



51/54/55

The Basics

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Chapter 51

- ▶ Starts with filing: 3 party/LEO/Director Hold/Post Crim. Conversion
- ▶ Burden on the county to prove by clear and convincing evidence
 - ▶ Diagnosis/Mental State – grossly impairs
 - ▶ Treatability – permanent vs. improved symptoms
 - ▶ Dangerousness – 5 standards
 - ▶ 51.20(1)(a)(2) a-e

Settlement Agreement

- ▶ Pauses proceedings for up to 90 days
- ▶ Conditions monitored by corp counsel/DHS
- ▶ If violated petition to revoke/72 hours hearing
- ▶ Petition is prima facie evidence of violation
- ▶ Burden on us to prove by preponderance that the facts are false

PC Hearing

- ▶ Within 72 hours
- ▶ Client given notice/petition/rights
- ▶ No extension
- ▶ Handled by Corporation Counsel
- ▶ Burden to prove probable cause
- ▶ Due process applies- 51.20(5)



After PC

- ▶ Inpatient or outpatient with conditions
- ▶ If inpatient final within 14 days of detention
- ▶ If outpatient with conditions within 30 days of the order
- ▶ May be postponed only at defense request no more than 7 days
- ▶ Conversion to 54/55 or 51.45 (alcohol commitment)

Jury Trial?

- ▶ Jury trial – must be filed within 48 hours of final – otherwise waived
- ▶ If filed within 5 days of detention – final 14 days after detention
- ▶ If filed later than 5 days after detention – final within 14 days of demand



Final hearing/Commitment

- ▶ Same three standards but to clear and convincing
- ▶ Consider ML/agreement that corp counsel outline beforehand which standard
- ▶ 6 month commitment – compliance with conditions



Involuntary medication order 51.61(1)(g)(4)

- ▶ Doctor must explain adv/disadv./alt.
- ▶ Client must express an understanding/application
- ▶ Client must generally be able to identify medication
- ▶ May be applied for at any stage of the proceedings
 - ▶ If at PC only applicable until final
 - ▶ If after final then upon the request have to hold a hearing, 10 days after filing



Recommitment

- ▶ Recommitment is for 1 year – could be negotiated
- ▶ Hearing – county must prove three prongs by clear and convincing evidence
- ▶ Dangerousness – proper subject for commitment if treatment were withdrawn
- ▶ Resistant to treatment such that recommitment would occur again
- ▶ However can not be a vague assertion but connected directly with one of five
- ▶ Right to jury trial applies

Guardianship: Temporary/Estate/Person

- ▶ Guardianship: Chapter 54 – Burden on the petitioner clear and convincing evidence that the proposed ward is one of the following:
 - ▶ Incompetent
 - ▶ A spendthrift
 - ▶ A minor
- ▶ Temporary – requires immediate appt - 60 days but may be extended 60 days
- ▶ Guardian of Estate – financial 54.01(11)
- ▶ Guardian of person – well being – 54.01(12)

