

Don Davis

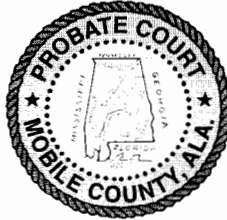
Judge of Probate

Joe McEarchern, Jr.

Chief Clerk/Administrator

C. Mark Erwin

Chief of Staff



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PROBATE COURT OF MOBILE COUNTY, ALABAMA

September 5, 2014

VIA ELECTRONIC MAIL AND UNITED STATES MAIL

Mr. J. T. Schlesinger
Chief Executive Officer
AltaPointe Health Systems, Inc.
5750-A Southland Drive
Mobile, AL 36693

RE: Mobile County Probate Court's Mental Health Probable Cause Docket

Dear Mr. Schlesinger:

In response to your letter dated September 4, 2014 and delivered late in the day by electronic mail, I was forced to postpone the Court's probable cause docket set this morning. Disappointment compounding disappointment is about all I can say with regard to your last minute ultimatum to not accept patients referred to you by orders of this Court. The issues giving rise to our recent changes to the docket schedule have been shared with you and your staff on multiple occasions. We have proposed multiple solutions to resolve these issues since June, 2014. We requested AltaPointe's input at addressing these issues. On the afternoon of the day preceding a docket that had been scheduled for weeks, you drew a line in the sand while failing to offer any workable alternative.

Let me remind you that we first communicated with AltaPointe's leadership on June 12, 2014 regarding various issues, including the problem of multiple continuances and the length of the evaluation time period. We offered possible solutions to these problems, yet AltaPointe failed or refused to respond or offer any possible solutions. We waited until August 6, 2014 to define a course of action. On August 6, 2014, we outlined our proposed remedies to deal with the ongoing issues. We did not have a response from your office until August 19, 2014. J. Michael Druhan, Jr., general counsel for the Court, contacted your attorney on August 27, 2014 (after leaving multiple phone messages) to discuss the changes and we heard nothing further from you until the eve of the docket in question.

Despite your protestations to the contrary, the record of all cases filed in this Court so far this year proves beyond any doubt that the average stay at EastPointe Hospital ("EastPointe") for evaluation is 10.5 days. Please note that this is the AVERAGE which means in 50 percent of all cases the stay is longer than 10.5 days and in 50 percent of the cases it is between the ordered 7 days and 10 days. You correctly state that early dismissals are available, but to my knowledge there has

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never been a single request by AltaPointe to dismiss a petition and release a Respondent prior to the end of the 7 day evaluation period. I can assure you that if such a request were filed with the Court we would accommodate it as soon as practicable.

As noted above, based on your stated intent to not accept or evaluate any patient ordered to AltaPointe's care by the Court, I was forced to cancel the scheduled probable cause docket. There were 16 cases set for hearing this morning at 9:00 a.m. We had to notify all of the petitioners, attorneys appointed to represent the respondents, the retained court reporter, and the Mobile County Sheriff's Department early this morning that AltaPointe would not agree to accept patients ordered to evaluation today. Many of the petitioners and family members could not be contacted until they arrived at the Courthouse this morning. I will further note that any respondent ordered to evaluation at this docket would have likely been transported to EastPointe by noon or shortly thereafter for admission. However, recognizing that I have no statutory authority to require you to evaluate these respondents, I could not in good conscience burden the Mobile County Sheriff's Department with their custody until you opened your doors to them sometime next week.

In yet another attempt to resolve the ongoing issues and ameliorate the dangerous public safety condition caused by your position, I am instituting the following procedures:

1. We will schedule the probable cause docket on Wednesday, starting at 9:30 a.m.
2. Upon a finding of probable cause, we will order the standard 7 day evaluation.
3. We will order a merit hearing to be conducted the following Tuesday.
4. Any request for a continuance of said merit hearing will have to be made in writing and filed before 10:00 a.m. on the day preceding the merit docket (Monday). All continuance requests will be set for a hearing at 8:30 a.m. before the merit docket commences.
5. Since this continuance request is filed on behalf of AltaPointe, your legal counsel should be present to argue the motion. The treating physician will also be required to testify as to the need for further evaluation.
6. 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.

