

# The Role of Prosecutor and Defense Counsel on the Healing to Wellness Court Team



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Tribal Law and Policy Institute  
[www.TLPI.org](http://www.TLPI.org)  
[www.WellnessCourts.org](http://www.WellnessCourts.org)

*Orientation to Tribal Healing to Wellness Courts*

*Unique Role of Judges on Healing to Wellness Courts*

*BJA and SAMHSA Drug Court Specific Funding Options*

*Current Funding Opportunities for THWCs – CTAS*

# HEALING TO WELLNESS COURT WEBINAR SERIES

**Kasia D. Klaus**

Menominee Indian Tribe of Wisconsin  
Assistant Tribal Prosecutor



**Zachary W. Brandmeir**

Penobscot Indian Nation  
Public Defender



**Lauren V. van Schilfgaarde**

Tribal Law and Policy Institute  
Tribal Law Specialist



# OUR PRESENTERS



# Second Key Component

*Participants enter Tribal Healing to Wellness Court through various referral points and legal processes that promote tribal sovereignty and the participant's due (fair) process rights.*

Using a non-adversarial approach, prosecution and defense counsel promote public safety while protecting participants' due process rights.

# Changing Roles

- To facilitate a participant's progress in treatment, prosecutors and defense counsel must shed their traditional adversarial courtroom roles and work together as a team
- Once a defendant is accepted into the drug court program, the team's focus is on the participant's recovery and law-abiding behavior, not on the merits of the pending case.

# The Prosecutor

- Review potential participants for eligibility
- Actively participate in staffing of cases
- Interact with the team to address revocations, pleas, and application of sanctions and incentives
- If re-arrest, investigate the new case and assess for continued participation

Shares a common goal of successful treatment completion

# The Defense Counsel

- Advocate for participant during staffing and court proceedings in non-adversarial manner
- Assist with the negotiation of plea agreements
- Represent and counsel participant in all court proceedings
- Concern for participant's constitutional rights

Shares a common goal of successful treatment completion



# THE PROSECUTOR

# Menīpaniw Court

**Prosecutor's Perspective**

“There is a good road”

# Overview of Referral Points and Legal Procedure

**Criminal Act**



**Arrest**



**Court Process**



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Pre-Trial Referral  
(After charges filed but  
before guilty plea or finding  
of guilt)

Pre-Adjudication Referral  
(Prosecutor defers filing charges)

Post-Adjudication  
(After a guilty plea  
or finding of guilt but  
but sentence deferred  
or stayed)



**TRIBAL HEALING TO WELLNESS COURT**

# Eligibility/Referral Process

1. Drugs were a major part of the current charge(s).
2. The Defendant has plead “Guilty” or “No Contest” to the current charge(s).
3. No violent offense against another person(s) were involved in the current charge(s)
4. The current charges are the Defendant’s first or second offense of a similar nature that involved drugs.
5. The Defendant is at minimum 17 year of age or older.
6. The Defendant is abusing or is chemically dependent on drugs.
7. The Defendant must live within a 50 mile radius of the Menominee Indian Reservation boundaries.

# Menīpaniw

- **Prosecutor's Role in the referral process:**

The Prosecutor may, at his/her discretion, refer a participant who meets the criteria set out in the Eligibility Criteria to Menīpaniw. The Prosecutor must screen all cases for potential Menīpaniw referrals. At the time of charging, the charging Prosecutor will conduct a preliminary review for Menīpaniw eligibility, and will note in the file the results of the review regarding his/her eligibility.

- Wellness Court Paralegal
- No Pre-Trial
- Time lapse between filing and Initial Appearance

## Beginning a New Life Style in the Program:

The first official step begins when the Court announces they have been accepted by the Menīpaniw Team!

Immediate participation: Maehnowesekiyah Treatment Center; Probation & Parole Officer; Weekly Court appearances; and daily call-in's; random drug screens.

# Bumps on the Road to Wellness

- *Sanctions* are given to Menipaniw participants that fail to follow any of the obligations set upon them by the Wellness Team. Each negative incident or report can bring the participant 24 hours in Tribal jail AND community service.
- *Contested Hearings* are done for every participant who wishes to contest a sanction or order for termination from Menipaniw Program.
- *Termination Orders* are recommended by the Wellness Team based upon the participants actions or lack of action or major violations to their Wellness Program.
- *Transition is the GOAL of the Menipaniw Program. Participants that are successful in the program and have changed their life from a negative to a positive, are transitioned out of Menipaniw Program. The Prosecutor reads aloud the dismissal of their charge and expungement of the record, which is followed by a congratulatory potluck and well wishes from everyone for the successful program participant.*

