

Mental Health Court & Emergency Writs

By: Scott W. Gertz

1. INTRODUCTION

A. IN GENERAL

This article will focus on an important public service provided by the Cook County State's Attorney's Office: emergency writs. In particular, this article will discuss the interests served, the standards used, and the procedures employed to obtain an emergency writ on behalf of the public.

B. DEFINITION AND INTERESTS SERVED

Emergency writs are technically called "Orders of Detention, Examination and Evaluation." In the parlance of mental health court, however, it is customary to use the more informal name "emergency writ."

Emergency writs are court orders which authorize law enforcement to escort a respondent to a mental health facility for a mental health evaluation. Through this legal procedure, petitioners, usually family members of the respondent, are frequently able to obtain treatment for a reluctant loved one, despite his or her refusal to seek assistance on a voluntary basis.

Emergency writs are an effective means of safeguarding the interests of the community. Frequently, persons alleged to be mentally ill are taken to a mental health facility for an evaluation because of their potential to be dangerous to themselves or others, if left to their own devices without proper supervision.

Finally, emergency writs are needed when a person alleged to be mentally ill is unable to care for his or her basic needs, such as finding food or housing. This is a recognition of the "high value" our society has placed to "protect and care for those unable to protect and care for themselves." *In re Charles Stephenson*, 367 N.E.2d 1273, (Ill.1977).

2. EMERGENCY WRITS

A. THE STANDARDS

Pursuant to 5/3-700 of the Mental Health & Developmental Disabilities Code (the Code), the court may order that a person 18 years of age or older to be subject to involuntary admission. Ill. Com. Stat. 405 5/3-700 (2001). Under 5/3-701 of the Code, the court may inquire of the petitioner as to whether there are reasonable grounds to believe the facts stated in the petition are true and whether the respondent is subject to

involuntary admission. Ill. Com. Stat. 405 5/3-701 (2001).

In emergency situations, the court's reasonable grounds inquiry can take place without notice to the respondent; only the assistant state's attorney and petitioner are before the court. In this emergency context, in order for the court to issue the emergency writ, the assistant state's attorney must elicit testimony from the petitioner to demonstrate that an emergency exists such that immediate hospitalization is necessary, as well as a factual basis for the allegations in the petition. Ill. Com. Stat. 405 5/3-701(b) (2001).

In addition, for the emergency writ to issue, the assistant state's attorney must

satisfy one or both of the statutory criteria used to determine if an individual is subject to involuntary commitment. First, the People can elicit testimony from the petitioner to show that there are reasonable grounds for the court to believe that the respondent has a mental illness and, because of his or her mental illness, is reasonably expected to inflict serious physical harm upon himself or herself or another in the near future. Mental illness, standing alone, is not sufficient to confine someone against their will. *In re Stanley Rovelstad*, 667 N.E.2d 720 (2nd Dist. 1996).

Alternatively, the assistant state's attorney can elicit testimony from the petitioner to show that there are reasonable grounds for the court to believe that the respondent has a mental illness and who, because of his or her mental illness, is unable to provide for his or her basic needs so as to guard himself or herself from harm. Again, mental illness, standing alone, is

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Facing an Ethical Dilemma? Call ISBA

Facing an ethical dilemma can be a serious source of stress. Take this one for example: Let's suppose that after representing your client for a period of time, he suddenly stops communicating with you, and also stops paying for the legal services that you both have already agreed he owes you. You would like to terminate your representation of him and discard his files after giving him 30 days notice to retrieve them. It has now been more than thirty days and you're wondering, "Can I now terminate the representation and discard the client's files?"

Over the years, the ISBA Committee on Professional Conduct has considered hundreds of ethical dilemmas, such as this one, and has issued opinions regarding how to handle them. A search through a listing of questions and the ISBA's responses on the web at <http://www.isba.org/isba/ethics/EthicsOpinions/>, if you can't find an opinion there that could be applied to your specific dilemma, you can also discuss your situation in person with one of the ISBA's formal attorneys. Call (800) 252-8000 or (217) 525-1760

or (312) 726-8775 and ask for an ethics service attorney.

