

ROB BONTA
Attorney General



State of California
DEPARTMENT OF JUSTICE

455 GOLDEN GATE AVENUE, SUITE 11000
SAN FRANCISCO, CA 94102-7004

Public: (415) 510-4400
Telephone: (415) 510-3547
Facsimile: (415) 703-5843
E-Mail: Colin.Schoell@doj.ca.gov

July 26, 2022

RE: *Stephanie Clendenin, et al. v. Stephanie Stiavetti, et al.*
Judicial Council of California, JCCP No. 5248

To Whom It May Concern:

You are receiving this cover letter because you or your office are the counsel of record in a matter that Defendants in the above-captioned case included in their Petition for Coordination (Petition) to the Judicial Council of California. Attached to the Notice of Submission of Petition for Coordination, filed in each of the included actions, are the Petition, three declarations in support, a Request for Judicial Notice, and a Motion for Stay. If you intend to file a response in support or in opposition to the Petition, you must serve and file the response at least nine court days before the date set for hearing on the Petition. (Cal. Rules of Ct., rules 3.525-3.526.) This hearing must be set within 30 days of the order assigning the coordination motion judge. (Cal. Rules of Court, rule 3.527.)

The Motion for Stay seeks to stay all unresolved included actions, except for *Stiavetti*, pending adjudication of the Petition in order to preserve the benefits of coordinating these matters and better serve all the interested parties. If you intend to oppose this motion, you must serve and submit any filings in opposition to the Judicial Council within 10 days after service of the motion and request a hearing on the motion. (Cal. Rules of Ct., rule 3.515, subd. (d)-(e).)

To avoid unnecessary waste of paper, we have included our Electronic Service Consent and respectfully request that you promptly complete and return one as well. If you would like electronic copies of these filings or have any questions, please contact Deputy Attorney General Colin Schoell at Colin.Schoell@doj.ca.gov or at the phone numbers listed above.

Sincerely,

Handwritten signature of Colin D. Schoell in black ink.

COLIN D. SCHOELL
Deputy Attorney General

For **ROB BONTA**
Attorney General

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

ROB BONTA
Attorney General of California
GREGORY D. BROWN
Supervising Deputy Attorney General
COLIN D. SCHOELL
Deputy Attorney General
State Bar No. 332896
455 Golden Gate Avenue, Suite 11000
San Francisco, CA 94102-7004
Telephone: (415) 510-3547
Fax: (415) 703-5843
E-mail: Colin.Schoell@doj.ca.gov

Attorneys for Petitioners
Stephanie Clendenin, Director of Department of
State Hospitals; Nancy Bargmann, Director of
Department of Developmental Services

Exempt from filing fees
Gov. Code, § 6103

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA

STEPHANIE STIAVETTI, et al.,

Plaintiffs,

v.

STEPHANIE CLENDENIN, AS
DIRECTOR OF THE CALIFORNIA
DEPARTMENT OF STATE HOSPITALS,
et al.,

Defendants.

Case No. RG15779731

NOTICE OF SUBMISSION OF
PETITION FOR COORDINATION

Dept: 21
Judge: The Hon. Evelio Martin Grillo
Action Filed: July 29, 2015ON

TO EACH PARTY AND TO THE COUNSEL OF RECORD FOR EACH PARTY:

YOU ARE HEREBY NOTIFIED THAT on July 20, 2022, defendants Stephanie Clendenin, as Director of the California Department of State Hospitals, and Nancy Bargmann, as Director of the California Department of Developmental Services, in *Stiavetti v. Clendenin*, Case No. RG15779731, Superior Court of Alameda County, submitted to the Chairperson of the Judicial Council a Petition for Coordination to the Judicial Council Re: Competency Services for Defendants Found Incompetent to Stand Trial (Petition). The Petition pertains to the actions

1 listed in Exhibit A of the Declaration of Sean Mark Rashkis in Support of the Petition. The
2 Petition requests assignment of a judge to determine whether coordination of these actions is
3 appropriate.

4 The name and address of counsel for petitioners is: Deputy Attorney General Colin Schoell,
5 Colin.Schoell@doj.ca.gov, 455 Golden Gate Avenue, Suite 11000, San Francisco, CA 94102-
6 7004.

7 TO ANY PARTY INTENDING TO OPPOSE THE PETITION FOR COORDINATION:

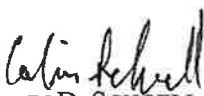
8 Pursuant to California Rules of Court, Rule 3.522(a)(4), any party intending to oppose the
9 Petition must serve and submit to the Chairperson of the Judicial Council a written opposition at
10 least nine court days before the hearing set in this matter.

11 A copy of the Petition and supporting documents is filed herewith as Exhibit A.

12 Dated: July 22, 2022

Respectfully submitted,

13 ROB BONTA
14 Attorney General of California
15 GREGORY D. BROWN
16 Supervising Deputy Attorney General

17 
18 COLIN D. SCHOELL
19 Deputy Attorney General
20 *Attorneys for Petitioners*
21 *Stephanie Clendenin, Director of*
22 *Department of State Hospitals; Nancy*
23 *Bargmann, Director of Department of*
24 *Developmental Services*

25 SA2015104568
26
27
28

Exhibit A

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

ROB BONTA
Attorney General of California
GREGORY D. BROWN
Supervising Deputy Attorney General
COLIN D. SCHOELL
Deputy Attorney General
State Bar No. 332896
455 Golden Gate Avenue, Suite 11000
San Francisco, CA 94102-7004
Telephone: (415) 510-3547
Fax: (415) 703-5843
E-mail: Colin.Schoell@doj.ca.gov
Attorneys for Petitioners
Stephanie Clendenin, Director of Department of
State Hospitals; Nancy Bargmann, Director of
Department of Developmental Services

RECEIVED

Judicial Council of California

JUL 20 2022

Andres Lopez (C.A.)
Coordination Lawyer

Exempt from Filing Fees —
Gov. Code, § 6103

JUDICIAL COUNCIL OF THE STATE OF CALIFORNIA

STEPHANIE STIAVETTI, et al.,

Plaintiffs,

v.

STEPHANIE CLENDENIN, AS
DIRECTOR OF THE CALIFORNIA
DEPARTMENT OF STATE HOSPITALS,
et al.,

Defendants.

JCCP Case No. **5248**

**PETITION FOR COORDINATION TO
THE JUDICIAL COUNCIL RE:
COMPETENCY SERVICES FOR
DEFENDANTS FOUND INCOMPETENT
TO STAND TRIAL; MEMORANDUM
OF POINTS & AUTHORITIES IN
SUPPORT OF PETITION**

Dept: 21
Judge: The Hon. Evelio Martin Grillo
Action Filed: July 29, 2015

TABLE OF CONTENTS

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Page

Petition 5

Memorandum of Points & Authorities..... 7

Introduction..... 7

 I. Events in Recent Years Have Led to a Statewide IST Waitlist for
 Competency Services 9

 II. *Stiavetti* Established a 28-Day Constitutional Deadline for the
 Commencement of Substantive Services and Entered a Writ Requiring
 DSH and DDS to Meet That Deadline for All IST Patients in California 10

 III. Following the *Stiavetti* Appellate Decision, Both the *Stiavetti* Trial Court
 and Superior Courts Across the State Are Seeking to Enforce DSH’s
 Compliance with Either *Stiavetti*’s Deadlines or Their own..... 12

Argument 15

 I. Standard for Coordination..... 15

 II. The 79 Competency Services Cases Are Complex Civil Proceedings 16

 III. Coordination Will Promote Judicial Economy and Serve the Interest of
 Justice..... 20

 A. Common Questions of Fact and Law Are Predominating and
 Significant. 20

 B. Coordination Will Advance the Efficient Utilization of Judicial
 Resources. 21

 C. Coordination Will Avoid Duplicative and Inconsistent Rulings and
 Orders..... 22

 D. All Cases Proposed to Be Coordinated Are at the Same Relative
 Stage of Adjudication..... 23

 E. The Remaining “Ends of Justice” Considerations Are Less
 Applicable. 24

 IV. Alameda County Is Best Situated to Handle the Coordinated Competency
 Proceedings 26

Conclusion 27

TABLE OF AUTHORITIES

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Page

CASES

People v. Fields
(1965) 62 Cal.2d 538 16

People v. Kareem A.
(2020) 46 Cal.App.5th 58 17

People v. Lawley
(2002) 27 Cal.4th 102 16

People v. Stanley
(1995) 10 Cal.4th 764 16

Stiavetti v. Ahlin
(April 19, 2019) Alameda County Superior Court Case No. RG15779731 11

Stiavetti v. Clendenin
(2021) 65 Cal.App.5th 691 *passim*

STATUTES

California Code of Civil Procedure

 § 177.5 16

 § 404 *passim*

 § 404.1 *passim*

California Code of Regulations Title 9

 § 4710 10, 18, 22

 § 4717 10

California Welfare and Institutions Code

 § 6509, subd. (b) 10

 § 7234, subd. (b)(2) 19

Penal Code

 § 1367, subd. (a) 9

 § 1367, subd. (b) 9

 § 1368-1370 9

 § 1370, subd. (a)(3) 19

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

TABLE OF AUTHORITIES
(continued)

Page

COURT RULES

California Rules of Court

Rule 3.400(a)..... 17
Rule 3.400(b) 17, 19
Rule 3.521 5
Rule 3.531 22
Rule 4.130(c)..... 16
Rule 4.130(f) 16

1 **PETITION**

2 TO THE CHAIRPERSON OF THE JUDICIAL COUNCIL:

3 Petitioners Stephanie Clendenin, as Director of the California Department of State
4 Hospitals, and Nancy Bargmann, as Director of the California Department of Developmental
5 Services, through their counsel Colin Schoell at 455 Golden Gate Avenue, Suite 11000, San
6 Francisco, CA 94102-7004 submit this Petition pursuant to Code of Civil Procedure section 404
7 to request assignment of a judge to determine whether it would be appropriate to coordinate this
8 action with the actions listed in the attached Declaration of Sean M. Rashkis in Support of
9 Defendants' Petition for Coordination to the Judicial Council Re: Competency Services for
10 Defendants Found Incompetent to Stand Trial (Rashkis Decl.), ¶ 4.

11 1. This petition is based on Code of Civil Procedure sections 404 and 404.1, California
12 Rules of Court, Rule 3.521, the attached memorandum in support, the Request for Judicial Notice
13 in support, the declarations of Sean M. Rashkis, Colin D. Schoell, and Jaci Thomson in support,
14 and the complete files and records of this action and the actions listed below.

15 2. This petition is made on the ground that these actions share common questions of fact
16 and law, and that coordination of these actions will promote the ends of justice. The petition is
17 supported by the declaration of Colin D. Schoell, setting forth facts showing that the actions are
18 complex and that coordination would satisfy the criteria set forth in Code of Civil Procedure
19 section 404.1, in that significant common questions of law and fact predominate in the actions;
20 judicial facilities and resources will be more efficiently utilized; the burden on the courts'
21 calendars will be lessened; and duplicative or inconsistent rulings will be avoided.

22 3. The defendant's name, county, case number, and the names and addresses of counsel
23 for each included action are set forth in the attached Rashkis Decl., Exhibit B.

24 4. Petitioners expect at least one party to the included actions to oppose this Petition and
25 therefore request a hearing to determine whether coordination of these action is appropriate.
26 Petitioners request that the hearing be set in the Superior Court of Alameda County.

27 //

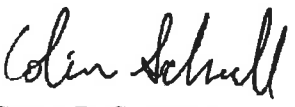
28 //

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Wherefore, petitioners request the petition for coordination be granted.

Dated: July 20, 2022

Respectfully submitted,
ROB BONTA
Attorney General of California
GREGORY D. BROWN
Supervising Deputy Attorney General


COLIN D. SCHOELL
Deputy Attorney General
*Attorneys for Petitioners
Stephanie Clendenin, Director of
Department of State Hospitals; Nancy
Bargmann, Director of Department of
Developmental Services*

SA2015104568

1 December 16, 2021, amended judgment in *Stiavetti, et al., v. Clendenin, et al. (Stiavetti)*,
2 Alameda County Superior Court Case No. RG15779731, DSH and DDS are ordered to
3 commence substantive competency services for *all* criminal defendants in California committed
4 to them as IST within what will ultimately be 28 days after service of that defendant’s
5 commitment packet. This 28-day timeframe will take effect following a 30-month phase-in
6 period beginning August 27, 2021, with increasingly strict deadlines. The first of several
7 benchmarks is that DSH and DDS must commence substantive competency services for all IST
8 defendants committed to the Departments within 60 days by August 27, 2022. Under *Stiavetti’s*
9 amended judgment, the 28-day deadline is not in effect until February 27, 2024. Thus, the
10 *Stiavetti* court set a single IST standard that all courts should follow.

11 Yet, in each of the 79 related cases, IST defendants awaiting substantive competency
12 services—and thus covered by the *Stiavetti* statewide injunction—are simultaneously the subject
13 of duplicative sanctions proceedings overseen by the local superior court in the county where
14 each respective defendant was charged. Thus, while one court in Alameda County adjudicates
15 enforcement of one judgment on behalf of all waitlisted defendants across the state, the courts in
16 many of the other counties in California have continued with their own proceedings to adjudicate
17 the ramifications of the State being unable to provide timely access to competency services within
18 their jurisdiction. The multiplicity of cases results in a number of different and competing court-
19 ordered deadlines for DSH to commence treating different IST defendants. This case multiplicity
20 also results in various courts ordering DSH, on threat of sanctions, to commence treating certain
21 IST defendants ahead of their turn on the waitlist, thereby delaying the treatment of other IST
22 defendants from other counties. The proliferation of cases is duplicative, unnecessary, inefficient,
23 consumes judicial resources, and in many instances results in conflicting orders for the same
24 named IST defendants.

25 The shared goal of all litigants is to hasten the commencement of substantive competency
26 services to criminal defendants found IST. To this end, one judge should handle all proceedings
27 that interpret, adjudicate, and enforce the state law—including the statewide court order in
28 *Stiavetti* that was affirmed on appeal in a published precedential opinion—that lie at the core of

1 these proceedings. For all these reasons, and those discussed below, the ends of justice are served
2 by an order coordinating the instant proceedings.

3 Factual and Procedural Background

4 **I. EVENTS IN RECENT YEARS HAVE LED TO A STATEWIDE IST WAITLIST FOR**
5 **COMPETENCY SERVICES**

6 Criminal defendants who, as a result of mental health disorder or developmental disability,
7 cannot understand the nature of their criminal proceedings or rationally assist counsel with their
8 defense are deemed incompetent to stand trial (IST). (Pen. Code, § 1367, subd. (a).) Following
9 an adversarial process whereby the nature and degree of incompetency is determined, and
10 disputes about it are resolved, if the trial court enters an order of incompetency all further
11 criminal proceedings are suspended. (*Id.*, §§ 1368-1370.) Defendants who are incompetent due
12 to a mental health disorder (also referred to as patients herein) are then committed to DSH, and
13 those incompetent due to a developmental disability (in whole or in part) are committed to DDS.
14 (*Id.*, § 1367, subd. (b).)² The trial court serves DSH or DDS with a commitment packet, thereby
15 initiating the relevant department's statutory obligations to provide competency restoration
16 services.

