

Chief Appellate Defender Report  
October 8, 2010

**Exhibit 3**

*Question:* Are defense attorneys allowed to participate in treatment team meetings and disclose client information such as relapses?

*Answer:* Yes, but only if the client has agreed.

A defense attorney representing a client in a treatment court is still the client's attorney and is still subject to the Montana Rules of Professional Conduct (Rules). Nothing in the Rules allows such an attorney to disregard Rule 1.6 and disclose confidential client information against the client's wishes just because the client happens to be in a treatment court environment.

It is sometimes said of this situation that there is a conflict of interest for a defense attorney to serve on a treatment court team where, as member of the team, the attorney discloses when client relapses. The issue, however, is more accurately described as a confidentiality/loyalty violation than as a conflict of interest problem.

This is true because there can be no conflict of interest between representing the client and disclosing information to the team, since Rule 1.6 prohibits disclosure to the team against the client's wishes. An attorney following the Rules is not faced with a conflict between two responsibilities, as there is only one permissible option--loyalty to the client.

There is no conflict of interest under Rule 1.7(a)(2) because the lawyer cannot owe a responsibility to the treatment team to act against the client's wishes. Any treatment team requirement that purports to require an attorney to disclose client confidences against the client's wishes or otherwise to act adversely to the client's chosen objectives of the representation would be asking the attorney to violate the Rules and must be ignored.

This is not to say that an attorney cannot disclose information to, or otherwise participate in, a treatment team if the client has requested the attorney to do so. If the client has given informed consent to the attorney's disclosures or has defined "the objectives of representation" under Rule 1.2(a) in such a way that disclosure to the treatment team "is impliedly authorized in order to carry out the representation" under Rule 1.6(a), then the attorney can make the authorized disclosures. Such client consent might even be a condition of the client's continued participation in the treatment court. There is no conflict of interest, however, because the attorney is carrying out his/her client's directives and the client's desire to continue participating in the voluntary treatment court program.

Of course Rule 3.3, imposes a duty of candor to the drug court that trumps Rule 1.6 confidentiality, but this obligation is the same as the one faced by defense attorneys in any courtroom situation. Rule 3.3 prohibits a lawyer in a drug court--like a lawyer before any other sort of court--from knowingly making a false statement of material fact or failing to correct false material evidence offered by the client.