

IN THE SUPREME COURT, STATE OF WYOMING

April Term, A.D. 2010

In the Matter of the Repeal of the Rules)
Governing Judicial Participation in)
Court Supervised Treatment Programs and the)
Adoption of the Revised Rules Governing)
Judicial Participation in Court Supervised)
Treatment Programs)

ORDER REPEALING THE EXISTING RULES GOVERNING JUDICIAL PARTICIPATION IN COURT SUPERVISED TREATMENT PROGRAMS AND ADOPTING REVISED RULES GOVERNING JUDICIAL PARTICIPATION IN COURT SUPERVISED TREATMENT PROGRAMS

In 2010, the Wyoming Legislature provided funding within the Wyoming Supreme Court budget for the payment of hourly magistrates participating in Court Supervised Treatment Programs. The Court finds, therefore, that the Rules Governing Judicial Participation in Court Supervised Treatment Programs should be amended to provide for the payment of hourly magistrates from the Court budget; it is therefore

ORDERED that the existing Rules Governing Judicial Participation in Court Supervised Treatment Programs be, and they hereby are, repealed and, further, that the revised Rules Governing Judicial Participation in Court Supervised Treatment Programs be, and they hereby are, adopted in the form attached hereto to be effective this date. This order and the revised rules shall be published in the advance sheets of the Pacific Reporter and in the Wyoming Court Rules Volume. This order and the revised rules shall also be made available online at the Wyoming Judicial Branch's website, <http://www.courts.state.wy.us>. The revised rules shall thereafter be spread at length upon the journal of this Court.

DATED this 21st day of April, 2010.

BY THE COURT:

BARTON R. VOIGT
Chief Justice

**RULES GOVERNING JUDICIAL PARTICIPATION IN COURT SUPERVISED
TREATMENT PROGRAMS**

Rule 1. Scope and purpose of rules.

These rules shall govern the conduct of judges who act as either a “referring judge” or a “participating judge” under the Court Supervised Treatment Programs Act.

Rule 2. Definitions.

(a) “Referring judge” means the district, juvenile, municipal, or circuit judge or circuit court magistrate who refers a substance offender or any other person to a court supervised treatment program.

(b) “Participating judge” means the district, juvenile, municipal, or circuit judge or circuit court magistrate who acts as part of a treatment team in a court supervised treatment program.

(c) “Participant” means a substance offender or any other person as provided in title 14 of the Wyoming Statutes who has been referred to and accepted into a court supervised treatment program.

(d) “Substance offender” means a person charged with a substance-related offense or an offense in which substance abuse is determined from the evidence to have been a significant factor in the commission of the offense.

Rule 3. Code of Judicial Conduct.

The Wyoming Code of Judicial Conduct, as revised or amended from time to time, shall govern the conduct of both referring judges and participating judges, except as otherwise specified herein.

Rule 4. Order of participation.

A referring judge may, as a condition of probation imposed in a sentencing proceeding or of a consent decree in a juvenile case, require a substance offender to participate in a court supervised treatment program, provided that said substance offender agrees to such participation and:

- (a) Has entered an admission, or a guilty or nolo contendere plea; or
- (b) Has entered a guilty plea pursuant to Wyo. Stat. Ann. § 7-13-301; or
- (c) Has signed a consent decree under title 14 of the Wyoming Statutes; or

(d) Is on parole under the provisions of Wyo. Stat. Ann. § 7-13-401 *et seq.*

Rule 5. Separation of judicial roles.

After a participating judge becomes a member of a participant's treatment team, the participating judge shall not perform any judicial duties in the criminal or juvenile case from which a participant was referred, or in any subsequent criminal or juvenile case that arises directly from the participant's conduct in the treatment program.

Rule 6. Prohibition on contractual relationships.

No judge shall be a signatory on any court supervised treatment program financial account, nor shall any judge or court or agency of the judicial branch enter into an employer-employee relationship with any treatment program employee, nor shall any judge or court or agency of the judicial branch enter into a contract with a non-judicial branch entity limiting or proscribing any judge's exercise of judicial discretion.

Rule 7. Professional advice.

No judge shall give psychological or substance abuse counseling advice to any participant or treatment team member.

Rule 8. Determining voluntariness of participation.

The referring judge, prior to obtaining any person's consent to participate in a treatment program, shall advise the person that the treatment program period may extend the period of probation beyond the maximum term of probation for the offense, and shall otherwise determine on the record that the person's consent to participate in the treatment program is knowing, intelligent, and voluntary.

Rule 9. Double jeopardy.

Jail sanctions imposed upon a participant for a treatment program violation shall be credited against any penalties imposed by the referring court on criminal charges for that same violation.

Rule 10. Due process.

A participant shall not be sanctioned with expulsion from the treatment program, incarceration or, in the case of a juvenile participant, detention, without (1) notice of the reasons for the proposed sanction, and (2) an opportunity to be heard on the matter by the participating judge; provided, however, that a participant may be incarcerated or detained for up to 72 hours for good cause found by a participating judge pending such hearing.

Rule 11. *Ex parte* communications.

Other than between treatment team members or as may occur in staffing sessions, the participating judge shall not engage in *ex parte* communications or contacts, and shall immediately report to the parties any unsolicited *ex parte* contacts. The participating judge shall not initiate factual or legal inquiries without the consent of all parties.

Rule 12. Burden of proof as to sanctions.

Before sanctions may be imposed by the participating judge pursuant to Wyo. Stat. Ann. § 7-13-1608, the State shall prove the participant's unsatisfactory performance by a preponderance of the evidence, unless the participant voluntarily admits an act sanctionable by incarceration or expulsion.

Rule 13. Personal involvement.

(a) Participating judges may attend and participate in treatment program functions, community events, and other out-of-court gatherings of a public nature.

(b) No participating judge shall enter into a relationship with a participant apart from that established by and confined to the treatment program.

Rule 14. Reporting criminal activity.

A participating judge has no obligation to report criminal activity by a participant that is disclosed during treatment program activities, nor does a participating judge have an obligation to report criminal activity or program violations observed or learned by the judge in an extra-judicial manner, except as may otherwise be required by law.

Rule 15. Fundraising efforts and activities.

No referring judge or participating judge shall participate in fundraising efforts or activities on behalf of a court supervised treatment program.

Rule 16. Confidentiality.

Personal and confidential information about participants learned by a participating judge shall be kept confidential by the participating judge, except as allowed by statute for the purposes of the treatment program.

Rule 17. Payment of magistrates.

Hourly circuit court magistrates shall not act as participating judges on a routine basis, but shall act as participating judges only at such times as a full-time judge or full-time equivalency magistrate is not available, unless the costs of said magistrate employed on a regular basis is absorbed in total by the circuit court budget.