While I do not agree with the statistics cited in your letter (the number of cases continued is significantly more than you represented), if we assume they are accurate then we should only have 4 or 5 such continuances filed each week. Regardless, I am willing to hear argument on any request for continuance as long as it is supported by medical evidence proving the need for further inpatient evaluation before a final determination on the merits can be reached.

Mr. J. T. Schlesinger
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One could easily deduce that AltaPointe's leadership has forgotten that it is a publicly-owned and publicly-financed organization that primarily exists to address public safety issues relating to *seriously* mentally ill persons in Mobile County and affording *seriously* mentally ill persons located in Mobile County with appropriate treatment and care. Your objections to the proposed changes based on alleged increased costs are not impressive because of your organization's public nature and your organization seems obtuse to the increase costs to the State and County associated with multiple continuances. Recall that most court costs in these cases are taxed to the Alabama State General Fund. Increased hearings will result in increased lawyers fees, transportation fees for the Mobile County Sheriff's Department, and increased statutorily mandated hearing fees. Additionally, increased hearings will result in greater expense for Mobile County (as to non-reimbursable expenses) and greater pressure on the already strapped staff resources of the Mobile County Sheriff's Department and the Court. Further, despite your claims of minimal staffing on Fridays and the weekends, I am quite certain that if 15-18 private-pay patients appeared on your doorstep on any given Friday afternoon you would have no issue at all admitting them to EastPointe, conducting all necessary medical histories and laboratory tests, and billing them or their insurance company for their care.

Frankly, the cost of care is not the Court's responsibility or primary concern in mental health cases. The Court is responsible to the citizens of Mobile County to: (1) properly, efficiently and timely manage the involuntary commitment cases filed with the Court; (2) promote the concept of public safety as it relates to the seriously mentally ill in Mobile County; and (3) balance each *allegedly* mentally ill person's right to liberty and due process with their need for acute care during a mental health crisis. This is a challenging task even in the best of times. Having a cooperative community mental health center that is properly attuned to the aforesaid responsibilities would make this challenge easier to accomplish. Since you sent your letter to a number of local and state officials, we are likewise forwarding to them copies of this letter and the earlier communications between the Court and AltaPointe.

Very Truly Yours,



Don Davis
Judge of Probate

cc: w/enc.

The Honorable Sandy Stimpson
The Honorable Sam Cochran
The Honorable James Reddoch
The Honorable Victor Gaston
The Honorable Merceria Ludgood
The Honorable Bess Rich
The Honorable Levon Manzie
Mr. James Tucker

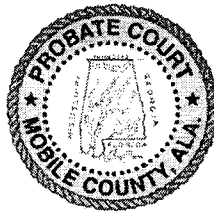
The Honorable Gina Gregory
The Honorable Jerry Carl
The Honorable Connie Hudson
The Honorable Fred Richardson, Jr.
The Honorable C.J. Small
The Honorable John C. Williams
The Honorable Joel Daves
Mr. Larry Jackson

Don Davis

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PROBATE COURT OF MOBILE COUNTY, ALABAMA

June 12, 2014

Mr. J. T. Schlesinger
Chief Executive Officer
AltaPointe Health Systems, Inc.
5750-A Southland Drive
Mobile, AL 36693

Re: Various Operational Matters Relating To Mental Health Involuntary Commitment Cases

Dear Mr. Schlesinger:

There are several matters relating to the Court's mental health involuntary commitment docket that prompt this letter.

EastPointe Hospital - Evaluation Recommendations Being Submitted Timely To Court

Many of the lawyers handling commitment cases have informed us repetively for quite some time that they are informed by EastPointe Hospital's staff that EastPointe Hospital's staff formulates the recommendations (including continuance recommendations) relating to involuntary commitment respondents on the Friday preceding the merit hearing (usually held on Tuesdays). We have previously expressed to AltaPointe's leadership in an informal manner the need for the Court's staff and lawyers to have a firm treatment recommendation by noon on the business day preceding a merit hearing. That said, we understand that something may come up at the last minute that prompts the change in a recommendation, but changes should be the exception, not the rule. The treatment recommendation is needed in advance to facilitate notification to the Alabama Department of Mental Health (as appropriate), the lawyers, petitioners and family members. Further, there is significant paperwork that must be prepared in relation to every commitment decision rendered by the Court and having advance notice of evaluation recommendations enables some of the required documentation to be prepared in advance. The lawyers assigned to a commitment case have certain duties and responsibilities they must fulfill prior to the merit hearing. Our earlier, informal request that EastPointe Hospital furnish the Court with treatment recommendations (in writing and signed by the appropriate physician) has not been acted upon by EastPointe Hospital. We formally request that AltaPointe's leadership promptly address this matter.

