

HON. MARSHA PECHMAN

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON

TRUEBLOOD, et. al.,

Plaintiffs,

**VS.**

WASHINGTON STATE DEPARTMENT OF  
SOCIAL AND HEALTH SERVICES;

Defendants.

NO.

DECLARATION OF JASON  
SCHWARZ IN SUPPORT OF  
MOTION FOR TEMPORARY  
RESTRAINING ORDER

I, JASON SCHWARZ, declare as follows:

1. I am over the age of eighteen, have personal knowledge of the matters stated herein, and am competent to testify thereto.

2. I am an attorney at the Snohomish County Public Defender Association.

3. I have worked as a public defender in this office for over nine years. I have worked on misdemeanor, felony, juvenile, and civil contempt cases. As part of my

1 current duties, I am tasked with representing all of our indigent clients who have been  
2 found to be not competent. When/if the client is restored, the case returns to the trial  
3 attorney for further litigation. In this capacity, I generally have 20-30 open felony cases  
4 where clients are at some stage of the competency/restoration proceedings. I attend all  
5 competency evaluations for clients, which entails driving to Western State Hospital  
6 from Snohomish County on a weekly basis. I am at Western State Hospital 2-3 times  
7 per month. I have extensive experience representing clients at all stages of the  
8 competency proceedings, including contested competency hearings, Sell hearings, I  
9 work with attorneys and clients who have active cases under the Involuntary  
10 Treatment Act (RCW 71.05), and was the founder of our county mental health court.

13 4. Recently, DSHS has started requesting that defense attorneys consent to  
14 allowing DSHS to transfer their clients from Western State Hospital to Yakima for  
15 receipt of competency services.

17 5. It is highly unlikely that any attorney in my division would consent to  
18 such a transfer. The likely result of such a request is litigation in Superior Court.

19 6. My understanding is that individuals receiving services at the Yakima  
20 facility will have limited access to space for private conversations.

22 7. Communicating with mentally ill clients often presents significant  
23 challenges for attorneys. The challenges in communication, rendering advice, and  
24 representing the rights of our clients are exponentially increased when communication  
25 between attorney and client is not in person.  
26

1           8.     My understanding is that attorneys will be expected to communicate with  
2 their clients via video conference in an area that is not confidential.

3           9.     Video conferencing prevents the attorney from showing discovery and  
4 court-related documents to the client.  
5

6           10.    Video conferencing is disfavored for clients whose symptoms include  
7 visual hallucinations. During every competency evaluation, evaluators ask clients  
8 whether they receive messages through the television. If the client's attorney were to  
9 appear via video conferencing, it could reduce the reliability of the attorney's advice  
10 given that the medium is one that is part of the client's active hallucination.  
11

12           11.    Moving clients from Western State Hospital to a facility in Yakima would  
13 greatly reduce my ability to communicate with my clients in part because it is unclear  
14 whether the phone lines will be confidential or whether the calls would be recorded  
15 and in part because in person visitations will be nearly impossible. Caseloads are high  
16 and travel to and from Yakima would require at least 5-6 hours per trip (not including  
17 time meeting with clients). Therefore assigning clients to YCRC will greatly reduce the  
18 quality of their representation and effectively undermine the client's right to effective  
19 assistance of counsel.  
20

21           12.    DSHS has sought to transfer individuals to Yakima after those  
22 individuals have been admitted to WSH.  
23

24           13.    The clients who are transferred to WSH for restoration are individuals  
25 who have already been found incompetent. They have already waited in jail for weeks  
26 or months to get services.

1           14.    When they arrive at the hospital, they have to get used to being in new  
2 surroundings.

3           15.    Moving to yet another facility in Yakima after a few days at WSH will  
4 disrupt their mental health and possibly lead to further deterioration. I am concerned  
5 that the disruption in the care will mean that it will take longer to restore my client and  
6 therefore it will take longer to resolve their criminal cases.

7  
8           16.    In addition, I understand that defendants treated in the Yakima facility  
9 will be evaluated via videoconference by an evaluator who is at WSH. This raises the  
10 same concerns as an attorney appearing via videoconferencing.

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12           17.    I have concerns about whether an evaluator will be able to accurately  
13 evaluate the competency of an individual via videoconference.

14           18.    I am not likely to trust such an evaluation and would likely litigate in  
15 Superior Court to compel in-person examinations of our clients.

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17           19.    I also have concerns that admission to the Yakima facility will adversely  
18 out-of-custody defendants. Out-of-custody defendants who require restoration are  
19 required to arrange their own transport to and from the facility. These clients are  
20 indigent and it is difficult to get them from Snohomish County to Pierce County. They  
21 often lack family or community support and resources. Attempting to transport an  
22 incompetent person from Snohomish County to Yakima County will be prohibitively  
23 expensive and will put a greater burden on defense counsel to attempt to arrange and  
24 pay for a secure and safe mode of transportation.  
25  
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1           20.     The plan to transfer individuals to Yakima is not one that I support. There  
2 are significant challenges with communicating with clients confidentially, the quality  
3 of any communication would be greatly reduced, moving mentally ill individuals  
4 around will not improve their mental health, driving to and from Yakima will  
5 adversely impact the time I can spend with other clients awaiting competency and  
6 restoration services, and I do not trust that these individuals can be accurately  
7 evaluated via videoconference.  
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9           I declare under penalty of perjury under 28 U.S.C. § 1746, that the forgoing is  
10 true and accurate.  
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12           DATED this 16<sup>th</sup> day of March, 2016, at Everett, Washington.  
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14             
15           JASON SCHWARZ - WSBA # 38062  
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**CERTIFICATE OF SERVICE**

I hereby certify that on March 17, 2016, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following:

- Nicholas A Williamson (NicholasW1@atg.wa.gov)
- Sarah Jane Coats (sarahc@atg.wa.gov)
- Amber Lea Leaders (amberl1@atg.wa.gov)

DATED: March 17, 2016, at Seattle, Washington

/s/ La Rond Baker  
La Rond Baker, WSBA No. 43610

Attorney for Plaintiffs