

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

**CONTRACT FOR PARTICIPATION IN THE
ALTERNATIVE TREATMENT COURT (ATC)**

Name: _____

Docket Number: _____

Offense(s): _____

Introduction:

You have been invited to participate in the Alternative Treatment Court (ATC) in the United States District Court for the Southern District of West Virginia. Contingent upon approval by the court and your agreement to participate in the ATC and abide by the governing terms of the ATC as set forth herein, you may participate in the ATC to enable intensive treatment, sanction alternatives, and incentives to effectively address the substance abuse or other issues that appear to be contributing causes for your criminal conduct. Participation is entirely voluntary but will require you to enter guilty plea(s) to one or more of the criminal charges currently pending against you in the case referenced above. The Originating District Judge will need to make a final determination whether to accept your guilty plea(s) and plea agreement before you can begin participation in the ATC. If the Originating District Judge agrees to accept your guilty plea(s) and plea agreement, in doing so approving your participation, and you thereafter successfully complete the ATC, then, as specified in the plea agreement pursuant to which you enter your guilty plea(s):

those guilty plea(s) will be vacated and the criminal charges against you in the case referenced above will be dismissed with prejudice (Track One);

or

you will be placed on a term of probation (Track Two).

ATC Basics:

If the Originating District Judge accepts your guilty plea(s) and plea agreement, and you are approved to participate in the ATC, you will be asked to sign this Contract and agree to its terms.

You will participate for at least 12 months, and generally no more than 18 months, but you may be required to participate for up to 24 months. Your attorney in your underlying criminal case will represent you in connection with the decision-making process concerning entry into the ATC, at the plea of guilty hearing, at a voluntary termination, following involuntary termination, and at the sentencing hearing or dismissal of the charges.

If the Originating District Judge accepts your guilty plea(s) and plea agreement, it will constitute final approval for your participation in the ATC, which will include a period of supervision by an ATC U.S. Probation Officer (USPO). You will agree to participate in a drug and alcohol evaluation and mental health evaluation, if deemed necessary by the USPO, and in any and all treatment and testing recommended, and may be required to agree to pay restitution. In addition to the requirement of actively engaging in any treatment and testing that may be recommended for substance abuse issues, you may also be required to participate in programs designed to address underlying causes of your criminal activity and to comply with all conditions set forth in the post-guilty plea agreement pursuant to which you entered your guilty plea, and by other conditions detailed in this agreement.

It is essential that the conduct and behavior of ATC participants and graduates reflect the goals of the ATC and foster a positive reputation for the ATC. As such, you must adhere to conditions that ensure that you are engaged in legal conduct, conduct which promotes positive involvement in the community, and conduct that reflects positively on the ATC. These conditions include at a minimum:

1. You must not commit another federal, state or local crime.
2. You must not unlawfully possess a controlled substance, and you must refrain from any unlawful use of a controlled substance.
3. After initially reporting to the probation office, you will receive instructions from the court or the probation officer about how and when you must report to the probation officer, and you must report to the probation officer as instructed.
4. You must not knowingly leave the federal judicial district where you are authorized to reside without first getting permission from the court or the probation officer.
5. You must answer truthfully the questions asked by your probation officer.
6. You must live at a place approved by the probation officer. If you plan to change where you live or anything about your living arrangements (such as the people you live with), you must notify the probation officer at least 10 days before the change. If notifying the probation officer in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
7. You must allow the probation officer to visit you at any time at your home or elsewhere, and you must permit the probation officer to take any items prohibited by the conditions of our supervision that he or she observes in plain view.
8. You must work full time (at least 30 hours a week) at a lawful type of employment, unless the probation officer excuses you from doing so. If you do not have full-time employment, you must try to find full-time employment unless the probation officer excuses you from doing so. If you plan to change where you work or anything about your work (such as your position or your job responsibilities), you must notify the probation officer at least 10 days

before the change. If notifying the probation officer at least 10 days in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.

