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LEGAL SERVICES OF NORTHWEST JERSEY

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August 13, 2021

The Honorable Glenn A. Grant, J.A.D.
Acting Administrative Director of the Courts
Comments on the Future of Court Operations
Hughes Justice Complex; P.O. Box 037
Trenton, NJ 08625-0037

Re: Comments on the Future of Court Operations

Dear Judge Grant:

This office represents Morris County adult residents who have been involuntarily committed to psychiatric treatment. We respectfully submit these comments in response to the Notice to the Bar and Public dated July 16, 2021. In particular, this submission is intended to address our concerns with point 6.c. of the proposed protocol, which would require remote hearings for "involuntary civil commitment proceedings, absent an application for an in-person hearing based on the individual circumstances of the case."

Legal Services of Northwest Jersey's relevant civil commitment experience

Legal Services of Northwest Jersey (LSNWJ), and one of its predecessor programs – Morris County Legal Aid Society – have represented Morris County residents facing involuntary commitment for over 50 years. LSNWJ represents several hundred civil commitment clients each year at hospitals throughout the state of New Jersey. The issues and incidents referenced below reflect the combined experience of 679 involuntarily committed clients since in-person proceedings were first paused by Order of this Court, dated March 27, 2020.

Issues LSNWJ's clients have experienced since remote hearings were first initiated

Many issues have arisen with regard to remote civil commitment hearings over the past 16 months. They vary in scope and severity, but their impact has been clear: remote civil commitment hearings impair 1) litigants' faith in the process and 2) the Court's ability to appropriately evaluate the evidence presented.

While some hospitals have navigated the transition to remote hearings better than others, many hospitals remain unable to consistently provide the minimum necessary supports to the patients, court, and counsel to enable hearings to run smoothly. Sixteen months into this transition, LSNWJ is still observing numerous deficiencies at multiple hospitals.



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For instance, in preparing for remote hearings, LSNWJ attorneys have variously 1) not received required court reports, 2) received incomplete or illegible reports, 3) received reports for the wrong clients, and 4) received reports that did not reflect the doctor's recommendation at the time of hearing. Similarly, hospitals have occasionally failed to notify court and counsel that a given client requires language interpretation until the day of court—requiring that the client's hearing be adjourned and delaying the client's potential discharge from the facility. These occurrences are much more frequent now than when hearings were held in-person.

The hearings themselves impair both client confidence and court access to indispensable information. Several hospitals stage the State's witnesses (doctors, social workers, etc.) off-screen. This prevents the Court from adequately evaluating witness credibility. Equally troubling, the Court cannot determine whether a witness has actual personal knowledge of the patient or is simply reading from a chart, or being whispered to by a party not called. These issues have occurred during hearings at which LSNWJ attorneys were present. This practice also raises major privacy concerns as to who may be present, but off-screen, during these *in camera* proceedings.

LSNWJ and our clients have experienced each of the following:

- Hearing participants, including hospitals, losing power and/or internet connectivity at their locations, causing lengthy delays to the proceedings. At some hospitals, these delays occur on each hearing date;
- Hearings that began at 10:00 a.m. routinely going until 6:00 p.m. – for the reasons previously stated – forcing patients to wait up to 8 hours to be heard, without meaningful opportunity for food, rest, or bathroom breaks;
- Audio issues, including dropped sentences, words, or syllables; echoes; pet animals causing background noise; low smoke detector batteries chirping during the proceedings; and various participants unable to navigate the “mute” function of the remote hearing software, resulting in background noises that drown out parts of the proceedings;
- Finally, due to an equipment issue, one hospital routinely set up hearings with a laptop balanced on its side, such that all hospital witnesses were sideways for the duration of the day's proceedings. This orientation persisted for several months.

Naturally, some of these issues are beyond the ability of the courts and hospitals to prevent. Most hospital staff should be commended for their efforts under genuinely difficult circumstances, and the goal of this section is not to lay blame for the deficits observed in past hearings. The goal is to highlight many of the intractable problems endemic to remote hearings, which adversely impact proceedings for some of the most vulnerable litigants before the Court. Given that many of these issues are not correctible without sweeping changes to the regulations governing psychiatric hospitals and staff, it is respectfully submitted that remote civil commitment hearings do not adequately serve the involuntarily committed.

Why these issues are not addressed by the option to apply for an in-person hearing

The proposed protocol provides for in-person civil commitment hearings where an application for such hearing is made “based on the individual circumstances of the case.” As a practical matter, this option fails to address the needs of the patients, for several reasons.

First, this proposed option does not allow sufficient time for the application to be made. Most often, LSNWJ is able to meet with clients 1-2 days before a hearing takes place. However, clients are often added to the court's calendar shortly before the hearings begin. While this is not ideal, LSNWJ generally prefers to have clients heard as soon as possible when they are seeking a discharge—even where adequate notice of hearing has not been provided. Under the best of circumstances, it would be impractical to meet with a client, evaluate the client, determine that an in-person hearing is necessary, and make the appropriate application to the court prior to the

scheduled hearing. Furthermore, under these time constraints, such an application would likely result in a delay of the client's hearing. Given the unenviable choice of an insufficient hearing now or a sufficient hearing later, many clients would forgo the due process to which they are otherwise entitled in order to be heard as soon as possible.

Second, this option places the burden on the wrong party. In civil commitment proceedings, the State bears the burden of proof and the burden of production. To place the burden of showing the need for an in-person hearing on the client essentially reverses the burden of production. Indeed, the reverse should be true: if the State believes that a given commitment client *does not* require an in-person hearing, that showing should be made by the State.

Conclusion and Recommendation

Every party to the civil commitment hearings that have taken place since March 2020 has done an admirable job. The emergence of COVID-19 and its attendant complications was an unexpected challenge that continues to present new and complex barriers to the administration of justice.

When the pandemic recedes and in-person hearings are again safe, civil commitment hearings should be held in-person as a matter of course. If a remote option remains available, it should be the State's burden to show that an in-person hearing is *not* necessary. Additionally, as remote hearings take place at psychiatric hospitals, the hospitals must be held to clear, uniform standards with regard to providing evidence in advance of the hearings, securing reliable internet access, and ensuring visibility of witnesses.

Respectfully Submitted,

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