

MICHIGAN PROBATE JUDGES ASSOCIATION

2 So. 6th St., Ste. 10
Crystal Falls, MI 49920
(906) 875-0659

May 31, 2015

EXECUTIVE COMMITTEE

Hon. C. JOSEPH SCHWEDLER
President

Hon. ROBERT J. BUTTS
President-Elect

Hon. DAVID M. MURKOWSKI
Vice-President

Hon. DORENE S. ALLEN
Treasurer

Hon. MONTE BURMEISTER
Secretary

Hon. THOMAS D. SLAGLE
Presiding Judge

Hon. LISA SULLIVAN
Immediate Past President

Hon. MONTE BURMEISTER
Editor of INTER-COM

AT LARGE MEMBERS

Hon. DARLENE O'BRIEN
Hon. WILLIAM DOHERTY
Hon. JOHN D. TOMLINSON
Hon. GREGG IDDINGS

REGIONAL ASSN. PRESIDENTS

Hon. DANIEL A. O'BRIEN
Southeastern

Hon. PATRICK MCGRAW
Central

Hon. MONTE BURMEISTER
Top of Michigan

Hon. ELIZABETH CHURCH
Upper Peninsula

Hon. G. SCOTT PIERANGELI
Southwestern

NON-VOTING

Hon. MARVIN ROBERTSON
Emeriti Judges Association

Hon. SUSAN L. DOBRICH
Technology

Larry Royster
Clerk of the Court
Michigan Supreme Court
P. O. Box 30052
Lansing, MI 48909

RE: ADM File No. 2014-45 Proposed Adoption of Rule 5.731a of the Michigan Court Rules

Dear Clerk Royster:

The Board of Directors of the Michigan Probate Judges Association (MPJA) oppose the proposed amendment to MCR 5.731 and respectfully recommend it be rejected.

If the purpose of the amendment is to provide privacy to respondents in an involuntary commitment proceeding, it is well intentioned but impossible to achieve under the current legislative scheme.

A person who is mentally ill and who can be expected to be an intentional or unintentional physical danger to self or others in the near future and has engaged in acts or threats supportive of the expectation or an individual who has mental illness and as a result of that mental illness is unable to attend to those basic physical needs in order to avoid serious harm in the near future and who has demonstrated their inability to care for their basic needs is a person requiring treatment under the Michigan Mental Health Code and is subject to involuntary hospitalization and outpatient treatment and supervision. MCL 330.1401 et seq. On average, nearly 20,000 petitions for involuntary hospitalization are filed yearly in the state of Michigan.

The statute requires the filing of a petition and two clinical certificates to hold a respondent for hearing. The certificate includes documentation that the physician has personally met with the respondent, observations, opinions regarding the potential for harm to self and others and the ability for self care, diagnoses, and recommendations for treatment. The filing of the petition and certificates triggers procedural requirements including the appointment of counsel and the fixing of a hearing date within seven days from the filing.

RE: ADM File No. 2014-45/MPJA

The statute requires the service of the clinical certificates upon the respondent and a number of other individuals including peace officers (MCL 330.1426), the hospital director, nearest relative, guardian and attorney for the respondent. (MCL 330.1431).

The prosecuting attorney who is statutorily charged with presenting the case will be provided with the certificates and petition. The testifying physician will also have a copy of the certificates and statements made to the physician by the respondent will be recorded on the certificate, are admissible, and will be testified to by the physician. Hearing are open to the public.

Thus, the sealing of certificates from public view seem ineffective for the purpose of providing privacy given the service requirements of the statute. Typically, the most personal or revealing information is contained not in the clinical certificate but in the publically filed petition and supplemental petition.

The statute does deem confidential and for the sole use of the respondent any independent clinical evaluation secured by the respondent by prohibiting the introduction of the evaluation into evidence or the testimony of the evaluating physician without the consent of the respondent.(MCL 330.1463).

There also exists a very practical concern with the proposed amendment as it places a tremendous burden on court staff to create, segregate, and maintain these confidential papers. With nearly 20,000 filings a year, court staff throughout the state would be required to create and maintain some 75,000 pages of segregated filing every year.

Lastly, there is an argument to be made for transparency in public filings, certainly when one is taken into protective custody when no crime has been committed and argument can be made that public safety is increased through public access of required court filings.

It is our opinion that any effective change to the confidentiality of information contained in involuntary commitment filings requires a comprehensive overhaul of the civil commitment process contained in the Michigan Mental Health Code through legislative enactment.

We thank the Court for providing the opportunity to the Michigan Probate Judges Association to comment on this important matter.

Sincerely,



Hon. David M. Murkowski, Vice President
Michigan Probate Judges Association