

SUPREME COURT OF NEW JERSEY

It is ORDERED that the attached amendments to Rules 4:74-7 and 4:74-7A of the Rules Governing the Courts of the State of New Jersey are adopted to be effective August 1, 2012.

For the Court,

/s/ Stuart Rabner

Chief Justice

Dated: July 10, 2012

4:74-7. Civil Commitment – Adults

(a) Applicability; Definitions. This rule applies to the civil commitment of persons 18 years of age or older[,] to inpatient or outpatient treatment, and the definitions contained in *N.J.S.A. 30:4-27.2* apply.

(b) Commencement of Action. An action for commitment to treatment shall be commenced either through a screening service referral or upon independent application for a temporary court order, except that an action for commitment to outpatient treatment may alternatively be commenced through the conversion procedure set forth in subparagraph (f)(3) of this Rule. All clinical and screening certificates shall be in the form prescribed by the Division of Mental Health and Addiction Services in the Department of Human Services subject to the approval of the Administrative Director of the Courts.

(1) Screening Service Referral. A person who has been involuntarily admitted to a short-term care or psychiatric facility or special psychiatric hospital or assigned to an outpatient treatment provider on referral by a screening service may be detained by the facility or the hospital without court order for not more than 72 hours from the time the original screening certificate was executed. During that period the facility, [or] the hospital or outpatient treatment provider may institute proceedings by filing with the court [both] the original clinical certificate completed by a psychiatrist on the patient's treatment team, [and] the original screening certificate executed by a psychiatrist or other physician affiliated with the screening service and, if commitment to outpatient treatment is recommended, an interim plan of outpatient treatment. If the screening was performed by means of telepsychiatry by a screening service having a Division of Mental Health and Addiction Services approved plan of telepsychiatry, the facility, hospital or outpatient treatment provider may file with the court a facsimile of the original

screening certificate in lieu of the original. A copy of the certificates and interim plan of outpatient treatment, if required, shall be filed with the office of the county adjuster.

(2) Independent Applications. If the screening service procedure is not employed, proceedings for involuntary commitment to treatment may be initiated by filing an application supported by two clinical certificates, at least one of which is prepared by a psychiatrist, stating that the person is in need of involuntary commitment to treatment. If an application for involuntary commitment to outpatient treatment is filed, an interim plan of outpatient treatment developed by an outpatient treatment program shall be filed in addition to the two clinical certificates. The originals shall be filed with the court and copies with the office of the county adjuster. If the application is made after a voluntary patient requests discharge from a facility or hospital, the patient may be detained for not more than 48 hours after the request or until the end of the next working day, whichever is later. If proceedings are instituted by independent application, there shall be no involuntary commitment to treatment prior to entry of a temporary commitment order by the court.

(3) Certificates for Adults

(A) Contents. If the patient is an adult, the certificates shall state with particularity the facts upon which the psychiatrist, physician or mental health screener relies in concluding that (1) the patient is mentally ill, (2) that mental illness causes the patient to be dangerous to self or others or property as defined by *N.J.S.A. 30:4-27.2h* and *-2i*, [and] (3) [appropriate facilities or services are not otherwise available] the patient is unwilling to accept appropriate treatment voluntarily after it has been offered, (4) the patient needs outpatient treatment or inpatient care at a short term care or psychiatric facility or special psychiatric hospital, and (5) other less restrictive alternative services are not appropriate or available to meet the person's mental health

care needs. If inpatient treatment is recommended, the certificates shall indicate that the patient is immediately or imminently dangerous to self, others or property or outpatient treatment is inadequate to render the patient unlikely to be dangerous within the reasonably foreseeable future. If outpatient treatment is recommended, the certificates shall indicate that with a plan of outpatient treatment the patient will unlikely be dangerous to self, others or property within the reasonably foreseeable future.

(B) Persons Disqualified. A person who is a relative by blood or marriage of the person being examined shall not execute any certificate required by this rule. If the screening service referral procedure is used, the same psychiatrist shall not sign both the screening certificate and the clinical certificate unless that psychiatrist has made a reasonable but unsuccessful attempt to have another psychiatrist conduct the evaluation and execute the certificate.

