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August 16, 2021

SENT VIA EMAIL: Comments.Mailbox@njcourts.gov

The Honorable Glenn A. Grant, J.A.D.
Acting Administrative Director of the Courts
Comments on the Future of Court Operations
Hughes Justice Complex
Post Office Box 037
Trenton, New Jersey 08625-0037

Re: Future of Court Operations-Remote and In-Person Proceedings Comment

Dear Judge Grant:

In accordance with the Notice to the Bar dated July 16, 2021, the New Jersey Department of Health, ("NJ DOH") Division of Behavioral Health Services is submitting this written comment in support of continued remote hearings for both general civil commitment hearings under N.J.S.A. 30:27.1 et. seq. and criminal commitment hearings under N.J.S.A. 2C:4-4 et seq and N.J.S.A. 2C:8 et. seq. for its state psychiatric hospitals; namely, Ancora Psychiatric Hospital in Camden County, Ann Klein Forensic Center in Mercer County, Greystone Park Psychiatric Hospital in Morris County, and Trenton Psychiatric Hospital in Mercer County.

In March 2020, in response to the growing public health concerns because of the COVID-19 pandemic and the declaration of a state of emergency in New Jersey, the state psychiatric hospitals successfully transitioned to virtual proceedings in lieu of in-person appearances. These measures were intended to minimize in-person contact and adhere to crucial social distancing

measures recommended the NJ DOH and Center for Disease Control (“CDC”)¹; however, these measures also had significant, yet unexpected, benefits on the hospitals and the patients they serve.

The state psychiatric hospitals have seen that virtual hearings: (1) promote a safe environment for patient, responsible clinical staff and the community at large, (2) allow for reliable due process for individuals who have civil commitment hearings, competency hearings (IST) and review hearings for those who are acquitted of criminal offenses by reason of insanity (NGRI hearings); and (3) reduce the costs of transportation of staff and mental health patients to the court house for hearings. In short, virtual hearings have resulted in these important hearings being conducted in a safer, more timely and effective manner while at the same time allowing the court to make credibility determinations and reasoned rulings on each case.²

Currently, all state hospitals have successfully transitioned civil commitment, NGRI, competency, municipal, and family court matters to virtual court hearings. Since January 2021, the hospitals have successfully conducted over 1,000 virtual hearings. More importantly, due to the transition to virtual hearings, the hospitals have seen a substantial increase in the number of patients who appear for their court proceedings. Patients who have never appeared for court, started to appear to court when the proceedings went virtual. When court was in-person, a significant number of patients refused to attend their hearings for various reasons, including, but not limited to, the patients not wanting to miss critical clinical activities that were occurring on the unit while

¹ See, Executive Order 103, Governor Murphy Declares a State of Emergency and Public Health Emergency, March 9, 2020. See also, Notice to the Bar, COVID-19 Coronavirus – Status of Court Operations; Immediate and Upcoming Plans, March 12, 2020.

²For purposes of this submission, NJ DOH made a national inquiry of other jurisdictions about their use of virtual hearings. NJ DOH heard from four states that indicated virtual hearings are their preferred way of conducting civil commitment and NGRI review hearings.

It should also be noted that remote hearings for civil commitment and Not Guilty By Reason of Insanity (NGRI) purposes is not a novel practice. In fact, in United States v. Baker, 45 F.3d 837 (4th Cir. 1995) the Eastern District of North Carolina found that videoconferencing commitment hearings satisfied constitutional due process. Additionally, in the Baker case, the court also acknowledged “the safety concerns inherent in transporting a potential mentally unstable person to a courthouse, with respect to the respondent and other parties, are substantially alleviated by the use of the video conferencing procedure.” Id. at 847.

