

Commonwealth of Massachusetts
Committee for Public Counsel Services
MENTAL HEALTH LITIGATION UNIT

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TRIAL PRACTICE CHECKLIST

GUARDIANSHIPS WITH AUTHORITY TO ADMIT AND/OR ADMINISTER “EXTRAORDINARY TREATMENT”

[including hearings under G.L. c. 123, § 8B]

A. Initial Steps

- Obtain copies of and review all pertinent pleadings (e.g., petition, physician's certificate or clinical team report, affidavits).
- File appearance.
- Interview client to ascertain his/her wishes; explain counsel's role.
- Review hospital records, including:
 - Medical Record
 - Treatment Review Notes
 - Unit Notes/Nursing Notes
 - In MR facilities, the client's ISP.
- Confer with Petitioner personally or through counsel as to:
 - Perspective as to client's competence.
 - Reasons for seeking proposed treatment/admission.
 - Discuss alternatives to proposed treatment/admission.
- Confer with potential witnesses, including:
 - Treating psychiatrist/psychologist.
 - Nursing staff.
 - Other ward staff (e.g., social worker or QMRP).
 - Possible witnesses suggested by the client

- Confer with other involved parties (e.g., family, previous clinicians).
- Prepare detailed file memorandum, including:
 - Client's medication history, including side effects.
 - Client's pattern of participation in inpatient treatment.
 - Client's pattern of participation in outpatient treatment.
 - Relative degree of success of previous treatment plans
 - Current treatment plan, including signs of clinical progress.
 - School record.
 - Criminal record.
 - Employment record.
 - Prior guardianships/commitments, including pertinent evaluations.
 - Client's home situation and relationships with "significant others."
- Consider "*Rogers*" factors, as appropriate:
 - Client's preferences regarding treatment (currently, and in the past).
 - Client's religious tenets.
 - Impact upon relationship with family from client's perspective.
 - Probability and severity of adverse side effects
 - Alternative treatment modalities, if any.
 - Prognosis with proposed treatment.
 - Prognosis without proposed treatment.
 - Other considerations pertinent to client's decision, if competent.
- Consider "authority to admit/commit" criteria:
 - Mental illness, as defined at 104 CMR 27.05(1).
 - Likelihood of serious harm (see G.L. c. 123, § 1):
 - Possibility of a less restrictive placement.
 - Ability of petitioner to prove all elements beyond a reasonable doubt.

B. Preparation for Hearing

- Formulate alternative final dispositions, if any.
- Decide upon best advocacy strategy and discuss with client.
- Negotiate with petitioner to reach out of court settlement, if appropriate.
- Take appropriate steps to discover petitioner's evidence & witnesses.
- Consider pre-trial conference.
- Prepare for hearing:

- Consider motion for independent clinical evaluation.
- Prepare any pretrial motions, memoranda and requests for rulings.
- Prepare direct- and cross-examination questions.
- Outline arguments to court.
- Prepare client.
- Review testimony with and prepare witnesses.
- Summon witnesses, if necessary.
- Draft proposed findings of fact and conclusions of law.

C. Post Hearing

- Ensure that periodic review and termination dates are incorporated in order.
- Ensure that provisions for modification of order and treatment plan, as client's needs change, are incorporated in order.
- Ensure that monitor's responsibilities are clearly defined in order.
- Meet with client to discuss disposition and appellate rights.
- File notice of appeal, at client's request, and notify CPCS for appointment of appellate counsel.