This position overlooks both the necessity of this procedure and its identical resemblance to the informed waiver of rights and plea agreement that is traditionally practiced in adversarial proceedings.

First, it is essential to the DTC process that the program participant settles any lingering procedural requirements from traditional criminal court. Only after those obligations are settled will a client in DTC be able to move forward with the therapy, counseling, job placement, and other program requirements.¹⁴⁰ The plea requirement allows the pending charges to be removed from the prosecutor's docket while treatment for the offender is pursued.¹⁴¹ Otherwise, various criminal charges would possibly remain across various courts of jurisdiction, and the associated court dates, probation hearings, motions, and other requirements would interfere with both the organization and central purpose of DTC.¹⁴² The foreboding, unknown future of pending criminal charges awaiting the client upon graduation would deny that individual the fresh legal start that DTC is otherwise so uniquely able to offer.¹⁴³

138. See Interview with Marie Lamoureux, Programs and Special Projects Manager for Orange Cnty. Drug Treatment Court, in Hillsborough, N.C. (Mar. 4, 2013).

139. Quinn, *supra* note 107, at 54–57.

140. See Interview with Marie Lamoureux, Programs and Special Projects Manager for Orange Cnty. Drug Treatment Court, in Hillsborough, N.C. (Mar. 4, 2013).

141. Hora et al., *supra* note 8, at 515.

142. DTC recognizes that immediacy is key to successful drug treatment. As a result, DTC procedures are created "to ensure that the court does not 'miss the critical window of opportunity for intervening and introducing the value of . . . [drug] treatment [into the defendant's life].'" *Id.* at 473 (alteration in original) (quoting DEFINING DRUG COURTS, *supra* note 7, at 5).

143. The plea also provides the DTC participant with a greater incentive to remain in the program and to complete treatment. Additionally, it aids in the client's therapy because it

Moreover, the informed plea agreement requirement is also necessary for policy reasons. Before electing the DTC program, every participant faces criminal charges. DTC is an alternative to an extensive prison sentence—not a substitute for the criminal law of North Carolina.¹⁴⁴ If guilty, the law dictates that the individual must be held accountable for the illegal actions. DTC allows North Carolina to hold the guilty party responsible for his actions while simultaneously providing treatment, reducing the likelihood of repeat offenses, and protecting the surrounding community.¹⁴⁵

The guilty plea prerequisite, therefore, is not functionally different from the informed plea requirement of adversarial proceedings, such as arbitration or criminal trials. In both contexts, a criminal defendant may be required to waive the right to testify, the right to a speedy trial, or the right to appeal a plea bargain.¹⁴⁶ Significantly, the “waiver of certain rights is not a new concept to the criminal justice system,”¹⁴⁷ *especially* in those proceedings that are voluntary.

CONCLUSION

The adjudicative structuring of North Carolina’s Drug Treatment Court does not demand a refashioning of the role of a lawyer in order to secure success of the court. Yet, the reception of DTC among the state’s legal communities varies from adamant approval, to half-hearted support, to firm opposition. The legal community’s divergent receptions of DTC are not due to any alleged inherent ethical implications within its collaborative structure. The opponents’ narrow definitions of legal ethical obligations are incompatible with the NCRPC and ignore the fact that the allegedly unethical components of DTC are no different from those

forces the participant “to accept her addiction and . . . overcome denial” via a public admission to drug use. Hora et al., *supra* note 8, at 516.

144. For a discussion of the relationship between the concept of “criminal responsibility” and common understandings of just punishment, see Stephen J. Schulhofer, *Just Punishment In an Imperfect World Questioning Authority: Justice and Criminal Law*, 87 MICH. L. REV. 1263 (1989). In a few North Carolina DTCs, however, there is not even a plea requirement. See Interview with Marie Lamoureux, Programs and Special Projects Manager for Orange Cnty. Drug Treatment Court, in Hillsborough, N.C. (Mar. 4, 2013). Conditioned on the successful completion of DTC, the district attorney’s office agrees to withdraw or even dismiss the charge. *Id.*

145. See Hora et al., *supra* note 8, at 521.

146. *Id.*

147. *Id.*

traditional components of adversarial proceedings that have long been recognized by the legal community as ethical.

Instead, the cause of hesitation and opposition is the long-standing reluctance by the legal community to directly deal with substance abuse and its accompanying social stigma. This resistance to embrace DTC can best be understood in three main flavors: (1) as a result of the legal profession's own issues with substance abuse; (2) the fact that the label of "therapeutic court" is essentially a dirty word to some, due to a lack of understanding of the court's structure and misconception of its goals; and (3) social misconceptions concerning the nature of addiction.

