

IN THE SUPREME COURT OF FLORIDA

Case No. SC16-1852 (Consolidated)

L.T. Case No.: 2D16-1328

JOHN DOE, et al.
Petitioners

v.

STATE OF FLORIDA
Respondent

**AMICUS BRIEF OF THE CHIEF JUDGE OF THE FIFTEENTH
JUDICIAL CIRCUIT IN SUPPORT OF THE RESPONDENT**

Amy Singer Borman
General Counsel
Fifteenth Judicial Circuit
205 North Dixie Highway – 5th Floor
West Palm Beach, Florida 33401
(561) 355-1927 telephone
(561) 355-1181 facsimile
ABorman@pbcgov.org
Florida Bar No.: 957097

RECEIVED, 12/29/2016 05:08:26 PM, Clerk, Supreme Court

I. TABLE OF CONTENTS

I. TABLE OF CONTENTS i

II. TABLE OF CITATIONS..... ii

III. STATEMENT OF INTEREST.....1

IV. SUMMARY OF THE ARGUMENT.....1

V. ARGUMENT2

 A. JUDICIAL OFFICERS HAVE DISCRETION TO PRESIDE OVER AN INVOLUNTARY COMMITMENT PROCEEDING VIA VIDEO CONFERENCING 3

 1. There is no constitutional prohibition to video conferencing because involuntary commitment proceedings are not criminal in nature 4

 2. No rule of procedure addresses a judicial officer's telepresence..... 5

 3. Absent a rule of procedure or constitutional provision, telepresence is within the judicial officer's discretion..... 6

 4. Reports detailing the use and benefit of video conferencing in court proceedings..... 7

 5. Technology is used in involuntary commitment hearings in other states. 10

 B. VIDEO CONFERENCING PROMOTES JUDICIAL AND COST EFFICIENCY, INCREASES SECURITY, AND FURTHERS THE INTEREST OF THE PATIENT 13

 1. Judicial and Cost Efficiency..... 13

 2. Increased Security 15

 3. Interest of the Patient..... 17

 C. CREATION OF RULES OF PROCEDURE 18

 D. FIFTEENTH JUDICIAL CIRCUIT'S TELEPRESENCE PROGRAM..... 19

VI. CONCLUSION.....20

II. TABLE OF CITATIONS

Cases

<i>Addington v. Texas</i> , 441 U.S. 418 (1979).....	4
<i>City of Coral Gables v. State ex rel. Worley</i> , 44 So.2d 298 (Fla.1950)	3
<i>Galbut v. Garfinkl</i> , 340 So. 2d 470 (Fla. 1976).....	6
<i>In re Commitment of J.S.T.</i> , 478 S.W.3d 856 (Tex. App. 2015)	11
<i>In re Drummond</i> , 69 So. 3d 1054 (Fla. 2d DCA 2011)	18
<i>In re Jacob S.</i> , Supreme Court Nos. S-15847, S-15868, 2016 WL 6818829 (Alaska, Nov. 18, 2016).....	10
<i>In re MH-208-000867</i> , 236 P. 3d 405 (Ariz. 2010).....	10
<i>In re W.J.C.</i> , 369 N.W.2d 162 (Wis. Ct. App. 1985)	11
<i>Levin, Middlebrooks, Mabie, Thomas, Mayes & Mitchell, P.A. v. U.S. Fire Ins. Co.</i> , 639 So. 2d 606 (Fla. 1994)	7
<i>Miami Herald Pub. Co. v. Lewis</i> , 426 So. 2d 1 (Fla. 1982)	7
<i>Rose v. Palm Beach Cty.</i> , 361 So. 2d 135 (Fla. 1978).....	6
<i>Town of Manalapan v. Rechler</i> , 674 So. 2d 789 (Fla. 4th DCA 1996).....	3
<i>United States v. Baker</i> , 45 F. 3d 837 (4th Cir. 1995)	14
<i>Woodel v. State</i> , 804 So. 2d 316 (Fla. 2001)	6

Statutes

§ 394.459(1), Fla. Stat. (2016).....	15
§ 394.467(6)(a)2., Fla. Stat. (2016)	17
Mont. Code § 53-21-140(2)	10