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EastPointe Hospital's Continuance Recommendations - Length of Evaluation

We have previously noted with concern to AltaPointe's administration the significant increase in the number of continuances in regards to merit hearings in involuntary commitment cases during the past twelve months. It appears that "continuance" has become the customary recommendation in close to a majority of the cases on the first occasion for a merit hearing in the cases. We don't want EastPointe Hospital to rush its evaluations. It is important to the respondents and the general public that the recommendations be properly formulated and appropriate for each individual respondent. Further, we don't want any respondent to remain in EastPointe Hospital any longer than necessary. In consideration of all of the aforesaid, please be advised that we are seriously considering changing the term of the evaluation time period from six days to thirteen days. If the term of the evaluation time period is extended and EastPointe Hospital has a firm recommendation to offer to the Court before the conclusion of said period of time, which is timely communicated to the Court and the lawyers involved, a merit hearing could be scheduled before the thirteenth day. We propose implementing this practice-procedural change on July 1, 2014. Please advise if AltaPointe has an objection to extension of the length of the evaluation time period. If so, a meaningful alternative should be offered.

EastPointe Hospital's Continuance Recommendations - Merit Hearings

We are receiving increasing negative feedback and commentary from lawyers handling involuntary commitment cases in regards to the continuance recommendations. There seems to be a growing sense by the lawyers handling these cases that in many instances the continuance recommendations are not appropriate and/or in the best interests of many of the respondents.

Some of the lawyers who have expressed their concerns to us have suggested that the Court require a written statement signed by the respondent's attending physician, which states the basis for any continuance request *with specificity* and with the requirement that any continuance request be submitted no later than 9:00 o'clock a.m. on the business day preceding the scheduled merit hearing. Based upon our assessment of the total docket situation and the lawyers' feedback, it appears to us that said recommendation is appropriate. We propose implementing this practice-procedural change on July 1, 2014. Please advise if AltaPointe has an objection to this procedure being implemented. If so, a meaningful alternative should be offered.

Start of Probable Cause Docket - Wednesdays

The probable cause docket has traditionally started at 9:30 o'clock a.m. on Wednesday, with the petitioners and lawyers handling cases on said docketed directed to be present at 8:00 o'clock a.m. to facilitate trial preparation to occur. During the past nine months we have experienced a sustained increase in the number of commitment cases being filed. We have decided to start the probable cause docket at 8:30 o'clock a.m. and handling up to fifteen cases during a morning

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session. If more than fifteen cases are scheduled on a probable cause docket, the cases in excess of fifteen will be set for a probable cause hearing on Wednesday afternoon, commencing at 2:00 o'clock p.m. We intend to initiate this practice-procedural change on July 1, 2014.

Emergency Detention Requests

We have also noted that there has been an increase in the frequency of requests for emergency detention orders. Many of these requests concern persons who have been past patients of AltaPointe or are current AltaPointe patients. We intend to start requiring all emergency detention requests to be stated in writing, *with specificity* as to the reason for the perceived emergent need. This new practice - procedural change will become effective immediately.

AltaPointe is notified upon the filing of an involuntary commitment petition either by its intake office located at the Courthouse or by the Court (when the petition is processed directly by the Court without the involvement of AltaPointe's intake office). We have previously been advised by AltaPointe's leadership that all petitions are promptly reviewed and that crisis intervention services are made available, when appropriate. Information provided to the Court's staff by petitioners suggests that crisis intervention services are not being afforded to any respondents. We intend on issuing an order upon the filing of a petition that requires AltaPointe to affirmatively initiate the provision of crisis intervention services upon the receipt of a petition and to affirmatively report to the Court in writing if such services are *not* made available to a respondent prior to a respondent coming before the Court. This new practice-procedural change will become effective immediately.

Further, we request that AltaPointe reconsider its earlier decision to not afford an emergency interview/evaluation by a medical doctor to respondents at an AltaPointe facility located in Mobile County, where an emergency detention request is made and there is no supporting documentation from a medical provider to support the emergency detention request. This procedure seemed to work well and it helped us prevent inappropriate emergency detention orders.