First, it is no secret that members of the legal profession suffer some of the highest rates of drug and alcohol abuse compared to almost any other career field.¹⁴⁸ The incredibly long work hours, high stress situations, and constant juggling of family, career, and day-to-day life have led many lawyers to self-medicate through drugs and alcohol.¹⁴⁹ Although North Carolina has established several lawyer assistance programs in an attempt to encourage lawyers to discuss their struggles with addiction and receive treatment,¹⁵⁰ the substance abuse dilemma is mostly unspoken of.¹⁵¹ In the specific context of DTC, the legal profession as a whole is faced with a judicial structure with the sole function of treating substance abuse and directly dealing with all of its accompanying evils: unemployment, emotional and mental instability, financial insolvency, poor social skills, etc.¹⁵² Perhaps some of the legal profession's hesitance to accept such a

148. See Laura Rothstein, *Law Students and Lawyers with Mental Health and Substance Abuse Problems: Protecting the Public and the Individual*, 69 U. PITT. L. REV. 531, 531–33 (2008).

¹⁴⁹ *Id.*

150. See BARCARES, <http://www.barcare.org> (last visited May 1, 2013); NORTH CAROLINA LAWYER ASSISTANCE PROGRAM, <http://www.nclap.org> (last visited May 1, 2013).

151. As indicated by a North Carolina Bar Association study, almost 17% of new North Carolina attorneys consume three to five alcoholic drinks a day. N.C. BAR ASS'N, REPORT OF THE QUALITY OF LIFE TASK FORCE AND RECOMMENDATIONS 4 (June 20, 1991), available at <http://www.ncbar.org/media/11638328/leqlreport1991.pdf>; see also Frank Newton, *The Twenty-Third Edward H. Young Lecture in Legal Education: Legal Education and Professionalism in Parallel Universes*, 160 MIL. L. REV. 223, 230 (1999) ("Rarely do we notice or publicize professionals and other white-collar drug abusers who have much easier access to controlled substances."); Rothstein, *supra* note 148, at 533 ("Because of the high stakes involved in the legal profession and the stigma attached to mental illness and substance abuse problems, individuals with these problems are often reluctant to seek help.").

152. JOYCE H. LOWINSON, *SUBSTANCE ABUSE: A COMPREHENSIVE TEXTBOOK*, 100, 345, 713, 1142–44 (2005).

court formation is due to its own unwillingness to directly confront and deal with a problem that has silently infiltrated much of the profession itself.

Second, another explanation is the misconception of DTC's structure and goals. In North Carolina counties such as Orange County, where the DTC enjoys considerable support from the surrounding population and the local legal community, DTC is treated as a legal "no-brainer."¹⁵³ Contrast this with other North Carolina counties where "therapeutic court" is deemed a "dirty word" by some legal professionals. Often, leftist social connotations are associated with any legal proceedings labeled "therapeutic" or "alternative," and they are viewed as an unwelcome departure from more socially conservative values such as the preservation of tradition and custom found in adversarial proceedings.¹⁵⁴ In conjunction with this perspective is the misperception that DTC is simply a vehicle for funneling more money into "people who won't change," either because sobriety is impossible for them or because, regardless of sobriety, "once a criminal always a criminal." This socially-charged opposition to DTC unfortunately leaves only one method intact for dealing with the offenders: the very expensive decision to continue incarceration of these individuals while ignoring their substance abuse, mental health, or financial problems until the point in time that they are re-released back into society.¹⁵⁵ This

153. It is impressive to note that the Orange County Commissioners decided to fund the Orange County Drug Treatment Court, even when state funding for the program was cut. Freda Kahen-Kashi, *County Commissioners Keep Drug Courts Alive*, CHAPELBORO MAGAZINE (June 19, 2011); Joe Schwartz, *Drug Treatment Courts Get the Budget Axe, Even Though They Save Money*, INDY WEEK NEWSPAPER (June 15, 2011), <http://www.indyweek.com/indyweek/drug-treatment-courts-get-the-budget-ax-even-though-they-save-money/Content?oid=2549963>. Mecklenburg County recently made the same change. See *Another Attempt to Kill N.C. Drug Courts*, THE CHARLOTTE OBSERVER (May 29, 2012), <http://www.charlotteobserver.com/2012/05/29/3268203/another-attempt-to-kill-nc-drug.html>.

154. See Albert P. Cardarelli & Stephen C. Hicks, *Radicalism in Law and Criminology: A Retrospective View of Critical Legal Studies and Radical Criminology*, 84 J. CRIM. L. & CRIMINOLOGY 502, 502, 546 (1993); Frank V. Williams, III, *Reinventing the Courts: The Frontiers of Judicial Activism in the State Courts*, 29 CAMPBELL L. REV. 591, 594, 639-43 (2007). There is a running joke amongst some North Carolina judges that a few of the state's court systems are "250 years of tradition, unimpeded by progress." See Interview with Hon. Joseph M. Buckner, Chief Dist. Court Judge, Orange Cnty., N.C., in Hillsborough, N.C. (Jan. 2, 2013).

155. Although some minimal treatment is provided in North Carolina's prisons, as much as 75% of inmates identified as needing substance abuse treatment are nonetheless not treated. *Justice and Redemption* (WRAL television broadcast Oct. 9, 2012). The cost of

attitude of “perhaps if we ignore it, it will just go away” alternative does little for either the public welfare or society’s pocket book.

