

Commission on Specialized Dockets Guidance: Constitutional Rights of Participants

A specialized docket court shall ensure the constitutional rights of its participants and not engage in practices that infringe upon those rights.

A. Adult Specialized Dockets

1. Restrictions on participants as to geographical locations and associations: An adult specialized docket may make restrictions on the access or contact that participants have with certain geographic locations and certain persons or a class of persons, if said restrictions are reasonably related to the participant's rehabilitative needs.
2. Restrictions on participants as to consumption of various substances: An adult specialized docket may require participants to comply with the directives indicated for their prescribed medications, or refrain from the use of certain otherwise legal substances or medications, if said restrictions are reasonably related to the participant's rehabilitative needs.
3. Directives to participants as to the time, manner, place and frequency of random drug testing: An adult specialized docket may require participants to present themselves for drug testing at any time when requested by any authorized representative of the specialized docket treatment team. The participant shall comply with such request, so long as requests are reasonably related to the participant's rehabilitative needs.
4. Secular Alternatives: If an adult specialized docket requires participation in a 12-step program as part of the requirements of participation, it shall permit participants to participate in a secular alternative and should refrain from requiring attendance at any non-secular 12-step program.
5. Searches: An adult specialized docket may require participants to sign conditions of community control that include the waiver of the right against warrantless searches, as long as the participants knowingly, intelligently and voluntarily sign the conditions. An adult specialized docket may conduct searches of participants who are not on community control as long as such searches conform to all constitutional prerequisites.

6. Due Process: a. Termination Hearings An adult specialized docket shall not terminate participants unless provided notice of intent to terminate, a hearing, and representation by an attorney. Said participants shall have a commensurate level of rights as those required for community control revocation hearings. A participant may waive the right to a hearing, so long as the participant has had the right to consult with an attorney, and the waiver is made knowingly, intelligently and voluntarily. 2 b. Jail Sanctions An adult specialized docket shall not impose a jail sanction for non-compliance without providing notice, a hearing, and representation by an attorney. A participant may waive the right to a hearing, so long as the participant has had the right to consult with an attorney, and the waiver is made knowingly, intelligently and voluntarily. Participants do not have the right to contest the imposition of sanctions that do not impact liberty interests. Adjustments in treatment activities are not sanctions.

7. Right against Self Incrimination: An adult specialized docket may require participants to waive their right to remain silent and to not incriminate themselves regarding violations of the rules of the specialized docket program. An adult specialized docket court, however, shall not require the waiver of these rights in regard to pending criminal charges, and statements made by participants cannot be used as evidence in any criminal prosecution.

8. Indigency: An adult specialized docket shall address and consider the participants ability to pay fees and other financial obligations and shall make reasonable accommodations based upon each participant's financial ability.

9. Other Constitutional and Statutory Concerns: An adult specialized docket court shall comply with all constitutional and statutory rights of their participants. Any such rights that are permitted to be waived by said participants are to be done in a manner that ensures the substantive due process rights of the participant.