Dockets When An Election Day Or Holiday Occurs On A Tuesday

It has been our practice during the past several years on days where we have an election or a holiday occurring on a Tuesday (the day when we regularly conduct our merit docket), to conduct the merit docket on the morning of the next day (Wednesday - the day when we regularly conduct our probable cause docket) and move the probable cause docket to the afternoon on Wednesday. Given the increase in the number of mental health case filings, it doesn't appear that this approach is workable any longer. The Mobile County Sheriff's Department is encountering extreme difficulty delivering the respondents to various locations following the merit docket (which is taking additional time because of additional cases to be heard) and then taking respondents into custody throughout Mobile County and bringing them to the Courthouse for a probable cause hearing.

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It is our plan to cancel the probable cause dockets during the weeks where we have an election or holiday occurring on a Tuesday of any given week. If an emergent matter arises during such a week, it will be specially handled. We intend to initiate this new practice and procedure effective immediately.

Access Being Afforded To Appointed Lawyers To Review EastPointe Hospital Medical Records

In late May 2014 AltaPointe proposed a protocol regarding appointed lawyers' ability to review EastPointe Hospital's medical records as to their assigned respondents. Commentary was furnished by Joe McEarchern, Chief Clerk of the Court, to Julie Bellcase on May 29, 2014. As of this date, we have not received an reply to our response.

In the response we noted that lawyers handling cases set for hearing on the week following Memorial Day 2014 complained that they were not permitted access to medical records that were reported by EastPointe Hospital as being in "draft" form. The lawyers commented that medical records are medical records and they inquired as to why any medical records would be in draft form. At merit hearings EastPointe Hospital's physicians have been testifying the last several months that entries are made in respondents' electronic medical record maintained at EastPointe Hospital contemporaneously with the service/ event being provided/noted. If entries are being made in "draft" form, such seems to contradict the testimony being offered by EastPointe Hospital's physicians.

We are unable to locate any statute or regulation that affords AltaPointe the ability to restrict lawyers access to a respondent's medical records, when the HIPPA provisions have been addressed by order of the Court (which is done in every order). If you have such legal citation, please furnish it to us.

EastPointe Hospital Physicians Responding To Inquiries By Lawyers

In Joe McEarchern's May 29, 2014 email communication to Julie Bellcase, Joe also noted that in late May we received complaints from some lawyer teams that respondents' physicians were not timely responding to inquiries from lawyers who want to speak with physicians about continuance recommendations being offered by the physicians. Other lawyers have made the same complaint. We would appreciate EastPointe Hospital establishing a protocol for such communications.

Mr. J. T. Schlesinger
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Concluding Remarks

In order for the commitment docket to proceed relatively smoothly, the lawyers in the cases and the Court's staff need AltaPointe's and EastPointe Hospital's cooperation and assistance. We look forward to receiving your response to the aforesaid matters.

Sincerely yours,



Don Davis
Judge of Probate

cc: Mr. Larry Jackson
The Honorable James Reddoch

From: Joe McEarchern [mailto:jmcearchern@probate.mobilecountyal.gov]
Sent: Wednesday, August 06, 2014 2:18 PM
To: Julie Bellcase
Subject: Change in mental commitment hearings

Julie:

After much discussion and review, the Court will change its commitment docket and hearing schedule for mental commitment matters [see below]. This change is primarily brought about as a result of the number of continuances for 2014; the information compiled indicates that a third or more of the scheduled merit hearings are continued for an average of 1.5 weeks beyond the first scheduled merit date. This change should afford a more efficient procedure and use of resources.

- Effective the first week in September, 2014, probable cause hearings will be set on Friday mornings. Afternoon settings may be used also depending on the number of cases pending. (starting on September 5, 2014).
- If probable cause is found and the respondent is directed to involuntary confinement for evaluation, the merit hearing will be scheduled eleven (11) days thereafter on a Tuesday. The Tuesday merit hearing dates will stay the same. Recommendations from AHS on patients set for hearing on a Tuesday should be sent to the Court by 4 o'clock p.m. on the Friday before. It is recognized that such could change over the weekend, and if such does occur, a notice or amendment can be filed with the Court on Monday.
- As noted previously, and pending the merit hearing, if AHS determines that a respondent no longer needs inpatient evaluation and/or confinement and should be released, or the petition should be dismissed, AHS should file an appropriate motion for such relief. Generally, the Court will take up same at the next scheduled merit hearing docket. If AHS determines that the respondent should be considered for outpatient commitment, AHS should file a motion as to same with the Court, which should be filed no later than 5 o'clock p.m. on the Friday before the next scheduled merit docket.