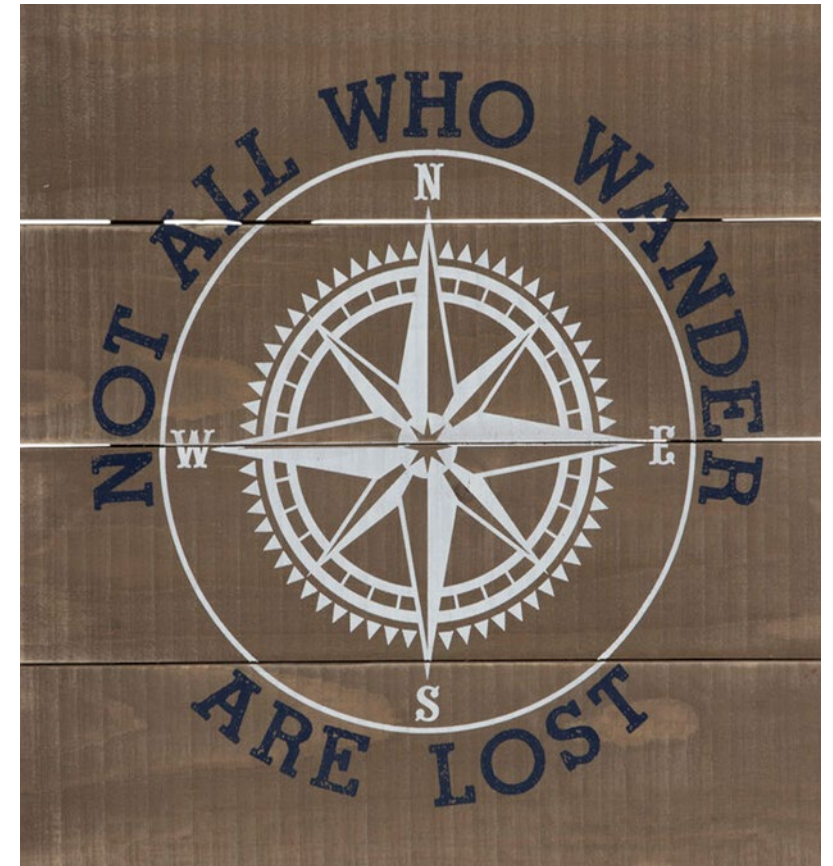


Protective Services

- ▶ Proposed ward has been deemed incompetent
- ▶ Petition for guardianship has been submitted
- ▶ Will incur substantial risk of physical harm or deterioration due to :
 - ▶ Developmental disability
 - ▶ Degenerative brain disorder
 - ▶ Serious or persistent mental illness
 - ▶ Other Like Incapacities

Protective Placement

- ▶ Burden on the petitioner to prove by clear and convincing evidence that the proposed ward:
 - ▶ Needs residential care and custody
 - ▶ Either suffers from a developmental disability or has been declared incompetent
 - ▶ Totally incapable of providing for their own care due to :
 - ▶ Developmental disability
 - ▶ Degenerative brain disorder
 - ▶ Serious or persistent mental illness
 - ▶ Other Like Incapacities
 - ▶ The disability is permanent or likely to be permanent



Emergency Protective Placement

- ▶ Petition filed by the person making the EPP request
- ▶ EPP hearing will be held within 72 hours
- ▶ Petitioner must prove PC
- ▶ Proposed ward is entitled to representation
- ▶ If PC found the final hearing and EPP may not exceed 30 days

Regular 55 Filings

- ▶ Begins with filing petition – APS/Private
- ▶ Guardian must file Statement of Acts at least 96 hours before the scheduled hearing
- ▶ Physician or psychologist report – 96 hrs
 - ▶ Can request IME
- ▶ Report of the GAL
- ▶ Evaluation usually by APS



GN/Protective Placement - Counsel

- ▶ GN – no right to PD unless with PP
- ▶ Automatic right to counsel for:
55.10(4)
 - ▶ Emergency Protective Placement
 - ▶ Initial filing of GN/PP Petition
- ▶ WATTS Annual Review – 55.18
 - ▶ Right to counsel only:
 - ▶ after GAL request or
 - ▶ if a court finds it necessary



Timing of the hearing

- ▶ Case began with EPP - Within 30 days of PC finding
- ▶ Case began with EPS - Within 60 days of PC finding
- ▶ Case began with Non-emergent petition – 60 days after filing
- ▶ One time 45 day extension allowed
- ▶ JT – unclear but should follow above



Right to be present

- ▶ Client has a right to be present at the hearing
- ▶ However the GAL has the ability to waive the client's appearance
- ▶ Only after a personal interview
- ▶ May override but need to do the leg work
- ▶ Hearings under Guardianship are closed unless requested otherwise
- ▶ Hearings under PP are open unless requested otherwise
- ▶ Most courts: PP governs when both are handled together

Jury Trial?

- ▶ Must be demanded at least 48 hours before the time for the hearing
- ▶ 6 person jury panel
- ▶ 5/6 verdict needed
- ▶ Clear and convincing standard



Least Restrictive

- ▶ Home
- ▶ Supported apartment
- ▶ CBRF/AFH – usually unlocked with 24 monitored egress
- ▶ Nursing home - can range from unlocked-locked facility
 - ▶ Usually 24/7 skilled nursing staff
- ▶ State run facilities (Mendota or WMHI) is not allowed under 54/55
 - ▶ Is allowed under a Chapter 51



Involuntary Med Order

- ▶ Adv./Disadv./Alt. have been explained
- ▶ Client is unable to expressing an understanding
- ▶ Client is substantially incapable of applying the understand
- ▶ Should be applied for at a later date
- ▶ Hearing must be handled within 30 days after filing
- ▶ Entitled to representation
- ▶ Must be proven by clear and convincing evidence



WATTS Review

- ▶ GN/PP Presumed indefinite – entitled to annual review
- ▶ GAL will conduct the preliminary review, may recommend adversary counsel
 - ▶ Only way to be appointed to these cases (unless local practice is otherwise)
- ▶ Entitled to a full due process hearing
- ▶ Rights to Jury/Counsel/IME
- ▶ Main issue is to reaffirm that the placement continues to be least restrictive

Need help? Reach out:

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