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| **STATE OF WISCONSIN CIRCUIT COURT** **BRANCH**       |       **COUNTY** | For Official Use |
| In the Matter of the Mental Condition of: Case No.     ME    CLIENTAlleged to be in need of an involuntarymental commitment. |
| **SUBJECT’S NOTICE OF MOTIONS AND PRE-PC HEARING MOTIONS** |

**NOTICE**

TO: COUNTY County Corporation Counsel COUNTY Probate Clerk

 ADDRESS COUNTY County Courthouse

 ADDRESS ADDRESS

 ADDRESS

PLEASE TAKE NOTICE that the respondent, CLIENT, appearing specially by Atty.      , will bring the following motion before the presiding commissioner at the COUNTY County Courthouse, ADDRESS, on or before the probable cause hearing, currently scheduled for      .

**MOTION**

The respondent, CLIENT, appearing specially by Atty.      , moves the Court for the following:

1. An order prohibiting any expert witness to offer any testimony of hearsay for the truth of the matter asserted. Grounds for this motion are as follows:
	1. While experts may rely upon facts or data that is not otherwise admissible, expert testimony is not otherwise immune from the rules of evidence governing hearsay. Wis. Stat. §§ 907.03; 908.02; 908.03; 908.04; 908.045; 908.05.
	2. Admission of hearsay evidence violates a subject’s right to confrontation. *See, generally, Vitek v. Jones*, 445 U.S. 480 (1980).
	3. Subjects in civil commitment proceedings are entitled to due process protections. Wis. Stat. § 51.20(5). Using hearsay in such proceedings is a due process violation. *See, generally, Lessard v. Schmidt*, 349 F. Supp. 1078 (E.D. Wis. 1972); *see also, generally, S.Y. v. Eau Claire County*, 156 Wis. 2d 317, 457 N.W.2d 326 (Ct. App. 1990).
2. An order prohibiting any expert witness to offer any testimony of any supposed expert opinion[[1]](#footnote-1) regarding whether the above-named subject is dangerous, as defined by Wis. Stat. § 51.20(1)(a)2. Grounds for this motion are as follows:
	1. Dangerousness, as defined by Wis. Stat. § 51.20(1)(a)2., is a fact-based inquiry for the fact-finder, not an opinion that an expert could hope to provide. *See* Wis. Stat. § 51.20(1)(a)2.; *see also* University of Wisconsin’s Continuing Legal Education for Wisconsin, *2020 Wisconsin Jury Instructions-Civil 7050 Involuntary Commitment: Mentally Ill – 51.20*, 2020 Wisconsin Jury Instructions-Civil (2020) (hereinafter, “*WI JI-Civil 7050*”).
	2. Dangerousness, as defined by Wis. Stat. § 51.20(1)(a)2., is not something for which “scientific, technical, or otherwise specialized knowledge” is required to help the fact-finder understand or determine. *See* Wis. Stat. § 907.02(1).
	3. CLIENT has no notice of any expert witness who may testify at the probable cause hearing who could have formulated any expert opinions regarding dangerousness as a “product of reliable principles and methods” or who could have “applied the principles and methods reliably to the facts of the case.” *See* Wis. Stat. § 907.02(1).
	4. If the commissioner binds this matter over for a final hearing, CLIENT anticipates that the Court will appoint two examiners to evaluate him pursuant to Wis. Stat. § 51.20(9). If, *arguendo*, any witness at the probable cause hearing could have possibly evaluated CLIENT in a manner similar to that which is described by Wis. Stat. § 51.20(9), the examiner would still not have statutory authority, guidance, or consent to provide any supposed expert opinion on dangerousness. Sub. (9) directs examiners to, in part, provide testimony and write a report as to “the existence of the conditions described in sub. (1)[,]” but such directive is not so specific as to direct the examiners to make opinions about dangerousness, specifically. *See* Wis. Stat. §§ 51.20(1), (9)(a)5. Indeed, sub. (1) provides all elements that the County must prove to the fact-finder. Wis. Stat. §§ 51.20(1). Such elements include whether the subject is mentally ill and a proper subject for treatment. Wis. Stat. §§ 51.20(1)(a)1. These are elements suited for an examiner’s expertise as a psychologist or psychiatrist under a *Daubert* analysis. By contrast, the “dangerousness” of the subject is based on the existence of certain facts. *See* Wis. Stat. §§ 51.20(1)(a)2. (describing certain “acts or omissions[,]” “threat[s,]” and “behavior”).
3. In the alternative to Motion #2, above, a hearing (prior to the probable cause hearing) pursuant to Wis. Stat. § 907.02(1), and *Daubert v. Merrell Dow Pharm. Inc.*, 509 U.S. 579 (1993) to review the admissibility of any expert testimony, including, but not limited to, whether any expert witnesses possess the requisite expertise to render expert opinions on dangerousness; such requisite expertise requires that they have relied upon principles and methods, peer reviewed and generally accepted in the examiners’ respective fields of expertise and applied facts of the case to those principles and methods.

 Dated at      , Wisconsin, this       day of      , 20     .

 Respectfully submitted,

 Electronically signed by Attorney

Attorney, Bar No.

Attorney for Respondent

State Public Defender's Office

Address

Address

Phone

1. If any expert also has personal knowledge of any alleged facts that the County may wish to offer for dangerousness, that is a different issue than (CLIENT) presents here. Here, (CLIENT) simply seeks to preclude the County from offering expert opinions in the place of factual evidence. [↑](#footnote-ref-1)