

Informal Opinion 25-1
December 23, 2025

Question:

The Judicial Conduct Commission (JCC) has requested an opinion on whether a problem-solving court¹ may refer participants to one treatment provider.

Answer:

Judges in problem-solving courts do not normally make treatment decisions or treatment recommendations for participants. Those decisions are instead made by other members of the problem-solving court team who possess the appropriate background and training. A problem-solving court judge can require that a defendant participate in and complete a treatment plan recommended by others, including a single treatment provider who serves all participants in the problem-solving court, so long as the plan is based on reasonable, unbiased criteria that are directly related to the needs of the court and the participant. Because problem-solving court judges do not make treatment decisions, and do not refer participants to particular providers, a judge is not ethically required to provide a roster of treatment providers or make referrals on a rotating basis from a list of providers.

Discussion:

The JCC has requested an ethics advisory opinion on the propriety of a problem-solving court referring participants to one treatment provider. The facts provided by the JCC are as follows: a judge presiding over a drug court does not maintain a list of treatment providers; the judge refers all participants to one treatment provider; “specialty courts, such as drug courts, can and do use only one provider;” and “defendants are not able to select a provider of their own choice.” The JCC questions whether these practices create an appearance of bias or abuse the prestige of the judicial office to advance the economic interests of others.

Two rules in the Utah Code of Judicial Conduct are relevant to this request. Rule 1.2 states that “[a] judge should act at all times in a manner that promotes and shall not undermine public confidence in the independence, integrity, and impartiality of the judiciary and shall avoid impropriety and the appearance of impropriety.” Rule 1.3 states that “[a] judge shall not abuse the prestige of judicial office to advance the personal or economic interests of the judge or others or allow others to do so.”

In Informal Opinion 10-2, this Committee determined that a judge may not refer parties to a specific mediator because doing so would create the impression that the mediator is in a special position to influence the judge and doing so might be seen as using the prestige of the judicial office to advance the personal and economic interests of the mediator. There, the

¹ “Problem-solving court” means the same as that term is defined in Rule 4-409 of the Utah Rules of Judicial Administration (“a targeted calendar of similar type cases that uses a collaborative approach involving the court, treatment providers, case management, frequent testing or monitoring and ongoing judicial supervision. Examples include drug courts, mental health courts and domestic violence courts”).

Committee noted that a judge could refer parties to a list of mediators maintained by the Administrative Office of the Courts but did not address the question of whether a judge could create a list of mediators and allow the parties to select a mediator from that list.

Thereafter, in Informal Opinion 12-2 the JCC asked the Committee to address the question not answered in Informal Opinion 10-2; namely, whether a judge could create a pool of preapproved providers and then make referrals from that list on a rotating basis. In Informal Opinion 12-2, the Committee determined that a judge may create a preapproved roster of service providers for criminal defendants, as long as (1) any interested individual or entity may apply to be included on the roster; (2) the criteria the court creates for being admitted to the roster are reasonable, unbiased, and directly related to the needs of the court; and (3) referrals are generally made on a rotating basis or by allowing the defendant to select a provider.

Both Informal Opinion 10-2 and Informal Opinion 12-2 involved circumstances where a judge makes a decision to refer a party to a particular service provider. Where a judge is selecting a particular provider and requiring a party to obtain services from that provider, the referral could create an impression that the provider has special influence with the judge or may be seen as lending the prestige of the judicial office to advance the interests of another.

The final paragraph of Informal Opinion 12-2 noted that referrals in problem-solving courts are unique and the requirements of Informal Opinion 12-2 may not apply:

The Committee recognizes that the conclusions of this opinion may raise questions about court referrals in other areas, such as specialty courts. The Committee is unable to anticipate how this opinion will affect those areas because the questions will be fact specific as to how a provider is selected and being used. The Committee must therefore await opinion requests dealing with other situations before offering advice.

The JCC is now asking this Committee for clarification of that caveat. Answering the question requires some general background on how problem-solving courts operate, how treatment services are provided and funded in the context of these courts and, most importantly, the judge's role and responsibilities in the context of a problem-solving court.