Thanks for your assistance with this matter.

JMc

Joe McEarchern, Jr., Chief Clerk
(Probate Court, Mobile County, AL)

[From Julie Bellcase, Tuesday, August 19, 2014 – 1:58 PM]

Joe,

The evaluation procedure outlined in your August 6 correspondence cannot be accommodated as it does not allow us to work within the financial resources available to support this service. The financial support we receive, largely from the City and the County, to provide for involuntary evaluation is woefully inadequate to support the evaluation services currently provided. The Court's proposal that would lengthen the evaluation period by an additional 4 days seriously impacts our hospital's ability to admit sufficient numbers of voluntary patients with third-party insurance to support its operations. No healthcare entity could alter its business model in such a significant manner without seriously jeopardizing its financial stability.

Although the stated reason for going to an 11-day evaluation is to reduce the number of continuances recommended, our physicians are currently recommending continuances for approximately one-third of the respondents. While we recognize the potential for early release, the fact that the motion will be heard at the next merit hearing docket will likely result in most respondents remaining on the unit for the 11-day period. (We anticipate that a recommendation for early release will not be made in time for the first merit hearing docket of the respondent's evaluation period.) The result of this is that instead of one-third of the respondents being continued beyond the normal evaluation period, the large majority of respondents will be on the unit for 11 days or more.

Following your initial proposal, we made a suggestion that would alter slightly the evaluation period each week, allowing for more time for the attending physician to treat the patient post-weekend. As described earlier, we believe more patient interaction by the attending physician at the end of the normal evaluation period could result in more definitive physician recommendations and less continuances. If the Court is not willing to change the protocol as we have suggested, there are two other suggestions that, if implemented, may impact the number of continuances: a) providing the Court with a written report signed by the physician as to the reason for the continuance recommendation; and b) allowing for the early release of a respondent upon submission of a report signed by the physician – without a hearing on the matter.

Again, the 11-day evaluation is not workable and will seriously impact our ability to provide preventive services for persons outside the court process. We will be happy to sit down with you and the Judge to discuss other options that may have an impact on the evaluation process.



Julie Bellcase

Chief of Staff

jbellcase@altapointe.org

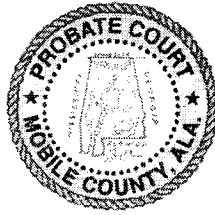
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PROBATE COURT OF MOBILE COUNTY, ALABAMA

September 3, 2014

VIA ELECTRONIC AND UNITED STATES MAIL

Mr. J. T. Schlesinger
Chief Executive Officer
AltaPointe Health Systems, Inc.
5750-A Southland Drive
Mobile, AL 36693

Re: Changes In Day Of The Week Court Conducts Probable Cause Hearings and Length Of Evaluation Time Period

Dear Mr. Schlesinger:

This letter will confirm Mike Druhan's conversation with Wade Perry last week regarding the captioned matters, wherein Perry was advised that the Court intended to implement the changes in the day of the week the Court conducts mental health commitment probable cause hearings and the length of the evaluation time period effective the first week of September 2014. The Court's Judicial Division Chief received a telephone call from Jarrett Crum late Tuesday afternoon, inquiring as to the Court's plans. To ensure that there are no misunderstandings, I offer this letter.

At the outset I want to note that we have no conceptual problem with continuances of merit hearings in mental health commitment cases. It is *very* important that the evaluations be properly conducted and accurate, as mental health commitment cases involve the potential for deprivation of liberty on the part of the respondents. However, we must also be cognizant of how numerous continuance recommendations relating to cases on the same docket affect the Court's operations, the operations of other entities involved in these cases, the lawyers appointed to serve in these cases, the petitioners, respondents' family members, and last, but certainly not least, the respondents.

