



**WASHINGTON
COURTS**

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January 24, 2019

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Secretary/Treasurer

JUDGE JENNIFER FASSBENDER
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RE: COURT CONDUCTED MORAL RECONATION THERAPY

Past President

JUDGE SCOTT K. AHLF
Olympia Municipal Court
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To Whom It May Concern:

The Department of Health and Human Services (DSHS) recently informed the District and Municipal Court Judges' Association (DMCJA) that they believe court-conducted Moral Reconciliation Therapy (MRT) should be certified by DSHS under RCW 26.50.150.

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The DMCJA does not believe court-conducted Moral Reconciliation Therapy is subject to DSHS control, and takes the position that an attempt to do so runs afoul of principles of judicial independence and is based on an inadequate understanding of court-run programs. I have enclosed the DMCJA's position statement on the issue. Courts can understand and appreciate DSHS wanting to ensure that providers of domestic violence treatment meet a minimum standard so that judges can be confident when ordering defendants to participate in domestic violence treatment. In fact, one of the actions DSHS takes when a program does not meet its certification requirements is to "[n]otify, in writing, the presiding judge and chief probation officer of each judicial district from which the treatment program receives court referrals." Washington Administrative Code (WAC) 110-60A-0530.

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Presiding judges in courts of limited jurisdiction oversee the probation officers in their courts and are well aware of the programs that the probation departments offer. These probation officers must meet minimum qualifications pursuant to statutes and court rules and the programs they present are approved by the Judge of the court. The judicial branch has the

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Department of Social and Health Services
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obligation to do its part in supervising and trying to rehabilitate its probationers. Court-run MRT programs do not fit within the confines of WAC 110-60A and therefore are not subject to DSHS certification and supervision. Courts are in the best position to determine which evidence based programs work for the rehabilitation of offenders and whether or not those programs will be used in a particular jurisdiction.

The DMCJA recognizes the necessity for DSHS to monitor private programs to certify compliance with the WAC. However, these programs are not available in all areas and are cost prohibitive for many participants. Courts are not willing nor required to have our programs reviewed or certified by an executive branch agency. We trust that DSHS understands judicial independence and will cease trying to exert unauthorized control over court programs.

I will be sending this letter to all judges in our association, as well as all managers and probation officers, advising them that that courts do not have to "certify" their own court programs with the executive branch. Courts already have the authority pursuant to statutes and court rules to offer such programs.

Sincerely,

A handwritten signature in cursive script that reads "Rebecca Robertson".

Judge Rebecca C. Robertson
DMCJA President

Enclosure



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RE: DISTRICT AND MUNICIPAL COURT JUDGES' ASSOCIATION
POSITION REGARDING MORAL RECONATION THERAPY
AS
COURT ADMINISTERED PROGRAM

Many people who come through our courts are in need of services. Often, these are indigent defendants who do not have the ability to pay for treatment/services that insurance will not cover. It is this very reason, why several courts have sent their probation officers to be trained in how to be a facilitator in the MRT program. These probation officers are to be commended for their interest and willingness to do the extra work to try and rehabilitate those who come through our courts.

CLJs have the legal authority to have MRT programs. Our legislature recognized the ability of CLJs to have probation officers and to refer defendants to probation for evaluation and services. Every judge of a court of limited jurisdiction shall have the authority to levy upon a person a monthly assessment not to exceed one hundred dollars for services provided whenever the person is referred by the court to the misdemeanor probation department for evaluation or supervision services. The assessment may also be made by a judge in superior court when such misdemeanor or gross misdemeanor cases are heard in the superior court.

RCW 10.64.120(1) (emphasis added). The legislature granted the administrative office of the courts (AOC) to define a probation department and adopt rules for the qualifications of probation officers.

For the purposes of this section the administrative office of the courts shall define a probation department and adopt rules for the qualifications of probation officers based on occupational and educational requirements developed by an oversight committee. This oversight committee shall include a representative from the district and municipal court judges' association, the misdemeanor corrections association, the administrative office of the courts, and associations of cities and counties. The oversight committee shall consider qualifications that provide the training and education

necessary to (a) conduct presentencing and post-sentencing background investigations, including sentencing recommendations to the court regarding jail terms, alternatives to incarceration, and conditions of release; and (b) provide ongoing supervision and assessment of offenders' needs and the risk they pose to the community.

RCW 10.64.120(2).1 AOC has, in fact, adopted rules governing probation departments that again acknowledge that such departments are at the direction of the presiding judge of the local court.

A misdemeanor probation department, if a court elects to establish one, is an entity that provides services designed to assist the court in the management of criminal justice and thereby aid in the preservation of public order and safety. This entity may consist of probation officers and probation clerks. The method of providing these services shall be established by the presiding judge of the local court to meet the specific needs of the court.

ARLJ 11.1. The rules explain a probation officer's qualifications, which include the ability to motivate offenders and counsel them on a variety of problems including domestic violence.

(a) Probation Officer Qualifications.

- (1) A minimum of a bachelor of arts or bachelor of science degree that provides the necessary education and skills in dealing with complex legal and human issues, as well as competence in making decisions and using discretionary judgment. A course of study in sociology, psychology, or criminal justice is preferred.
- (2) Counseling skills necessary to evaluate and act on offender crisis, assess offender needs, motivate offenders, and make recommendations to the court.
- (3) Education and training necessary to communicate effectively, both orally and in writing, to interview and counsel offenders with a wide variety of offender problems, including but not limited to alcoholism, domestic violence, mental illness, sexual deviancy; to testify in court, to communicate with referral resources, and to prepare legal documents and reports.
- (4) Anyone not meeting the above qualifications and having competently held the position of probation officer for the past two years shall be deemed to have met the qualifications.

ARLJ 11.2 (emphasis added). The legislature recognized that the practice of a profession who is regulated under the laws of this state are exempt from requirements mandated in Chapter 18.19 regulating counselors.

Nothing in this chapter may be construed to prohibit or restrict:

- (1) The practice of a profession by a person who is either registered, certified, licensed, or similarly regulated under the laws of this state and who is performing services within the person's authorized scope of practice, including any attorney admitted to practice law in this state when providing counseling incidental to and in the course of providing legal counsel;

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RCW 18.19.040(1). The legislature also recognized the benefits of peer counseling and that the practice of peer counseling also is exempt from the training and certification requirements of Chapter 18.19 regulating counselors.

Nothing in this chapter may be construed to prohibit or restrict:

.....

(7) The practice of counseling by peer counselors who use their own experience to encourage and support people with similar conditions or activities related to the training of peer counselors;

RCW 18.19.040(7).

MRT is not a domestic violence treatment program. It is a program that allows the probation officer to act as a facilitator for peer to peer counseling. Despite the workbook being titled a "Domestic Violence Treatment Program," the actual program is in fact not what is contemplated in RCW 26.50.150, but is in fact peer to peer counseling run through the court, not the executive branch.

Sincerely,



Judge Rebecca C. Robertson
DMCJA President