# Prosecutor: A Different Perspective

- To ensure the contract is being adhered to
- Sanctions
- Contested hearings
- Termination
- Transition



# A Prosecutor's Nightmare

- Changing outlooks- rehabilitation
- Establishing boundaries
- Initial Appearances
- The transfer from Wellness Court to Criminal Court post termination
- Dealing with the programs negative reputation

# Menīpaniw

## Pros

- Prosecutor has an opportunity to develop positive relationships in the community.
- Improve image of the Prosecutors role in the Court by demonstrating that they are not always the “Bad” guy.
- Become a part of the participant’s support system.
- The ability to observe the participant’s make positive changes in their lives.
- Working as a team with other departments

## Cons

- The initial process to enter the Wellness Court seems daunting for a majority of the new participants
- Defense Attorneys/Legal Advocates who do not have ‘buy-in’ for the Wellness program

# Meet Our Team

- Judges- Martina Gauthier; Kris Goodwill
- Program Coordinator – John “Jack” Krebs
- Probation and Parole- Rebecca McCann
- Police Department- Warren Warrington
- Defense Counsel: Gary Dodge
- Treatment Center: Jennifer Metoxen

# THE DEFENSE COUNSEL

# Zachary Brandmeir

## Penobscot Nation Tribal Court

### Public Defender

- Solo Practice Criminal Defense and Family Law Attorney
- Practice in the State and Federal Courts in the State of Maine
- Public Defender at the Penobscot Nation Tribal Court

# Defense Counsel's Basic Role

- Client's Goals & Objectives
- Screening
- Team Meetings
- Court Appearances
- Collateral Matters (Potentially)

# Common Issues

- Clients Goals > Team Goals
- Client Candor to Tribunal
- Treatment Recommendations

# Client's Goals & Objectives

- 1<sup>st</sup> Obligation is to Client
- Preserve formal protection in informal process



# Screening Duties

- Sanctions
- Waivers
- Confidentiality
- Risk/Benefits

# Team Meetings

- Address logistical issues with treatment – (do not advise as to specific treatments)
- Learn about compliance issues early and try to fix early
- Present client issues with process to team members and try to fix
- Credibly argue about client successes
- Defend against sanctions

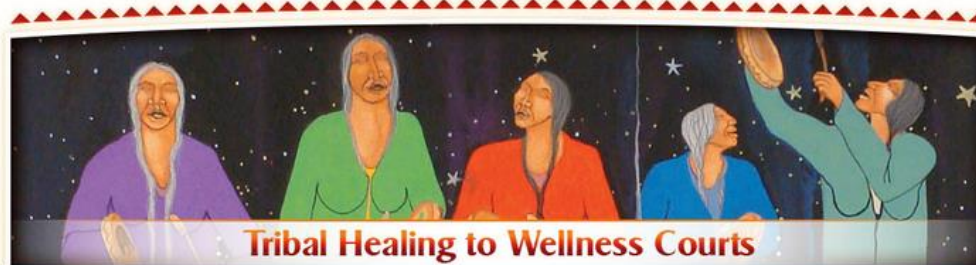
# Court Appearances

- Credibly emphasize client successes
- Screen client statements
- Air client complaints

# Penobscot Nation Wellness Court

- Penobscot Nation
- Tribal Court
- Wellness Court Team Members
- Participants
- Procedure and the Key Components

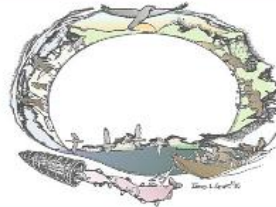
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"Expanding the Role of Tribal Courts in Alaska" in Fairbanks, AK on August 5-7, 2014, sponsored by the National Judicial College, ... [More](#)



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**Resources & Tools**

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State Resources

Search by Tribe:

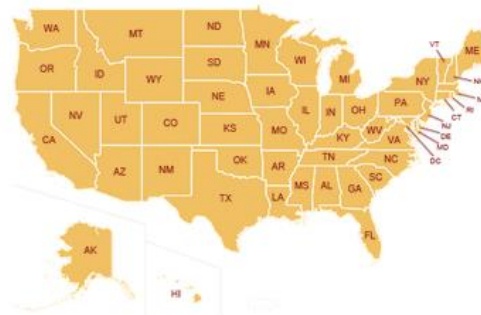
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# THWC Enhancement Training