9. You must not communicate or interact with someone you know is engaged in criminal activity. If you know someone has been convicted of a felony, you must not knowingly communicate or interact with that person without first getting the permission of the probation officer.
10. If you are arrested or questioned by a law enforcement officer, you must notify the probation officer within 72 hours.
11. You must not own, possess, or have access to a firearm, ammunition, destructive device, or dangerous weapon (i.e., anything that was designed, or was modified for, the specific purpose of causing bodily injury or death to another person such as nunchakus or tasers).
12. You must not act or make any agreement with a law enforcement agency to act as a confidential human source or informant without first getting the permission of the court.
13. If the probation officer determines that you pose a risk to another person (including an organization), the probation officer may require you to notify the person about the risk, and you must comply with that instruction. The probation officer may contact the person and confirm that you have notified the person about the risk.
14. You must follow the instructions of the probation officer related to the conditions of supervision.
15. The defendant shall not purchase, possess, or consume any organic or synthetic intoxicants, including bath salts synthetic cannabinoids, or other designer stimulants.
16. You must submit your person, property, and/or any device or entity used to store your property, house, residence, vehicle, papers, computers (as defined in 18 U.S.C. § 1030(e)(1)), other electronic communications or data storage devices or media, or office, to a search conducted by a USPO. You must warn any other occupants that the premises may be subject to searches pursuant to this condition. A search may be conducted under this provision only when reasonable suspicion, as determined by the ATC Team, exists that you have violated a condition of supervision and that the areas to be searched contain evidence of this violation. Any search must be conducted at a reasonable time and in a reasonable manner, and is contingent upon approval by the ATC Team.

An Assistant Federal Public Defender (AFPD) and an Assistant United States Attorney (AUSA) will be assigned to the ATC Team. Both the AFPD and AUSA will work with the ATC USPO to provide additional support and encouragement for your success in the ATC. Communications between the AFPD and you regarding your participation in the ATC are not privileged, and your participation in the ATC does not create an attorney-client relationship with the FPDO or any of its employees.

ATC Appearances:

You will be required to appear before the ATC Judicial Officer to evaluate your progress. The USPO, AUSA and AFPD will be present. It is possible the treatment and/or other ATC providers may also be present. Oral and/or written progress reports from the USPO will be provided to the ATC Judicial Officer, the AUSA, and the AFPD. Those reports will describe both successes and problems you have experienced.

ATC Treatment and Counseling Programs:

An important part of the ATC will be your participation in substance abuse treatment and counseling programs and/or other programs addressing underlying causes of criminal activity as determined necessary by the USPO and the other members of the ATC Team. You may be expected to participate in Moral Reconciliation Therapy (MRT) and, if so, you must complete that ATC in a timely manner in order to graduate from the ATC. Treatment and other ATC providers will be expected to share information regarding your participation and progress in any treatment and counseling programs with all of the members of the ATC Team, including the ATC Judicial Officer, USPO, AUSA, and AFPD. Treatment and other program providers may also be present at ATC appearances, at which they will be expected to discuss your participation and progress with all of the members of the ATC Team. To enable treatment and other program providers to freely share information regarding your participation and progress in substance abuse treatment and counseling programs and other programs, you will be required to execute a waiver of confidentiality.

Limited Use of Statements Made During ATC Appearances:

An important part of the ATC is your complete honesty during your ATC appearances. To encourage your honesty, the USAO has agreed to the following:

(A) Except as otherwise provided in subparagraph (B) below, in any criminal prosecution that may be brought against you by the USAO, the USAO will not offer in evidence in its case-in-chief any statements you make or any documents or other information you provide during your ATC appearances (collectively ATC statements).

