

8.8 Preparation for Hearing

Contact with defense attorney. In addition to the usual prehearing preparation, the respondent's attorney should take extra steps when the respondent has been found incapable of proceeding on criminal charges. Because the respondent may be subject to further criminal proceedings, the attorney should contact the respondent's criminal defense attorney, who can shed light on the defense strategy. For example, the defense attorney might be aware of the state's objective, which might be supervised placement in the community rather than a prison sentence.

Note that the defendant's criminal defense attorney is not entitled to notice of the involuntary commitment proceeding under the statutes. Commitment counsel must therefore initiate contact if information is required from the defense attorney.

Because the defense attorney knows of the commitment through the criminal proceedings, counsel is not divulging confidential information by making contact. Still, the better practice is to obtain the client's permission prior to contacting the defense attorney.

Contact with district attorney. After talking with the defense attorney, or if unable to contact the defense attorney, counsel may consider contacting the district attorney. The district attorney is entitled to notice of the involuntary commitment proceedings, so this would not be revealing confidential information. Counsel must take care, however, not to relate any confidential information to the district attorney.

The purpose of this contact is to determine the state's objective in the case, which might affect the strategy in the involuntary commitment case. For example, the district attorney may be planning to dismiss the charges or to dismiss the charges with leave. Supervised placement that would prevent repeated minor crimes related to the mental illness, such as trespass, might be a satisfactory resolution for the state.

Contact with witnesses. Potential witnesses might include individuals connected to the criminal proceeding, including family members. Counsel should check to see if there are orders preventing the defendant from contacting a victim or victims and honor those orders. Consent of the respondent should be obtained before contacting witnesses because of the confidentiality of the proceedings.

Family members might be able to testify as to the respondent's danger to others or lack thereof. A person willing to provide housing or supervision could be valuable to the respondent's case.