September 8-10, 2014

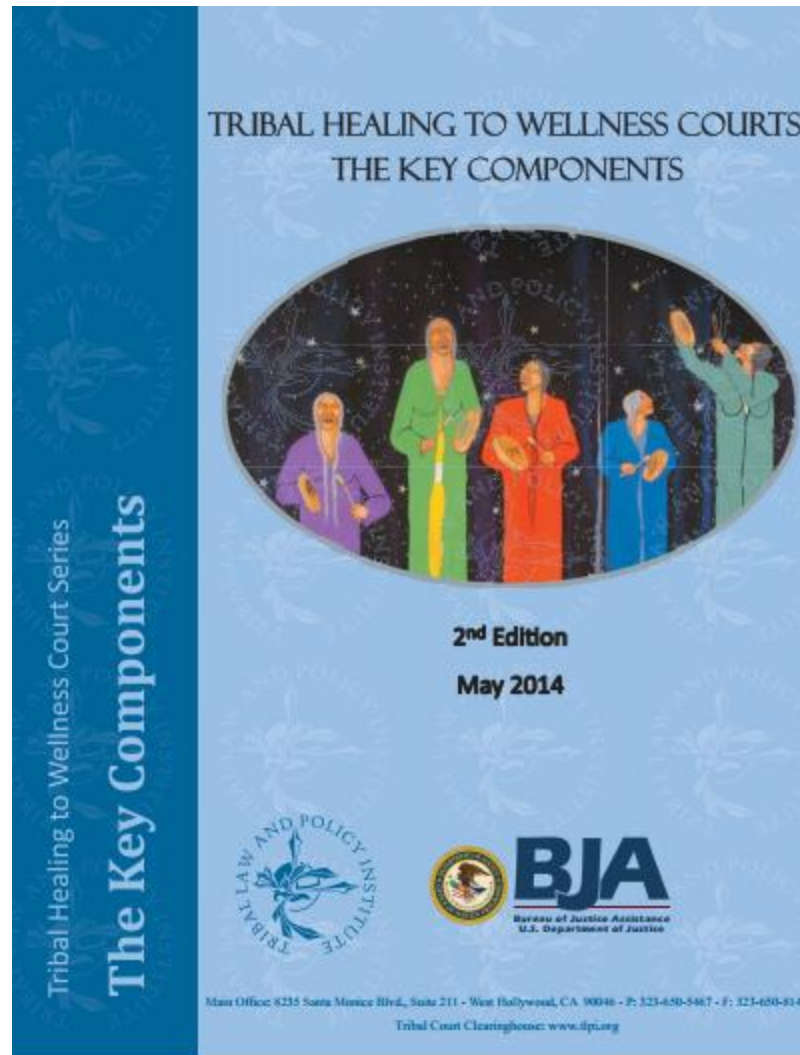
Albuquerque, NM

[enhtraining.tlpi.org](http://enhtraining.tlpi.org)



QUESTIONS

# THWC Ten Key Components, 2nd ed.





Lauren van Schilfgaarde  
Tribal Law Specialist  
Tribal Law and Policy Institute  
8235 Santa Monica Blvd. Ste. 211  
West Hollywood, CA 90046  
(323) 650-5467  
[lauren@tlpi.org](mailto:lauren@tlpi.org)  
[wellness@tlpi.org](mailto:wellness@tlpi.org)

# Tribal Law and Policy Institute Resources

- [www.WellnessCourts.org](http://www.WellnessCourts.org)
- Tribal Healing to Wellness Court Publication Series
  - Tribal 10 Key Components
  - Preliminary Overview
  - Judicial Bench Book
  - Program Development
- Webinars
- Training Calendar
- On-Site Technical Assistance

# Resources

- Julie Turnbull and Hank Judin, “Your Role as an Attorney in Drug Court”, Texas Association of Drug Court Professionals, *available at* [www.tadcp.org/documents/RoleofAttorney2013.pdf](http://www.tadcp.org/documents/RoleofAttorney2013.pdf).
- Karen Freeman-Wilson, Ronald Sullivan, and Susan Weinstein, *Critical Issues for Defense Attorneys in Drug Court*, National Drug Court Institute Monograph Series 4 (Apr. 2003), *available at* [www.ndci.org/sites/default/files/ndci/Mono4.CriticalIssues.pdf](http://www.ndci.org/sites/default/files/ndci/Mono4.CriticalIssues.pdf).
- Karen Freeman-Wilson, Robert Tuttle, and Susan Weinstein, *Ethical Considerations for Judges and Attorneys in Drug Court*, National Drug Court Institute (May 2001), *available at* [www.ndci.org/sites/default/files/nadcp/ethicalconsiderations.pdf](http://www.ndci.org/sites/default/files/nadcp/ethicalconsiderations.pdf).