

IN THE CIRCUIT COURT OF THE SEVENTEENTH JUDICIAL CIRCUIT
IN AND FOR BROWARD COUNTY, FLORIDA

Order Number 2009-92-CO

ADMINISTRATIVE ORDER AS TO
MISDEMEANOR DRUG COURT DIVISION

(a) Florida Rule of Judicial Administration 2.215(b)(3) states the chief judge shall “develop an administrative plan for the efficient and proper administration of all courts within that circuit.”

(b) §948.16(1), Fla. Stat., authorizes the chief judge to establish a drug court program to include programs as authorized by §397.334, Fla. Stat.

(c) In accordance with the authority vested in the chief judge by Florida Rule of Judicial Administration 2.215, it is ordered:

(1) Cases eligible for transfer to the misdemeanor drug court division are:

(a) defendants eligible for a pretrial substance abuse education and treatment intervention program as authorized by §948.16(1), Fla. Stat.¹, or

(b) defendants referred by another county criminal judge for drug court probation after sentencing².

(2) Entry into misdemeanor drug court is voluntary. The defendant upon entry into a pretrial substance abuse education and treatment intervention program shall sign an agreement setting forth the terms of the pretrial substance abuse education and treatment intervention program. If the defendant voluntarily enters misdemeanor drug court probation he or she shall sign a document listing the terms of probation.

¹ The defendant’s participation in a State Attorney pretrial drug diversion program will not exclude the transfer of the case from the State Attorney’s program to a court supervised pretrial substance abuse education and treatment intervention program. A defendant who was arrested and is prosecuted for a violent felony crime or sex felony crime is not eligible to enter misdemeanor drug court.

² If a case is transferred to drug court from another county criminal division for drug court probation and if the defendant is then charged with a violation of probation or arrested and prosecution commenced for a crime not set forth in §948.16(1), Fla. Stat., the case may be transferred back to the originally assigned county criminal division for proceedings with regard to the violation of probation or additionally filed misdemeanor charges after hearing before the judge assigned to the misdemeanor drug court division.

(3) A defendant is preliminarily qualified to participate in a pretrial substance abuse education and treatment intervention program or probation if the charged offense is set forth at §948.16(1), Fla. Stat.,³ or other charges agreed to by the State Attorney.

(4) An eligible defendant may seek to transfer his or her case to misdemeanor drug court by filing a written motion or by ore tenus motion and having the matter heard either by the originally assigned county criminal division judge or misdemeanor drug court division judge. Additionally a judge may sua sponte order the transfer of a case to the misdemeanor drug court division. The State, defendant, and defense counsel, if any, shall be present at the hearing and may present evidence that supports transfer of the case to the misdemeanor drug court division⁴.

(5) The judge assigned to the misdemeanor drug court division at the defendant's drug court arraignment or upon transfer of a case to the misdemeanor drug court division shall make the final determination of the defendant's eligibility for voluntary participation in the misdemeanor pretrial substance abuse education and treatment intervention program or probation. The State Attorney shall advise the Court if the defendant is eligible to participate in the available misdemeanor drug court programs.

(6) Any defendant electing to participate in misdemeanor drug court must:

- (a) sign an agreement setting forth all terms and conditions of participation;
- (b) attend a pretrial substance abuse education and treatment intervention program or probation substance abuse education and treatment intervention program for a minimum of six (6) months;
- (c) substantially comply with all terms of probation or the terms of the pretrial substance abuse education and treatment intervention program (which shall include all approved alternative programs);
- (d) substantially comply with all court orders.

³ If the State Attorney objects to a case being transferred to drug court based upon allegations the defendant was dealing or selling the controlled substance which is the basis for the arrest, he or she shall advise the court. If the objection is sustained the defendant's case shall be transferred to the originally assigned county criminal division from drug court or with consent of the defendant the misdemeanor drug court judge may proceed with final disposition of the case.

⁴ If the defendant requests a hearing before the judge assigned to the misdemeanor drug court division, the Clerk of County Court shall provide a notice to the State Attorney, defense counsel, and defendant of the date and time for a hearing. The judge assigned to the misdemeanor drug court division shall be responsible for the entry of a transfer order if the case is accepted into the misdemeanor drug court division.

(7) At the six (6) month anniversary of entry into a pretrial substance abuse education and treatment intervention program or probation the court shall conduct a status conference and determine if:

- (a) The defendant successfully completed all terms and conditions of the pretrial substance abuse education and treatment intervention program and/or probation.
- (b) The defendant is successfully finishing all terms and conditions of the pretrial substance abuse education and treatment intervention program and/or probation and will complete same within the next six (6) months.
- (c) The defendant did not successfully complete all terms and conditions of the pretrial substance abuse education and treatment intervention program and/or probation and will not complete same within the next six (6) months. The court may determine if there are extraordinary circumstances and order continued treatment.

(8) A defendant transferred to misdemeanor drug court may be terminated if:

- (a) there is an outstanding capias for a period of thirty (30) days; or
- (b) new criminal charge(s) or violation of probation is/are filed;
- (c) he or she is no longer participating in the pretrial substance abuse education and treatment intervention program or other approved program; or
- (d) he or she poses a danger to public safety; or
- (e) he or she requests a trial.

(9) A defendant shall be terminated if he or she is charged with a violent felony crime or felony sex crime.

(10) This Administrative Order vacates and supersedes Administrative Order VI-06-I-2.

DONE AND ORDERED in chambers at Fort Lauderdale, Broward County, Florida on August 5, 2009.

s/Victor Tobin
Victor Tobin, Chief Judge