(B) Notwithstanding the USAO's agreement set forth in subparagraph (A) above, the USAO may use:

(i) information derived directly or indirectly from ATC statements for the purpose of obtaining and pursuing leads to other evidence, which evidence may be used for any purpose, including any criminal prosecution of you; and

(ii) ATC statements and all evidence obtained directly or indirectly from ATC statements for the purpose of cross-examination should you testify, or to refute or counter at any stage of any proceeding (including during the USAO's case-in-chief in any criminal prosecution) any evidence, argument, statement or representation offered by or on your behalf in connection with that proceeding.

The USAO's agreement in subparagraph (A) above is limited to the USAO and cannot bind any other federal, state, local, or foreign prosecuting, enforcement, administrative, or regulatory authorities. Moreover, the USAO's agreement in subparagraph (A) above is limited to ATC statements and does not apply to any statements made or documents or other information provided by you at any other time, whether oral, written, or recorded.

ATC Supervision Violations and Sanctions:

ATC supervision violations and sanctions will ordinarily be handled on the regularly scheduled ATC calendar. The ATC Judicial Officer, however, can schedule an appearance at any time. Sanctions and modifications regarding treatment and other programs may also be handled on an expedited basis with the consent of the parties and the ATC Judicial Officer or by the USPO alone under certain circumstances, as described herein.

Noncompliant behavior by you may result in sanctions. The range of possible sanctions has been drafted broadly to assure that some level of sanction is available for every type of violation. Factors that will influence the type of sanction employed include: the seriousness of the violation, the number of violations, and the amount of time you have remained compliant, either before a first violation, or between violations. An important factor will be whether you voluntarily disclose the violation. Dishonesty on your part will result in enhanced sanctions. Depending on the factors referenced above, any of the sanctions listed below, including termination from the ATC, is available. As a general rule, repeat violations will result in more serious sanctions being applied.

Sanctions may include, but are not limited to:

- Judicial reprimand during ATC proceedings in front of other ATC participants;
- Daily reporting to the USPO;
- Enhanced counseling sessions, including inpatient if appropriate, and/or drug testing;
- Enhanced court sessions;
- An order to participate in community service as part of the ATC;
- An order to complete a term of home confinement, with conditions that may include standard location monitoring or location monitoring with GPS;
- An order to submit a written assignment;
- An order to spend time in jail; and
- Termination from the ATC.

The list of sanctions is not necessarily in order of severity. In certain instances, sanctions may be ordered more than once during the course of the ATC.

If you admit to the violation, you may be permitted to complete the sanction and remain in the ATC. When expedited action is appropriate and the parties agree, a sanction or adjustment in treatment can be imposed through a modification without an appearance before the ATC Judicial Officer. The USPO's report at the next ATC appearance will inform the ATC Judicial Officer whether you properly completed the sanction ordered at the last appearance. Your failure to complete ordered sanctions may result in added sanctions, or termination from the ATC.

The USPO need not wait until your scheduled ATC appearance to address problems in supervision. If you fail to abide by directions of the USPO, or if the USPO believes that you have committed other violations of your supervision, the USPO will have discretion to contact you and directly address the violation; arrive at a proposed method of addressing the violation through discussions with the ATC Judicial Officer, AUSA, and AFPD; or request the issuance of a warrant for your arrest. The ATC Judicial Officer alone, under certain circumstances, as determined by the USPO on a case-by-case basis, can impose sanctions such as daily reporting, enhanced counseling including inpatient treatment, enhanced drug testing, community service, and written assignments, etc.

Termination from the ATC:

If you fail to enter a guilty plea before the Originating District Judge, or the Originating District Judge does not accept your plea agreement, your case will proceed accordingly.

You may be involuntarily terminated from the ATC if you fail to participate in treatment or other programs, or if you violate the terms of the ATC, including failure to make ATC court appearances, failure to participate actively in the ATC, conduct that reflects negatively on the ATC, repeated drug use, or a new violation of any local, state or federal law. Final decisions regarding involuntary termination will be made by the Originating District Judge. A decision regarding termination is not subject to appeal. If you are involuntarily terminated from the ATC, you will return to regular pretrial supervision, or possibly be detained following a hearing before the Originating District Judge at which you will be afforded representation by your original counsel. In imposing sentence, the Originating District Judge will not be bound to provide the benefits that your plea agreement would have required had you successfully completed the ATC.