17 In recent years, the number of felony defendants found IST has increased and continues to
18 do so, outstripping DSH's competency services capacity and leading to a waitlist for those
19 defendants to begin receiving substantive competency restoration services. DSH's statewide
20 waitlist was further exacerbated by several factors arising from the COVID-19 pandemic.
21 (Declaration of Jaci Thomson (Decl. Thomson), ¶ 5.) There are several unavoidable reasons: the
22 need to suspend admissions to state hospitals due to the recent COVID-19 surge associated with
23 the Omicron variant, county transportation scheduling issues, COVID-19 outbreaks and
24 quarantines at county jails, and not receiving timely medical screenings and COVID-19 test
25 results from committing counties for incoming patient admissions. (Decl. Thomson, ¶ 5.) These

26 ² The vast majority of defendants found IST are committed to DSH, and all of the cases
27 proposed to be coordinated by this petition concern DSH commitments. Accordingly, this
28 petition primarily focuses on DSH patients, and will note differences about the populations of
DSH and DDS patients only when material.

1 combined factors resulted in delayed and/or rescheduled admissions, which further impacts the
2 statewide waitlist. (*Ibid.*) As of July 4, 2022, there were 1,739 IST defendants on DSH’s
3 statewide waitlist. (Decl. Thomson, ¶ 4.)³

4 DSH utilizes a statewide waitlist for admission of IST defendants awaiting commencement
5 of substantive competency services at a DSH facility. (Decl. Thomson, ¶ 4.) To ensure equity
6 throughout the state, defendants are placed on the waitlist in order of their commitment date, even
7 if they first receive treatment at a jail-based competency treatment (JBCT) program. (Cal. Code
8 Regs., tit. 9, § 4710; Decl. Thomson, ¶ 3.) DSH may send an IST referral to an inpatient facility
9 at one of the four state hospitals that treats IST patients, to one of 21 jail-based competency
10 treatment (JBCT) programs, eight of which may accept IST referrals from other counties, or the
11 Admission Evaluation and Stabilization (AES) facility located in the Kern County Jail, amounting
12 to 12,088 referrals over the last three years.⁴ (Decl. Thomson, ¶ 4.) Alternatively, DSH may
13 refer an IST defendant for outpatient treatment through contracted services under its Mental
14 Health Diversion and community-based restoration (CBR) programs. (Decl. Thomson, ¶ 4.)
15 However, a waitlisted defendant whose mental state becomes “psychiatrically acute”, as
16 determined by DSH clinicians, may be admitted on an expedited basis unrelated to their
17 commitment date via an acuity review process. (Cal. Code Regs., tit. 9, § 4717.) Defendants
18 committed with a developmental disability are governed by different procedures, and therefore
19 are placed on a distinct statewide waitlist for DDS. (Welf. & Inst. Code, § 6509, subd. (b).)

20 **II. STIAVETTI ESTABLISHED A 28-DAY CONSTITUTIONAL DEADLINE FOR THE**
21 **COMMENCEMENT OF SUBSTANTIVE SERVICES AND ENTERED A WRIT REQUIRING**
22 **DSH AND DDS TO MEET THAT DEADLINE FOR ALL IST PATIENTS IN CALIFORNIA**

23 On July 29, 2015, family members of five criminal defendants found IST filed a petition for
24 writ of mandamus and complaint for declaratory and injunctive relief against the directors of
25 DSH and DDS. (*Stiavetti v. Clendenin (Stiavetti)* (2021) 65 Cal.App.5th 691, 703.) The civil

26 ³ Due to the limited number of IST defendants treated by DDS compared to DSH, DDS is
27 currently in compliance with the 28-day deadline for the commencement of substantive
28 competency services set forth in *Stiavetti v. Clendenin* (2021) 65 Cal.App.5th 691.

⁴ ISTs that initially receive competency treatment at a JBCT or AES program, but are later
deemed to require additional treatment at a state hospital, remain at the relevant JBCT or AES
program and are admitted to a state hospital based on the initial commitment date.

1 action alleged that the delays in providing substantive competency services by DSH and DDS
2 violated the due process rights of IST defendants statewide. (*Id.* at p. 694.)

3 The trial court concluded that the IST defendants' constitutional due process rights required
4 DSH and DDS to "commence substantive services to restore an IST defendant to competency
5 within 28 days of the transfer of responsibility." (*Stiavetti, supra*, 65 Cal.App.5th at p. 704.)
6 However, the court also made clear that DSH and DDS "will not be in violation of the judgment
7 if they show good cause for not admitting a few IST defendants within the required timeframes."
8 (*Id.*, at 715.) Due to the administrative difficulty of compliance with the judgment, the trial court
9 set a 30-month phase-in period over which DSH and DDS must meet the 28-day deadline. (*Id.*, at
10 704.) As part of this phase-in period, DSH and DDS must meet a 60-day deadline within 12
11 months, a 45-day deadline within 18 months, and a 33-day deadline within 24 months.⁵ (See
12 Request for Judicial Notice (RJN), Exh. A, *Stiavetti v. Ahlin* (April 19, 2019) Alameda County
13 Superior Court Case No. RG15779731, p. 4 [trial court judgment].) Additionally, DSH and DDS
14 must file status reports to the court two months after each deadline containing a breakdown of the
15 location of IST defendants DSH and DDS have responsibility for, as well as the minimum,
16 maximum, average, and median wait time during that period. (*Id.* at p. 5.) DSH and DDS
17 appealed, and the Court of Appeal affirmed the portions of the judgment that DSH and DDS
18 appealed,⁶ remanding the case to the trial court for enforcement. (*Stiavetti, supra*, 65 Cal.App.5th
19 at p. 738.) On remand, the trial court issued an amended judgment retaining the phased
20 compliance deadlines and stating the 28-day deadline is not in effect until February 27, 2024, or
21 "within 30 months of" August 27, 2021. (See RJN, Exh. B, *Stiavetti v. Ahlin* (December 16,

22
23
24 ⁵ Defendants in *Stiavetti* filed a motion for modification on July 1, 2022, requesting that the
25 court remove these intermediary deadlines due to the ongoing necessity of unit quarantines to
26 combat the spread of COVID-19.

27 ⁶ The *Stiavetti* plaintiffs cross-appealed on a narrow issue concerning the transfer-of-
28 responsibility date for certain IST patients committed to DDS, and the Court of Appeal reversed
on that issue, providing for an earlier transfer-of-responsibility date than the trial court had
originally ordered. (*Stiavetti, supra*, 65 Cal.App.5th at pp. 731, 738.) In all other respects the
judgment was affirmed, including the imposition of a 28-day deadline for commencement of
substantive competency services, as well as the 30-month period for DSH and DDS to phase in
the implementation of this deadline. (*Id.* at p. 738.)

1 2021) Alameda County Superior Court Case No. RG15779731, p. 4 [trial court amended
2 judgment].)

3 **III. FOLLOWING THE *STIAVETTI* APPELLATE DECISION, BOTH THE *STIAVETTI* TRIAL
4 COURT AND SUPERIOR COURTS ACROSS THE STATE ARE SEEKING TO ENFORCE
5 DSH'S COMPLIANCE WITH EITHER *STIAVETTI*'S DEADLINES OR THEIR OWN**

6 Following the Court of Appeal's published opinion in *Stiavetti*, both the *Stiavetti* trial court
7 and numerous other superior courts throughout the state have taken steps to enforce DSH's
8 compliance with various (and often competing) court-imposed deadlines for the commencement
9 of substantive competency services for IST defendants. Because of this inconsistent and
10 unpredictable enforcement, DSH is facing duplicative and often competing litigation as different
11 superior courts around the state seek to impose and enforce different deadlines for the
12 commencement of competency services for IST defendants from their respective counties. These
13 enforcement proceedings continue notwithstanding *Stiavetti*'s statewide permanent injunction and
14 ongoing enforcement proceedings pursuant to its amended judgment, and the fact that all IST
15 defendants committed to DSH are on the same statewide waitlist for admission to a treatment
16 facility.

17 In *Stiavetti*, the superior court is currently overseeing and enforcing DSH's and DDS's
18 compliance with the court's permanent injunction, which applies to all IST patients throughout
19 the state. (*Stiavetti, supra*, 65 Cal.App.5th at pp. 714-715.) Recognizing that numerous practical
20 realities make it essentially impossible for DSH to immediately meet the court's 28-day standard,
21 the *Stiavetti* superior court created a 30-month phased timeline for DSH to come into compliance
22 with the 28-day standard. (RJN, Exh. A, p. 4.) The court will oversee DSH's plan to come into
23 compliance and enforce the injunction in the event of noncompliance. (RJN, Exh. A, pp. 4-5.)
24 Because *Stiavetti*'s injunction applies statewide, any oversight and enforcement actions taken by
25 the court will apply to all IST defendants in the state. (*Stiavetti, supra*, 65 Cal.App.5th at pp.
26 714-716; RJN, Exh. B, p. 4 [*Stiavetti* trial court amended judgment requiring compliance with
27 phased requirements for commencement of substantive services for "all IST defendants"].)

28 Meanwhile, in the other 78 actions included in this petition, the superior courts have issued
their own independent orders requiring DSH to commence substantive competency services

1 within specific timelines set by those courts for particular IST defendants – all of whom are on
2 the same statewide waitlist for all IST defendants committed to DSH and are already covered by
3 the *Stiavetti* injunction. (Declaration of Sean M. Rashkis (Decl. Rashkis), ¶ 4.) Some of these
4 superior courts order the immediate admission of the IST defendant at issue, or further complicate
5 matters by holding DSH to a different standard than the one established in the *Stiavetti* judgment.
6 (See RJN, Exhs. D, p. 2 [“directing DSH to immediately commence treatment”]; C, p. 6 [ordered
7 to “admit and accept” defendant “no later than 21 days from the date of this order”]; E, p. 3 [DSH
8 failed to admit defendant within “60 days” of the commitment order, and “within thirty days” of
9 the prior OSC hearing]; M, p. 1 [On June 14, 2021, the Court ordered DSH to receive Defendant
10 by June 18, 2021].) Each of these 78 actions involves either an order to show cause (OSC) why
11 DSH should not be sanctioned for failing to comply with the court-ordered deadline for
12 commencing substantive competency services, or a petition for writ of habeas corpus seeking to
13 require DSH to commence substantive competency services within a certain time or for the court
14 to order that the Sheriff release the defendant from custody. (See RJN, Exhs. C, p. 6 [ordering
15 DSH to “admit and accept petitioner” within 21 days and ordering the Orange County Sheriff’s
16 Department to deliver petitioner to DSH for care and treatment]; D, p. 2 [habeas proceedings].)

17 The deadlines imposed by the courts in these actions vary, with several following *Stiavetti*’s
18 28-day deadline but declining to follow *Stiavetti*’s 30-month phase-in for that deadline (See RJN,
19 Exh. O, pp. 2-3 [recognizing the 28-day placement deadline in *Stiavetti* but ordering placement in
20 a competency training program 11 days after an order granting writ of habeas corpus following an
21 order to show cause]), and sometimes imposing deadline lengths that differ from *Stiavetti*’s
22 statewide 28-day deadline (See RJN, Exhs. C, p. 6 [ordered to “admit and accept” defendant “no
23 later than 21 days from the date of this order”]; D, p. 2 [“directing DSH to immediately
24 commence treatment”]; E, p. 3 [DSH failed to admit defendant within “60 days” of the
25 commitment order, and “within thirty days” of the prior OSC hearing]; M, p. 1 [On June 14,
26 2021, the Court ordered DSH to receive Defendant by June 18, 2021]). When these courts
27 impose deadlines shorter than *Stiavetti*’s, they present DSH with a choice: follow the court’s
28 order and admit a particular IST defendant for treatment ahead of their position on the waitlist,

1 thereby delaying the treatment of other IST defendants ahead of them on the waitlist and
2 disrupting DSH's ability to comply with the *Stiavetti* statewide injunction; or violate the court's
3 order and face potential sanctions in order to treat all IST defendants fairly and maintain the
4 integrity of the statewide waitlist. As previously noted, each of the IST defendants in these
5 actions is also covered by the *Stiavetti* permanent injunction and ongoing enforcement
6 proceedings.

7 The litany of actions to oversee or enforce DSH's compliance with deadlines to commence
8 substantive services tend to be lengthy and complex cases, and when DSH is unable to meet a
9 deadline, the court generally must assess the reasons why and consider DSH's ongoing efforts to
10 reduce IST wait times on a statewide basis as to whether they have good cause and substantial
11 justification for non-compliance. The proceedings have often required DSH to call numerous
12 evidentiary witnesses to testify regarding the multifaceted reasons for the length of the statewide
13 waitlist—including but not limited to the lack of adequate behavioral and mental health treatment
14 options in the community, as well as recent complications due to the COVID-19 pandemic—and
15 DSH's various efforts to reduce the waitlist, such as increasing bed capacity, diverting people
16 with serious mental illness charged with a felony into treatment instead of through the criminal
17 justice system, JBCT programs, and community-based restoration (CBR) programs. (See RJN,
18 Exh. F, pp. 3, 11 [four witnesses, bed capacity, JBCT]; D, pp. 2, 10-11 [admission procedures,
19 bed capacity, JBCT, diversion].) These evidentiary hearings frequently extend over several court
20 days and can often take several months to conclude, depending on the superior court's calendar.
21 (See RJN, Exhs. G, p. 6 [six hearings over five months]; F, p. 3 [five hearings over three months];
22 H, p. 1 [24 days of hearings over one year].) Because all IST patients committed to DSH are
23 placed on the same statewide waitlist for commencement of treatment, the testimony and
24 documentary evidence in proceedings concerning the waitlist and DSH's compliance with court-
25 ordered treatment deadlines tends to be largely duplicative in each case regardless of the county
26 or IST patient(s) involved.

27 Not only is this duplicitous litigation lengthy and complex, but it is also voluminous. The
28 thousands of patients annually committed to DSH as IST, combined with the number of patients

1 on the waitlist, results in the same type of sanctions litigation expending countless judicial
2 resources across the state. From July to December 2019, after the original *Stiavetti* trial court
3 order was issued, DSH appeared 438 times in Order to Show Cause proceedings across the state,
4 which all sought to impose sanctions on DSH for patients awaiting competency restoration.
5 (Rashkis Decl., ¶ 3.) Although this litigation slowed during the early stages of COVID, DSH still
6 was required to appear in 750 competency litigation proceedings in 2020. (*Ibid.*) But just as
7 quickly, the pace of litigation regarding the waitlist resumed, and in the first half of 2021 (January
8 to June) DSH made 668 appearances in superior courts on OSCs, followed by 972 appearances in
9 superior courts on OSCs for the second half of 2021, all of which were regarding delayed
10 admissions of patients for competency restoration. (*Ibid.*)

11 Moreover, the multitude of separate OSC proceedings result in inconsistent rulings
12 impacting the statewide waitlist which frequently conflict with the amended judgment in *Stiavetti*.
13 Rather than consuming unnecessary judicial resources by requiring DSH to appear in hundreds or
14 thousands of mostly duplicative competency litigation proceedings per year, DSH could provide
15 status reports to the superior court to update it on the status of the defendant’s transportation to a
16 competency restoration program.

17 ARGUMENT

18 I. STANDARD FOR COORDINATION

19 “When civil actions sharing a common question of fact or law are pending in different
20 courts, a petition for coordination may be submitted to the Chairperson of the Judicial Council ...
21 by all of the parties plaintiff or defendant in any such action.” (Code Civ. Proc., § 404.) A
22 petition for coordination must “be supported by a declaration stating facts showing that the
23 actions are complex, as defined by the Judicial Council and that the actions meet the standards
24 specified in Section 404.1.” (Code Civ. Proc., § 404.)

