



## PROBATE COURT OF MOBILE COUNTY, ALABAMA

### MEMORANDUM

TO: ALL APPOINTED LAWYERS - MENTAL HEALTH INVOLUNTARY  
COMMITMENT DOCKET

FROM: DON DAVIS

RE: PROBABLE CAUSE DOCKET - STATUS REPORT

DATE: SEPTEMBER 9, 2014

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Some months ago, some of you expressed the following concerns to members of the Court's staff and me (on occasion directly): (1) you questioned the propriety of some respondents' evaluation time periods being extended beyond the initial week, (2) the significant number of continuances was negatively impacting your law practices from a scheduling standpoint and making it difficult for you to agree to serve as an appointed lawyer in these cases, and (3) the significant number of continuances was resulting in you having to attend follow up merit dockets where you had only one or two cases on the subsequent docket and it was not financially conducive for you to have to spend so much time in court in regards to the second, third (or on rare occasion fourth) continued merit hearing. Further, during this time period we have seen an increase in the number of lawyers being substituted as guardians ad litem for the originally appointed lawyer after a case commenced but before it concluded. Given the Constitutional implications associated with commitment cases, such substitutions are frowned upon and should be the exception instead of common practice. These comments and observations prompted us to conduct an internal review of the situation.

After months of review of operations and outcomes of our mental health involuntary commitment cases, we ascertained that the *average* evaluation time period was 10.5 days. This means that in 50 percent of the cases the evaluation time period was more than 10.5 days and in 50 percent of the cases the evaluation time period was less than 10.5 days.

We also advised AltaPointe Health Systems, Inc. ("AltaPointe") of the concerns and problems being reported. Some appointed lawyers were also reporting problems associated with: (1) access to EastPointe Hospital on the day preceding the merit hearing to review medical records, meet with the respondent (if appropriate under the circumstances) and speak with EastPointe staff (notably the psychiatrists) if there were some question about what was being recommended; (2) the lawyers being afforded timely and full access to their assigned respondent's medical records; and (3) the ability to meet with a respondent's attending psychiatrist, should there be a question. There is also the ongoing problem associated with EastPointe's medical records not being made/kept/maintained in a manner that qualifies for the information contained in the medical records

being properly admitted into evidence under the business records exception to the hearsay evidence rule at merit hearings.

I would note that the excessive continuances also impact the Court's staff's ability to effectively administer these cases. You may not realize it but there is a lot of effort behind the scenes associated with notifying lawyers, petitioners, family members and the Sheriff's Department of case settings and the organization of the merit docket. Regrettably, most of this work is "last minute" in nature. The ability of the Court's staff to get these cases properly prepared and ready to be heard is also dependent upon the Court's staff receiving treatment recommendations as quickly as possible and with as much advance notice as possible. EastPointe has a very bad habit of missing the deadline (noon on the day preceding a merit docket) for submitting treatment recommendations to the Court. On many occasions (despite our repeated protests), the treatment recommendations do not come in until mid to late afternoon.

All of the aforesaid matters have also been brought to AltaPointe's leadership's attention on multiple occasions verbally and in writing (see attachment). We submitted suggested changes to address the problems (two of which were to move the docket to Friday mornings and to extend the evaluation time period to 11 days). We received no response from AltaPointe. We also solicited comments from various lawyers handling these dockets, the Sheriff's Department and the temporary probate judges. Positive feedback was received from these persons/entity.

We communicated the plans to move the probable cause docket to Fridays and to change the length of the evaluation time period to AltaPointe weeks in advance of the planned implementation date. You can read of the specifics concerning the same in the attachment.

As the lawyers appointed to handle cases last week know, the probable cause docket was not conducted on Wednesday, but rather was scheduled to be conducted on Friday morning. Sixteen cases were set for probable cause hearings. I received notice by e-mail late in the day on Thursday, September 4, 2014, that EastPointe would refuse to accept respondents if we conducted the probable cause docket on Friday morning. Mind you, there were ample empty, publicly funded beds available to accommodate any respondent as to whom probable cause was determined to exist.

At this point in time, I had no choice but to acquiesce to AltaPointe's position. I have to approach this matter from a "big picture" perspective and I can not ignore the public safety issues involved in these cases. If I have to choose between public safety on the one hand and various matters that are unnecessary, inconvenient, inefficient and/or expensive, I must side with public safety. I believe AltaPointe's position is wrong and I think AltaPointe's leadership exercised poor judgment to prompt cancellation of the probable cause docket - from a public safety perspective as well as from a patient treatment perspective. This is just the latest example of the lack of cooperation AltaPointe's leadership offers to the Court, the Mobile County Sheriff's Department, and the Mobile community in regards to the most seriously mentally ill adults in Mobile County.

If you were assigned to a docket during the months of September or October 2014 where the probable cause hearing was scheduled for a Friday - **please note that the probable cause hearing is now scheduled for Wednesday of said week.** Additionally, please note that **all requests (by EastPointe) for continuance must be in writing and filed before 10:00 a.m. on the day preceding the merit hearing. All continuance requests will be set for hearing at 8:30 a.m. before the merit docket commences.** AltaPointe has been directed to have its legal counsel present to argue continuance motions. **The treating physician is required to be present to testify as to the need for further evaluation of the respondent.** If the continuance request relates to "your" respondent, you also need to be present. If the continuance request is granted, the merit hearing will be reset to the next merit docket. If the continuance request is denied, the merit hearing will proceed as scheduled. **At all times and at all hearings the Court expects appointed lawyers to represent their client's best interests. If you object to a continuance request or your client objects to a continuance request, you are expected to inform the Court of such objection.**

As noted above and discussed in the attachment, there are problems with EastPointe's medical records - in terms of how they are kept and access being afforded to those entitled to access. This problem was discovered by an appointed lawyer. Various appointed lawyers have noted at merit hearings that there are discrepancies between factual statements contained in respondents' nurses notes and the doctors' notes. AltaPointe advised us several months ago that it wants to limit or eliminate lawyers discussing respondents with EastPointe physicians because the doctors are too busy to do so. Further, an appointed lawyer brought to our attention that AltaPointe recently revised its medical record request form to be utilized by appointed lawyers in commitment cases, that excludes nurses notes and doctorate level employees' notes from those records that are available for appointed lawyers to look at or obtain copies of. This action has prompted us to draft a suggested medical record request form for you to utilize to request respondents' medical records. Stacie Vitello sent this form to you earlier this week. In terms of appointed lawyers meeting with respondents' doctors prior to the merit hearing, if the difficulty continues we suggest that the lawyer request that the Court subpoena the doctor in question to the Courthouse an hour before the merit docket to afford the lawyer the opportunity to meet with the respondent's doctor.

In closing, I encourage you to represent your client to your fullest and best ability. And if you have any difficulty in doing so as a result of AltaPointe or EastPointe, file the appropriate pleading to bring the matter to the Court's attention. If you have any questions concerning the aforesaid, please feel free to contact Stacie Vitello [574.6008 or [svitello@probate.mobilecountyal.gov](mailto:svitello@probate.mobilecountyal.gov)] or me [574.6110 or [don.davis@probate.mobilecountyal.gov](mailto:don.davis@probate.mobilecountyal.gov)].

  
Don Davis

Attachment