Other Authorities

Administrative Conference of the United States, Recommendation 2014-7 <i>Best Practices for Using Video Teleconferencing for Hearings</i> (Dec. 2014), https://www.acus.gov/sites/default/files/documents/Recommendation%25202014-7%2520%2528Video%2520Hearings%2529_1.pdf	9
COSCA/NACM Joint Technology Committee, <i>Possible Future Program Topics</i> (Dec. 2014),.....	8
Florida Courts, <i>Virtual Remote Interpreting</i> , http://flcourts.org/resources-and-services/court-services/court-interpreting/virtual-remote-interpreting.shtml (last visited Dec. 27, 2016).....	5

Florida Supreme Court justices ask for more judges, Sun Sentinel (Sept. 15, 2016),
<http://www.sun-sentinel.com/news/politics/fl-more-judges-needed-20161215-story.html>13

Janis Price & Hasan Sapci, *Law & Psychiatry: Telecourt: The Use of Videoconferencing for Involuntary Commitment Hearings in Academic Health Centers*, 58 *Psychiatric Servs.*, 17 (Jan. 2007),
<http://ps.psychiatryonline.org/doi/full/10.1176/ps.2007.58.1.17>12

Judicial Administration of the Baker Act and Its Effect on Florida’s Elders; Report and Recommendations of the subcommittee on Case Administration (1999),
http://www.floridasupremecourt.org/pub_info/documents/BakerFinalREport.pdf
.....18

Muaid Ithman et al., *Videoconferencing for Civil Commitment: Preserving Dignity*, *IEEE Tech. & Society Mag.* 35 (Winter 2014),
<http://ieeexplore.ieee.org/stamp/stamp.jsp?tp=&arnumber=6969193>11

Office of Program Policy Analysis & Government Accountability, *Judicial Case Management Practices Vary Throughout State; Better Case Data Needed*, Report No. 09-06 (Jan. 2009)8

Thomas M. Clarke, *Technology and Engineering*, *Future Trends in State Courts* 2010, 154 (2010),
<http://cdm16501.contentdm.oclc.org/cdm/ref/collection/tech/id/765>18

Rules

Florida Family Law Rule of Procedure 12.4515

Florida Rule of Civil Procedure 1.4515

Florida Rule of Criminal Procedure 3.130.....5

Florida Rule of Criminal Procedure 3.160.....5

Florida Rule of Judicial Administration 2.5305

Florida Rule of Juvenile Procedure 8.1045

Florida Rule of Juvenile Procedure 8.2555

Florida Rule of Small Claims Court 7.1405

III. STATEMENT OF INTEREST

Jeffrey J. Colbath, Chief Judge of the Fifteenth Judicial Circuit, files this amicus brief to advise this Court on the significant impact that an affirmative answer to the certified question will have on the administration of not only the Fifteenth Judicial Circuit, but on all circuit courts throughout the state. Chief Judge Colbath has a specific interest in the instant matter as the Fifteenth Judicial Circuit is in the final phase of implementing a video conferencing program for Baker Act Hearings. Chief Judge Colbath had previously met with the representatives of both the Public Defender's Office and State Attorney's Office for the Fifteenth Judicial Circuit, as well as representatives of the seven mental health receiving facilities in Palm Beach County, to discuss the implementation of the video conference hearings. The installation of network lines, the outfitting of the facilities' rooms, and security protocols are currently underway. An answer to the certified question will directly impact whether the new program will be viable and whether the Circuit should continue allocating funds to the program.

IV. SUMMARY OF THE ARGUMENT

Florida's circuit courts are continually required to handle more cases with finite resources. To that end, chief judges around the state are increasingly relying on technology to control the administrative functioning of the judiciary and

improve access to courts. The emerging and increasing use of videoconferencing technology to conduct remote hearings is an example of this trend.

The decision to hold a hearing using videoconference technology is discretionary; thus, it is non-ministerial and therefore inappropriate for mandamus relief. There is no rule, statute, or constitutional prohibition on the use of videoconferencing technology in Baker Act hearings. Absent such prohibitions, trial courts have discretion to control the administration of their courtrooms, which includes the decision to hold hearings using teleconferencing technology. Various reports supporting trial courts' use of videoconferencing technology bolster this conclusion, as does the increasing use of the practice in other states.

