

Subcommittee on Involuntary Commitments and the Involuntary  
Administration of Psychotropic Drugs  
3-17-08  
12:00-1:30 p.m.

Present:

Judge Christen – Co-Chair  
Judge Stowers  
Master Duggan  
Linda Beecher, PD  
Jim Gottstein  
Elizabeth Brennan, PD  
Colleen Brady, Fairbanks Court Visitor  
Beth Russo, OPA  
Stacy Kraly, Juneau DOL (465-4164)  
Nancy Meade – substituting for Doug Wooliver, court staff

Absent:

Judge Peter Michalski – Co-Chair  
Judge Rhoades  
Susan Wibker  
Jim Parker

## **I. INTRODUCTION**

Judge Christen provided a brief summary of activity since the last meeting. First, the committee determined that it needed some additional members, and the Chief Justice appointed two new members: Judge Rhoades (Anchorage District Court) and Colleen Brady (court visitor in Fairbanks).

## **II. TIMING ISSUES GENERALLY**

Second, to follow up from the last meeting, a group of judges met to prepare draft revisions to Probate Rule 2. The intent was to address the lack of standard, reasonable timeframes for (1) parties to file objections to a master's report and (2) the judge's approval or rejection of the master's report. Developing these timeframes proved to be difficult for several reasons stemming from the conflict between respondents' right to swift decisions and the attorneys' and judges' scheduling constraints related to drafting the decision and the objections.

Judge Christen pointed out that, as a starting point, most judges fall back on the 10-day deadline for filing objections in Probate Rule 2(f), although the committee agreed that 10 days is simply too long when dealing with involuntary commitments and medication issues. Further, the probate rule contains no deadline to use even as a reference for the timing of the judge's decision. See Probate Rule 2(e). Sometimes, a judge issues a decision before the 10 days for filing objections have passed, which causes problems if a party intended to object. A judge might do that if he or she thinks that the timeframes in Probate Rule 2(f) are not appropriate for these cases.

Master Duggan explained how these cases are handled in Anchorage, and what the approximate timeframes are. The procedures are about the same in Fairbanks; in Southeast, superior court judges handle these cases, so the issues are not the same.

The committee discussed what timeframes might be reasonable in these situations, and what steps could be taken to speed up the process.

One idea was to invite the parties to file affirmative non-oppositions, or something similar, so that the master and judge would know if the case was ready for a decision. Another idea was to have CDs of the master's hearing prepared immediately after the hearing and provided to the parties, to hasten their decision about whether they will object (that is, the parties would have the recording of the oral findings immediately, and would not have to wait for the master to write his or her report, which may take several days depending on the complexity and scheduling). Both of these procedures would allow for shorter deadlines for filing objections; the committee discussed whether a three-day deadline for objections would be reasonable if CDs were supplied. The answer was not clear; although three days would normally be enough time, it depends on the attorney's other scheduling commitments, and it could lead to many motions for extensions of time. Already, the public defenders make every attempt to file objections as soon as they can, because that's normally in the best interest of their clients.

Committee members reported that, very often, a party who intends to object will say that to the master at the hearing, which Master Duggan and all other committee members agreed can help move the case forward more efficiently. If that happens, a log note (or, even better, an actual sticky note) in the file will alert the judge that objections are coming, and the judge will wait for those before issuing a decision. This is not universal; some attorneys cannot determine whether to object until the written master's findings are issued. A CD of the hearing may be helpful in many cases, but sometimes the attorney wants to see the master's findings before making a final decision whether to object.

### **III. TRANSPORTATION AND TIMING**

The committee discussed the delay that is inherent in transporting respondents. In the majority of cases, people from all parts of the state are going to API and therefore they get transported to Anchorage for the hearings. The committee learned that there is a facility in Fairbanks that handles commitments for adults up to 30 days long. For those cases, the initial hearings are in Fairbanks in front of a probate master. They are often conducted in person, with the respondent transported to the courthouse, and are sometimes conducted by telephone from the hospital. Committee members reported that in Ketchikan it is also done that way – the court conducts the hearing by phone or at the courthouse (in which case the respondent would be transported to the court by the troopers). AS 47.30.735 provides that the hearing must be held where it is “least likely to have a harmful effect” on the respondent, and courts generally try to adhere to that.

There was some discussion of the logistics of transporting respondents. The committee noted that the respondent must be handcuffed if judicial services (JS) transports, or if a private contractor transports. Apparently, there are major difficulties with transport in Juneau (cost and availability are the logistical problems), but Ketchikan and Sitka, where JS provides the transportation, run smoothly. In Southeast, some respondents go to Bartlett Hospital (Juneau) and some to API, depending on the respondent's choice, the level of services needed, and whether one facility or the other is at capacity. Stacy agreed to prepare a chart showing where a respondent goes depending on where he or she lives.