25 Under section 404.1, pending complex cases are appropriate for coordination “if one judge
26 hearing all of the cases for all purposes in a selected site or sites will promote the ends of justice,”
27 taking into account:

- 1 1. Whether a common question of fact or law is predominating and significant to the litigation;
- 2 2. The convenience of parties, witnesses, and counsel;
- 3 3. The relative development of the actions and the work product of counsel;
- 4 4. The efficient utilization of judicial facilities and manpower;
- 5 5. The calendar of the courts;
- 6 6. The disadvantages of duplicative and inconsistent rulings, orders, or judgments; and
- 7 7. The likelihood of settlement of the actions without further litigation should coordination be denied.

8 (Code Civ. Proc., § 404.1.)

9 **II. THE 79 COMPETENCY SERVICES CASES ARE COMPLEX CIVIL PROCEEDINGS**

10 As a threshold matter, the 79 competency services cases proposed for coordination are
11 complex civil proceedings, and therefore, meet the initial criteria for coordination. They derive
12 from, and are ancillary to, actions pending in criminal court, but proceed as civil proceedings
13 under the Code of Civil Procedure. (*People v. Lawley* (2002) 27 Cal.4th 102, 131 [although it
14 arises in the context of a criminal trial, a competency hearing is a special proceeding, governed
15 generally by the rules applicable to civil proceedings]; accord, *People v. Fields* (1965) 62 Cal.2d
16 538, 540.) Upon suspension of the criminal proceedings, interim proceedings concerning the
17 patient’s competency and treatment are special proceedings of a civil nature. (Cal. Rules of
18 Court, rule 4.130(c) & (f); *People v. Stanley* (1995) 10 Cal.4th 764, 807 [“A proceeding to
19 determine the mental competence of a criminal defendant to stand trial pursuant to . . . [Penal
20 Code] section 1368 is a special proceeding civil in nature”].)⁷ Further, OSC hearings as to why
21 the IST defendant has not begun receiving substantive competency services threaten DSH with
22 sanctions pursuant to Code of Civil Procedure, section 177.5, which is a civil proceeding.

23 Additionally, the 79 cases proposed to be coordinated are complex. A complex action is an
24 action that “requires exceptional judicial management to avoid placing unnecessary burdens on

25 ⁷ Here, the Director of DSH and the Director of DDS are the sole defendants in *Stiavetti*
26 following the dismissal of the State of California on April 26, 2016, and DSH is the sole real
27 party in interest to the other 78 coordination cases, which concern orders to show cause or
28 petitions for writs of habeas corpus that seek to enforce orders requiring DSH to commence
treatment of IST patients. DSH and DDS do not need the agreement of any additional parties or
approval of the trial court to submit this petition. (Code Civ. Proc., § 404.) DSH and DDS have
voluntarily solicited the views of the *Stiavetti* plaintiffs and they do not join in this petition.
(Declaration of Colin Schoell (Schoell Decl.) ¶ 12.)

1 the court or the litigants.” (Cal. Rules of Court, rule 3.400(a).) Such a case may involve
2 numerous time-consuming pretrial motions; a great number of witnesses or a substantial amount
3 of evidence; many separately represented parties; related actions pending in other counties, states,
4 or countries or in a federal court; or other issues. (*Id.*, rule 3.400(b).)

5 Here, *Stiavetti* was deemed complex and assigned to the complex-litigation department the
6 same year it was filed. (Schoell Decl., ¶ 3.) The other 78 cases DSH and DDS seek to have
7 coordinated with *Stiavetti* raise essentially the same issues and accordingly are complex as well,
8 as described further below.

9 Each of the other 78 cases concern OSCs issued in connection with commitment orders or
10 OSCs issued following the grant of a petition for habeas corpus that order DSH to admit an IST
11 defendant on an expedited basis, or habeas writs ordering commencement of substantive
12 competency services within a time frame that contradicts with the operative *Stiavetti* judgment.
13 Regardless of the origin, these proceedings seek to enforce DSH’s compliance with court-ordered
14 deadlines to commence substantive competency restoration services under threat of sanctions.
15 (Rashkis Decl., ¶ 3.) The proceedings assess whether DSH is unable to comply and, if so, why
16 that is and what efforts DSH is undertaking to cure its compliance deficiencies. (See, e.g., RJN,
17 Exh. E, p. 8 [endeavoring to establish whether DSH can “show cause, if any exists, as to why
18 defendant has not been placed with Department of State Hospitals as ordered by this Court on
19 July 28, 2021, and order, which is still in full force and effect.”].)

20 In many recent instances, similar hearings have spanned months and required dozens of
21 hours of testimony. (See *People v. Kareem A.* (2020) 46 Cal.App.5th 58, 64-69 [noting the
22 consolidated appeal of four separate sanctions orders stemmed from extensive briefing and two
23 evidentiary hearings relating to 247 IST defendants, which required testimony from five DSH
24 employees being questioned at length]; RJN, Exh. F, pp. 1-2 [consolidated proceedings of 8
25 defendants, including 5 days of hearings spanning four months]; Exh. I, pp. 1-2 [consolidated
26 proceedings of 15 defendants spanning three months]; Exh. G, pp. 1-2, 5-6 [consolidated
27 proceedings of 29 defendants spanning 7 months]; Exh. H, pp. 1, 16 [consolidated proceedings of
28 10 defendants, including 24 days of hearings spanning one year].) As evidenced by the orders to

1 show cause included in the instant petition, many of the recent and current competency services
2 proceedings have already been consolidated in preparation for hearings of similar length and
3 scope. (Rashkis Decl., ¶ 3; See RJN, Exhs. D [3 defendants]; F [8 defendants]; G [29
4 defendants]; H [10 defendants]; I [15 defendants]; J [140 defendants]; K [18 defendants]; L [3
5 defendants].) In advance of these evidentiary hearings, there is often significant civil discovery
6 and motion work, including but not limited to discovery regarding DSH’s efforts to increase the
7 capacity of its competency treatment programs and the ongoing impacts of the COVID-19
8 pandemic. (See RJN, Exh. F, pp. 11, 16, 19 [analyzing bed capacity changes, telehealth services,
9 Jail-Based Competency Training, intergovernmental efforts, and COVID-19 impacts].) Much of
10 this civil discovery and motion work is duplicative of the work done in other competency services
11 proceedings because it centers on DSH’s efforts to address the IST waitlist. Relevant evidence
12 has generally included legislative reports, budgetary documents, expert reports, and materials
13 concerning community mental health resources, JBCT programs, CBR programs, and diversion.
14 (See, e.g., RJN, Exhs. I, pp. 5, 21-31 [analyzing at length documentary evidence including the
15 Governor’s Budget Estimates for DSH FY 2018-2019, the May Revise of the Governor’s Budget
16 Estimates for DSH FY 2018-19, Mental Health Services Oversight & Accountability Commission
17 Report entitled, “Reducing Criminal Justice Involvement for People with Mental Illness,” dated
18 November 2017]; J, pp. 23-29 [analyzing evidence regarding impacts of jail-based competency
19 treatment, new regulations, and bed capacity in omnibus sanctions proceeding related to
20 placement of 140 IST defendants].)

21 The complexity of each hearing is exacerbated by the complexity of the statewide system
22 for administering competency services. As discussed above, DSH places all criminal defendants
23 committed to its custody for competency services on a single waitlist in order of commitment
24 date. (Cal. Code Regs., tit. 9, § 4710.) While a commitment order does not explicitly demand
25 that a defendant jump the waitlist, a threat of sanction proceedings, by way of an Order to Show
26 Cause or a habeas petition threatening to penalize DSH for anything other than immediate
27 admission, does. Such an immediate admission for a particular IST defendant would have the
28 effect of pushing back the admission of every other IST defendant ahead of them on the waitlist,

1 impacting competency services proceedings in other courts and counties. (See Cal. Rules of
2 Court, rule 3.400(b) [listing among the factors that make a matter complex the existence of
3 related actions pending in other counties].)

4 DSH, in particular, functions as a central point of contact for managing thousands of patient
5 commitments every year to provide people with the care they need. DSH sends patients from 58
6 counties to one of four hospitals that treat IST patients, or serving them through JBCT programs,
7 county-run and DSH-funded diversion programs, or through CBR or other alternative treatment
8 programs, amounting to 12,088 referrals over the last three years. (Thomson Decl., ¶ 4.) All IST
9 commitments are processed by a division of DSH called the Patient Management Unit (PMU).
10 PMU is responsible for receiving and reviewing the commitment documents that are required by
11 Penal Code section 1370, subdivision (a)(3). (*Id.*, ¶ 3.) PMU also maintains DSH's statewide
12 waitlist to ensure that IST referrals are prioritized by their respective commitment dates in the
13 event a commitment packet is not timely delivered to DSH by committing courts, or when an IST
14 patient is treated in a DSH Mental Health Diversion program or Community Based Restoration
15 Program and thereafter requires a higher level of care in a DSH facility. (*Ibid.*)

16 A patient's placement among the four state hospitals might be further limited by the nature
17 of the charges alleged, special medical needs, the degree of psychiatric acuity, the individual's
18 propensity for violence, or a history of elopement. (*Id.*, ¶ 4.) Unless a compelling reason is
19 indicated for an alternative DSH facility placement, PMU makes an effort to place IST referrals
20 in a facility that is closest to the IST's county of residence.⁸ (*Id.*, ¶ 4.) The safety measures taken
21 in response to COVID-19, detailed in the Factual Background, *supra*, have greatly impacted the
22 hospitals' ability to admit and integrate new patients from county jails into the hospitals. (*Id.*, ¶ 7;
23 see also RJN, Exh. F, p. 19 [analyzing impact of COVID-19, Executive Order N-35-20, and DSH
24 Directive dated March 23, 2020, suspending admission of patients to DSH facilities in the context
25 of need to protect patient safety].)

26 In short, hearings held to enforce commitment orders are inherently complex for a variety of
27 reasons, including: the sophisticated psychiatric testimony that is typically delivered; the months

28 ⁸ See Welfare and Institutions Code, section 7234, subdivision (b)(2).

1 of preparation, discovery, and law and motion work that these proceedings frequently require; the
2 interrelatedness of all IST enforcement proceedings throughout the state given that all IST
3 defendants committed to DSH are placed on the same statewide waitlist for commencement of
4 substantive competency services; and because so much of the evidence and testimony revolve
5 around DSH's ongoing efforts to address the IST waitlist on multiple fronts, as well as DSH's
6 role in centrally managing the placement of all patient commitments statewide.

7 **III. COORDINATION WILL PROMOTE JUDICIAL ECONOMY AND SERVE THE INTEREST**
8 **OF JUSTICE**

9 Statewide coordination of the 79 competency services cases will promote judicial economy,
10 serve the interest of justice, and will likely advance at least five of Code of Civil Procedure
11 section 404.1's explicit considerations.

12 **A. Common Questions of Fact and Law Are Predominating and Significant.**

13 Above all else, the 79 cases DSH and DDS seek to have coordinated concern common
14 questions of fact and law that are predominating and significant to the litigation. (Code Civ.
15 Proc., § 404.1.)

16 Each of the enforcement proceedings share essentially identical questions of law and fact
17 with *Stiavetti*. Each individual case concerns the oversight and enforcement of DSH's duty to
18 commence substantive competency services for a particular IST defendant, and in virtually every
19 case, the primary reason for the delay in commencing treatment is the fact that DSH's treatment
20 facilities are full and thus, the defendant is awaiting their turn on the statewide waitlist for
21 treatment along with every IST patient committed after them. (See, e.g., RJN, Exh. F, pp. 11, 16,
22 19 [analyzing the impacts of DSH programs, intergovernmental efforts, and COVID-19 on DSH's
23 waitlist].) *Stiavetti* concerns the exact same issues—oversight and enforcement of DSH's
24 compliance with the court-ordered timeline to commence substantive competency services—but
25 does so for all IST defendants on a statewide basis. Thus, each individual enforcement
26 proceeding is almost entirely, if not wholly, duplicative of the ongoing oversight and enforcement
27 action in *Stiavetti*.

1 Beyond the fact that each of the other 78 cases concerns IST defendants who are already
2 covered by *Stiavetti*'s permanent injunction, all of these cases involve the same agency, DSH, and
3 the overwhelming majority of factual disputes concern the placement policies, budgeting, and
4 operations of DSH, as well as the admission, discharge, and wait-listing of those committed to
5 DSH's care. In each of these cases, the courts are endeavoring to understand the complex reasons
6 why DSH is currently unable to meet the timeline imposed by the court, and what efforts DSH is
7 undertaking to be able to meet that standard. (See, e.g., RJN, Exh. I, pp. 5-6, 21-31 [analyzing
8 the Governor's Budget Estimates and a 2017 Mental Health Services Oversight & Accountability
9 Commission Report].) Ultimately, the trial courts must determine whether DSH's efforts are
10 reasonable and sufficient in light of the barriers it faces.

11 For all these reasons, the enforcement proceedings overwhelmingly share common, and in
12 many instances, identical, questions of fact and law.

13 **B. Coordination Will Advance the Efficient Utilization of Judicial Resources.**

14 Coordination is also appropriate because it will promote the "efficient utilization of judicial
15 facilities and manpower" and lessen the burden on the "calendar of the courts." (Code Civ. Proc.,
16 § 404.1.) As an initial matter, the sheer number of these proceedings imposes an immense impact
17 on judicial economy. From July to December 2019, after the original *Stiavetti* trial court order
18 was issued, DSH appeared 438 times in Order to Show Cause proceedings across the state, all of
19 which involved efforts to impose sanctions on DSH for patients awaiting competency restoration.
20 (Rashkis Decl., ¶ 3.) Since then, the number of appearances has grown significantly. Courts
21 required DSH to appear in 750 competency litigation proceedings in 2020 and 1,640 appearances
22 in OSCs in 2021 regarding delayed admissions for patients. (*Ibid.*) These thousands of
23 appearances are not an efficient utilization of judicial facilities and personnel, and it cannot be
24 disputed that these OSCs are a severe burden on the courts' calendars.

25 The enforcement hearings at issue also frequently require civil discovery and law and
26 motion practice; they have historically involved all manner of pre-hearing disputes; and the
27 hearings themselves have often required multiple court days and, including continuances, have
28 taken as long as 14 months to complete. (Schoell Decl., ¶ 10.) Meanwhile, DSH's ongoing

1 efforts to comply with the phased milestones toward the statewide 28-day standard established in
2 *Stiavetti* are being directly adjudicated—and, to the extent necessary and appropriate, will be
3 enforced—by the *Stiavetti* court. Thus, if these actions are not coordinated, superior courts across
4 California will continue to preside over lengthy hearings in multiple different proceedings,
5 duplicative of *Stiavetti*, that will strain the courts’ resources. Furthermore, COVID-19 has
6 strained the court system, and the result of DSH’s pandemic admission protocols has been to
7 lengthen the IST waitlist at the very time that courts are least available to handle these
8 proceedings. (See RJN, Exh. 1 (*Afre*), p. 19 [analyzing impact of COVID-19 and finding good
9 cause and a substantial justification for DSH’s non-compliance].)

