



Multifirm Litigation Team Enters into Consent Decree to Settle Decade-Long Battle To Protect Thousands in Colorado With Mental Illness

DENVER, MARCH 21, 2019 — A longstanding court battle over extensive wait times for court-ordered mental health evaluations has come to a landmark finish thanks to the work of a few dedicated litigators.

A coalition of lawyers – Iris Eytan, a Colorado criminal defense attorney of Eytan Nielsen LLC, Caleb Durling of Fox Rothschild LLP, and Ellie Lockwood of Snell & Wilmer LLP, both civil litigators on behalf of the Disability Law Colorado (DLC) – moved to reopen litigation dating back to 2012 against the Colorado Department of Human Services (the Department) that was meant to address chronic and widespread delays in the court system for providing court-ordered competency evaluations to pretrial detainees, but failed to do so.

Federal Magistrate Judge Nina Wang ruled that the Department was in breach of the original agreements and set a five-day hearing to determine the length of the breach and fashion a long-term solution.

DLC and the Department agreed to mediate to resolve the longstanding issues. The parties mediated with Federal Magistrate Judge Michael Hegarty for five days. On March 15, 2019, the parties entered into a Consent Decree, which the Court has entered as an order on March 20, which created a robust and comprehensive competency system – unlike any other system in the country – in which the Department agreed that:

- The appointment of a Special Master, who is a specialist in forensic competency systems, who will assist in the creation of this new competency system, and will monitor the Department’s progress, and approve of the Department’s plans.
- The creation of two new units in the Department, one which will create data collection and analysis systems, the other which will require the hiring of numerous clinicians who will interface with the courts and community service providers.
- The development of a system to streamline competency services in the community to reduce the need for expensive inpatient beds.
- The development of a triage system, which will ensure that the most acutely ill pretrial detainees will be transported from jails to the hospital in 7 days, instead of 28 days.



- Delivery of mental health treatment and clinical assessments in jail during the interim period before transfer to an inpatient bed at the hospital.
- Shortened deadlines for completion of competency evaluations and restorations.
- The end of the Department’s policy of freezing civil beds for use by pretrial detainees.
- Continued court oversight over the Consent Decree that could, in the event of the Department’s violation, result in fines and liquidated damages of up to \$10 million a year that will be placed in a trust to be utilized for non-Departmental and community mental health services.

“This Consent Decree should be a benchmark for every state in the country. Top to bottom, this is a very comprehensive Consent Decree designed to help this very vulnerable population for many years to come. The criminal justice system was failing, because of the mental health system was broken, but now the people most in need of inpatient psychiatric care will be moved from jail to a hospital in 7 days, instead of the current 4-5 months,” said Eytan.

“We worked hard with the state to build a streamlined community-based mental health system that will significantly reduce the criminalization of persons with mental illness. The Special Master will have ongoing oversight and authority to ensure all components are complied with and the constitutional rights of thousands are protected,” said Durling.

“This Consent Decree will ensure sweeping reforms to Colorado’s broken competency system that in the coming months and years will provide thousands of detainees with serious mental illness a better life,” said Lockwood.

In addition to Durling, Eytan and Lockwood, DLC was represented by Tim Scalo of Snell & Wilmer LLP and Mark Ivandick and Jennifer Purrington of DLC. The team of lawyers worked under the umbrella of the Colorado Lawyers’ Committee, a nonpartisan consortium of Colorado law firms focused on major public policy issues and systemic change within the state.

The lawsuit was originally filed in the United States District Court for the District of Colorado, No. 11-cv-02285-BNB (D. Colo.).