You will recall that we have advised AltaPointe's leadership on more than one occasion during the past year that the significant increase in the number of continuance recommendations by the EastPointe Hospital Adult Evaluation Unit was taxing the Court's resources and the lawyers who serve in these cases. The number of continuance recommendations has not abated and frequently the continuance recommendations come in very late on the day preceding the scheduled merit hearing. The Court's resources are limited. A lot of work (of a last minute nature) is required to organize and prepare a mental health commitment merit docket. The increased volume of

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Mr. J. T. Schlesinger
September 3, 2014
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continuance recommendations resulted in the Court having to have staff work over time in order to be ready for the hearings that were to go forward for disposition. Further, the lawyers who serve as legal counsel in these cases play a significant role in the commitment process and it is imperative that we have qualified lawyers available to serve in these cases. We have been informed by many of the lawyers that the continuances (especially for the second and third weeks) are impairing other areas of their law practice because of the need for these lawyers to keep successive Tuesday mornings open in the event they had one or more cases continued. For most of the lawyers who serve as appointed lawyers in these cases, the only way these cases are financially viable for the lawyers is for them to handle a group of cases on the same date and time. The continued cases frequently result in a number of lawyers having to be present before the Court for one and possibly two cases.

The decision to make these changes was not made without much thought and study. We analyzed the data for the first six months of 2014 and determined that the average length of the evaluation time period for *all* respondents was 10.59 days. In addition to AltaPointe, we solicited comment from lawyers and other entities involved with the mental health commitment docket about the change in the length of the evaluation time period and the day of the week on which the probable cause docket is conducted. A number of lawyers expressed support for the two changes because it will afford them a greater sense of certainty in terms of when they will need to be present before the Court and facilitates them having more time available to address other clients' legal needs. The changes will also positively impact the Mobile County Sheriff's Department's ability to provide adequate deputies and related resources for the mental health dockets.

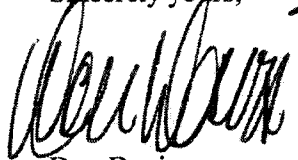
AltaPointe was the only interested party to voice objection and this objection was relayed on August 19th - after the decision to make these changes had been made and announced to all interested parties. Following the August 19th communication from AltaPointe, we reviewed AltaPointe's objections again. We continue to believe that the changes are in the best interest of all concerned. First, as noted above, the average evaluation time period for *all* respondents is 10.59 days. It makes little sense to not try to have the docket reflect, as clearly as possible, reality. AltaPointe's budget for the Adult Evaluation Unit is apparently not realistic. Further, we fail to understand how the changes will negatively impact AltaPointe's budget, given the large volume of continuance requests we have been experiencing. Second, AltaPointe has repeatedly represented to a variety of persons and entities that EastPointe Hospital has empty beds and sufficient bed capacity to handle the needs of its three (3) county service area. Third, the decision of whether a respondent receives an inpatient evaluations or an "outpatient evaluation" is, in our view, a clinical decision that continues to lie with AltaPointe. If, in a given week, AltaPointe doesn't have sufficient bed space for all of the respondents, AltaPointe will continue to have the option of conducting the court-ordered evaluation on an "outpatient" basis. Finally, AltaPointe has and will continue to have the ability to advise the Court as to whether a respondent being detained at the EastPointe Hospital Adult Evaluation Unit should be discharged before the next scheduled docket.

Mr. J. T. Schlesinger
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Finally, I want to address why AltaPointe's only proffered solution in regards to the continuance problem is not feasible. We have repetitively explained that moving the probable cause docket to Thursdays is not viable. The Probate Court is not the only court in session each regular business day. A number of the lawyers who serve as appointed lawyers in the Court's mental health commitment operation also serve as appointed lawyers with regard to regular dockets being conducted by these other courts. We remain open to conducting the probable cause docket on Wednesday, with a two (2) week evaluation time period. We would also suggest that AltaPointe provide crisis intervention services to respondents between the time the petition is filed and the probable cause hearing is conducted - especially to those respondents who have been previously treated by AltaPointe. We will be glad to consider any other suggestions AltaPointe has to offer.

I hope that this letter addresses any ongoing issues and questions AltaPointe might have in regards to the changes in the Court's probable cause docket and evaluation time period. If not, I trust that you will pose whatever additional question(s) you have to me.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Don Davis", written in a cursive style.

Don Davis
Judge of Probate

cc: J. Michael Druhan, Jr., Esq.