10 In short, piecemeal adjudication of the issues relating to DSH’s statewide IST waitlist in
11 multiple duplicative and potentially inconsistent proceedings is an inefficient use of judicial
12 resources, placing an unnecessary strain on courts’ calendars and burdening judges, court clerks,
13 and judicial staff. Coordination of the 79 cases—as well as any future such cases—in a single
14 proceeding would ease the burden on courts’ calendars and better utilize judicial resources.⁹

15 **C. Coordination Will Avoid Duplicative and Inconsistent Rulings and Orders.**

16 Coordination of competency services cases is also supported by section 404.1’s criteria
17 concerning “the disadvantages of duplicative and inconsistent rulings, orders, or judgments.”
18 (Code Civ. Proc., § 404.1.) As discussed in greater detail above, DSH operates a single waitlist
19 serving all criminal defendants committed to its custody for competency services, and defendants
20 are placed by order of commitment date. While a commitment order does not explicitly suggest
21 that any single IST defendant jump the waitlist, a threat of sanctions, by way of an order to show
22 cause flowing from a commitment order or a habeas writ ordering immediate admission, asks
23 DSH to violate California Code of Regulations, title 9, section 4710, which prohibits DSH from
24 admitting any IST defendant before others with earlier dates of commitment, subject only to
25 limited exceptions for cases of psychiatric acuity. Given the statewide IST waitlist, enforcement
26 of individual commitment orders has the effect of creating inconsistency about who should be

27 _____
28 ⁹ Due to their recurring nature, Petitioners expect to submit add-on petitions to coordinate
future iterations of these same type of cases, pursuant to California Rules of Court, rule 3.531.

1 admitted next.

2 Duplicative and inconsistent rulings will also result from the current county-by-county
3 adjudication of the individual enforcement proceedings that are duplicative of the statewide
4 *Stiavetti* proceedings. For example, because each IST patient is admitted for treatment based on a
5 statewide waitlist, any order in any case that affects the waitlist—such as ordering DSH to
6 immediately begin treating a patient who is not first on the waitlist—will directly affect DSH’s
7 timeline for admitting other patients, whose admission for treatment may be delayed if they are
8 displaced from their position on the list. (Thomson Decl., ¶ 6.) This creates a significant risk that
9 different superior courts might issue directly conflicting orders, such as two or more courts each
10 ordering DSH to immediately admit different patients to a single open treatment bed, or different
11 courts setting different admission deadlines for the same patient. Indeed, some superior courts
12 are issuing admission deadlines that are different from the statewide 28-day deadline, with a 30-
13 month phase-in period, established in *Stiavetti*. (See RJN, Ex. E, p. 8 [finding that DSH “failed to
14 admit the Defendant to the State Hospital no more than 60 days after the date the Defendant was
15 committed on August 3, 2021” over a year in advance of the August 27, 2022, phased deadline in
16 the *Stiavetti* trial court]).

17 Piecemeal proceedings create a further risk that if the courts seek to enforce DSH’s
18 compliance with commencement-of-services deadlines through sanctions, DSH could be
19 sanctioned twice by two separate courts for the same IST patient—once in *Stiavetti* and a second
20 time in the court handling the individual patient’s case. Finally, different courts could issue
21 duplicative or conflicting orders concerning the reasonableness and sufficiency of DSH’s efforts
22 to come into compliance with court-ordered deadlines, as DSH’s compliance efforts are a
23 statewide undertaking. Coordination would avoid such duplicative and cross-purpose rulings.

24 **D. All Cases Proposed to Be Coordinated Are at the Same Relative Stage of**
25 **Adjudication.**

26 Additionally, the cases DSH and DDS seek to coordinate are at the same relative stage of
27 adjudication. (Code Civ. Proc., § 404.1.) Unlike most coordinated actions, the proceedings DSH
28 and DDS propose to coordinate are at their “end” stages. In *Stiavetti*, judgment has issued, and in

1 each competency services proceeding, a commitment order has issued. The only remaining task
2 of the courts is to monitor compliance, and to tackle questions of non-compliance, with the orders
3 they have issued. The dominant concern underlying the compliance inquiry is whether DSH has
4 taken adequate steps toward reducing its waitlist and providing timely substantive competency
5 services. Ultimately, the courts wrestling with waitlist litigation are all asking the same
6 fundamental question—that is, how the court can go about enforcing DSH’s compliance with
7 court-ordered deadlines for the commencement of substantive competency services. To this end,
8 if these cases are coordinated in a centralized department, DSH still intends to provide criminal
9 courts with status reports on commencement of substantive competency services for IST
10 defendants so those courts are aware of the ongoing progress toward competency in each
11 coordinated matter. In fact, in 2020 and 2021, DSH filed 768 reports of this nature with the
12 courts, and if required, DSH does not object to continuing to file these reports in the future.¹⁰
13 (Rashkis Decl., ¶ 3.) DSH does not seek to prevent the courts from remaining informed of the
14 status of the IST defendants on the waitlist. Rather, this petition is intended to maximize the
15 efficiency of the judicial process.

16 **E. The Remaining “Ends of Justice” Considerations Are Less Applicable.**

17 The two remaining considerations of the “ends of justice” inquiry are less applicable to the
18 instant proposal. Due to the widespread and unique nature of competency services proceedings,
19 forum convenience and likelihood of settlement do not counsel in favor or against coordination.
20 First, as to the convenience of the parties, witnesses, and counsel, there is no single county that is
21 more convenient than the others. (See Code Civ. Proc., § 404.1.) Alameda County Superior
22 Court is convenient for DSH witnesses and counsel and is the venue for *Stiavetti*, to which all the
23 included actions are related. (Rashkis Decl., ¶ 4.) The eleven counties from which the remaining
24 cases would be transferred¹¹ vary in distance from Alameda County. Because the proceedings to

25 _____
26 ¹⁰ In 2020, DSH’s legal division filed 272 of these reports. For January to June 2021,
27 DSH’s Legal Division filed 333 of these reports. And for July 2021 to December 2021, DSH’s
28 Legal Division filed 163 of these reports.

¹¹ The eleven counties are Alameda, Butte, Orange, Santa Barbara, Shasta, Solano, Sonoma,
Stanislaus, Tuolumne, Ventura, and Yolo.

1 enforce commitment orders often continue long after the defendants have in fact received
2 substantive competency services, the defendants themselves may no longer even be in the
3 county's custody or have IST status. (See, e.g., RJN, Exh. F, pp. 3-8 [conducting evidentiary
4 hearings on five days over a three-month period between March and June 2021 and issuing an
5 order on September 10, 2021, long after DSH had issued Certifications of Mental Competency or
6 the IST defendants were otherwise restored to competence].)

7 Second, the likelihood of settlement should coordination be denied is less pertinent to the
8 analysis, as these cases are not of a type that can typically be settled. (See Code Civ. Proc., §
9 404.1.) Foremost, the fact that a statewide waitlist exists means that if the instant petition is
10 denied, any advancement of one defendant negatively affects the remainder of them—each
11 commitment is connected and, if subject to negotiation, each placement would create a
12 competition among and between wait-listed defendants. Second, the cases are difficult, if not
13 impossible, to settle because of the status of the proceedings. In *Stiavetti*, because the matter is
14 post-judgment, there does not appear to be any remaining dispute between the parties that could
15 be settled in the ordinary sense. DSH is working on multiple fronts to bring the system into
16 compliance with the court-ordered 28-day deadline over the 30-month phase-in period. If DSH is
17 able to bring the system into compliance and meet the court's timelines, the case should end, and
18 if DSH is unable to meet these timelines, the court will determine the appropriate remedy at that
19 time. Similarly, in the 78 other enforcement proceedings to be coordinated with *Stiavetti*, the
20 order committing an IST defendant to DSH's custody is final—substantive competency services
21 are due, and only commencing the services can resolve the dispute. Individual superior courts
22 issuing sanctions against DSH will not speed up the process, because, generally, DSH is bound by
23 regulation to schedule admission of IST defendants according to their date of commitment. The
24 nature of the proceedings makes the matters generally unsuitable for settlement—in delivering
25 substantive competency services to waitlisted defendants, services have either commenced or
26 they have not, and it does not appear that any in-between currently exists that would enable an
27 agreement in compromise to accelerate the waitlist. Finally, to the extent any settlement is
28 possible, it would have to be a global settlement, and thus, coordination would only enhance, not

1 hinder, what little potential for settlement might exist.

2 In sum, the competency services cases qualify for coordination under section 404.1, and the
3 ends of justice will be served by bringing these interrelated and largely duplicative proceedings
4 before a single court, where judicial resources can effectively and efficiently focus on one
5 common goal: shortening the statewide IST waitlist.

6 **IV. ALAMEDA COUNTY IS BEST SITUATED TO HANDLE THE COORDINATED**
7 **COMPETENCY PROCEEDINGS**

8 DSH and DDS propose Alameda County Superior Court as the venue for the coordinated
9 action because it is already managing implementation of the statewide judgment in *Stiavetti*,
10 which affects every IST patient in the state who is awaiting the commencement of substantive
11 competency services. Put another way, receipt of the transferred cases does not significantly
12 expand or add to the scope of the *Stiavetti* court’s work—but it does greatly diminish the burden
13 on other superior courts.

14 As a threshold matter, DSH and DDS seek to coordinate only proceedings that oversee or
15 enforce DSH’s compliance with the 28-day deadline to commence treatment, as set forth by
16 *Stiavetti*. DSH does not wish to coordinate other logistical concerns related to the
17 commencement of substantive services, specifically transportation of IST defendants on the
18 waitlist, which may be more appropriately left to the courts in the counties where IST defendants
19 are detained. The *Stiavetti* judgment requires DSH to provide all waitlisted defendants, regardless
20 of their county of origin, with substantive competency services within (ultimately) 28 days of
21 service of the commitment packet on DSH. (Schoell Decl. ¶ 8.)¹² The judgment also requires
22 DSH and DDS to file four status reports identifying: (1) the number of defendants found
23 incompetent to stand trial that DSH and DDS have responsibility for at the *beginning* of specified
24 milestone dates; (2) the number of criminal defendants that DSH and DDS have responsibility for

25 _____
26 ¹² The Honorable Winifred Smith, of Department 21, retired in 2021. *Stiavetti* is now
27 pending before the Honorable Evelio Grillo, who was transferred to Department 21 (Complex
28 Litigation) following Judge Smith’s retirement. If, for any reason, Judge Grillo cannot preside
over the coordinated matter, Alameda County Superior Court has other complex judges well-
qualified to handle the coordinated actions.

1 at the *end* of those milestones; (3) the number of *new* defendants found incompetent to stand trial
2 and committed to DSH or DDS custody that have been added to the waitlist between the
3 milestones; (4) the average and median wait times between the milestones; and (5) the range of
4 wait times between the milestones. (See RJN, Exh. B, at p. 5.)¹³ As evidenced by these terms
5 from the *Stiavetti* amended judgment, the *Stiavetti* court intends to analyze aggregate data
6 tracking implementation of its statewide order, and to account for any competency services that
7 are not timely delivered to an in-custody criminal defendant declared incompetent to stand trial.
8 In short, Alameda County is already doing the work of ensuring no defendant's competency
9 services are delayed without penalty, and would be the jurisdiction best suited to, and least
10 burdened by, receipt of the coordinated actions.

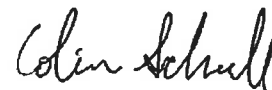
11 CONCLUSION

12 For all the above reasons, the Judicial Council should issue an order under Code of Civil
13 Procedure section 404 coordinating the instant 79 proceedings and transferring them to Alameda
14 County Superior Court, where they can be adjudicated before a single judge.

15 Dated: July 20, 2022

16 Respectfully submitted,

17 ROB BONTA
18 Attorney General of California
19 GREGORY D. BROWN
20 Supervising Deputy Attorney General



21 COLIN D. SCHOELL
22 Deputy Attorney General
23 *Attorneys for Petitioners*
24 *Stephanie Clendenin, Director of*
25 *Department of State Hospitals; Nancy*
Bargmann, Director of Department of
Developmental Services

26 ¹³ Reporting requirements (1) and (2) must also include a breakdown of how many
27 criminal defendants were in a hospital, treatment facility, outpatient program, jail-based
28 competency treatment program, other facilities or programs under DSH's or DDS's supervision,
and how many criminal defendants are not yet receiving substantive services. (See RJN, Exh. B,
p. 5.)

RECEIVED

Judicial Council of California

JUL 20 2022

Judicial Council (v.a.)
Coordination Lawyer

1 ROB BONTA
Attorney General of California
2 GREGORY D. BROWN
Supervising Deputy Attorney General
3 COLIN D. SCHOELL
Deputy Attorney General
4 State Bar No. 332896
455 Golden Gate Avenue, Suite 11000
5 San Francisco, CA 94102-7004
Telephone: (415) 510-3547
6 Fax: (415) 703-5843
E-mail: Colin.Schoell@doj.ca.gov
7 *Attorneys for the California Department of State
Hospitals and the California Department of
8 Development Services.*

Exempt from Filing Fees —
Gov. Code, § 6103

JUDICIAL COUNCIL OF THE STATE OF CALIFORNIA

13 STEPHANIE STIAVETTI, et al.

14 Plaintiffs,

15 v.

17 STEPHANIE CLENDENIN, et al

18 Defendants.

19 Alameda Cnty. Super. Ct. Case No.
20 RG157779731

JCCP Case No.

5248

**DECLARATION OF JACI THOMSON IN
SUPPORT OF DEFENDANTS'
PETITION FOR COORDINATION TO
THE JUDICIAL COUNCIL RE:
COMPETENCY SERVICES FOR
DEFENDANTS FOUND INCOMPETENT
TO STAND TRIAL**

1 I, Jaci Thomson, do hereby declare as follows:

2 1. I am the Deputy Director of Hospital Strategic Planning and Implementation for
3 the Department of State Hospitals (DSH). The facts set forth herein are of my own personal
4 knowledge and if sworn I could and would testify competently hereto.

5 2. In the course of my duties, I oversee key functions supporting DSH's hospital
6 operations, including, but not limited to, patient referral processing, system-wide admission
7 coordination, data analytics, and policy and regulation development. Specifically, I facilitate bed
8 activation and planning, including beds utilized for provision of restorative care to criminal
9 defendants declared incompetent to stand trial (IST), and oversee census and patient movement
10 tracking and reporting. I also manage the development of patient population projections for
11 capacity and other planning. I have held this position since September 20, 2021.

12 3. DSH receives service of several thousand court-ordered, incompetent to stand trial
13 (IST) commitments from each of California's 58 counties every year. DSH prioritizes and
14 sequences these commitments based on the date of commitment, pursuant to title 9 California
15 Code of Regulations, section 4710. All IST commitments are processed by a division of DSH
16 called the Patient Management Unit (PMU). PMU is responsible for receiving and reviewing the
17 commitment documents that are required by Penal Code section 1370, subdivision (a)(3). PMU
18 also maintains DSH's statewide waitlist to ensure that IST referrals are prioritized by their
19 respective commitment dates in the event a commitment packet is not timely delivered to DSH by
20 committing courts, and/or when an IST is treated in a DSH Mental Health Diversion program or
21 Community Based Restoration Program and thereafter requires a higher level of care in a DSH
22 facility.

