

INDIANA OFFICE OF COURT SERVICES

PROBLEM-SOLVING COURT PRACTICE GUIDELINES

Participation in AA/NA

The United States Constitution is premised on the separation of church and state.¹ Consequently, problem-solving courts must proceed cautiously when making referrals to religious-based services. Alcoholics Anonymous (AA) and Narcotics Anonymous (NA) have been repeatedly held to be religious-based programs because they are predicated on the existence of a higher power or a God.² Problem-solving courts may not order a participant to go to AA/NA if the participant has a religious objection to this activity.³ To avoid even the appearance of coercion, courts should offer secular program alternatives as well as AA/NA to all participants required to go to a self-help program as a condition of problem-solving court participation.

¹ U.S. Constitution, First Amendment, Establishment Clause: “Congress shall make no law respecting an establishment of religion, or prohibiting the full exercise thereof;...”

Agostini v. Felton, 505 U.S. 577, 587 (1997) (“It is beyond dispute that, at a minimum, the Constitution guarantees that government may not coerce anyone to support or participate in religion or its exercise.”)

² Griffin v. Coughlin, 673 N.E.2d 98 (N.Y. 1996), cert. denied, 519 U.S. 1054 (1997) (holding that conditioning desirable privilege – family visitation – on prisoner’s participation in program that incorporated Alcoholics Anonymous doctrine was unconstitutional because it violated the Establishment Clause.)

Kerr v. Farrey, 95 F.3d 472 (7th Cir. 1996) (holding that the prison violated the Establishment Clause by requiring attendance at Narcotics Anonymous meetings which used “God” in its treatment approach.)

³ Hanas v. Inner City Christian Outreach, 542 F. Supp. 2d 683 (E.D. Mich. 2008) (holding that the drug court program manager and the drug court consultant were liable for actions related to referral to faith based program, when they knew of participant’s objections while in the program, and when the program denied the participant the opportunity to practice his chosen faith – Catholicism.)

Inouye v. Kemna, 504 F.3d 705 (9th Cir. 2007) (concluding that parole officer had lost qualified immunity because he forced AA on Buddhist.)

Bausch v. Sumiec, 139 F. Supp. 2d 1029 (E.D. Wis. 2001) (an offender cannot be said to have freely chosen a religiously-oriented treatment program as an alternative to revocation unless a meaningful secular alternative is also offered.)

Source: [Constitutional and Other Legal Issues in Drug Court: A Webliography](#)

Hon. William G. Meyer (ret.)

Senior Judicial Fellow

National Drug Court Institute