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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  CLIENT  Alleged to be in need of an involuntary  mental 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 in Limine before the Honorable JUDGE at the COUNTY County Courthouse, ADDRESS, at a date and time to be set by the Court.

**MOTION**

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

1. An order prohibiting either of the examiners appointed pursuant to Wis. Stat. § 51.20(9) 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 either of the examiners appointed pursuant to Wis. Stat. § 51.20(9) to offer any testimony of any supposed expert opinion 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. Nothing described in the examiners’ reports states or even suggests that either expert is basing any opinions regarding dangerousness as a “product of reliable principles and methods” or that the examiner “applied the principles and methods reliably to the facts of the case.” *See* Wis. Stat. § 907.02(1).
   4. While the aforementioned examiners were appointed, in part, to provide testimony and write a report as to “the existence of the conditions described in sub. (1)[,]” 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 final 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 the examiners appointed pursuant to Wis. Stat. § 51.20(9) have 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