You may at any time voluntarily discontinue your participation in the ATC and have your criminal case set for sentencing before the Originating District Judge. If that occurs, the Originating District Judge will not be bound to provide the benefits that your plea agreement would have required had you successfully completed the ATC.

Whether your termination from the ATC is voluntary or involuntary, the Originating District Judge will be aware of, and can consider in imposing sentence, all conduct that has taken place during your participation in the ATC, including successes, failures, statements made and sanctions that occurred during your participation in the ATC.

Graduation and Benefits:

Your successful completion of the ATC will be determined by the Originating District Judge after consulting with the members of the ATC Team. Successful completion is subject to the minimum requirements that you complete any required treatment program and/or Moral Reconciliation Therapy if applicable. If you are determined to have a substance abuse issue, you must also have demonstrated at least six months of continuous sobriety. Upon successful completion of the ATC, you will receive the benefits specified in your plea agreement, which will include:

being permitted to withdraw your previously-entered guilty plea(s), with the criminal charges previously pending at the time of your guilty plea(s) dismissed with prejudice (Track One);

or

you will be placed on a term of probation (Track Two).

Finally, you agree to maintain contact with the USPO or researchers for five years after successfully completing the ATC and keep your personal contact information updated and accurate for the purposes of tracking your success. You further agree that the USPO or researchers may run record checks on you during the five-year period after successful completion of the ATC. In addition, you must agree to be interviewed by an ATC representative every four months for one year following your graduation from the ATC so that the ATC Team can keep abreast of your progress.

Agreement to Participate:

Participant:

I, _____, have read, or someone has read to me in the language I best understand, this contract and the plea agreement that would be a condition of my participation in the ATC. I have discussed this contract and the plea agreement with my attorney and I understand its terms. I have also discussed the ATC with my attorney, and I understand the ATC. I voluntarily agree to participate in the ATC subject to the terms set forth in this contract and the plea agreement. I understand I can revoke my voluntary participation in the ATC at any time and that, if I do so, my criminal case will be set for sentencing before the Originating District Judge without any obligation to provide me the benefits set forth in the plea agreement for successful completion of the ATC.

Signature

Date

Attorney of Record

Date

ATC Assistant Federal Public Defender:

I, _____, the Assistant Federal Public Defender have discussed the ATC, the plea agreement that would be a condition of participation in the ATC, and this contract with the participant and the participant's attorney in the underlying criminal matter. I believe that the participant understands the ATC, the terms of the plea agreement that would be a condition of participation in the ATC, and the terms of this contract, and that the participant's agreement to participate in the ATC subject to the terms of this contract and the plea agreement that would be a condition of participation in the ATC is knowingly and voluntarily made.

Signature

Date

ATC Assistant United States Attorney:

I, _____, the Assistant United States Attorney representing the United States Attorney's Office for the Southern District of West Virginia (USAO) in the ATC, agree to the terms of this contract on behalf of the USAO and accept the above named participant into the ATC subject to the terms of this contract and the plea agreement that is a condition of the participant's participation in the ATC.

Signature

Date

ATC U.S. Probation Officer:

I, _____, the U.S. Probation Officer assigned to the ATC, accept the above named participant into the ATC subject to the terms of this contract and the plea agreement that is a condition of the participant's participation in the ATC.

Signature

Date

ATC Judicial Officer:

Subject to the Originating District Judge's acceptance of the participant's guilty plea(s) and plea agreement, the court hereby accepts the above-named participant into the ATC subject to the terms of this contract and the plea agreement that is a condition of the participant's participation in the ATC.

Signature

Date