Finally, you can also submit a formal query to the Committee on Professional Conduct, asking them to consider your particular dilemma. This process can take at least six months, however, so you have to be sure you have plenty of time available before the opinion is returned.

The ISBA's ethical opinions should not be taken as legal advice, but merely as guidance and interpretations of the current Illinois Rules of Professional Conduct.

As for what to do about your client and his files, ISBA Advisory Opinion 09-02 says you may terminate the representation of your client when the client's conduct substantially fails to fulfill an agreement or obligation to the lawyer as to expenses or fees. Rule 1.16 (b) (1) (F). In general you are required to return to the client all of the files that were supplied to you by the client, but you are entitled to be compensated by the client for any expenses incurred in returning the files. See ISBA Advisory Opinion 94-14.

Can I get a Refund for a Previous Year's Real Estate Taxes? Understanding the "Certificate of Error" Process in Cook County

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mentation that the Certificate of Error be granted. The State's Attorney must present the Certificate of Error "recommendation" to the court for approval.

Once the Assessor's Office has reviewed a Certificate of Error application,

either granting or denying, the matter is considered resolved and the Assessor's Office will not reconsider an additional Certificate of Error application for the same year without new and compelling documentation not previously submitted. *There is no appeal process from the Assessor's decision granting or denying a Certificate of Error application.*

Conclusion

The Certificate of Error process provides taxpayers with an avenue to contest an assessment for a year prior to the current assessment year and request a refund for the overpayment of real estate taxes. Recent changes to the existing Certificate of Error legislation vests more discretionary authority with the Cook County Assessor's Office to grant Certificates of Error and provides more immediate relief for the majority of taxpayers, namely homeowners, "mom and pop" operations and small business owners.

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not sufficient to confine someone against their will. *Id.*

These are the same legal standards used in civil commitment hearings, except the burden of proof in the commitment hearing is clear and convincing evidence, not reasonable grounds. *Id.* In addition, the scope of the court's inquiry in an emergency writ setting is far more limited than that of a civil commitment hearing.

B. THE PROCEDURE

Geography can play an important role in many emergency writ proceedings. The respondent's address will determine to which State mental health facility the respondent will be escorted. In other words, the petitioner does not have an opportunity to select a particular State facility for the respondent. In contrast, if the respondent is to be escorted to a private hospital, the petitioner will do the selecting.

If the emergency writ is issued, it permits law enforcement to escort the respondent, even against his or her will, to a mental health facility for a mental health evaluation within 72 hours of the clerk's file stamp (the emergency writ expires after the 72 hours). Once the respondent is taken to the hospital, the intake psychiatrist determines whether or not to admit the patient.

3. CONCLUSION

Emergency writs are an important resource for the public to deal, in a proactive way, with the effects of mental illness. Three important interests are served through this procedure: first, family members (or anyone 18 or older) can take an important step towards helping a loved one receive mental health treatment; second, society is protected, as the person alleged to be mentally ill and dangerous is no longer living in the community freely; third, society's obligation to help those who can't help themselves is fulfilled, as the respondent is cared for in a mental health facility.

Scott W. Gertz, Cook County Assistant State's Attorney

Emergency writ proceedings are held in three locations - Chicago-Read Mental Health Center (Read), Tinley Park Mental Health Center ("Tinley Park"), and the Daley Center. The public is free to utilize the services of any of these three locations at which emergency writ proceedings are held.

Interested parties should come to Read between 8:30 am and 9:00 am, everyday but Tuesday, if Read is geographically convenient. Alternatively, Tinley Park is available for emergency writs between 8:30 am and 9:00 am on Tuesdays.

Finally, interested parties can obtain an emergency writ by calling 312-603-8600, or by coming to the Cook County State's Attorney's Office, Public Interest Bureau, located at 69 West Washington Street, 7th floor. Appointment times are held at 9:30 am and 1:30 p.m., Monday through Friday. Once the paper work has been processed, the petitioner and the assistant state's attorney will go before the judge at the Daley Center in an attempt to obtain the emergency writ.