(c) Temporary Commitment. The court may enter an order of temporary commitment to treatment authorizing the assignment of a person to an outpatient treatment provider or the admission to or retention of custody by a facility pending final hearing if it finds probable cause, based on the [certificates] documents filed in accordance with paragraph (b) of this rule, to believe that the person is in need of involuntary commitment to treatment. The order of temporary commitment shall include the following terms:

1. A place and day certain for the commitment hearing, which shall be within 20 days [after] from the initial [inpatient admission to the facility] commitment to treatment. The date shall not be subject to adjournment except that in exceptional circumstances and for good cause shown in open court and on the record the hearing may be adjourned for a period of not more than 14 days.

2. Assignment of counsel to present the case for involuntary commitment to treatment as required by statute.

3. Assignment of counsel to represent an unrepresented patient, whose fees shall be fixed by the court after hearing and paid pursuant to paragraph (i) of this rule.

4. The persons to be notified by the county adjuster of the admitting county of the time and place of hearing, the mode of service of the notice, and the time within which notice must be served. Notice shall be served not less than 10 days prior to the date of the hearing, nor shall any mode of service of the notice on the patient be permitted other than personal service. In addition to the patient, the patient's counsel, and the patient's guardian or guardian *ad litem*, if any, notice shall also be given to the county counsel, the nearest relatives of the patient, the county adjuster of the county in which the patient has legal settlement, and the director[,] or chief executive officer [or other individual who has custody of the patient] of the inpatient facility or hospital or outpatient treatment provider. The court may order notice to be served on any other person. The form of notice served upon the patient and the patient's counsel or guardian *ad litem* shall include a copy of the temporary court order, a statement of the patient's rights at the hearing and the screening or clinical certificates and supporting documents.

(d) Discovery. ...no change

(e) Hearing. No final order of commitment to treatment shall be entered except upon hearing conducted in accordance with the provisions of these rules. The application for commitment to treatment shall be supported by the oral testimony of a psychiatrist on the patient's treatment team who has conducted a personal examination of the patient as close to the court hearing date as possible, but in no event more than five calendar days prior to the court hearing. If a licensed psychologist has examined the patient, the court may also require the

psychologist to appear and testify in the matter. Any expert witness who is to testify shall prepare a written report and shall make it available to the court and all counsel no later than one business day prior to the hearing. The report shall be in a form prescribed by the Department of Human Services and subject to approval by the Administrative Director of the Courts, and designed to minimize the burden on hospital or outpatient treatment provider administrative and clinical resources while still accomplishing its objective. Other members of the patient's treatment team may also testify at the hearing, as may the patient's next-of-kin if the court so determines. The patient shall have the right to appear at the hearing, but may be excused from the courtroom during all or any portion thereof if the court determines that because of the patient's conduct at the hearing it cannot reasonably continue while the patient is present. In no case shall the patient appear *pro se*. The patient, through counsel, shall have the right to present evidence and to cross-examine witnesses. The hearing shall be held in camera, except as otherwise provided by R. 3:19-2 (acquittal by reason of insanity).

(f) Final Order of Commitment, Review, Conversions, Modifications of Outpatient Treatment.

(1) Entry of Order. The court shall enter an order authorizing involuntary commitment of the patient to an outpatient treatment provider or admission to an inpatient setting for treatment if it finds, by clear and convincing evidence presented at the hearing that the patient is in need of continued involuntary commitment to treatment by reason of the fact that (1) the patient is mentally ill, (2) mental illness causes the patient to be dangerous to self or dangerous to others or property as defined in *N.J.S.A. 30:4-27.2h* and *-2i*, (3) the patient is unwilling to be admitted to a facility for voluntary care or accept appropriate treatment voluntarily, and (4) the patient needs outpatient treatment as defined by *N.J.S.A. 30:4-27.2hh* or inpatient care at a short-

term care or psychiatric facility or special psychiatric hospital because other less restrictive alternative services are not appropriate or available to meet the patient's mental health care needs.