Problem solving courts apply a multi-disciplinary, collaborative approach to addressing needs in the criminal justice system. Participation is typically voluntary. The problem-solving court team includes not only judges, prosecutors, and defense attorneys, but also case managers, treatment providers, and community supervision professionals. Problem-solving courts apply evidence-based practices. Each team member is responsible for their particular area of expertise. Assessments and treatment recommendations are typically discussed with participants, and a treatment plan is developed by professionals in the relevant areas of expertise. Judges are not licensed treatment providers. They do not develop treatment plans for participants. They do not select which treatment providers will provide these services.

In accordance with Rule 4-409 of the Utah Rules of Judicial Administration, every problem-solving court must adhere to specific certification criteria promulgated by the Council

and be recertified by the Council every two years. The current adult drug court checklist includes 54 required certification criteria, 40 presumed certification criteria, and 16 non-certification-related best practice standards. Criteria include the following: treatment providers must be licensed and certified to deliver substance abuse treatment, as required by the Department of Human Services or other relevant licensure or certification entity; at a minimum, the prosecutor, defense counsel, treatment representative, law enforcement, guardian ad litem (where applicable), and judge must attend each staff meeting and drug court session; and treatment providers must administer behavioral and cognitive-behavioral treatments that are documented in manuals and have been demonstrated to improve outcomes for addicted persons involved in the criminal justice system. One of the best practice standards is that problem-solving courts should, where possible, offer participants a full continuum of care for treatment of substance use or mental health disorders, including detoxification, residential care, sober living, day treatment, and outpatient services.

In accordance with Utah Code section 17-77-103, each county must provide mental health and substance use services to residents of the county. Counties receive state and federal funds to fulfill those obligations and contract with local treatment providers. The provider or providers who offer these services are typically determined by the counties, and the judges who preside over problem-solving courts do not select the providers. If a participant is indigent and the county contracts with only one provider, or only one provider on contract with the county meets the certification criteria required by the Council, the problem-solving court may be limited to making referrals to one provider. That, however, is not a function of the judge selecting who will provide services. Rather, it is a function of the resources available in a particular area and the county-contracted services that are offered. If a participant has a preference or wishes to get treatment from someone other than a county-contracted provider, that would be discussed with the treatment professionals. The treatment professionals may or may not approve such a plan, but the judge is not usually involved in making that decision.

Because problem-solving court judges do not make treatment decisions or refer participants to one provider over another, the concerns identified in Informal Opinions 10-2 and 12-2 do not apply. Both of those opinions addressed situations where a *judge* selected a provider and required a party to obtain services from that provider. If for some reason a problem-solving court judge was regularly involved in making these kinds of treatment decisions or choosing one treatment provider over another, then Rules 1.2 and 1.3 could be implicated and the court may be required to comply with some or all of the procedures specified in Informal Opinion 12-2. The Committee's understanding, however, is that this is not how problem-solving courts typically operate.

A related question might be whether a problem-solving court judge can order a participant to complete a particular treatment plan developed by others or require a participant to complete a treatment plan with a particular provider designated and selected by others as a condition of participating in the program. Again, so long as it is not the judge who is choosing one treatment provider over another as part of that treatment plan, and the plan is based on reasonable, unbiased criteria that are directly related to the needs of the court and the participant, the judge can order a participant to complete that plan. Doing so would not generally violate Rules 1.2 or 1.3 because it would not lend the prestige of the judicial office to another or create

an appearance of special status with the court.²

Questions regarding whether a particular problem-solving court complies with best practices or meets the certification standards established by the Judicial Council are outside the scope of this Committee's authority.

² Participants in problem-solving courts often are required to submit to urinalysis or other testing for drugs or alcohol with a particular provider and that provider often serves all participants in the court. Problem-solving courts typically do not allow participants to test at any other facilities, even though others may offer similar services, for a variety of reasons. This type of specialized forensic testing requires following proper procedures for the collection, retention, testing, confirmatory testing, and chain-of-custody. There are also a variety of best-practice standards applicable to forensic testing for problem-solving courts. As with treatment providers, those who provide forensic testing services are usually selected by and contract with the county. The problem-solving court judge would not normally be involved in that process and Rules 1.2 and 1.3 would therefore not be violated by requiring all participants to test with a particular provider.