In like fashion, the New Jersey District Court in the matter of the United States of America v. Moruzin, 2007 U.S. Dist. LEXIS 73434, permitted videoconferencing for expert testimony for Sell hearings. A Sell hearing determines whether Corrections can administer antipsychotic medication on an involuntary basis to attempt to restore the defendant’s mental competence to stand trial. See Sell v. United States, 539 U.S. 166 (2003). The Moruzin court in allowing the videoconferencing of the expert witness reasoned that “...[A] Sell hearing, while arising in a criminal context, is not a trial. Its purpose is not to determine innocence, guilt, or punishment, but rather to determine whether the serious step of involuntary medication should be undertaken to treat a mentally incompetent felony defendants with a goal of restoring competency to assist in defense and stand trial...”

court was in session. For example, at Ancora Psychiatric Hospital the virtual court proceedings are essentially brought to the patients on the patients' units. Patients are free to continue with their daily routine until their matter is ready to be heard by the court. The patients are no longer waiting around or missing essential treatment/programming, as a result, the hospital has seen a reduction of psychiatric codes being called during court hearings as the patients are less agitated. Moreover, if the patient clinically decompensates during the virtual hearing, since the hearings are being conducted on the unit, more clinical support staff are readily available to quickly intervene.

Opponents of virtual hearings will most likely argue that some of the patients, due to the nature of their mental illness, cannot meaningfully participate in a hearing that involves videos/monitors. However, the July 16, 2021 Notice to the Bar specifically provides that judges, in all matters, "may determine to proceed in person where the participants have demonstrated an inability to proceed in a remote format, or in other exceptional circumstances." Notice to the Bar, Future of Court Operations- Remote and In-Person Proceedings- Publication for Comment, at 2, Section 3. Thus, if a patient cannot participate due to the nature of their impairment, the patient or the patient's representative can make a request for an in-person hearing and the judge, can decide whether the matter will be proceeding in-person or virtually. It should also be noted, that since virtual hearings have been instituted, the hospitals have not received requests for an in-person hearings from its patient population; however, should a request ever be made, or the clinical team determines that the virtual court limits a specific patient's participation in court, the hospital would timely communicate the patients' request or the team's concerns to the court; at which point, the judge and the parties can come to a decision regarding the need for an in-person hearing.

Opponents of virtual hearings may also argue that due to the venerable nature of civilly committed patients, the physical presence of the court participants, including the judge, are necessary. See generally, Doe v. State, 217 So. 3d 1020, (Fla. 2017). This argument fails however, as the hospitals have successfully conducted over a 1,000 virtual hearings since March 2020 and have not received any reports that the virtual hearings caused "patient confusion about the proceeding, discourage[d] participation, cause[d] exacerbation of symptoms..." or caused a disruption in the "patient's willingness to accept treatment once committed." Id. at 1027. As previously stated, the opposite has been proven to be true: there has been an increase in patient

participation in court process that has been recognized by all court participants.³ Of note, across all state psychiatric hospitals, including Ann Klein Forensic Center, 1186 patients have been successfully treated and discharged since virtual hearings were instituted. Therefore, establishing that virtual hearings have not disrupted the continuity of patient care or effected the hospitals' ability to timely and efficiently discharge patients that no longer meet the civil commitment standard (dangerous to self, others, or property as a result of a mental illness and no lesser restrictive alternative is available). See, N.J.S.A. 30:4-27.2. Unlike the issue in Doe v. State, where a singular judge initiated an ad hoc procedure for virtual hearings via email; the current process has been thoroughly vetted by all court participants; has been successfully used for over a year; and has an established procedure that has been clearly delineated by the judiciary; which provides an option for patients or their representatives to proceed with an in-person hearing should a situation so requires.

NJ DOH acknowledges that its state psychiatric hospital patient population has specific procedural due process safeguards at their hearings. These rights include: (a) the right to be represented by counsel or, if indigent, by appointed counsel; (b) the right to be present at the court hearing unless the court determines that because of the person's conduct at the court hearing the proceeding cannot reasonably continue while the person is present; (c) the right to present evidence; (d) the right to cross examine witnesses; and (e) The right to a hearing in camera. See, N.J.S.A. 30:4-27.14. Since its institution, virtual hearings have not threatened any of these safeguards. Patients continue to meet with their assigned counsel, sometimes even during the scheduled hearing. The patients are not only present in virtual court but actively participate in their hearings. The hospitals provide the court reports and other accompanying evidence to all parties one business day prior to the scheduled court hearing as required by Court Rule 4:74-7(e). There may be an exceptional circumstance in which a document is to be introduced at the hearing itself. In that situation, all that is required is a procedure for the prompt exchange of documents between the judge, the attorneys and the witness (if necessary); with modern technology, this exchange can be easily be accomplished via a quick email. Lastly, if patients request an in-camera review their matter, the court can remove also remove unnecessary participants from the virtual hearing with a simple tap of a button.