(2) Review. The order shall provide for periodic reviews of the commitment. For inpatient treatment, periodic reviews should be no later than (i) three months from the date of the first hearing, and (ii) nine months from the date of the first hearing, and (iii) 12 months from the date of the first hearing, and (iv) at least annually thereafter, if the patient is not sooner discharged. For outpatient treatment, periodic reviews should be no later than (i) 6 months from the date of the first hearing, (ii) 9 months from the date of the first hearing, (iii) 12 months from the date of the first hearing, and (iv) at least annually thereafter, if the patient is not sooner discharged. The court may schedule additional review hearings but, except in extraordinary circumstances, not more than once every 30 days. If the court determines at a review hearing that involuntary commitment to treatment shall be continued, it shall execute a new order. All reviews shall be conducted in the manner required by paragraph (e) of this rule. When the advanced age of the patient or when the cause or nature of the mental illness renders it appropriate, and where it would be impractical to obtain the testimony of a psychiatrist as required in paragraph (e), the court may, in its discretion and with the consent of the patient, support its findings by the oral testimony of a physician on the patient's treatment team who has personally conducted an examination of the patient as close to the hearing date as possible, but in no event more than five days prior to the hearing date. A scheduled periodic review, as set forth above, shall not be stayed pending appeal of a prior determination under this rule.

(3) Conversions. The chief executive officer of a psychiatric facility or hospital may apply to the court between the time periods for review of the commitment for an order changing

the placement of the patient from an inpatient setting to an outpatient setting. The court shall set a date for a hearing on the conversion application and notice of the hearing shall be served upon the patient, the patient's guardian, if any, the patient's next of kin, the patient's attorney and the county adjuster of the county in which the patient has legal settlement. The court shall enter an order authorizing the conversion of the involuntary commitment of the patient from inpatient to outpatient treatment if it finds, by clear and convincing evidence presented at the hearing, that the patient is in need of continued commitment to treatment pursuant to N.J.S.A. 30:4-27.2m, and the least restrictive environment for the patient to receive clinically appropriate treatment is in an outpatient setting.

(4) Modification of Outpatient Treatment.

(A) Material Noncompliance. If a patient fails to materially comply with a plan of outpatient treatment during the time the patient is assigned to outpatient treatment by the court or the provider determines the plan of outpatient treatment is inadequate to meet the patient's mental health needs, the outpatient treatment provider shall notify the court in writing of the material noncompliance and refer the patient to a screening service for assessment to determine appropriate mental health services pursuant to N.J.S.A. 30:4-27.5.

(B) Modification of Plan. If an outpatient treatment provider determines a plan of outpatient treatment is inappropriate and needs to be modified, but the patient does not need to be referred to a screening service, the provider shall apply to the court for an order modifying the plan of outpatient treatment. Notice of the application to modify the treatment plan shall be served upon the patient's attorney and the county adjuster. The court shall enter an order modifying the plan of outpatient treatment as appropriate.

(g) Conversion to Voluntary Status; Voluntary Admission Through a Screening Service ...no change

(h) Discharge.

(1) Order of Discharge. If the court concludes at the review hearing that the evidence does not warrant continued commitment to treatment, it shall order that the patient be discharged. The facility or outpatient treatment provider shall discharge the patient as soon as practicable but no later than 48 hours after the court's verbal order or by the end of the next working day, whichever is later. An order discharging the patient may contain conditions for discharge[, such as attendance at a non-residential mental health facility or other form of supervision] provided the court finds that the patient's history indicates a high risk of [rehospitalization] repeated commitment because of the patient's failure to comply with discharge plans or a substantial likelihood that by reason of mental illness the patient will be dangerous to self, others or property if the patient does not receive other appropriate and available services that render involuntary commitment to treatment unnecessary. Conditions shall be recommended by the facility or outpatient treatment provider and mental health agency staff and developed with the participation of the patient, shall be specific, and shall not exceed 90 days in duration except as otherwise provided by law. The continuation of any such conditions shall be subject to periodic review as provided by paragraph (f) hereof.

(2) Order of Conditional Extension Pending Placement. If a patient otherwise entitled to discharge from an inpatient facility cannot be immediately discharged due to the unavailability of an appropriate placement, the court shall enter an order conditionally extending the patient's hospitalization and scheduling a placement review hearing within 60 days thereafter. If the patient is not sooner discharged, a second placement review hearing shall be held no later

than six months after the initial placement review hearing and subsequently at no greater than six-month intervals. At all placement review hearings the court shall inquire into and receive evidence of the patient's placement as is necessary to support the entry of an order conditionally extending the patient's hospitalization. At all placement review hearings, the hospital employee who has primary responsibility for placing the patient shall prepare a written report and shall make it available to the court and all counsel no later than one business day prior to the hearing. The report shall be in a form prescribed by the Department of Human Services and subject to approval by the Administrative Director of the Courts, and designed to minimize the burden on hospital administrative and clinical resources while still accomplishing its objective. If the court is advised at a hearing that an appropriate placement is available, it shall forthwith order such placement. If an appropriate placement becomes available during the interval between scheduled hearings, the patient may be administratively discharged to said placement.

