

Office of the State Public Defender
**INVOLUNTARY COMMITMENT
CHECKLIST**

January 1, 2011

READ (or reread): *In the Matter of the Mental Health of KGF*, 2001 MT 140.

Establish familiarity with mental disorders, medical terminology, and psychotropic medications.

INITIAL CLIENT CONTACT

- Meet with the client **as soon as possible** following assignment to the case
- Identify yourself by name and affiliation
- Be sure to clarify that you are not part of the hospital staff
- Explain what is happening (involuntary commitment process) and why
- Identify all parties to the commitment process
- Discuss and explain the client's rights in the commitment process
 - Right to treatment
 - Right to refuse treatment
 - Right to an independent evaluation
- Explain the right to obtain voluntary treatment
- Inform client that communications between client and attorney are confidential
- Explain that the respondent has a right to obtain private counsel at respondent's own expense
- Obtain signed releases from client
- Identify all relevant witnesses
- Identify whether there has been any prior medical treatment
- Advise the client regarding all available options
 - Assist the client in obtaining his/her objectives by advising him/her regarding the probabilities of success associated with each option
- Advise the client regarding the pros and cons of voluntary treatment
 - But remember: You may not presume, in the absence of objection from the client, that the client wishes to be involuntary committed
 - And **you must advocate for the client's express wishes** – not the wishes of relatives, friends, or guardian
- Secure assistance from experts if communication impairments arise
 - Language, literacy, chemicals, mental health. medication

HANDLING THE CASE

- Seek the most expedient and timely resolution that does not offend the client's express wishes
- Do not agree to a continuance unless it is necessary for effective advocacy
- Ensure that the client may exercise his/her right to a jury trial
 - Explain the benefits and detriments of a jury vs. judge trial
 - Inform the court immediately if the client elects a jury trial
 - If the client elects to waive a jury, ensure that the waiver is knowing and voluntary

- Ensure that the client actively participates in every stage of the proceeding
 - Encourage the client to be present at all hearings
 - ❖ Avoid using your authority to waive the client's presence except where attendance would seriously jeopardize the client's condition
 - Advise the client regarding the law at every stage of the proceedings
 - Make a record of advice regarding the client's elections and waivers
- When a client is under the influence of psychotropic medications, introduce evidence regarding the medication and its effect on the client's demeanor
- Advocate zealously and effectively for the client's express interests at all stages of trial
- Be familiar with court rules and local customs regarding the commitment process
- Seek to bifurcate probable cause and placement proceedings if the client's interests so dictate
- Object to introduction of prior commitment or criminal charge evidence until adjudication issues have been resolved
- Conduct rigorous examination and cross-examination of all witnesses
- Consider filing a Petition for Habeas Corpus relief, if appropriate
- Obtain and review all relevant records prior to initial hearing
- Identify the least restrictive alternative available
- Solicit support of social workers to explore possible community service options
- Appointment of Friend
- Obtain and review diagnoses and opinions of state's expert
- Facilitate client's exercise of right to be examined by a second professional person
 - Explain that client has the right to select second professional person
- Provide continuity of representation for the client throughout the involuntary commitment process:
 - Investigate the case
 - Obtain witness statements
 - Be aware of timelines
 - Make sure the client is fully informed and understands what is going on
 - Secure expert assistance if needed

FOR CASES RESULTING IN COMMITMENT

- Advocate for an appropriate treatment and discharge plan which is tailored to the client's individual needs
 - Argue for the exclusion of unnecessarily restrictive conditions
- Advocate for least restrictive alternative available
- Review the commitment order to ensure statutory compliance
- Inform client of right to appeal