23 4. DSH places IST defendants at one of a variety of DSH facilities¹ located
24 throughout the State. An IST patient's placement is impacted by the nature of the charges
25 alleged, special medical needs, the degree of psychiatric acuity, the IST's propensity for violence,
26 or a history of elopement. DSH may place an IST referral in an inpatient facility at one of the

27 _____
28 ¹ Facilities under the jurisdiction of DSH are defined in Welfare and Institutions Code
section 4100.

1 four state hospitals that treats IST patients, to one of 22 jail-based competency treatment (JBCT)
2 programs, six of which may accept IST referrals from other counties, or the Admission
3 Evaluation and Stabilization (AES) facility located in the Kern County Jail, or the recently
4 opened the Sacramento Behavioral Health Hospital, an Institute for Mental Disease located in
5 Sacramento. Alternatively, courts may refer an IST for outpatient treatment through contracted
6 services with DSH under its Mental Health Diversion and community-based restoration (CBR)
7 programs. Over the last three years, DSH received 12,088 referrals for IST treatment.² As of
8 July 4, 2022, there were 1,739 IST defendants on DSH's statewide waitlist.

9 5. DSH undertook, and continues to make, significant efforts to address its waitlist.
10 However, COVID-19 impacted these gains due to the census reductions DSH made to implement
11 isolation and quarantine spaces and the admission protocols recommended by public health
12 experts. Since March of 2020, DSH suspended admission and/or discharges several times in
13 response to COVID-19 and subsequent variants. The initial decision to suspend admissions
14 occurred on March 23, 2020, was for 30-days, and was continued on April 23, 2020, for an
15 additional 30-days. The Omicron variant impacted both staff and patients at DSH Hospitals and,
16 as a result, the number of positive cases, units on quarantine, including admission units, increased
17 significantly. As a result, DSH's Director temporarily suspended IST admissions on January 12,
18 2021, for 30-days due to the impact of the Delta variant of the COVID-19 virus. The most recent
19 suspension occurred on January 3, 2022, for 30-days, with an extension of up to 30-days on
20 February 2, 2022, , due to the growing impact of the Omicron variant of the COVID-19 virus. A
21 copy of these Directives can be found at: <<https://www.dsh.ca.gov/COVID-19/notices.html>> (last
22 visited Jul. 5, 2022). DSH's statewide waitlist was further exacerbated by several factors arising
23 from the COVID-19 pandemic, including: the need to suspend admissions to state hospitals,
24 county transportation scheduling issues, COVID-19 outbreaks and quarantines at the county jails,
25 and not receiving timely medical screenings and COVID-19 test results from committing counties
26 for incoming patient admissions. These combined factors resulted in delayed and/or rescheduled

27 ² ISTs that initially receive competency treatment at a JBCT or AES program, but are later
28 deemed to require additional treatment at a state hospital, remain at the relevant JBCT or AES
program and are admitted to a state hospital based on the initial commitment date.

1 admissions, which further impacts the statewide waitlist. The admission suspensions protected the
2 health, safety, and welfare of patients by controlling admissions for the benefit of those that are
3 at increased risk of developing severe COVID-19, given that the introduction of new persons is
4 one of the most significant risk vectors to the spread of COVID-19. As of July 5, 2022, COVID-
5 19 quarantines impacted those DSH Hospitals serving ISTs as follows: (i) DSH-Atascadero – 18
6 units on quarantine; (ii) DSH-Metropolitan – 8 units on quarantine; (iii) DSH-Napa – 14 units on
7 quarantine; and (iv) DSH-Patton – 25 units on quarantine. When units at a State Hospital are
8 placed on quarantine, the impacted Hospital cannot admit any new IST defendants to that unit
9 until that unit comes off quarantine, which may prevent new admissions and can prevent
10 movement to a permanent unit for treatment.

11 6. Because each IST patient is admitted for treatment based on a statewide waitlist,
12 any order in any case that affects the waitlist—such as ordering DSH to immediately begin
13 treating a patient who is not first on the waitlist—will directly affect DSH’s timeline for admitting
14 other patients, whose admission for treatment may be delayed if they are displaced from their
15 position on the list.

16 I declare under the penalty of perjury under the laws of the State of California that the
17 foregoing is true and correct.

18 Date: July 8, 2022

19 
20 _____
21 Jaci Thomson
22 Deputy Director

23 SA2015104568
24 42946268.docx
25
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

ROB BONTA
Attorney General of California
GREGORY D. BROWN
Supervising Deputy Attorney General
COLIN D. SCHOELL
Deputy Attorney General
State Bar No. 332896
455 Golden Gate Avenue, Suite 11000
San Francisco, CA 94102-7004
Telephone: (415) 510-3547
Fax: (415) 703-5843
E-mail: Colin.Schoell@doj.ca.gov
*Attorneys for the California Department of State
Hospitals and the California Department of
Development Services*

RECEIVED
Judicial Council of California

JUL 20 2022
Andrea J. ...
Coordination Lawyer

Exempt from Filing Fees —
Gov. Code, § 6103

JUDICIAL COUNCIL OF THE STATE OF CALIFORNIA

STEPHANIE STIAVETTI, et al.

Plaintiffs,

v.

STEPHANIE CLENDENIN, et al

Defendants.

Alameda Cnty. Super. Ct. Case No.
RG157779731

JCCP Case No. **5248**
**DECLARATION OF SEAN MARK
RASHKIS IN SUPPORT OF
DEFENDANTS' PETITION FOR
COORDINATION TO THE JUDICIAL
COUNCIL RE:
COMPETENCY SERVICES FOR
DEFENDANTS FOUND INCOMPETENT
TO STAND TRIAL**

1 I, Sean Mark Rashkis, do hereby declare as follows:

2 1. I am an Assistant Chief Counsel in the Legal Division of the Department of State
3 Hospitals (DSH). The facts set forth herein are of my own personal knowledge and if sworn I
4 could and would testify competently hereto.

5 2. In the course of my duties, I supervise staff attorneys that represent DSH and serve
6 as the liaison to the California Attorney General's Office for many cases referred to that office,
7 including hearings relating to substantive competency services for criminal defendants committed
8 to DSH under Penal Code section 1370. I have served in this role for over six years.

9 3. From July to December 2019, after the original *Stiavetti* trial court judgment was
10 issued, DSH appeared 438 times in Order to Show Cause proceedings across the state, all of
11 which sought to hold DSH in contempt for patients awaiting competency restoration. Although
12 this litigation slowed during the early stages of COVID, DSH still was required to appear in 750
13 competency litigation proceedings in 2020. But just as quickly, the pace of litigation regarding
14 the waitlist resumed, and in the first half of 2021 (January to June) DSH made 668 appearances in
15 Superior Courts on OSCs, followed by 972 appearances in Superior Courts on OSCs for the last
16 six months of 2021, all of which were regarding delayed admissions of patients for competency
17 restoration and many of which were consolidated for evidentiary hearings. DSH routinely files
18 status reports with courts throughout the state on status of admission for IST defendants to a DSH
19 facility. For 2020, DSH's Legal Division filed 272 of these status reports. For January to June
20 2021, the Division filed 333 of these reports. For July 2021 to December 2021, the Division filed
21 163 of these reports. In addition to formal filings, DSH's Patient Management Unit consistently
22 communicates with courts and defense counsel by phone or email to provide status of admission.

23 4. Alameda County Superior Court is convenient for DSH witnesses and counsel,
24 and, as a supervisor of attorneys that appear in such matters, there is simply no single county that
25 is ideal for all witnesses and counsel, as they routinely come from all over the State. The contact
26 information for counsel of the included actions is attached hereto as Exhibit B. The most relevant
27 information to criminal defendants from these hearings, however, are the status reports regarding
28 their current place on the waitlist, which DSH currently provides and can continue to provide to

1 defendants while the matters are coordinated for sanctions purposes. DSH included cases from
2 the 11 Counties that are part of this Petition because of an inconsistent application of the *Stiavetti*
3 decision and/or its compliance framework, such inconsistency resulted in the setting of multiple
4 OSCs in each County, sometimes with minimal advance notice, and with these OSCs set in the
5 same courthouse multiple days each week. A true and correct copy of the 79 cases included for
6 coordination are attached hereto as Exhibit A and listed below, with 78 of those being OSC
7 proceedings challenging DSH's waitlist for IST criminal defendants and seeking to enforce
8 DSH's compliance with court-ordered deadlines to commence substantive competency restoration
9 services:

- 10 a. Case Name: PEOPLE v. KUMONEE BUTLER;
11 Filing County: Alameda;
12 Case Number: 21-MH010020-1; 21-MH-005438-1; 21-MH-010046; 21-MH-005472;
13 Filing Date: 2/2/2022
- 14 b. Case Name: PEOPLE v. SHAQUIN FERGUSON;
15 Filing County: Alameda;
16 Case Number: 20-MH-005617; 19-MH009119-1; 21-MH-005839-1;
17 Filing Date: 2/4/2022
- 18 c. Case Name: PEOPLE v. DARIO FRANCO;
19 Filing County: Alameda;
20 Case Number: 22-MH-003675-1; 22-MH-001935-1; 22-MH-000832-1; 21-MH-
21 014648-1; 21-MH-0069601;
22 Filing Date: 4/15/2022
- 23 d. Case Name: PEOPLE v. JESUS HEREDIA ESTRADA;
24 Filing County: Alameda;
25 Case Number: 21-MH-005194-1;
26 Filing Date: 2/4/2022
- 27 e. Case Name: PEOPLE v. MARIA OREBEL MENDEZ;
28 Filing County: Alameda;
Case Number: 21-MH-009758-1;
Filing Date: 12/17/2021
- f. Case Name: PEOPLE v. LEONEL MIRANDA;
Filing County: Alameda;
Case Number: 21-MH-014828-1;
Filing Date: 5/27/2022
- g. Case Name: STIAVETTI v. CLENDENIN, et al.
Filing County: Alameda
Case Number: RG15779731
Filing Date: 07/29/2015

///

- 1 h. Case Name: PEOPLE v. MICHAEL TECKLE;
2 Filing County: Alameda;
3 Case Number: 21MH005420;
4 Filing Date: 2/4/2022
- 5 i. Case Name: PEOPLE v. CHARLES ANDERS;
6 Filing County: Butte;
7 Case Number: 21CF04542-1;
8 Filing Date: 2/9/2022
- 9 j. Case Name: PEOPLE v. JOEL BIGGINTON;
10 Filing County: Butte;
11 Case Number: 19CF02615-4;
12 Filing Date: 1/12/2022
- 13 k. Case Name: PEOPLE v. HALEY BOWEN;
14 Filing County: Butte;
15 Case Number: 21CF05246-1;
16 Filing Date: 2/9/2022
- 17 l. Case Name: PEOPLE v. VICTORIA FLOYD;
18 Filing County: Butte;
19 Case Number: 21CF05620-1;
20 Filing Date: 2/23/2022
- 21 m. Case Name: PEOPLE v. JEFFERY HAGAR;
22 Filing County: Butte;
23 Case Number: 20CF03938-1;
24 Filing Date: 12/29/2021
- 25 n. Case Name: PEOPLE v. KAO LAO;
26 Filing County: Butte;
27 Case Number: 21CF06521-1;
28 Filing Date: 4/20/2022
- o. Case Name: PEOPLE v. RHONDA LAURIE MAGNUSSON;
Filing County: Butte;
Case Number: 21CF03671-1;
Filing Date: 1/20/2022
- p. Case Name: PEOPLE v. KEITH RYAN MILNER
Filing County: Butte
Case Number: 21CF06346-1
Filing Date: 05/09/2022
- q. Case Name: PEOPLE v. CAMERON ALEXANDER NAVARRO;
Filing County: Butte;
Case Number: 18CF05593-1;
Filing Date: 12/30/2021
- r. Case Name: PEOPLE v. JOHN A. ROOD;
Filing County: Butte;
Case Number: 21CF04975-1;
Filing Date: 4/7/2022

- 1 s. Case Name: PEOPLE v. PAUL STEVE SEGURA;
2 Filing County: Butte;
3 Case Number: 21CF04579-1;
4 Filing Date: 12/30/2021
- 5 t. Case Name: PEOPLE v. JAVIER AGUILAR;
6 Filing County: Orange;
7 Case Number: 21CF2712; 21CF2878; 21CM12060;
8 Filing Date: 2/15/2022
- 9 u. Case Name: PEOPLE v. DONALD EARL BENJAMIN;
10 Filing County: Orange;
11 Case Number: 21CF2511;
12 Filing Date: 3/10/2022
- 13 v. Case Name: PEOPLE v. JOSEPH BRAHAM;
14 Filing County: Orange;
15 Case Number: 21CF3526;
16 Filing Date: 3/23/2022
- 17 w. Case Name: PEOPLE v. JASEN CORDIERO;
18 Filing County: Orange;
19 Case Number: M-19685 X A;
20 Filing Date: 3/16/2022
- 21 x. Case Name: PEOPLE v. JOSHUA EASTMAN;
22 Filing County: Orange;
23 Case Number: 21CF3420;
24 Filing Date: 3/30/2022
- 25 y. Case Name: PEOPLE v. AMINADAB GAXIOLOA GONZALEZ;
26 Filing County: Orange;
27 Case Number: M-19498 X A;
28 Filing Date: 12/1/2021
- z. Case Name: PEOPLE v. DERRION GIBSON;
Filing County: Orange;
Case Number: 21WF2638;
Filing Date: 2/4/2022
- aa. Case Name: PEOPLE v. WILLIAM GUNDISALVUS;
Filing County: Orange;
Case Number: 22WF0353; 22WF0304;
Filing Date: 4/11/2022
- bb. Case Name: PEOPLE v. NORMA GORDIAN JIMENEZ;
Filing County: Orange;
Case Number: 21CF2525;
Filing Date: 1/28/2022
- cc. Case Name: PEOPLE v. STEPHEN ALEXANDER McGAVOCK;
Filing County: Orange;
Case Number: 21HF1730;
Filing Date: 12/20/2021

- 1 dd. Case Name: PEOPLE v. GEORGE THOMAS NASSIF;
2 Filing County: Orange;
3 Case Number: M-19585 X A;
4 Filing Date: 12/15/2021
- 5 ee. Case Name: PEOPLE v. ALFRED CHRIS NUNEZ;
6 Filing County: Orange;
7 Case Number: 21WF2129;
8 Filing Date: 11/30/2021
- 9 ff. Case Name: PEOPLE v. JOSE SALAS;
10 Filing County: Orange;
11 Case Number: M19773;
12 Filing Date: 2/9/2022
- 13 gg. Case Name: PEOPLE v. REYNALDO SOTO;
14 Filing County: Orange;
15 Case Number: 18CR03245; 19CR04509; 21CR06895; 21CR06903; 21CR06926;
16 21CR07546;
17 Filing Date: 1/28/2022
- 18 hh. Case Name: PEOPLE v. ANDREW JINHYUN YOON;
19 Filing County: Orange;
20 Case Number: M-19495; 21CF1652;
21 Filing Date: 12/1/2021
- 22 ii. Case Name: PEOPLE v. JESUS AGUILAR;
23 Filing County: Santa Barbara;
24 Case Number: 21CR02344; 22CR00014; 22CR00508; 22CR01064;
25 Filing Date: 3/11/2022
- 26 jj. Case Name: PEOPLE v. ELIAS BANALES;
27 Filing County: Santa Barbara;
28 Case Number: 21CR06204; 21CR07723;
Filing Date: 3/11/2022
- kk. Case Name: PEOPLE v. ALONZO BROWN;
Filing County: Santa Barbara;
Case Number: 20CR06969; 20CR04014; 20CR07507;
Filing Date: 2/18/2022
- ll. Case Name: PEOPLE v. TORREY DUNSON;
Filing County: Santa Barbara;
Case Number: 20CRR01062; 20CR05645; 20CR04301;
Filing Date: 3/11/2022
- mm. Case Name: PEOPLE v. PATRICIA MICHELLE MCCOY;
Filing County: Santa Barbara;
Case Number: 21CR00711; 20CR01680;
Filing Date: 3/18/2021
- nn. Case Name: PEOPLE v. KEITH DAVID MILTON;
Filing County: Santa Barbara;
Case Number: 21CR06670; 21CR05007; 20CR06290; 19CR09821;
Filing Date: 3/11/2022