The patient shall have the right to counsel in all placement review proceedings. Notice of the date, time and place of all hearings shall be given the patient and patient's counsel no later than ten days prior to the hearing. The patient's counsel shall be entitled to inspect and copy all records relating to the patient's condition including the patient's clinical chart and all records relating to placement, to introduce evidence and to cross-examine adverse witnesses.

(3) Access to Appropriate Records for Placement. Whenever a person is or has been voluntarily admitted or involuntarily committed to [a facility] treatment under *N.J.S.A.* Title 30, Article 4, and whose certificates, applications, records and reports, therefore, are controlled by *N.J.S.A.* 30:4-24.3 and it appears that disclosure of said records is necessary to plan for or implement the placement of the person in a less restrictive or alternative environment, and the patient is unable or unwilling to give informed consent for said disclosure, a petition for the

release of such records and the authority to execute any and all documents necessary to effectuate such placement, including but not limited to any and all applications and financial forms, may be made pursuant to *R. 1:6* as follows:

(A) Contents. The petition shall set forth the person or facility making the application, the name of the patient, the type of facility in which placement is sought, the commitment status of the patient, the reasons for the request, the response of the patient and his or her next-of-kin, and the relief requested.

(B) Service; Protective Order. A copy of the petition shall be served on the patient and the patient's attorney, if any. The court may in its discretion appoint an attorney to represent an unrepresented patient. The court shall enter a protective order to preserve the confidentiality of the records to the greatest extent possible.

(i) Order for Payment for Commitment to a Psychiatric Facility.

(1) The patient's legal settlement and provision for payment of the expenses of the patient's care and treatment at a psychiatric facility shall be determined by the court on petition of the county adjuster, which shall be accompanied by a report stating the results of the county adjuster's investigation and the county adjuster's recommendations. The county adjuster's petition and report shall be served upon the patient or the patient's legal guardian if any, the patient's attorney, and any person who may be legally responsible for payment. The petition shall set forth the name and address of the county adjuster and the address of the court and shall state that any objection to the recommendations of the county adjuster shall be filed with the court and served upon the county adjuster within 20 days after service of the petition and report. The petition shall further state that if no objection is filed within the 20-day period, the court may enter an order imposing liability in accordance with the recommendations of the report of the

county adjuster. If no objection is filed, the court may enter an appropriate order based on the petition. If an objection is filed, an order may be entered only after a hearing on notice, which may be summary in nature.

(2) The person or public body charged with the responsibility for payment of the expenses of the patient's care and treatment at a psychiatric facility shall also be charged with the fee of assigned counsel and guardian ad litem and reasonable costs, including the costs of experts, incurred by either of them in representing the patient. If the assigned counsel or guardian ad litem is employed by a legal services project, counsel's fee shall be ordered payable thereto. If counsel is employed by the State or county, no fee allowance shall be made.