Videoconferencing technology offers circuit courts, and the Fifteenth Judicial Circuit in particular, much-needed flexibility to improve judicial and cost efficiency, maintain security, and ensure patient interests. The Chief Judge recommends promulgating a rule of procedure on videoconferencing in Baker Act hearings to create statewide standards. Finally, the Chief Judge will outline the Fifteenth Judicial Circuit's plan for videoconferencing in Baker Act hearings.

V. ARGUMENT

The Chief Judge sought leave to file this amicus brief to provide this Court with background about how an affirmative answer to the certified question will affect trial courts generally, and the Fifteenth Judicial Circuit in particular. To that

end, this brief begins with a discussion of the discretionary nature of the trial court's decision to hold a hearing using videoconference technology. Not only is the use of videoconferencing for involuntary commitment proceedings discretionary, video and teleconferencing have been used to conduct these hearings in other states. The following section explains how, taking into account judicial and cost efficiency, security concerns, and patient interest, it would be an economical use of public funds to implement video conferencing when feasible. Finally, the brief concludes with proposals for more formal rulemaking in this area and a description of the Fifteenth Judicial Circuit's proposed teleconferencing program.

A. JUDICIAL OFFICERS HAVE DISCRETION TO PRESIDE OVER AN INVOLUNTARY COMMITMENT PROCEEDING VIA VIDEO CONFERENCING

The Court has been asked to determine whether judicial officers have a clear legal duty to hold in-person hearings in Baker Act proceedings. Mandamus is a remedy to command performance of a ministerial act. *Town of Manalapan v. Rechler*, 674 So. 2d 789, 790 (Fla. 4th DCA 1996); *City of Coral Gables v. State ex rel. Worley*, 44 So.2d 298 (Fla. 1950). “A duty or act is defined as ministerial when there is **no room for the exercise of discretion**, and the performance being required is directed by law.” *Town of Manalapan*, 674 So. 2d at 790 (citing *Solomon v. Sanitarians' Registration Bd.*, 155 So. 2d 353 (Fla. 1963) (emphasis

added). As this section explains in detail, no authority expressly prohibits the practice, therefore videoconferencing by judicial officers at an involuntary commitment proceeding is within the discretion of the court and is, therefore, not subject to mandamus relief. This conclusion is buttressed by the findings of several reports published on this topic, as well as the nationwide trend of using videoconferencing technology to conduct court hearings.

1. There is no constitutional prohibition to video conferencing because involuntary commitment proceedings are not criminal in nature

Petitioners argue that patients in Baker Act proceedings require the same heightened level of due process protection as that afforded a defendant in a criminal proceeding. While civil commitment "constitutes a significant deprivation of liberty that requires due process protection," the level of protection is not equal to the due process requirements of criminal proceedings. *Addington v. Texas*, 441 U.S. 418, 428-29 (1979). The reason for this lesser standard is that the state's interest in a civil commitment proceeding, unlike a criminal proceeding, is not punitive. *Id.* at 428. In fact, the reasonable doubt standard has been found inappropriate in civil commitment proceedings, as the lesser clear and convincing standard adequately protects a petitioner's due process requirements. *Id.* at 432-33. Accordingly, the lens through which this Court reviews the video conferencing of Baker Act Hearings cannot be the same as that for criminal hearings.

2. No rule of procedure addresses a judicial officer's telepresence¹

There is no rule of court discussing a judicial officer's telepresence at a hearing. There are, however, at least eight rules of procedure that address court appearances or court testimony by electronic communication.² The titles to these rules evince only the intent to address the types of communication equipment to be used when a witness, party, or attorney appears or testifies remotely.³ These rules do not, however, contemplate the remote appearance by the judicial officer, or what is referred to as "telepresence."⁴ Because the current rules of procedure do not address this situation, there are no rules permitting—or prohibiting—the telepresence of a judicial officer.

¹ The term "telepresence" has been used to describe virtual remote interpreting in Florida. See Florida Courts, *Virtual Remote Interpreting*, <http://flcourts.org/resources-and-services/court-services/court-interpreting/virtual-remote-interpreting.shtml> (last visited Dec. 27, 2016).

