

Attorney Appointments in Mental Health Commitment Proceedings

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Effective January 1, 2004, the Probate Court's Administrative Order #2004-03 set forth a plan for selecting, appointing, compensating and monitoring the performance of attorneys who are appointed by the Oakland County Probate Court to represent indigent respondents. Attorneys appointed for Mental Health commitment proceedings fall under the administration of this order. In order to become part of the rotation list for Mental Health commitment proceedings, an application must be completed and submitted to the Probate Court. These applications can be obtained by calling my office or Nicole Bennett at 248-452-2282. Once you have completed the application, the Probate Court Attorney Appointment Committee will meet and notify you that you have been placed on the rotation list to receive these types of appointments.

Subsequently, and on a weekly basis, attorneys are appointed to represent respondents in these Mental Health proceedings through Nicole Bennett's office. These appointments are no longer handled by the individual Probate Court judge's office. An attorney can expect to receive up to three appointments at one time, depending upon the location of the patients and the availability of the attorney.

In general, the definitions of a "person requiring treatment" (including the criteria for a person to receive "assisted out-patient treatment"[AOT]) and "mental illness" are found at MCL 330.1401(1) and MCL 330.1400(g). A person whose mental process has been weakened or impaired by dementia, has a primary diagnosis of epilepsy, or an individual with alcoholism or other drug dependence is not a "person requiring treatment." (There is an exception if the patient also meets the criteria under MCL 330.1401(1), MCL 330.1401(2)).

Please note also that the definition of a "person requiring treatment" under the Mental Health Code differs substantially from a "legally incapacitated individual," as defined under the Estates and Protected Individual Code, for whom a guardian may be appointed.

If you are appointed to serve as counsel in Mental Health commitment proceedings, please review MCR 5.732. This rule outlines the general responsibilities of the attorney, including:

- A. Representing the individual in all Probate Court proceedings under the Mental Health Code until the attorney is discharged by court order or another attorney has filed an appearance on the individual's behalf.
- B. Serving as an advocate for the individual's preferred position. If the individual does not express a preference, the attorney must advocate for the position that the attorney believes is in the individual's best interest.

The court rule also states that the individual "may waive an attorney only in open court and after consultation with an attorney." In these instances, the court does not have to accept the waiver if the court believes that the waiver is not "voluntarily and understandingly made." Attorneys are also required to attend a deferral hearing at the hospital or location where the ward is held.

These Mental Health commitment proceedings are held in front of the Probate Court judges on Monday and Thursday mornings. Please note that if there are holidays during the week, these hearing days may be adjusted and the Probate Court Mental Health Division would notify parties of these adjusted dates.

It is imperative that if you are seeking appointments for Mental Health commitment hearings, you familiarize yourself with the Mental Health Code and the Michigan Court Rules relative to these commitment proceedings. It is also highly recommended that prior to accepting any appointments, you attend and observe these proceedings at the Probate Court that are held on every Monday and Thursday morning.

If you have any questions regarding this general information, please do not hesitate to contact my office or the Mental Health Office at 248-858-0291. Stay tuned!