

MICHIGAN PROBATE JUDGES ASSOCIATION

EXECUTIVE COMMITTEE

Hon. Robert J. Butts
President

Hon. David M. Murkowski
President-Elect

Hon. Dorene S. Allen
Vice-President

Hon. Monte Burmeister
Treasurer

Hon. Thomas D. Slagle
Secretary

Hon. Darlene O'Brien
Presiding Judge

Hon. C. Joseph Schwedler
Immediate Past President

Hon. Monte Burmeister
Editor of INTER-COM

870 South Main Street
Cheboygan, MI 49721
231-627-8823
Fax: 231-627-8868

June 30, 2016

AT LARGE MEMBERS

Hon. John Tomlinson
Hon. William Doherty
Hon. F. Kay Behm
Hon. Gregg Iddings

Mr. Larry S. Royster
Clerk of the Court
Michigan Supreme Court
PO Box 30052
Lansing, MI 48909

REGIONAL ASSN. PRESIDENTS

Hon. Kathleen Ryan
Southeastern

Hon. Patrick McGraw
Central

Hon. Shana Lambourn
Top of Michigan

Hon. Elizabeth Church
Upper Peninsula

Hon. G. Scott Pierangeli
Southwestern

Re: ADM File No. 2013-18
Proposed Amendment of MCR 5.738a of the Michigan Court Rules

Dear Mr. Royster:

The Board of Directors of the Michigan Probate Judges Association (MPJA) thanks the Supreme Court for the opportunity to address the Court regarding proposed amendments to the Michigan Court Rules.

The Board of Directors of the MPJA oppose certain proposed amendments to MCR 5.738a (use of video conferencing technology) and respectfully provide substituted language for the Court's consideration.

Proposed MCR 5.738a(A)(1) allows the courts to use video conferencing technology to conduct any hearing in a mental health proceeding when the subject of the petition does not object to the use of video conferencing technology.

Our objection to this amendment is it removes any discretion from the trial court to determine the appropriateness of the location of the hearing or under what conditions the hearing should be conducted.

The MPJA believe this amendment will create a waste of judicial, prosecutorial and defense counsel resources, creates the potential risk of physical harm to patient and law enforcement in the transportation of the patient between the hospital and court and increases cost to the hospital and Sheriff's Department in that transportation.

NON-VOTING

Hon. Marvin Robertson
Emeriti Judges Association

Hon. Susan L. Dobrich
Technology

Committee Chairs

Estates and Trusts
Hon. David Murkowski

Family Court
Juvenile & Adoption
Hon. Dorene Allen
Domestic Relations
Hon. F. Kay Behm

Mental Health
Hon. Curtis Bell
Hon. David Murkowski

Legislation
Hon. Lisa Sullivan

Governance
Hon. Patrick McGraw

Inter-Com
Hon. Monte Burmeister

Compensation
Hon. Frederick Mulhauser
Hon. Patrick McGraw

Technology
Hon. Susan Dobrich

Mr. Larry S. Royster
Page 2
June 30, 2016

Nearly 20,000 petitions for involuntary hospitalization are filed in Michigan yearly. By statutory mandate, mental health commitment hearings shall be conducted within seven days of the filing of the petition and two physicians' certificates. Kent County, for example, receives approximately 2,000 petitions for hospitalization every year. In addition, the Kent County Probate Court processes an additional 1,300 out-of-county petitions for those patients treated in a Kent County facility. The Kent County Probate Court conducts 600 mental health hearings annually.

With the advent of video technology, the Kent County Probate Court has moved from conducting hearings at hospitals with the judge, prosecutor and defense attorney traveling between three hospitals twice every week to video conferencing. Video conferencing eliminates travel for the judge, prosecutor and court reporter and eliminates the time, risk and costs associated with hospital transport of patients by the Sheriff's Department.

Kent County conducts an average of 12 hearings per week, every week, throughout the year. Under the proposed amendment, refusal without cause by a patient to participate in a video hearing will require either the court to cancel the scheduled teleconferenced mental health docket and require the court, prosecutor and court reporter to appear at the hospital for that hearing or require the county sheriff to transfer the patient from the hospital to the courthouse for hearing and require the patient's counsel to appear with the patient at the courthouse.

Given the ramifications of the proposed court rule change affecting docket management, efficiency, safety, and cost, the MPJA respectfully requests that the proposed language of MCR 5.738a(A)(1) read as follows:

The courts may use video conferencing technology to conduct any hearing in a mental health proceeding under any of the following conditions: The subject of the petition does not object to the use of video conferencing technology, or upon the objection of the subject of the petition, the court finds good cause on the record to conduct the mental health proceeding by video conferencing technology.

Next, the Board of Directors of the Michigan Probate Judges Association seek amendment to the proposed language of MCR 5.738a(A)(3) which states:

The subject's presence is waived by the court if there is testimony by a physician or licensed psychologist who has

Mr. Larry S. Royster
Page 3
June 30, 2016

recently observed the subject that the subject's attendance would expose the subject to serious risk of physical harm.

The MPJA respectfully requests that additional language be included in the court rule that acknowledges the need and provides protection for other members of the public and personnel involved in mental health proceedings.

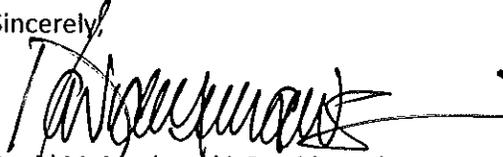
The following language is proposed:

The subject's presence is waived by the court if there is testimony by a physician or licensed psychologist who has recently observed the subject that the subject's attendance would expose the subject *or others* to serious risk of physical harm.

We believe this amendment to the proposed court rule acknowledges the court's responsibility to provide a safe venue for every individual who participates in mental health proceedings.

We thank the Supreme Court for providing this opportunity for the Michigan probate judges to comment on these important proposals.

Sincerely,



David M. Murkowski, President Elect
Michigan Probate Judges Association

DMM:ajc
cc: Anne M. Boomer