² Florida Rule of Civil Procedure 1.451 (Taking Testimony), Florida Rule of Judicial Administration 2.530 (Communication Equipment), Florida Rules of Criminal Procedure 3.130 (First Appearance) and 3.160 (Arraignment), Florida Rule of Small Claims Court 7.140 (Trial), Florida Rules of Juvenile Procedure 8.104 (Testimony by Closed-Circuit Television) and 8.255 (General Provisions for Hearings), and Florida Family Law Rule of Procedure 12.451 (Taking Testimony).

³ These rules do not address out-of-court testimony such as depositions.

⁴ For Baker Act electronic proceedings, the parties, attorneys, and witnesses are present together—allowing attorneys to meet with their clients and the defendants to confront adverse witnesses—but the judicial officer appears electronically.

3. Absent a rule of procedure or constitutional provision, telepresence is within the judicial officer's discretion

“A trial court has the inherent authority to control the administrative functioning of its courtroom so long as the trial court does not abuse that authority.” *Woodel v. State*, 804 So. 2d 316, 324 (Fla. 2001). That otherwise broad discretion can be circumscribed by the Florida Supreme Court by enacting rules of procedure. *Galbut v. Garfinkl*, 340 So. 2d 470, 472 (Fla. 1976) (“[I]n the absence of a controlling statute or overriding rule of procedure, trial courts have a broad discretion in the trial of a cause.”). Until the enactment of a rule of procedure, the trial court maintains its inherent authority to act to administer justice within the scope of its jurisdiction. *See id.* To find otherwise would be to turn the well-established law regarding the trial court’s discretion to control its own administrative functioning on its head. *Id.*

Courts are tasked daily with crafting solutions to issues without the benefit of a rule of procedure directly on point. A trial court is not a proverbial ‘potted plant’ that must wait for rules to be promulgated before it resolves new procedural dilemmas. *See Rose v. Palm Beach Cty.*, 361 So. 2d 135, 137 (Fla. 1978) (“Every court has inherent power to do all things that are reasonably necessary for the administration of justice within the scope of its jurisdiction, subject to valid existing laws and constitutional provisions.”). Indeed, this Court has recognized

that, “[c]learly, a trial judge has the inherent power to do those things necessary to . . . conduct its business in a proper manner.” *Levin, Middlebrooks, Mabie, Thomas, Mayes & Mitchell, P.A. v. U.S. Fire Ins. Co.*, 639 So. 2d 606, 608–09 (Fla. 1994); *see also Miami Herald Pub. Co. v. Lewis*, 426 So. 2d 1, 3 (Fla. 1982) (recognizing that courts have the inherent power “to preserve order and decorum in the court room, to protect the rights of the parties and witnesses and generally to further the administration of justice” (internal quotations omitted)).

For this Court to find that a clear legal duty to hold in-person Baker Act hearings exists, it would effectively be requiring trial courts to wait for rule-based authority to act where they previously had inherent authority. Such an outcome is not only counter to existing law, but would create a chilling effect on circuit courts’ implementation of pilot programs designed to increase judicial efficiency and decrease budgetary spending. Accordingly, trial courts have discretion to use videoconferencing technology in the absence of a rule restraining that discretion.

4. Reports detailing the use and benefit of video conferencing in court proceedings.

The effective use of technology in court proceedings has continued to rise. There are at least three relevant reports that indicate the reliability and effective use of video conferencing in court proceedings. These reports discussed use of video conferencing during court appearances in Florida, the expansion of technological

usage nationally, and recommendations for best practices with technological usage in the federal courts. A brief overview of the reports is set forth below.

The first report is from the Office of Program Policy Analysis and Government Accountability (OPPAGA).⁵ OPPAGA detailed in its January 2009 Report that the use of closed-circuit television for first appearances and video conferencing in several Florida judicial circuits has allowed for better use of the courts' time, improved safety, and increased cost efficiency. The report also found that video conferencing avoids the costs of transportation and security of individuals coming from the county jail and is used to facilitate hearings with participants in remote locations without delaying the case.