³ Hospital personnel were in attendance when the Office of the Public Defender and County Counsel informed a civil commitment court judge that they too have seen an increased in patient court attendance since the proceedings went virtual.

There is an operational benefit to continue remote hearings for NGRI and IST matters. Similar to civil commitment proceedings, NGRI and IST patients are more inclined to appear in court virtually. There has been a significant reduction in the amount of patients that refuse to attend court. When NGRI and IST hearings were in-person, the patients would often be driven several hours to their hearing to wait around in a jail cell for several more hours, for a hearing that often times, took less than an hour. Virtual hearings eliminated the commute and the amount of time the patients waited around at the courthouse. Patients can now continue with their daily routine on the hospital unit and participate with necessary treatment until the patient is ready to be heard by the court. Similarly, in-person hearings required that the psychiatrists to travel to remote geographical locations and therefore, were away from the hospital for the entire day, as many of the courthouses are several hours (one-way) from the doctor's assigned hospital. Generally, one psychiatrist is responsible for the care and safety of twenty (20) to twenty-five (25) patients. When the doctor is away from the hospital, it impacts the continuity of care, in various ways, including but not limited to, the treating doctor's absence may make it more difficult for the covering doctor to mitigate violent incidents; or the treating doctor's absence could lead to misinterpretation in patient care issues. Virtual hearings allow the expert witnesses to remain on hospital grounds and be available to all their patients until the scheduled matter is ready to be heard. When the matter is ready, the psychiatrists can simply log on to their office computer and appear as the expert. In this capacity, the parties are still able to cross-examine the witness and the court is still able to make credibility determinations. When the doctor's court appearance is no longer necessary, the doctor can quickly return to patient care and other hospital duties. In short, since doctors now remain on hospital grounds, it makes for better continuity of patient care and a safer treatment environment for all of the doctor's patients.⁴

⁴ There is a cost benefit of conducting virtual hearings. The hospitals have reduced the number of overtime hours incurred as a result of assigning additional staff for in-person civil commitment court. While court was in-person, the hospital needed at least five escort staff in the building where court was held to ensure patient safety and ensure that the patients were ready to be heard. For hospitals like Ancora and Trenton Psychiatric hospitals, two additional staff were needed to drive from building to building to gather the patients and escort the patients to court. All hospital staff that are assigned for court purposes are pulled from various units in the hospital and therefore, led to a reduction in the amount of oversight that hospitals had on the units. Moreover, the county adjuster's office no longer needed to provide a sheriff officer for each civil commitment proceeding. Similarly, for KROL and IST matters, the hospitals no longer need to enlist outside agencies, like the Human Services Police Department or various Sherriff Departments to transport the patients to their hearings throughout New Jersey; as oftentimes, "when mentally ill patients are transported to[court], they are treated via the same process and procedures used for criminal inmates." Doe v. State, 217 So. 3d 1020, 1027 (Fla. 2017).

For all other court proceedings, the benefit of virtual court has a similar effect. More patients are informing the hospital of their off-site court matters and are appearing for their scheduled court dates. It is important that the patients handle these forensic matters while hospitalized as the patients' non-appearance could have a detrimental effect when the patient is released into the community. For example, if the court issues a failure to appear, a bench warrant is usually issued; therefore, when the patient is released from the hospital, they are likely to be arrested. The patient's arrest can not only have a detrimental effect on their community residential placement, but it can also lead to the patient missing necessary mental health appointments and medication administration, which, in turn, can lead to the individual decompensating in the community and possibly necessitating re-admission to the state psychiatric hospital.

For all of the above stated reasons, the NJ DOH is writing to support continued remote hearings for civil commitment hearings, NGRI and IST hearings.

Very truly yours,



Deborah Hartel
Deputy Commissioner
Integrated Health Services

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