

THE HON. MARSHA J. PECHMAN

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

A.B., by and through her next friend CASSIE
CORDELL TRUEBLOOD, *et al.*,

No. 14-cv-01178-MJP

Plaintiffs,

v.

**DECLARATION OF HEATHER
CARROLL IN SUPPORT OF
PLAINTIFFS' MOTION FOR
CONTEMPT**

WASHINGTON STATE DEPARTMENT OF
SOCIAL AND HEALTH SERVICES, *et al.*,

Defendants.

I, Heather Carroll, 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 a criminal defense attorney currently practicing in Clark County, Washington. I have been in active practice for over ten years, representing mainly indigent clients charged with felony offenses. In my practice I have had the opportunity to work with many clients who suffer from serious mental illness. As such, I am quite familiar with the competency evaluation and restoration process.

1 3. I am currently representing a client who is in jail awaiting restoration services. On
2 May 26, 2016, the Clark County Superior Court entered an order finding my client incompetent
3 to stand trial and directing that my client be transported and admitted to a DSHS designated
4 facility within 7 days of the order. On May 27, 2016, Western State Hospital (WSH) confirmed
5 it had receipt of all necessary documentation to admit my client.

6 4. On May 19, 2016, I met with my client who, during our meeting at the jail, began
7 violently punching himself in the head with a closed fist. I was so worried about my client
8 seriously hurting himself that I contacted both the jail mental health and his community mental
9 health provider.

10 5. On June 6, 2016, I also moved the Clark County Superior Court for an order to
11 show cause as to why my client had not been transported. The Court granted the order, and set a
12 hearing for June 15, 2016.

13 6. In preparing my motion for a finding of contempt and sanctions, I reviewed some
14 of the filings in the federal case. On June 7, 2016, I reviewed the "Behavioral Health
15 Administration Forensic Triage Consultation and Expedited Admissions Process" (TCEA). Dkt.
16 271. This document was submitted to this Court by the Department of Social and Health
17 Services (DSHS) and outlined a process by which individuals awaiting competency services who
18 were acutely mentally ill could be referred to WSH for review and possible expedited admission.

19 7. On June 7, 2016, I called Barbara Shelman at the admissions office at WSH and
20 asked for the email address. She did not provide me with the email address but said she would
21 provide it to the mental health professionals at the jail per my request.

22 8. On June 7, 2016, I spoke with Ed Worsman, psychiatric nurse practitioner at the
23 Clark County Jail. I forwarded him the document from the federal case, along with contact

1 information for Ms. Shelman and Christine Shriner at WSH. Ms. Shelman sent Mr. Worsman
2 the TCEA paperwork.

3 9. On June 7, 2016 I emailed Christine Shriner and requested information about the
4 TCEA process. In response I received the "Triage Memo for Partners" and "Triage Consult
5 Form".

6 10. According to the Triage Memo for Partners, assigned defense attorneys could
7 make referrals for triage consultations. However, it is concerning to me that DSHS is relying on
8 defense attorneys to identify class members who are in need of immediate medical intervention.
9 Defense attorneys, prosecutors, and judges are not clinicians and, as such, should not be making
10 medical determinations in life-threatening situations. Additionally, the time I spend with clients
11 in custody is a small fraction of the time they are in custody. For clients with severe illness, their
12 behavior may make it difficult for me to visit with them, and they are often unable to access the
13 phone to call me. I am uncomfortable with the proposition that DSHS is relying on me to triage
14 clients or identify when they are in a life-threatening situation. Clients who are severely
15 decompensated need to be evaluated by medical practitioners trained to identify individuals who
16 are in severe crisis and who, for medical safety reasons, would benefit from immediate removal
17 from the jail into a hospital setting.

18 11. The Triage Memo for Partners also states triage it is to be used for patients
19 exhibiting "significant and life threatening psychotic symptoms; and/or active suicidal intent or
20 actions - as differentiated from suicidal ideation or gestures." It is my non-medical opinion that
21 those factors were present in my client's case. However, my opinion was supported by Dr.
22 Viljoen's report, WSH's evaluator, and in jail records cited to in the report. To my knowledge,
23 no triage referral was made.

1 12. The Triage Memo for Partners goes on to provide a list of mandatory documents
2 necessary to successfully make a referral. Those documents are: a copy of the valid court order
3 for admission to a state hospital, medical and psychiatric records from the facility, medication
4 records for the last 72 hours, restraint/seclusion logs for the duration of their stay at current
5 facility, medical/mental health notes for length of stay at current facility, and current labs if
6 available.

7 13. As a defense attorney, I have a copy of the court order, but I would need to obtain
8 all the other records from the jail before referring a client for triage.

9 14. My understanding is that these other documents are routinely provided to WSH for
10 conducting the competency evaluation or when class members are medically cleared for
11 transport to the state hospital. Shifting this burden to third-party, non-medical providers to not
12 only make the referral but also gather the records already in the custody and control of WSH
13 seems unnecessarily onerous and puts a chilling effect on the making a triage referral.


14 15. Even if I took all the arguably duplicative steps to either subpoena the required
15 records for triage or obtain copies of my client's medical records, I may not be able to obtain the
16 consent of my client to make these requests if my client if not competent to even authorize the
17 sharing of their protected health information, or not able to physically sign a consent form.

18 16. I am astounded at the lack of communication regarding the triage protocol when a
19 document filed in federal court claims it has been in place since March. I am also concerned that
20 DSHS is relying on non-medical providers to assess the medical needs of individuals with unmet
21 clinical mental health needs. This should be DSHS's responsibility as they are in the best
22 position to not only know all of the individuals waiting for competency services but they likely
23 also have all the required documentation. If I had known about this process on May 19th, I

1 would have referred my client for triage and urged Clark County Jail staff to do the same. Had I
2 known to make the referral, it is unclear if my client would still be in jail waiting for transport for
3 restoration services given the jail records and WSH's evaluation report note his significant self-
4 inflicted wounds and risk of suicide. Unfortunately, I was not aware of the process and my client
5 is still in a cell in the booking area of the Clark County Jail.

6 17. As of today, thirteen days from when the court ordered my client to be transported
7 for restoration, my client remains in the Clark County Jail. Due to his behavior and the severity
8 of mental illness, my client has been held in a cell in the booking area of the jail since arrival on
9 May 18, 2016.

10
11 I declare under penalty of perjury under the laws of the United States and the State of
12 Washington that the foregoing is true and correct and that this declaration was executed on June
13 8, 2016, at Cortlandt, New York.

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15 HEATHER CARROLL, WSBA #36706

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CERTIFICATE OF SERVICE

I hereby certify that on June 10, 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: June 10, 2016, at Seattle, Washington

/s/La Rond Baker

La Rond Baker, WSBA No. 43610