The National Center for State Courts (NCSC) issued a report from a joint committee with the Conference of State Courts Administrator and the National Association for Court Management.⁶ The joint committee has been working on a variety of expanded telepresence applications, including remote court appearance of witnesses, parties, and lawyers, as well as remote appearances of judges to conduct hearings and trials in geographically remote areas. The report's findings

⁵ Office of Program Policy Analysis & Government Accountability, *Judicial Case Management Practices Vary Throughout State; Better Case Data Needed*, Report No. 09-06 (Jan. 2009).

⁶ COSCA/NACM Joint Technology Committee, *Possible Future Program Topics* (Dec. 2014),

<http://www.ncsc.org/~media/Files/PDF/About%20Us/Committees/JTC/JTC%20Future%20Program%20Topics%20-%20Dec%202014%20FINAL.ashx>.

are meant to help develop and promote technology standards for the courts and to improve court processes and business practices.

Lastly, the Administrative Conference of the United States issued Recommendation 2014-7, *Best Practices for Using Video Teleconferencing for Hearings*, which builds upon Recommendation 2011-4 *Agency Use of Video Hearings: Best Practices and Possibilities for Expansion*.⁷ The Recommendation sets forth detailed best practices: specific equipment requirements (microphone placement, increasing bandwidth if needed, etc.); courtroom arrangements (noise transference standards, lighting needs, etc.); technological training for the parties, judge, and technology staff; and procedural practices to maintain the dignity and authority of a courtroom while using videoconferencing technology. The Recommendation also included the creation of a handbook on the use of video teleconferencing for hearings and related proceedings to be updated as technology changes.

The findings and recommendations set forth in these reports are applicable to judicial telepresence in Baker Act proceedings. By moving to judicial telepresence, judicial efficiency and cost efficiency will increase, safety for the

⁷ Administrative Conference of the United States, Recommendation 2014-7 *Best Practices for Using Video Teleconferencing for Hearings* (Dec. 2014), https://www.acus.gov/sites/default/files/documents/Recommendation%202014-7%20%2528Video%20Hearings%2529_1.pdf.

patient, public, and judicial officers will improve, and the patient's interest will be furthered. There is no denying the fact that video conferencing is part of the future landscape for the judiciary.

5. Technology is used in involuntary commitment hearings in other states.

States are beginning to use, and address the legality of using, video conferencing for involuntary commitment hearings. At least one state's legislature has, by statute, authorized video testimony in civil commitment proceedings. Section 53-21-140(1) of the Montana Code provides that involuntary commitment hearings held “by the use of two-way electronic audio-video communication . . . is considered to be a hearing in open court.” Under the Montana Code, the audio-video communication must allow for the patient, the attorney, and the judge to simultaneously view and converse with one another without preventing the attorney and patient from communicating privately. Mont. Code § 53-21-140(2).

Courts in other states have permitted the use of audio-visual communication in hearings even in absence of a statute or rule. For example, courts in Alaska,⁸ Arizona,⁹ and Wisconsin¹⁰ have found that use of technology in involuntary

⁸ *In re Jacob S.*, Supreme Court Nos. S-15847, S-15868, 2016 WL 6818829 (Alaska, Nov. 18, 2016) (permitting use of telephonic testimony in involuntary commitment hearing over due process objections).

⁹ *In re MH-208-000867*, 236 P. 3d 405 (Ariz. 2010) (en banc) (same).

commitment proceedings is permissible. Similarly, Texas has found video conferencing proper in involuntary commitment trials for active tuberculosis patients. *In re Commitment of J.S.T.*, 478 S.W.3d 856 (Tex. App. 2015) (trial court did not abuse its discretion in requiring patient in tuberculosis proceeding to remain in isolation and appear by video-teleconferencing as he was able to confer with his attorney, interact with witnesses and speak to the court).

Appearances by phone or video in involuntary commitment proceedings are being implemented in other state trial courts. For example, the Thirteenth Judicial Circuit in Boone County, Missouri, implemented video conferencing for involuntary civil commitment hearings for patients in 2010.¹¹ In Boone County, the judge, prosecutor, court clerk, and courtroom deputy are located at the courthouse for the hearings while the patient, patient's attorney, psychiatrists, and other staff witnesses are located at the hospital. The hospital creates a "courtroom" equipped with a United States flag and state seal. The patient is present in restraints along with hospital security. Researchers from the University of

¹⁰ *In re W.J.C.*, 369 N.W.2d 162 (Wis. Ct. App. 1985) (finding examining physicians ability to testify by telephone did not violate the patient's due process rights in involuntary commitment hearing).