- 1 oo. Case Name: PEOPLE v. JUAN PACHECO;
2 Filing County: Santa Barbara;
3 Case Number: 20CR06230; 20CR08068; 21CR05344; 22CR00578; 22CR01424;
4 Filing Date: 3/11/2022
- 5 pp. Case Name: PEOPLE v. GERRARDO RAMIREZ;
6 Filing County: Santa Barbara;
7 Case Number: 20CR02270;
8 Filing Date: 7/10/2022
- 9 qq. Case Name: PEOPLE v. STEPHEN WADSWORTH;
10 Filing County: Santa Barbara;
11 Case Number: 21CR08284;
12 Filing Date: 3/11/2022
- 13 rr. Case Name: PEOPLE v. GABRIEL WISEMAN;
14 Filing County: Santa Barbara;
15 Case Number: 21CR07489; 21CR08533;
16 Filing Date: 3/18/2022
- 17 ss. Case Name: PEOPLE v. BRANDON BEAGLE;
18 Filing County: Shasta;
19 Case Number: 22MH0433;
20 Filing Date: 2/15/2022
- 21 tt. Case Name: PEOPLE v. TIFFANY ROCHELLE BEEDY;
22 Filing County: Shasta;
23 Case Number: 21F6952; 19F4124; 21M2171; 20M5149; 20M2844;
24 Filing Date: 1/26/2022
- 25 uu. Case Name: PEOPLE v. MARK RAIBLEY;
26 Filing County: Shasta;
27 Case Number: 22HM493;
28 Filing Date: 3/21/2022
- vv. Case Name: PEOPLE v. JOSEPH AMIR RODGERS;
Filing County: Shasta;
Case Number: 19F4574 et seq.;
Filing Date: 1/12/2022
- ww. Case Name: PEOPLE v. AUSTIN EVAN SCHUMACHER;
Filing County: Shasta;
Case Number: 22HM495; 21F7252;
Filing Date: 1/12/2022
- xx. Case Name: PEOPLE v. MELEIKE STEVENSON;
Filing County: Shasta;
Case Number: 22HM494;
Filing Date: 2/25/2022
- yy. Case Name: PEOPLE v. JANET WILSON;
Filing County: Shasta;
Case Number: 22HB293;
Filing Date: 2/9/2022

- 1 zz. Case Name: PEOPLE v. ROBERT KIMURA CUELLAR;
2 Filing County: Solano;
3 Case Number: FCR357677;
4 Filing Date: 12:00:00 AM
- 5 aaa. Case Name: PEOPLE v. LONZELL TYRELL McINTOSH;
6 Filing County: Solano;
7 Case Number: FCR362024;
8 Filing Date: 4/25/2022
- 9 bbb. Case Name: PEOPLE v. BRANDIE LOUISE McNARY;
10 Filing County: Solano;
11 Case Number: FCR352963; FCR352498;
12 Filing Date: 3/28/2022
- 13 ccc. Case Name: PEOPLE v. DENNIS MERRIDA;
14 Filing County: Solano;
15 Case Number: VCR235704;
16 Filing Date: 3/10/2022
- 17 ddd. Case Name: PEOPLE v. WILLIAM WENZEL NEUBURGER;
18 Filing County: Solano;
19 Case Number: FCR361605;
20 Filing Date: 2/10/2022
- 21 eee. Case Name: PEOPLE v. JAMAAL D. STORMS;
22 Filing County: Solano;
23 Case Number: FCR358348; FCR347009;
24 Filing Date: 1/13/2022
- 25 fff. Case Name: PEOPLE v. CHARLES CORNELIUS TYES;
26 Filing County: Solano;
27 Case Number: FCR359852; VCR238166;
28 Filing Date: 10/18/2021
- 29 ggg. Case Name: PEOPLE v. JOSEPH JULIUS WHITMAN;
30 Filing County: Solano;
31 Case Number: FCR360767;
32 Filing Date: 1/13/2022
- 33 hhh. Case Name: PEOPLE v. NORRIS WILLIAMS;
34 Filing County: Solano;
35 Case Number: FCR361083;
36 Filing Date: 1/24/2022
- 37 iii. Case Name: PEOPLE v. TANJEET SINGH CLAIRE;
38 Filing County: Sonoma;
39 Case Number: SCR-744643-1;
40 Filing Date: 5/10/2021
- 41 jjj. Case Name: PEOPLE v. JONATAN MACIAS LOPEZ;
42 Filing County: Stanislaus;
43 Case Number: CR-21-011535;
44 Filing Date: 4/5/2022

- 1 kkk. Case Name: PEOPLE v. STEVE LEE MORRIS;
2 Filing County: Stanislaus;
3 Case Number: CR-21-010999;
4 Filing Date: 3/9/2022
- 5 ill. Case Name: PEOPLE v. ANTHONY PINTO;
6 Filing County: Stanislaus;
7 Case Number: CR-22-001780;
8 Filing Date: 6/27/2022
- 9 mmm. Case Name: PEOPLE v. RAYMOND RICO;
10 Filing County: Stanislaus;
11 Case Number: CR-21-012577;
12 Filing Date: 3/9/2022
- 13 nnn. Case Name: PEOPLE v. JONATHAN JAMES ROMERO;
14 Filing County: Stanislaus;
15 Case Number: CR-20-003842; CR-20-005074; CR-20-005100;
16 Filing Date: 1/6/2022
- 17 ooo. Case Name: PEOPLE v. JEANNIE MARIE SORIANO;
18 Filing County: Stanislaus;
19 Case Number: CR-22-001639;
20 Filing Date: 4/20/2022
- 21 ppp. Case Name: PEOPLE v. TERRY WILLIAMS HUGHES;
22 Filing County: Tuolumne;
23 Case Number: CRF67674; CRM61806; CRM62080; CRM62463;
24 CRM62902; CRM63978; CRM67371;
25 Filing Date: 3/9/2022
- 26 qqq. Case Name: PEOPLE v. EDWARD ISHAM;
27 Filing County: Tuolumne;
28 Case Number: CRF67854; CRF68180; CRM65782; CRM67481; CRM67785;
CRM67908; CRM67911; CRM68000; CRM68185; CRM68205; CRM68542;
Filing Date: 3/4/2022
- rrr. Case Name: PEOPLE v. HALEIGH PELLO;
Filing County: Tuolumne;
Case Number: CRF64077; CRF65163; CRM63560; CRM63946; CRM63992;
CRM64039; CRM67336; CRM67348; CRM67634; CRM67740; CRM67852;
CRM67894;
Filing Date: 12/23/2021
- sss. Case Name: PEOPLE v. AMELIO EREDIO RENTERIA;
Filing County: Tuolumne;
Case Number: CRF66192;
Filing Date: 12/10/2021
- ttt. Case Name: PEOPLE v. MICHELLE VERMON-VONDRA;
Filing County: Tuolumne;
Case Number: CRF67722;
Filing Date: 12/6/2021

///

- 1 uuu. Case Name: PEOPLE v. NICHOLAS RYAN PRENDIZ;
2 Filing County: Ventura;
3 Case Number: 2021003132 M A; 2021002076 M A; 2020027695 M A; 2020027608
4 M A; 2021011439 F A;
5 Filing Date: 1/6/2022
- 6 vvv. Case Name: PEOPLE v. JOSE SANCHEZ;
7 Filing County: Ventura;
8 Case Number: 2018020003 F A;
9 Filing Date: 2/7/2022
- 10 www. Case Name: PEOPLE v. DALLAS SMITH;
11 Filing County: Ventura;
12 Case Number: 2021018509;
13 Filing Date: 3/17/2022
- 14 xxx. Case Name: PEOPLE v. BRYAN WILSON;
15 Filing County: Ventura;
16 Case Number: 2021022381 FA;
17 Filing Date: 10/28/2021
- 18 yyy. Case Name: PEOPLE v. AARON RENE HILLS;
19 Filing County: Yolo;
20 Case Number: CR21-1735; CR21-1733; CR20-3574; CR20-0485;
21 Filing Date: 1/6/2022
- 22 zzz. Case Name: PEOPLE v. ROBIN STARR;
23 Filing County: Yolo;
24 Case Number: CR21-1812; 21-2722; 19-3231;
25 Filing Date: 12/14/2022

26 I declare under the penalty of perjury under the laws of the State of California that the
27 foregoing is true and correct.

28 Date: July 20, 2022

Sean Mark Rashkis

Sean Mark Rashkis
Assistant Chief Counsel

SA2015104568
42946268.docx

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

ROB BONTA
Attorney General of California
GREGORY D. BROWN
Supervising Deputy Attorney General
COLIN D. SCHOELL
Deputy Attorney General
State Bar No. 332896
455 Golden Gate Avenue, Suite 11000
San Francisco, CA 94102-7004
Telephone: (415) 510-3547
Fax: (415) 703-5843
E-mail: Colin.Schoell@doj.ca.gov
Attorneys for Petitioners
Stephanie Clendenin, Director of Department of
State Hospitals; Nancy Bargmann, Director of
Department of Developmental Services

RECEIVED

Judicial Council of California

JUL 20 2022

Andrea Jaramillo (C.A.)
Coordinator Lawyer

**Exempt from Filing Fees —
Gov. Code, § 6103**

JUDICIAL COUNCIL OF THE STATE OF CALIFORNIA

STEPHANIE STIAVETTI, et al.

Plaintiffs,

v.

STEPHANIE CLENDENIN, et al

Defendants.

Alameda Cnty. Super. Ct. Case No.
RG157779731

JCCP Case No. **5248**
DECLARATION OF COLIN D. SCHOELL IN SUPPORT OF DEFENDANTS' PETITION FOR COORDINATION TO THE JUDICIAL COUNCIL RE: COMPETENCY SERVICES FOR DEFENDANTS INCOMPETENT TO STAND TRIAL

1 I, Colin D. Schoell, declare

2 1. I am an attorney licensed to practice before all courts of the State of California and
3 a Deputy Attorney General for the State of California. I represent defendants in the above-
4 captioned action. The matters set forth herein are known to me to be true, and if called upon, I
5 could competently testify thereto.

6 2. Pursuant to California Code of Civil Procedure section 404 et seq. and California
7 Rules of Court, rule 3.501 et seq., petitioners the Department of State Hospitals (DSH), the
8 Department of Developmental Services (DDS), and their respective directors petition to have the
9 cases identified in the Declaration of Sean M Rashkis (Rashkis Decl.), Exhibit A, coordinated.
10 All of the proceedings in the Rashkis Decl., Exhibit A are related to the complex case *Stiavetti, et*
11 *al. v. Clendenin et al.*, Alameda County Superior Case no. RG157779731 (*Stiavetti*).

12 3. Plaintiffs in *Stiavetti*—the family members of criminal defendants who were found
13 incompetent to stand trial (IST), committed to DSH or DDS for treatment, and experienced delays
14 in placement in a DSH or DDS facility—filed a petition for writ of traditional mandamus and
15 civil complaint for injunctive relief on July 29, 2015. Defendants moved for complex designation
16 on December 14, 2015. The motion was granted and the matter transferred to Alameda County
17 Superior Court’s complex department on December 21, 2015.

18 4. Judgment was entered against DSH, DDS, and their respective directors on April
19 19, 2019. The relevant portion of that judgment was affirmed on appeal, and the remittitur issued
20 on August 27, 2021.¹ The judgment and a subsequently issued writ of mandate, effective August
21 27, 2021, give DSH and DDS a deadline (starting at 60 days after a one-year phase-in period, and
22 ultimately reaching 28 days after a 30-month phase-in period) to commence substantive
23 competency services for IST defendants, measured the “transfer of responsibility” date to DSH or
24 DDS following a commitment order. The judgment and writ of mandate govern all defendants
25 found incompetent to stand trial in California.

26 5. The universe of legal proceedings related to *Stiavetti* is large, as *Stiavetti*’s

27 _____
28 ¹ The Court of Appeal reversed on limited issues raised in the plaintiffs’ cross-appeal, but
affirmed as to all issues raised in the defendants’ appeal.

1 deadline for the commencement of substantive competency services applies to all proceedings in
2 California in which a criminal defendant is declared incompetent to stand trial and committed to
3 either DSH or DDS for competency services. These proceedings are civil, and begin with a court
4 declaring a doubt as to a defendants' competency. If a defendant is found incompetent to stand
5 trial, the court may issue a Commitment Order to DSH or DDS to provide competency treatment
6 to the criminal defendant.

7 6. In this petition, DSH and DDS seek only to coordinate a small subset of the
8 competency proceedings now pending—those proceedings that are at a similar stage of litigation,
9 enforcement. In the proceedings proposed for coordination, DSH and/or DDS are presently
10 subject to enforcement proceedings relating to whether they have commenced substantive
11 competency services for a particular IST defendant or group of defendants within a deadline
12 imposed by the court.

13 7. DSH has four hospitals that provide IST competency services and DSH maintains
14 a single waitlist for criminal defendants waitlisted for such services. DDS has one facility for the
15 provision of competency services, and also maintains a single waitlist. Both the DSH and DDS
16 waitlists place defendants according to the date of their commitment order, with limited
17 exceptions.

18 8. The judgment and writ of mandate in *Stiavetti et al. v. Clendenin, et al.*, require
19 DSH and DDS to commence substantive competency services for all IST defendants committed
20 to DSH or DDS in California within a specific time period—eventually reaching 28 days, but to
21 be phased in over a period of 30 months—following the date of service of the defendant's
22 commitment packet for DSH commitments and the date of service of the commitment order for
23 DDS commitments. The *Stiavetti* superior court is currently overseeing and enforcing DSH's and
24 DDS's compliance with that judgment and writ of mandate. Meanwhile, in the other 78
25 proceedings in this petition for coordination, superior courts are overseeing sanctions or other
26 enforcement proceedings against DSH for DSH's failure to commence competency treatment for
27 specific IST defendants within the deadlines imposed by those courts. Thus, for each of the IST
28 defendants in the other 78 proceedings, there are currently two separate orders from two different

1 courts imposing commencement-of-treatment deadlines on DSH (and in many instances, two
2 separate deadlines), and two separate proceedings to enforce those deadlines—one in the county
3 of that defendant’s criminal action, and the second in *Stiavetti* in Alameda County. In short, the
4 cases turn on identical provisions of the Penal Code, involve a single service (competency
5 treatment), offered by a single department (DSH), based on each IST defendant’s placement on a
6 single waitlist, and each individual case involves an IST defendant who is also covered by the
7 statewide proceedings in *Stiavetti*.