(j) Filing. ... no change

Note: paragraphs (a) (b) (c) (d) (e) (f) and (g), captions and text deleted and new text adopted July 17, 1975 to be effective September 8, 1975; paragraphs (a), (b), (c), (e), (f) amended and (j) caption and text deleted and new caption and text adopted September 13, 1976, to be effective September 13, 1976; paragraphs (b), (d), and (f) amended July 24, 1978, to be effective September 11, 1978; paragraph (f) amended July 16, 1981 to be effective September 14, 1981; paragraph (b) amended July 22, 1983 to be effective September 12, 1983; paragraphs (e) and (f) amended and paragraphs (g) and (h) caption and text amended November 2, 1987 to be effective January 1, 1988; paragraphs (a) and (b) amended, subparagraphs (b)(1) and (2) adopted, paragraphs (c), (d) and (e) amended, caption and text of paragraph (f) amended, and caption and text of subparagraphs (g)(1) and (2) amended November 7, 1988 to be effective immediately; November 7, 1988 amendments rescinded February 21, 1989 retroactive to November 7, 1988; November 7, 1988 amendments reinstated June 6, 1989 to be effective June 7, 1989; subparagraph (c)(2) amended June 6, 1989 to be effective June 7, 1989; paragraph (g) recaptioned and text adopted and paragraphs (g) (h) (i) and (j) redesignated (h) (i) (j) and (k) June 29, 1990 to be effective September 4, 1990; paragraphs (c), (e) and (g) amended July 14, 1992 to be effective September 1, 1992; paragraphs (b)(2), (c)(1) and (4), (e), (f), (h)(2), (i)(1) and (2) and (k) amended July 13, 1994 to be effective September 1, 1994; amended January 22, 1997 to be effective March 1, 1997; paragraph (f)(2) amended July 27, 2006 to be effective September 1, 2006; paragraph (f)(2) amended July 9, 2008 to be effective September 1, 2008; paragraphs (a), (b), (c), (e), and (h) amended, paragraph (f) caption and text amended, new subparagraphs (f)(3) and (f)(4) adopted, and paragraph (i) caption and text amended July 10, 2012 to be effective August 1, 2012.

4:74-7A. Civil Commitment-Minors

(a) Definitions. ...no change.

(b) Applicability. All provisions of *R. 4:74-7* (Civil Commitment-Adults) shall be applicable to the commitment of minors, except as follows:

(1) The certificates required by *R. 4:74-7(b)* shall state with particularity the facts upon which the psychiatrist, physician or mental health screener relies in concluding that (a) the minor suffers from childhood mental illness, (b) the childhood mental illness causes the minor to be dangerous to self or others or property as defined in *R. 4:74-7A(a)(3)*, and (c) the minor is in need of intensive psychiatric treatment that can be provided at a psychiatric hospital, special psychiatric hospital or children's crisis intervention service and which cannot be provided in the home, the community or on an outpatient basis.

(2) The order of temporary commitment prescribed by *R. 4:74-7(c)* shall fix a date certain for the commitment hearing within 14 days after the initial inpatient admission to the facility, which date shall not be subject to adjournment except that in exceptional circumstances and for good cause shown in open court and on the record, the hearing may be adjourned for a period of not more than seven days. Notice shall be served not less than five days prior to the hearing.

(3) A guardian *ad litem*, other than the applicant for the commitment, shall be appointed to represent the patient. If the court, for good cause shown, appoints a guardian *ad litem* who is not an attorney, counsel for the guardian *ad litem* shall also be appointed. The guardian *ad litem* shall, unless relieved by court order, continue to represent the minor in respect of all matters arising under this rule until the minor is either released or reaches majority.

Assigned counsel and guardian ad litem fees shall be fixed by the court after hearing and paid pursuant to R. 4:74-7(i).

(4) A final order of commitment pursuant to R. 4:74-7(f) may be entered if the court finds that either:

(i) a minor fourteen years of age or older (a) suffers from childhood mental illness, (b) that the childhood mental illness causes the minor to be dangerous to self or others or property as defined by *N.J.S.A.* 30:4-27.2h and -27.2i and (c) that the minor is in need of intensive psychiatric treatment that can be provided at a psychiatric facility, special psychiatric hospital, or children's crisis intervention service and which cannot be provided in the home, the community or on an outpatient basis; or

(ii) a minor under fourteen years of age (a) suffers from childhood mental illness, (b) that the childhood mental illness causes the minor to be dangerous to self or others or property as defined by R. 4:74-7A(a)(3) and (c) that the minor is in need of intensive psychiatric treatment that can be provided at a psychiatric facility, special psychiatric hospital, or children's crisis intervention service and which cannot be provided in the home, the community or on an outpatient basis.

(5) The commitment shall be judicially reviewed no later than every three months from the date of its last entry until the minor is discharged or reaches the age of 18.

(6) The hearings on an application to convert to voluntary status pursuant to R. 4:74-7(g) shall be held within 14 days rather than the 20 days prescribed for adults.

(7) Any and all provisions relating to involuntary commitment to outpatient treatment.

(c) Voluntary Admission. ...no change.

(d) Parental Admission and Discharge. ...no change.

Note: New rule relating to the commitment of minors adopted January 22, 1997 to be effective March 1, 1997; new subparagraph (b)(7) adopted July 10, 2012 to be effective August 1, 2012.