¹¹ Muaid Ithman et al., *Videoconferencing for Civil Commitment: Preserving Dignity*, IEEE Tech. & Society Mag. 35 (Winter 2014), <http://ieeexplore.ieee.org/stamp/stamp.jsp?tp=&arnumber=6969193>.

Missouri-Columbia's Department of Psychiatry found the program saves staff time, improves productivity, and enhances patient and staff safety.

Similarly, the probate court in Washtenaw County, Michigan, also recently implemented a video conferencing program for involuntary commitment proceedings with successful results.¹² In 2010, the probate court worked with the University of Michigan Medical Center's Telemedicine Resource Center to establish a program that they estimated would save \$315,000.00 annually in costs. There, the patient, attorney, and testifying physician were in the conference room at the facility while the judge, prosecuting attorney, court personnel, and other witnesses remained at the courthouse. An American Psychiatric Association publication found that the telecourt hearings for involuntary commitment proceedings did not negatively impact—and actually benefitted—the safety and dignity of the patient.

These examples illustrate that the use of audio or video tools is appropriate and permissible in many jurisdictions. Considering the benefits experienced in other municipalities, this is plainly a trend poised to continue, particularly as ever-more sophisticated technology for audio or video conferencing emerges. Mindful

¹² Janis Price & Hasan Sapci, *Law & Psychiatry: Telecourt: The Use of Videoconferencing for Involuntary Commitment Hearings in Academic Health Centers*, 58 *Psychiatric Servs.*, 17 (Jan. 2007), <http://ps.psychiatryonline.org/doi/full/10.1176/ps.2007.58.1.17>.

of this trend, the next section discusses the benefits reaped by all parties involved by using audio or video appearances at involuntary commitment hearings.

B. VIDEO CONFERENCING PROMOTES JUDICIAL AND COST EFFICIENCY, INCREASES SECURITY, AND FURTHERS THE INTEREST OF THE PATIENT

Video conferencing is a trend that many jurisdictions are applying to the involuntary commitment setting, as noted above. This section explores why jurisdictions are adopting these programs and how, through the lens of the Fifteenth Judicial Circuit's own experiences, such programs are in the best interest of all parties involved: the court system, the general public, and the patients.

1. Judicial and Cost Efficiency

The Florida Legislature has not created any new circuit or county judgeships in a decade.¹³ Due to the funding predicament facing our judiciary, chief judges and court administrators have been receptive to new and alternative business models to keep the courts operating efficiently. Remote court interpreters, digital recording of court proceedings, and video appearances for detained defendants are all examples of implementing communication technology to increase efficiency. Involuntary commitment proceedings are amenable to similar technological advancements without violating a patient's constitutional rights. *See United States*

¹³ *Florida Supreme Court justices ask for more judges*, Sun Sentinel (Sept. 15, 2016), <http://www.sun-sentinel.com/news/politics/fl-more-judges-needed-20161215-story.html>.

v. Baker, 45 F.3d 837 (4th Cir. 1995) (finding video conferencing constitutional as it allows respondent to be present, does not preclude confronting and cross examining of witnesses, does not affect right to present effective defense, and further addresses administrative concerns of safety and cost).

The Fifteenth Judicial Circuit covers Palm Beach County, which is forty miles wide by sixty miles long. There are seven facilities to which four magistrates travel to preside over the Baker Act proceedings; two magistrates are assigned to cover the southern end of the county (“South County”), and two are assigned to cover the northern end (“North County”). The patient/respondent remains in the facility while the state attorney, public defender, and judicial officer travel to the facility. Judicial telepresence would improve efficiency by removing unnecessary travel¹⁴ and wait time¹⁵ for the magistrate.

In addition to improving judicial efficiency, judicial telepresence would also save actual costs. If the hearings are held at the facility where the patient is located, both the magistrate and the Palm Beach County Sheriff deputy assigned to provide security incur travel-related costs.¹⁶ If the hearings are held at the

¹⁴ Magistrates must travel approximately thirty miles roundtrip to visit all of the facilities in North County, and twenty miles roundtrip in South County.