In general, the majority of respondents are still funneled into Anchorage, and transportation takes time. This is one of the main reasons that it is difficult to conduct the initial hearing within 72 hours, as required by statute. Mr. Gottstein suggested that this requirement is not being met, and perhaps this issue should be explored.

#### **IV. MASTERS' INVOLVEMENT AND DE NOVO HEARINGS IN SUPERIOR COURT**

Mr. Gottstein questioned whether involuntary commitment and medication cases should be handled by masters in the first instance. He points out that the questions of developing reasonable deadlines for filing objections to a master's report, and for the judge's approval or rejection of the master's report, could be avoided if the committee recommends that judges should handle these cases entirely, as they do in Southeast Alaska.

To support the view that judges should handle these cases, Mr. Gottstein pointed out that Civil Rule 53(d)(1) requires a transcript of the hearing to be prepared, but usually this rule is not followed. The master prepares a report, but a transcript is not attached. Judge Christen again mentioned that perhaps with the new recording equipment and procedures, a CD can be prepared and attached easily. This could well be helpful to judges. If that is an acceptable substitute for a transcript, the rule could be revised to allow the CD in lieu of a transcript in every case. In general, the committee agreed that Civil Rule 53(d)(1) was not normally followed in these cases.

As for having judges in Anchorage handle these case without masters, there was some serious concern about the increased burden this would place on the already busy judges. One suggestion for having these cases handled by a superior court judges was to schedule these hearing at API (so no transporting of respondents would be needed) at a set time after hours, say 4:30 or 5:00 p.m., so that judges could handle these without impacting their other duties. The committee may wish to explore this further after it has more facts about the numbers of cases at issue.

Alternatively, some committee members would like to see a procedure that would provide for a de novo hearing in front of a superior court judge. To some attorneys, this is considered preferable to drafting objections to the master's report, which takes more time. Some members estimated that the hearings would take 1 to 2 hours for a commitment, and perhaps longer for a medication hearing. Many of the hearings involve witnesses, and sometimes there are pre-hearing motions. Others questioned whether the hearings actually would take longer, perhaps up to a full trial day. Of course, these would have to be heard very fast, and there could be calendaring difficulties. Peremptory challenges could further complicate this, or lead to delays that would conflict with the goal of moving these cases forward expeditiously.

Judge Christen noted that it was difficult to assess the impact these ideas would have on the judges without knowing how many of these cases arise. One estimate is that objections to the master's findings are filed in about 10% of these cases. Judge Christen will review the Courtview statistics to provide the committee with a better idea of the numbers, and therefore the expected impact if these cases were heard by judges.

#### **V. BIFURCATION**

The committee briefly discussed the notion of bifurcating these two proceedings, since there is a true need to move very fast with commitments, but slower action is acceptable

for involuntary medication issues, which are not as urgent. There are different considerations and requirements for the commitment versus the medication issues, but the consensus was that having two hearings would be redundant and inefficient.

## **VI. OTHER**

Judge Christen noted that the committee may want to consider recommending a revision to Probate Rule 2(b)2.C, because the wording seems awkward in that it concerns “consent” hearings, rather than involuntary issues.

The committee discussed perceived problems with filed objections that are not getting to the judge. Judge Christen reported that clerks will simply place filed objections in the court file unless an order is attached to them, in which case they will go to the judge. She encourages attorneys to file a courtesy copy in chambers to ensure that judges know about the objections. Some members suggested that if a proposed order must be filed with objections, then the rule should explicitly say so. Currently, attorneys are unsure whether every objection must be accompanied by an expedited motion and order, and whether that is a reasonable requirement.

## **VII. SUMMARY AND FOLLOW UP**

The committee will continue working to identify issues that can be addressed with a new rule. So far, the committee believes that the rule should include:

(a) workable deadlines for parties to file objections to the master’s report, and timeframes for the judges’ decisions – the problem is deciding what those timeframes should be, and

(b) possibly a procedure for de novo review of the master’s findings in superior court. As part of this discussion, the committee will consider whether to recommend adopting the “Juneau model,” in which the judges handle the entire proceeding. The committee will decide whether these options are feasible once it has statistics showing the number of cases at issue. These options could have the unintended effect of actually adding time to the process, they could prove to be too problematic for judge’s schedules, and they could be complicated by peremptory challenges. Nonetheless, the committee will look into these further.

One member noted that CINA Rule 5 already has timeframes for objections that apply in the CINA context, and that rule could possibly serve as a model. That rule does not, however, address the second timing issue, the one that would set a deadline for how quickly the judge’s decision must issue after the master’s findings are finalized.

*Judge Christen* will gather statistics on the numbers of involuntary commitments and involuntary medication hearings, including the number of the cases in which a party files objections to the master’s report.

*Stacy Kraly* will provide a chart or other written information showing which facility respondents are committed to compared to where the respondent is located and where the hearing takes place.

*Judge Christen* will set up the next committee meeting by email.