8 9. The proceedings to enforce commencement-of-treatment deadlines for IST
9 defendants are complex in that they require analysis of the entire system that delivers competency
10 services to California’s criminal defendants. Each of the criminal defendants is on a single
11 statewide waitlist for DSH or DDS commitments, and DSH orchestrates placement statewide of
12 over 3,000² defendants per year from 58 counties to a system of four hospitals, 22 jail-based
13 competency treatment programs (including the Admission Evaluation and Stabilization Center in
14 the Kern County Jail), and community-based restoration out of Los Angeles County

15 10. Hearings in these enforcement proceedings in the various superior courts generally
16 require voluminous evidence to determine whether DSH³ had good cause or substantial
17 justification for its inability to meet the court-imposed deadlines. Specifically, DSH generally
18 must submit documentary evidence and the testimony of witnesses detailing the circumstances
19 that have resulted in significant increases in the number of IST defendants referred to DSH in
20 recent years, efforts DSH has made to increase its bed capacity for IST treatment, efforts DSH
21 has made to develop and implement diversion programs and community-based mental health
22 services programs to help prevent individuals from becoming IST defendants in the first place,
23 and DSH’s ongoing efforts to coordinate with other stakeholders to develop comprehensive
24 solutions to the ongoing IST waitlist issues and the widespread mental health issues that underlie
25 them. In some jurisdictions, such proceedings have consumed months of trial court time, with
26 some taking as long as 14 months to complete.

27 ² Fiscal Year 2020-2021 data.

28 ³ Enforcement proceedings against DDS have been relatively uncommon and there are
none currently pending, but would likely raise similar issues if they were to arise in the future.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

11. The 79 cases identified in Rashkis Decl., Exhibit A, are pending in eleven counties.

12. On July 5-6, 2022, I informed counsel in *Stiavetti* and in the underlying criminal actions of my intent to file a Petition for Coordination with the Judicial Council; only the plaintiffs in *Stiavetti* have taken a position on the Petition, stating in a case management conference statement that they intend to opposes it.

Dated: July 20, 2022



COLIN D. SCHOELL
Deputy Attorney General
Attorneys for Petitioners
Stephanie Clendenin, Director of
Department of State Hospitals; Nancy
Bargmann, Director of Department of
Developmental Services

SA2015104568

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

ROB BONTA
Attorney General of California
GREGORY D. BROWN
Supervising Deputy Attorney General
COLIN D. SCHOELL
Deputy Attorney General
State Bar No. 332896
455 Golden Gate Avenue, Suite 11000
San Francisco, CA 94102-7004
Telephone: (415) 510-3547
Fax: (415) 703-5843
E-mail: Colin.Schoell@doj.ca.gov
Attorneys for Petitioners
Stephanie Clendenin, Director of Department of
State Hospitals; Nancy Bargmann, Director of
Department of Developmental Services

Exempt from filing fees
Gov. Code, § 6103

RECEIVED

Judicial Council of California

JUL 20 2022

Andrea Formicola (b.e.)
Coordination Lawyer

JUDICIAL COUNCIL OF THE STATE OF CALIFORNIA

5248

**STEPHANIE CLENDENIN, AS
DIRECTOR OF THE CALIFORNIA
DEPARTMENT OF STATE HOSPITALS,
et al.,**

Petitioners,

v.

STEPHANIE STIAVETTI, et al.,

Respondents.

JCCP Case No.

**PETITIONERS' REQUEST FOR
JUDICIAL NOTICE IN SUPPORT OF
PETITION FOR COORDINATION**

Petitioners respectfully requests that, pursuant to Rule of Evidence section 452, the Court
take judicial notice of the following documents:

//

1 189917-8, 4189915-2, 4-19113-0, 4-188524-3 [and associated cases]).

2 10. Attached as Exhibit J is a true and correct copy of the Omnibus Order Imposing
3 Sanctions for Failure to Admit Defendants for Treatment as Ordered issued in *In re Kareem A., et*
4 *al.* (Los Angeles County Superior Court, Case No. ZM031353 [and associated cases]).

5 11. Attached as Exhibit K is a true and correct copy of the Omnibus Order: (1)
6 Granting in Part and Denying in Part the Request for Imposition of Sanctions Against the
7 Department of State Hospitals and (2) Denying the Request to Modify the *Loveton* Order issued
8 in *People v. Ballard-Grajada, et al.* (Contra Costa County Superior Court, Case No. 02-326721-8
9 [and associated cases]).

10 12. Attached as Exhibit L is a true and correct copy of the Order Imposing Monetary
11 Sanctions issued in *People v. Calderon, et al.* (Solano County Superior Court, Case No.
12 FCR358606 [and associated cases]).

13 13. Attached as Exhibit M is a true and correct copy of the Order Imposing Sanctions
14 for Failure to Timely Receive Petitioner issued in *In re Edwards* (Shasta County Superior Court,
15 Case Nos. 21HB3119, 20F8437, 20M2700).

16 14. Attached as Exhibit N is a true and correct copy of the Order and Judgment of
17 Indirect Contempt and Order Modifying Contempt Fine from \$1500 to \$1000 issued in *People v.*
18 *Portades, Jr.* (Solano County Superior Court, Case Nos. VCR230763, VCR229829,
19 VCR228558).

20 15. Attached as Exhibit O is a true and correct copy of the Order re: Writ of Habeas
21 Corpus issued in *In re Osborne* (Sonoma County Superior Court, Case No. SCR-748629-1-MH).

22 The Court may take judicial notice of the above-listed documents under Section 452,
23 subdivision (d), of the California Evidence Code because the documents are court records.

24 LEGAL ARGUMENT

25 Evidence Code section 452, subdivision (d), provides that judicial notice may be taken of
26 records of “any court of this state.” The court must take judicial notice of any matter specified in
27 Evidence Code section 452 “if a party requests it and: (a) [g]ives each adverse party sufficient
28 notice of the request, through the pleadings or otherwise, to enable such adverse party to prepare

1 to meet the request; and (b) [f]urnishes the court with sufficient information to enable it to take
2 judicial notice of the matter.” (Evid. Code, § 453.) In determining the propriety of taking judicial
3 notice of a matter, the Court may consider “[a]ny source of pertinent information.” (Evid. Code,
4 § 454, subd. (a)(1).) In such cases, “[e]xclusionary rules of evidence do not apply except for
5 Section 352 and the rules of privilege.” (Evid. Code, § 454, subd. (a)(2).)

6 All of the exhibits detailed above are official records of courts of the state of California.
7 Each of these documents are filed in their respective cases and therefore properly noticed as
8 official records of a court of this State. Moreover, each of these documents is relevant to the
9 question of whether this Court should grant the accompanying Petition for Coordination.

10 **CONCLUSION**

11 For the foregoing reasons, Petitioners’ request for judicial notice should be granted.

12
13 Dated: July 20, 2022

Respectfully submitted,

14 ROB BONTA
15 Attorney General of California
16 GREGORY D. BROWN
Supervising Deputy Attorney General

17 

18 COLIN D. SCHOELL
19 Deputy Attorney General
20 *Attorneys for Petitioners*
21 *Stephanie Clendenin, Director of*
Department of State Hospitals; Nancy
Bargmann, Director of Department of
22 *Developmental Services*

23 SA2015104568
24
25
26
27
28

RECEIVED

Judicial Council of California

JUL 20 2022

Andria Yarnello (b.a.)
Coordination Lawyer

1 ROB BONTA
 Attorney General of California
 2 GREGORY D. BROWN
 Supervising Deputy Attorney General
 3 COLIN D. SCHOELL
 Deputy Attorney General
 4 State Bar No. 332896
 455 Golden Gate Avenue, Suite 11000
 5 San Francisco, CA 94102-7004
 Telephone: (415) 510-3547
 6 Fax: (415) 703-5843
 E-mail: Colin.Schoell@doj.ca.gov
 7 *Attorneys for Petitioners*
Stephanie Clendenin, Director of Department of
 8 *State Hospitals; Nancy Bargmann, Director of*
Department of Developmental Services
 9

JUDICIAL COUNCIL OF THE STATE OF CALIFORNIA

STEPHANIE STIAVETTI, et al.,

Plaintiffs,

v.

STEPHANIE CLENDENIN, AS
DIRECTOR OF THE CALIFORNIA
DEPARTMENT OF STATE HOSPITALS,
et al.,

Defendants.

Alameda Cnty. Super. Ct. Case No.
RG15779731

JCCP Case No.

5248

[1] PETITIONERS' NOTICE OF
MOTION AND MOTION FOR STAY
PENDING COORDINATION; AND

[2] MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT THEREOF

[Code Civ. Proc., § 404.5; California Rules of
Court, rule 3.515]

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that as part of its petition for coordination to the Judicial Council of California, Defendants in the above-captioned case will move for an order to stay all actions listed in Exhibit A pending resolution of the petition for coordination. This motion is made on the ground that a stay is necessary and appropriate to effectuate the purposes of coordination, pursuant to Code of Civil Procedure, section 404.5 and the standards set forth in California Rules


1 of Court, rule 3.515, subdivision (f) and Code of Civil Procedure, section 404.1. All known
2 pending related cases to be stayed are listed in Exhibit A, and the stay order should extend to any
3 related case brought to this court in an add-on petition. (Cal. Rules of Court, rule 3.515, subd.
4 (b).)

5 This motion is further based upon this notice and motion; the Memorandum of Points and
6 Authorities in support thereof; the Declaration of Colin D. Schoell and attached exhibits; the
7 Declarations of Jaci Thomson and Sean M. Rashkis and attached exhibits; and all other records
8 and files in this action, and any further evidence or argument as may be presented prior to or at
9 the time of the hearing on the motion, pursuant to California Rules of Court, rule 3.527.

10 Dated: July 20, 2022

Respectfully submitted,

11 ROB BONTA
12 Attorney General of California
13 GREGORY D. BROWN
14 Supervising Deputy Attorney General

15 
16 COLIN D. SCHOELL
17 Deputy Attorney General
18 *Attorneys for Petitioners*
19 *Stephanie Clendenin, Director of*
20 *Department of State Hospitals; Nancy*
21 *Bargmann, Director of Department of*
22 *Developmental Services*

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **INTRODUCTION**

3 In a separate Petition for Coordination (Petition), filed in this court on July 20, 2022,
4 Defendants Stephanie Clendenin, in her official capacity as the Director of the California
5 Department of State Hospitals (DSH), and Nancy Bargmann, in her official capacity as Director
6 of the Department of Developmental Services (DDS) (collectively, Petitioners), seek to
7 coordinate the unresolved cases attached as Exhibit A.¹ Petitioners request the coordination
8 motion judge stay all of these included commitment order enforcement actions pending resolution
9 of the petition for coordination because they are numerous, widespread, and involve complex,
10 nearly identical factual and legal issues that would be better adjudicated on a statewide basis by a
11 single judge. Therefore, a stay of these enforcement actions would promote judicial efficiency
12 and consistency by preserving those issues for a single judge, thereby better serving those whose
13 rights are at stake.

14 A stay of these included actions will promote the ends of justice under both parts of the
15 two-part standard set by California Rules of Court, rule 3.515, subdivision (f):

- 16
- 17 • First, the imminence of enforcement proceedings in the superior courts will
18 materially affect the status of the actions to be stayed because the “trial” in the
19 included actions—evidentiary hearings—could begin prior to the assignment of a
20 coordination motion judge, reducing the considerable judicial efficiency benefits
21 gained from coordination of the included actions if the actions are not stayed.
 - 22 • Second, a final judgment in the actions to be stayed would have a res judicata effect
23 on the only legal issue in the included actions: whether Petitioners timely commenced
24 substantive competency services following a commitment order from the superior
25 court. Once the superior court decides whether or not to issue sanctions, adversarial

26

27 ¹ As explained in more detail in the Petition, although DDS receives some IST
28 commitments, the vast majority are committed to DSH. DDS is not currently facing enforcement
proceedings relating to its commitments, so all of the cases proposed to be coordinated and stayed
here concern DSH commitments.

1 litigation in the action effectively ends and cannot be re-opened should the
2 coordination motion judge grant the petition for coordination.

3 Further, issuance of a stay in this case would guarantee that the benefits of coordination are
4 realized if the petition is granted by preserving the aspects of coordination that promote the ends
5 of justice in this case. (Code Civ. Proc., § 404.1.) Granting this motion for stay would benefit all
6 parties by preventing inconsistent or duplicative rulings on common issues of fact and law while
7 conserving limited judicial resources. Petitioners do not seek to stay *Stiavetti v. Clendenin*,
8 Alameda Superior Court, Case No. RG15779731 (*Stiavetti*), because the petition for coordination
9 is intended to prevent the included actions, listed in Exhibit A, from interfering with the statewide
10 enforcement proceedings occurring in *Stiavetti*, which can and should continue pending
11 resolution of the petition. Additionally, Petitioners recognize that some of the included actions in
12 Exhibit A will have resolved prior to a decision on this motion for stay, and seek only to stay the
13 unresolved actions and any added by an add-on petition. For each of these reasons, and as further
14 set forth herein, the coordination motion judge should stay the included actions listed in Exhibit A
15 pending adjudication of the petition for coordination.

16 **FACTUAL AND PROCEDURAL BACKGROUND**

17 As described in depth in the petition for coordination, the events in recent years have led to
18 a statewide waitlist for criminal defendants who, as a result of a mental health disorder or
19 developmental disability, are deemed incompetent to stand trial (IST). (Pen. Code, § 1367, subd.
20 (a).) Defendants who are IST due to a mental health disorder are committed to DSH while those
21 who are IST due to a developmental disability (in whole or in part) are committed to DDS. (*Id.*, §
22 1367, subd. (b).) The trial court serves DSH or DDS with a commitment packet, which initiates
23 the commitment proceedings and the relevant department's obligation to provide competency
24 restoration services.

25 Recently, however, the number of felony defendants found IST has increased significantly
26 and continues to do so, outstripping DSH's capacity to provide competency services and resulting
27 in a waitlist for those defendants to begin receiving competency services. The length of this
28 statewide waitlist, and by extension the time each individual waits to receive competency

1 services, was further exacerbated by necessary public health and safety measures taken in
2 response to the COVID-19 pandemic. As a result of the statewide waitlist, proceedings to enforce
3 the commitment orders began occurring in superior courts across the state with the same issue:
4 whether sanctions against DSH are appropriate for the delay in the commencement of substantive
5 competency services.

6 Because the enforcement proceedings all have the same issue, much of the evidence
7 produced in these hearings is duplicative of evidence produced in other superior courts. Where a
8 judge has not previously heard the evidence, DSH would often opt to call witnesses in addition to
9 its pleadings to more fully explain why the defendant at issue had not yet begun receiving
10 competency services. These evidentiary hearings could take several months or even years,
11 depending on the court's scheduling. Where a judge had previously heard DSH's testimonial
12 evidence of its efforts to address the waitlist, DSH would often opt to submit the issue on the
13 pleadings to conserve its limited resources, as well as the court's, and those proceedings could
14 conclude just a handful of hearings after they began. However, with some counties pursuing
15 enforcement proceedings more aggressively than others, this led to a patchwork of proceedings
16 across the state, opening the door to inconsistent or even conflicting standards of enforcement.
17 For that reason, Petitioners are now pursuing coordination of these enforcement proceedings
18 before a single coordination judge, so that judge may be presented with all the evidence and make
19 consistent rulings regarding sanctions for delays in the commencement of competency services.
20 In order to preserve these sanctions decisions for the coordination judge to consider on a
21 statewide basis if the petition is granted, Petitioners also seek a stay of these included actions
22 while the petition for coordination is pending.