¹⁵ For example, the presiding magistrate waits while the patient meets with his or her attorney and the state attorney confers with the doctor.

¹⁶ In the Fifteenth Judicial Circuit, judges and magistrates are assigned Palm Beach County Sheriff Office deputies, rather than civilian bailiffs, to provide security.

courthouse, then the facility incurs the costs of transport and security of the patient. Having the patient remain at the facility while the judicial officer remains at the courthouse both increases efficiency and decreases costs.

2. Increased Security

Without videoconferencing, the circuit courts have two options for holding Baker Act hearings: judicial officers can conduct the hearings at the courthouse or they can hold hearings at the patients' facilities. Both options are less than ideal, each creating unique security issues that are remedied by using videoconferencing technology.

Holding Baker Act hearings at the courthouse would force patients to travel to an unfamiliar location and be subject to stringent security protocols. The Baker Act expressly provides that the patient's individual dignity shall be respected at all times. § 394.459(1), Fla. Stat. (2016). To that end, "[p]rocedures, facilities, vehicles, and restraining devices utilized for criminals or those accused of crime **shall not be used** in connection with persons who have a mental illness, except for the protection of the patient or others." *Id.* (emphasis added). The courthouses at the Fifteenth Judicial Circuit are ill-equipped for holding Baker Act hearings. The courthouse's holding cells are designed for use by defendants in criminal cases; by the Baker Act's plain language, such cells should be avoided for use in these hearings. Other than the holding cells, there is no private or secure waiting area for

the patient. As discussed in the following section, this runs afoul of the Legislature's express policy in favor of holding hearings in the patients' facilities. Waiting in an open area may not only be detrimental, but for those patients who are found to be a danger to themselves or others, the general public could be exposed to unnecessary risk. Similarly, transport service employees may not be law enforcement, thus increasing the risk of escape in route between the facility and the courthouse. In sum, security protocols are best followed, and the safety of the public is increased, when the patient remains at the facility.

Although it is clear that the courthouse is not an ideal setting for these hearings, the current system of holding hearings off-site poses other security concerns for the court. While a deputy does travel with the magistrate to the facility, at least three North County facilities secure the room in which the hearing takes place by locking in the participants. To exit the room, the assistance of a facility employee is required. This procedure is contrary to the courthouse's security protocol, which provides all judicial officers with access to a panic button and an escape route. Further, unlike the courthouse's security team that is trained to detect weapons on persons and in property, there is either an absence of screening or less stringent screening at the various facilities. In addition to the decrease in security, the deputy is further hindered by the unfamiliar layout of the

room and lack of back up deputies should an emergency arise.¹⁷ Holding hearings at the facility while the magistrate appears remotely remedies these security issues.

3. Interest of the Patient

Baker Act proceedings are unique because the court is statutorily encouraged to hold off-site hearings for the benefit of the patient. § 394.467(6)(a)2., Fla. Stat. (2016). The use of videoconferencing accomplishes the Legislature's objectives that the patient remains in a therapeutic environment.

Following the 1995 decision in *United States v. Baker*, the American Psychiatric Association (APA) endorsed the use of video conferencing as a means to conduct civil commitment hearings.¹⁸ While Amicus Disability Rights Florida relies on the Subcommittee on Case Administration's 1999 study on Judicial Administration of the Baker Act and Its Effect on Florida's Elders finding that video conferencing should not be used for Baker Act Hearings, drastic improvements in video technology have been made in the past twenty years. Not only has telepsychiatry become an acceptable method for psychiatrists to interact with patients,¹⁹ but, as discussed *supra*, more courts use video conferencing in involuntary commitment proceedings. Further, a 2010 National Center for State

¹⁷ Because the patients are not searched or weapons before entering the room where the hearing takes place, the one deputy present in the room must watch the patient vigilantly to ensure that he or she does not possess any object that could serve as a weapon.

¹⁸ Ithman et al., *supra* note 11.

¹⁹ Price & Sapci, *supra* note 12.