Moreover, prejudicial social misconceptions of addiction further provide an explanation for the legal community’s hesitance to embrace DTC. Over time, addiction has been given numerous definitions,¹⁵⁶ none of which have resulted in a universally accepted answer. Due to social misconceptions about the nature of addiction,¹⁵⁷ society has historically stigmatized addiction as a disorder within one’s own self-control, as opposed to a true disability or disease.¹⁵⁸ “Political ‘policies have branded these unfortunate individuals as the outcasts of society and forced them unnecessarily to lives of crime and degradation.’”¹⁵⁹ Perhaps the most helpful definition of “addiction” for DTC is: “the act of continuing the same behavior in the face of repetitive and subsequent negative consequences of that behavior.”¹⁶⁰ In order to break the constant cycle of addiction, the causal sources of the behavior must be addressed and eradicated.¹⁶¹ Judgmental presumptions about the nature of the addicts’ substance abuse, therefore, must be overcome in order for the community to stop stigmatizing the addict as an outcast and instead begin focusing on the addict’s treatment opportunities.

Furthermore, establishing a DTC is not an attempt to force every lawyer in the area to work within its structure—quite the contrary. A lawyer who is suspicious of addiction, as well as the treatment that seeks to overcome it, is detrimental to the very core of the DTC objective. A DTC client will never be able to reach sobriety if the lawyer does not think that

putting an offender through North Carolina’s DTC program is only a fraction of the approximated \$28,000 it costs the state to keep an offender in prison for one year. *Id.*

156. Hora et al., *supra* note 8, at 451 (“The term ‘addiction,’ like the words ‘drug’ and ‘addict,’ does not have a universally accepted definition. ‘Attempts at a unified theory of addiction have long been frustrated.’”).

157. Nicole Fiocco, *The Unpopular Disabled: Drug Addicts and Alcoholics Lose Benefits*, 49 ADMIN. L. REV. 1007, 1017 (1997).

158. Charles Dackis et al., *Neurobiology of Addiction: Treatment and Public Policy Ramifications*, 8 NATURE NEUROSCIENCE 1431, 1436 (2005).

159. Geoffrey R. Stone, *A Passion For Justice*, 98 YALE L.J. 213, 217 (1988) (quoting *United States v. Moore*, 486 F.2d 1139, 1229 (D.C. Cir. 1973) (Wright, J., dissenting)).

160. This definition is almost identical to the definition adopted by the American Society of Addiction Medicine: “a disease process characterized by the continued use of a specific psychoactive substance despite physical, psychological or social harm . . . major behavior characteristics: preoccupation . . . compulsive use . . . relapse.” Norman S. Miller et al., *The Relationship of Addiction, Tolerance and Dependence on Alcohol and Drugs: A Neurochemical Approach*, 4 J. OF SUBSTANCE ABUSE TREATMENT 197, 199 (1987).

161. *Id.*

the client is worthy of sobriety or if the lawyer does not think that sobriety is attainable.¹⁶² As Chief District Court Judge of Orange County, Judge Buckner, articulates: “the focus [of DTC] must be on a skill set. Not all lawyers have to do this. You need people who understand addiction to make DTC effective.”¹⁶³

In sum, the long-standing hesitance by the legal community to directly deal with substance addiction best accounts for why there is opposition to DTC. This explanation best addresses why resistance among the legal community remains, despite the fact that much of the DTC structure mirrors ethical adversarial adjudicative framework and complies with the legal ethics standards governing North Carolina’s lawyers.¹⁶⁴ The crux of the opposition argument to DTC is truly rooted in social misconceptions rather than legal reasoning.

This Comment implores North Carolina’s legal community to reexamine its perspective on North Carolina’s Drug Treatment Courts. Therapeutic justice is a newly emerging field of law that is deserving of attention and has already proven to be effective in the state.¹⁶⁵ As highlighted in Part I of this Comment, DTC saves the government and taxpayers money, deters future crime by treating the underlying issues that trigger individual repeat offenders, reduces the overall crime rate, protects community citizens against becoming potential victims, reduces drug use in the area, and produces sober and productive community members through work placement programs and community service.¹⁶⁶ It would be a disservice to the people of North Carolina to allow the profession’s wariness of directly dealing with substance abuse to impede the vast financial and social benefits of North Carolina’s Drug Treatment Courts.

Lily Van Patten

162. See BEST PRACTICES, *supra* note 12, at 10–11.

163. Interview with Hon. Joseph M. Buckner, Chief Dist. Court Judge, Orange Cnty., N.C., in Hillsborough, N.C. (Jan. 2, 2013).

164. Such comparable adjudicative framework includes plea bargaining, traffic court speeding ticket negotiations, family court child support payment negotiations, and probation court fee payment negotiations. *Id.*

165. LAKE & WALKER, *supra* note 3, at 32.

166. See *id.*; *Drug Courts Work*, NAT’L ASS’N OF DRUG COURT PROF’LS, <http://www.nadcp.org/learn/facts-and-figures> (last visited May 1, 2013); RECOVERYNC, www.recoverync.org (last visited May 1, 2013).