23 ARGUMENT

24 I. STANDARD OF REVIEW

25 Pending a determination of whether coordination is appropriate, the coordination motion
26 judge may "stay any action being considered for, or affecting an action being considered for,
27 coordination." (Code Civ. Proc, § 404.5.) A motion for stay should be granted pending
28 resolution of the coordination petition where "the stay will promote the ends of justice." (Cal.

1 Rules of Court, rule 3.515, subd. (f).) A stay promotes the ends of justice when the imminence of
2 a proceeding “might materially affect the status of the action,” and when “a final judgment in the
3 action would have a res judicata or collateral estoppel effect with regard to any common issue of
4 the included actions.” (*Ibid.*) The ends of justice are also promoted where the elements of Code
5 of Civil Procedure, section 404.1, outlining the considerations for appropriateness of
6 coordination, are preserved for the coordination judge to consider. The elements most applicable
7 here are common questions of fact and law between the included actions, efficient utilization of
8 judicial resources, avoidance of duplicative and inconsistent rulings, and the actions being at the
9 same relative stage of adjudication. (Code Civ. Proc., § 404.1.)

10 **II. THE COORDINATION MOTION JUDGE SHOULD STAY THE INCLUDED ACTIONS**
11 **PENDING ADJUDICATION OF THE PETITION FOR COORDINATION TO PROMOTE THE**
12 **ENDS OF JUSTICE**

13 Although the standard set out in California Rules of Court, rule 3.515, subdivision (f) does
14 not cleanly apply to the included actions, a stay nevertheless promotes the ends of justice as
15 defined by that rule’s standards and those outlined in Code of Civil Procedure, section 404.1. The
16 included actions in this case differ from typical cases included in petitions for coordination in that
17 they are solely enforcement proceedings and do not follow the standard civil case’s procedure of
18 discovery, trial, and judgment. Instead, Petitioners may put on witnesses in evidentiary hearings
19 over the course of months or even years (depending on the court’s calendar and scheduling), or
20 simply submit on the pleadings and receive a judgment on sanctions in a matter of just a few
21 weeks. Petitioners make this decision in each case based on the presiding judge’s preferences,
22 resulting in inconsistencies throughout the state.

23 Here, the included actions’ imminent sanctions proceedings would materially affect the
24 actions’ status and a sanctions judgment would have a res judicata effect on the main issue
25 common to the included actions: whether Petitioners timely commenced substantive competency
26 services. If a stay is not issued, the included actions will be materially affected because the
27 superior courts are likely permitted to issue a decision on sanctions if enforcement hearings—
28 analogous to the “trial” of these proceedings—begin prior to the order assigning a coordination
motion judge. (Cal. Rules of Court, rule 3.515, subd. (i).) That sanctions decision is a final

1 judgment on the sole issue in the action and has a res judicata effect on the main issue common to
2 the included actions, whether Petitioners willfully defied the court’s order to provide competency
3 services, or did so without good cause or substantial justification. (*Newland v. Super. Ct.* (1995)
4 40 Cal.App.4th 608, 615 [sanction orders “have the force and effect of a money judgment”].)
5 Therefore, one of the main benefits of coordination in this case, eliminating inconsistent or
6 duplicative rulings by adjudicating the actions before a single judge on a statewide basis, will be
7 lost and all parties will be harmed if a stay order is not issued.

8 Additionally, a stay of the included actions is necessary to preserve the aspects of
9 coordination that promote the ends of justice in this case, which are explained in more detail in
10 the petition for coordination. Namely, a stay would maximize the efficient utilization of judicial
11 resources, preserve the included actions at the same relative stage of adjudication, and avoid
12 duplicative or inconsistent rulings by ensuring that common questions of fact and law are
13 preserved for adjudication on a statewide basis and not on a county-by-county basis by various
14 superior courts.² (Code Civ. Proc., § 404.1.) For those reasons, a stay of all included actions
15 listed in Exhibit A will promote the ends of justice for all parties in this case by ensuring the
16 benefits of coordination are realized.

17 **A. Without a Stay, the Imminence of Enforcement Proceedings in the**
18 **Included Actions Materially Affects their Status by Enabling the Superior**
19 **Courts to Rule on Sanctions if Enforcement Proceedings Begin Prior to the**
20 **Assignment of a Coordination Motion Judge.**

21 An order staying the included actions is necessary to preserve the benefits of coordination
22 pending adjudication of the petition in this case because without a stay order, the imminent
23 “trials” in the included actions—evidentiary hearings—may begin prior to assignment of the
24 coordination motion judge and thereby materially affect the actions’ status. Without a stay order,
25 the superior courts may continue to exercise jurisdiction over the included actions for pretrial and
26 discovery proceedings, as well as enter judgment in any action where the trial commenced prior
27 to the assignment of the coordination motion judge. (Cal. Rules of Court, rule 3.515, subd. (i).)

28 ² Due to the widespread nature of the included actions and the unique nature of the
proceedings, forum convenience and likelihood of settlement are less applicable to these cases, as
Petitioners cannot settle these cases due to their statutory obligations to provide competency
services in the order of commitment. (Code Civ. Proc., § 404.1.)

1 In this case, the evidentiary sanctions proceedings in the included actions could be
2 considered a “trial” that commenced prior to the order assigning a coordination motion judge
3 because they involve the presentation of evidence and argument on the dispositive issue. If these
4 proceedings commence prior to issuance of the order assigning a coordination motion judge, a
5 process that can take up to sixty days, then the superior court is permitted to issue a sanctions
6 judgment despite that order, unless a stay is issued. This sanctions decision is a final judgment
7 that cannot be reversed by the coordination judge. (*Newland v. Super. Ct.* (1995) 40 Cal.App.4th
8 608, 610.) Without a stay order, many of the included actions will begin sanctions proceedings
9 during the thirty to sixty-day period between the filing of the petition and the assignment of a
10 coordination motion judge. Consequently, imposing a stay will preserve the benefits of
11 coordinating those actions by postponing a decision on sanctions and allowing a single judge to
12 make consistent decisions on the propriety of sanctions in each case if the petition is granted.

13 The imminence of these proceedings threatens to disrupt the statewide enforcement of the
14 judgment issued in *Stiavetti* and oversight of Petitioners’ steps implemented to come into
15 compliance with that judgment. Each action that reaches a decision on the issue of sanctions
16 must be removed from the necessarily statewide enforcement of *Stiavetti*’s judgment, in favor of
17 the county-specific decision. Additionally, permitting the included actions to proceed pending
18 the adjudication of the petition would short-circuit the potential benefits of coordinating the
19 included actions by preventing the coordination judge from ruling on sanctions after assessing the
20 merits of the issue on a statewide basis. Instead, the current state of affairs would continue: the
21 cases would move out of the same stage of adjudication through an inefficient utilization of
22 judicial resources in each county, with duplicative or inconsistent rulings on the issues common
23 to all of the included actions. The coordination judge would then no longer have the opportunity
24 to apply a consistent statewide standard to the included actions where the superior courts issued a
25 decision on sanctions because of *res judicata*, and the benefits of coordination would be lost for
26 all parties.

1 **B. The Issuance of a Decision on Sanctions in the Included Actions Would**
2 **Have a Res Judicata or Collateral Estoppel Effect on the Primary Issue**
3 **Common to those Actions**

4 The coordination motion judge should grant this motion for stay in this case because the
5 superior courts in some of the included actions may issue decisions on sanctions that have a res
6 judicata effect on that action prior to the adjudication of the petition for coordination. An order
7 granting coordination acts as a stay of the included action when filed in the action's superior
8 court. (Cal. Rules of Court, rule 3.529, subd. (b)-(c).) However, if the included actions are
9 permitted to proceed while the coordination motion judge is considering the petition for
10 coordination, then the parties would lose the ability to preserve the benefits of coordination with
11 this statutory stay for any included actions where a decision on sanctions is issued prior to the
12 order granting coordination. Adjudication of the petition for coordination can take several
13 months after filing, especially if a hearing must be held as is likely here, during which time the
14 included actions will proceed unless the coordination motion judge issues a stay order. While
15 some of these actions can take months or years to conclude, that timeframe is entirely dependent
16 on the superior court's calendar and the number of witnesses called to provide evidentiary
17 testimony. Therefore, these actions have the potential to move quickly because they involve just
18 a single issue: whether Petitioners willfully defied the court's order to timely commence
19 substantive competency services for the defendant following their commitment, or did so without
20 good cause or substantial justification.

21 If the superior court schedules hearings rapidly, Petitioners would have no recourse to
22 postpone the decision on sanctions until after the Petition is decided, undercutting the benefits of
23 coordination if the Petition is subsequently granted. In short, if the included actions are not
24 stayed during the months between filing and adjudication of the petition, the benefits of
25 coordinating many of those actions will be lost because those superior courts will issue a decision
26 on sanctions.

27 The parties will also suffer irreparable harm in any actions where a decision on sanctions is
28 issued while the petition is pending because, if the petition is granted, the superior courts will
have already decided the actions on an inconsistent, county-by-county basis, preventing the

1 coordination judge from deciding them on a consistent, statewide basis. A superior court's
2 decision whether to issue sanctions cannot later be unwound if the petition for coordination is
3 granted, so the issuance of that sanctions decision would have a res judicata effect on the primary
4 issue common to the included actions. This effect means that particular defendant must be carved
5 out of statewide enforcement in *Stiavetti*, or by the coordination judge, otherwise Petitioners face
6 sanctions from two courts due to delays in competency services for a single defendant. The
7 statewide enforcement in *Stiavetti* has not yet encountered this res judicata issue, but only because
8 the first compliance deadline has not passed, so that court has not yet begun issuing sanctions.
9 For that reason, a stay promotes the ends of justice in this case and this motion should be granted.

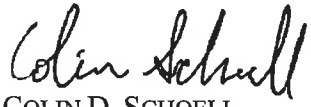
10 **CONCLUSION**

11 For all the foregoing reasons, Petitioners respectfully request that the coordination motion
12 judge grant this motion for stay pending resolution of the petition for coordination.

13 Dated: July 20, 2022

Respectfully submitted,

14 ROB BONTA
15 Attorney General of California
16 GREGORY D. BROWN
Supervising Deputy Attorney General

17 
18 COLIN D. SCHOELL
19 Deputy Attorney General
20 *Attorneys for Petitioners*
21 *Stephanie Clendenin, Director of*
22 *Department of State Hospitals; Nancy*
Bargmann, Director of Department of
Developmental Services

23 SA2015104568

ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NO: 332,896 NAME: Colin D. Schoell FIRM NAME: California Attorney's General Office STREET ADDRESS: 455 Golden Gate Avenue, Suite 11000 CITY: San Francisco STATE: CA ZIP CODE: 94102-7004 TELEPHONE NO.: (415) 510-3547 FAX NO.: (415) 703-5843 E-MAIL ADDRESS: Colin.Schoell@doj.ca.gov ATTORNEY FOR (name): Stephanie Clendenin, Director DSH; Nancy Bargmann, Director CDDS	FOR COURT USE ONLY
SUPERIOR COURT OF CALIFORNIA, COUNTY OF JUDICIAL COUNCIL OF CALIFORNIA STREET ADDRESS: 455 Golden Gate Avenue MAILING ADDRESS: 455 Golden Gate Avenue CITY AND ZIP CODE: San Francisco, CA 94102-3688 BRANCH NAME:	CASE NUMBER: 5248
Plaintiff/Petitioner: Stephanie Clendenin, Dir. DSH; Nancy Bargmann, Dir. CDDS Defendant/Respondent: Stephanie Stiavetti, et al.	JUDICIAL OFFICER:
CONSENT TO ELECTRONIC SERVICE AND NOTICE OF ELECTRONIC SERVICE ADDRESS	DEPARTMENT:

1. The following party or the attorney for:
- plaintiff (name):
 - defendant (name):
 - petitioner (name): *Stephanie Clendenin, Director DSH; Nancy Bargmann, Director CDDS*
 - respondent (name):
 - other (describe):

consents to electronic service of notices and documents in the above-captioned action.

2. The electronic service address of the person identified in item 1 is (specify):
Colin.Schoell@doj.ca.gov

Date: Jul 25, 2022

Colin Schoell

TYPE OR PRINT NAME



(SIGNATURE OF PARTY OR ATTORNEY)

DECLARATION OF SERVICE BY U.S. MAIL

Case Name: **STEPHANIE STIIVETTI, et al. v STEPHANIE CLENDENIN, et al.**
Case No.: **RG15779731**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter; my business address is 455 Golden Gate Avenue, Suite 11000, San Francisco, CA 94102-7004.

On July 26, 2022, I served the following documents:

- **NOTICE OF SUBMISSION OF PETITION FOR COORDINATION**
- **PETITION FOR COORDINATION TO THE JUDICIAL COUNCIL RE: COMPETENCY SERVICES FOR DEFENDANTS FOUND INCOMPETENT TO STAND TRIAL; MEMORANDUM OF POINTS & AUTHORITIES IN SUPPORT OF PETITION**
- **DECLARATION OF JACI THOMSON IN SUPPORT OF DEFENDANTS' PETITION FOR COORDINATION TO THE JUDICIAL COUNCIL RE: COMPETENCY SERVICES FOR DEFENDANTS FOUND INCOMPETENT TO STAND TRIAL**
- **DECLARATION OF SEAN MARK RASHKIS IN SUPPORT OF DEFENDANTS' PETITION FOR COORDINATION TO THE JUDICIAL COUNCIL RE: COMPETENCY SERVICES FOR DEFENDANTS FOUND INCOMPETENT TO STAND TRIAL - EXHIBITS TO THE DECLARATION OF SEAN MARK RASHKIS ON CD**
- **DECLARATION OF COLIN D. SCHOELL IN SUPPORT OF DEFENDANTS' PETITION FOR COORDINATION TO THE JUDICIAL COUNCIL RE: COMPETENCY SERVICES FOR DEFENDANTS INCOMPETENT TO STAND TRIAL**
- **PETITIONERS' REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF PETITION FOR COORDINATION - EXHIBITS TO THE REQUEST FOR JUDICIAL NOTICE ON CD**
- **[1] PETITIONERS' NOTICE OF MOTION AND MOTION FOR STAY PENDING COORDINATION; AND [2] MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF - EXHIBITS TO THE MOTION FOR STAY ON CD - EXHIBITS TO THE MOTION FOR STAY ON CD**
- **CONSENT TO ELECTRONIC SERVICE AND NOTICE OF ELECTRONIC SERVICE ADDRESS**

by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the United States Mail at San Francisco, California, addressed as follows:

Clerk of the Court
Alameda County Superior Court
Oakland - René C. Davidson Courthouse
1225 Fallon Street
Oakland, CA 94612

Michael Temple Risher, Esq.
American Civil Liberties Union Foundation
of Nor Cal
39 Drumm Street
San Francisco, CA 94111

Duncan C. Simpson, Esq.
Sullivan & Cromwell LLP
1870 Embarcadero Road
Palo Alto, California 94303

Peter J. Eliasberg, Esq.
American Civil Liberties Union Foundation
of So Cal
1313 West 8th Street
Los Angeles, CA 90017

I declare under penalty of perjury under the laws of the State of California and the United States of America the foregoing is true and correct and that this declaration was executed on July 26, 2022, at San Francisco, California.

Moe San
Declarant



Signature

SA2015104568