Courts article on future trends in state courts stated that videoconferencing is the one technology that has “rapidly improved in both cost and quality of the last five years.”²⁰ These recent studies and the use of telepsychiatry negate the claims set forth in the 1999 report relied upon by Amicus Disability Rights Florida.²¹

C. CREATION OF RULES OF PROCEDURE

There are currently no dedicated rules of procedure governing involuntary commitments for Baker Act proceedings. *In re Drummond*, 69 So. 3d 1054, 1055 (Fla. 2d DCA 2011). To provide uniform procedures throughout the state, all civil involuntary commitments (Baker Act, Marchman Act, and Jimmy Ryce Act²² proceedings) should have rules of procedure²³ and uniform electronic conferencing

²⁰ Thomas M. Clarke, *Technology and Engineering*, Future Trends in State Courts 2010, 154 (2010),

<http://cdm16501.contentdm.oclc.org/cdm/ref/collection/tech/id/765>.

²¹ See Judicial Administration of the Baker Act and Its Effect on Florida’s Elders; Report and Recommendations of the Subcommittee on Case Administration (1999),

http://www.floridasupremecourt.org/pub_info/documents/BakerFinalREport.pdf.

Although the subcommittee conducted meetings and interviews, its conclusions about the use of videoconference technology are speculative. The subcommittee report acknowledges that “[l]imited funding, time, and staff support were obstacles to th[e] study.” *Id.* at 9. Significantly, the report cites a single interviewee for the conclusions that “**some**” patients or judicial officers “**may**” have various issues with a video hearing. (emphasis added).

²² The 4-Series of the Rules of Court could be expanded from exclusively governing Jimmy Ryce cases to include procedures for other types of involuntary commitment proceedings, i.e. Baker Act and Marchman Act.

²³ For example, a rule could establish enumerated factors for the court to consider in determining whether to appear by telepresence, such as specific objections by

standards.²⁴ Given that Baker Act hearings are already held outside of a normal courtroom, it would be a minimal shift for judicial officers to conduct the hearings via videoconference.

D. FIFTEENTH JUDICIAL CIRCUIT'S TELEPRESENCE PROGRAM

The proposed program in the Fifteenth Judicial Circuit has been discussed with the stakeholders and a plan has been developed. Security for the state attorney and public defender will be provided by the facilities' security staff, as the deputy—who attends for the security of the magistrate—will no longer be present. With the implementation of this program, Petitioners' concerns as to the decorum of the proceeding and potential objections should be alleviated. Currently, the rooms used at the mental health facilities in Palm Beach County are not configured in a courtroom-like manner nor do they convey the authority and dignity of a courtroom.²⁵ Rather, the parties are seated around a conference table with the magistrate at the head of the table. With videoconferencing, the magistrates will appear in their robes and sit at their bench with the flags of the United States and

parties based upon a patient's individualized fears or other medical issues, applicability of the Americans with Disabilities Act, or other considerations.

²⁴ Promulgating rules for such hearings would ensure consistency in statewide procedure, equipment standards, and required considerations, while avoiding unnecessary litigation and uncertainty by providing a formal mechanism for parties to contest the use of such equipment for good cause.

²⁵ In one facility, a flag and seal are placed in the room during the hearing. Photographs of the various facilities are set forth in the Appendix.

Florida behind them. It will be clear to the patient that the person speaking to them is a judicial officer. If the patient requests to appear in person before the magistrate, a plan will be in place for the facility to transport to individual to the courthouse. Should there be an electronic malfunction, the magistrate will travel to the facility to conduct the hearing. Thus, these safeguards should address the concerns raised by the Petitioner and Amicus Disability Rights Florida.

VI. CONCLUSION

The development of video technology has continued to advance over the last decade. At the same time, the Florida judiciary has faced financial constraints. In order to maintain judicial efficiency in the face of the budget cuts, courts have created innovative uses for technology. Judicial telepresence is an effective method to use technology without compromising the rights of patients facing civil commitment proceedings. There is no constitutional, statutory, or rule-based prohibition on judicial officers presiding over Baker Act hearings by telepresence, therefore it is a discretionary matter for which mandamus cannot lie. The Chief Judge requests this Honorable Court to answer the certified question in the negative.

