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Sent: Wednesday, June 24, 2009 8:57 AM

To: Creeron, F. Thomas

Subject: Informal Opinion

Tom,

Please let me know if you need this request submitted in a different format. I am seeking an informal opinion regarding whether a County corporation counsel has the authority to refuse to file a so called "three-party" petition for examination (Sec. 51.20(1)). It is my opinion that if the petition meets all the requirements as set forth in the statutes (i.e., signed statements under oath by three adults which represent the basis for their belief that the allegations made in the petition are true). then the corporation counsel must file the petition with the Court. In turn, the Court must then review the petition (Sec. 51.20(2)) to determine whether an order of detention should be issued (i.e., cause to believe that statutory grounds for an involuntary commitment exist).

During my research into this question, I have been unable to find clear answer to my question. I have reviewed previous published decisions by the Attorney General which discuss the duties and obligations of a corporation counsel in involuntary commitment proceedings (79 Atty. Gen. 129 citing two earlier opinions); however although these opinions clarify that the corporation counsel represents the "interests of the public" and not the three petitioners to the extent that the corporation counsel has the authority to settle a case once it has been filed, over the objection of the three petitioners, these opinions don't provide any guidance as to whether a corporation counsel may simply refuse to file a petition. Having read Chapter 51 in its entirety it seems clear to me that the Legislature intended to create a procedure whereby three adults

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and file a petition for examination and have the petition reviewed by a Circuit Court Judge. As such, should a corporation counsel refuse to file a petition that meets the statutory requirements, then the petitioners could bring a mandamus action to compel the filing of the petition.

I have not been able to find any published court decisions in Wisconsin that answer this question. I have found a number of unpublished decisions regarding Chapter 51 proceedings that do not directly answer this question.

I discovered one Wisconsin Supreme Court decision which indicates that Section 51.20 (4) requires that all three-party petitions must be drafted by the corporation counsel and can not be drafted by court personnel (In the Matter of D.S. v. Racine County, 142 Wis. 2d 129, 416 N.W.2d 292 (1987)).

I would appreciate any assistance that you could provide in this matter.

I'm just trying to clarify whether I have the authority to refuse to file a three party petition with the Court and if so, then are there any limits to this authority.

Thanks,

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