

FILED
ALAMEDA COUNTY

DEC 09 2022

CLERK OF THE SUPERIOR COURT

By  Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF ALAMEDA

DEPARTMENT OF STATE HOSPITALS
COMPENTENCY SERVICES CASES

No. JCCP 5248
No. RG15-779731

AMENDED¹ ORDER (1) DENYING
PETITION TO COORDINATE; AND (2)
LIFTING STAY

DATE 12/7/22
TIME 10:00 AM
DEPT 21

PROCEDURE

On 9/14/22, the Chair of the Judicial Council issued an Order Assigning Coordination Motion Judge, authorizing the presiding Judge in Alameda County to appoint a Coordination Motion Judge. (CCP 404; CRC 3.524.)

On 9/28/22, the presiding Judge in Alameda County, acting through the Supervising Judge of Complex, appointed Evelio Grillo as Coordination Motion Judge.

¹ The court erroneously affirmed the tentative decision on 12/6/22. The court intended to take the matter under submission and issue an order after some changes to the tentative decision. This is the intended subsequent order. The court can fix its ministerial errors. (*Aspen Internat. Capital Corp. v. Marsch* (1991) 235 Cal. App. 3d 1199, 1204.)

1 On 9/29/22, Judge Grillo set the hearing on coordination and asked counsel to address
2 certain questions.

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4 CASES IDENTIFIED IN PETITION FOR COORDINATION

5 The identified superior court cases in the Judicial Council order include both the civil
6 case of *Stiavetti, v. Clendenin*, Alameda Case No RG15-779731, and numerous special
7 proceedings arising out of criminal cases from throughout California. The cases are stated in the
8 Judicial Council order. The court will not repeat them here.
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11 NATURE OF CASES AND ISSUES TO BE COORDINATED

12 In *Stiavetti v. Clendenin* (2021) 65 Cal.App.5th 691, the Court of Appeal held that the
13 DSH and DDS have a Constitutional obligation to within 28 days of service of the transfer of
14 responsibility document commence substantive services designed to return defendants in
15 California who have been found incompetent to stand trial (IST) to competency.

16 In *Stiavetti, v. Clendenin*, Alameda Case No RG15-779731, the trial court entered an
17 amended judgment on 12/16/21. The amended judgment sets a series of gradually shortening
18 time periods for the DSH and DDS to commence substantive services for all IST defendants.
19 The amended judgment states that the DSH and DDS must commence substantive services with
20 timelines decreasing from 60 days in August 2022, to 45 days in February 2023, to 33 days in
21 August 2023, to 28 days in February 2024. The amended judgment requires the DSH and DDS to
22 file status reports after each progress point. The superior court in *Stiavetti* has continuing
23 jurisdiction to enforce the judgment regarding statewide compliance with the minimum
24 Constitutional due process standard.
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1 In numerous criminal cases from throughout California, the People are prosecuting cases
2 against defendants in which a trial judge has found that the DSH and DDS have apparently not
3 provided prompt services to the IST defendant, and in a special proceeding the trial judge is
4 either ordering the DSH and DDS to provide prompt services or ordering sanctions for failure to
5 provide prompt services.

6 Petitioner does not seek a JCCP to manage *Stiavetti* and all the special proceedings
7 arising out of criminal cases with commitments of IST defendants to DSH facilities. Petitioner
8 does not wish to coordinate logistical concerns for individual IST defendants and agrees that
9 those are best left to local courts. (Petition at 26:16-19.)

10 Petitioner seeks a JCCP to manage the parts of the cases “that oversee or enforce DSH’s
11 compliance with the 28 day deadline to commence treatment.” (Petition at 26:14-16.) Petitioner
12 argues that in the proposed JCCP the coordination trial judge would (1) potentially modify
13 existing trial court orders that the DSH and DDS provide substantive services to any given IST
14 defendant by any specific date (the “waitlist” issue) and (2) consider any and all motions for
15 sanctions because the DSH has not provided substantive services to any given IST defendant by
16 any specific date (the “sanctions” issue). (Petition at 8:11-14; 22:10-12; 26:14-16.)
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20 THE STATUTE

21 CCP 404 states that coordination is appropriate “When civil actions sharing a common
22 question of fact or law are pending in different courts.” CCP 404.1 states the factors the court
23 must consider when ruling on a Petition of Coordination. Coordination is appropriate if it “will
24 promote the ends of justice taking into account whether the common question of fact or law is
25 predominating and significant to the litigation; the convenience of the parties, witnesses, and
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1 counsel, the relative development of the actions and the work product of counsel, the efficient
2 utilization of judicial facilities and manpower; the calendar of the courts; the disadvantages of
3 duplicative and inconsistent rulings, orders, or judgments; and the likelihood of settlement of the
4 actions without further litigation should coordination be denied.” (See also *Ford Motor*
5 *Warranty Cases* (2017) 11 Cal. App.5th 626.)
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8 THE COURT PLAUSIBLY CAN COORDINATE SPECIAL PROCEEDINGS ARISING OUT
9 OF CRIMINAL CASES

10 CCP 404 states that coordination is appropriate “When civil actions sharing a common
11 question of fact or law are pending in different courts.”

12 The court can coordinate civil actions. (CCP 21(1) and 22.) The CCP distinguishes
13 “special proceedings” from “actions,” suggesting that a special proceeding is not a civil action.
14 (CCP 21(1 and 2), 22, 23.)

15 The case law suggests that when a special proceeding that arises out of a criminal case
16 then it is a flexible statute or situation specific analysis regarding whether the special proceeding
17 is a separate civil proceeding or is part of the criminal proceeding. *Bravo v. Cambell* (1974) 11
18 Cal.3d 834, 838, holds that for purposes of filing fees a special proceeding arising out of criminal
19 case is part of the criminal case. *Gross v. Superior Court* (1954) 42 Cal.2d 816, 820, holds that
20 the petitioner in a special proceeding is entitled to transcripts prepared at state's expense under
21 statute providing for transcript fees in criminal cases.
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23 The court does not reach the issue of whether under CCP 404 a court can coordinate
24 special proceedings relating to IST defendants under Penal Code 1370.1 and similar statutes.
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1 The court assumes for purposes of this orders that the court could coordinate the special
2 proceedings relating to IST defendants.

3 4 THE COURT CAN COORDINATE PARTS OF CASES

5 The order of 9/29/22 asked whether it is possible to coordinate cases only for purposes of
6 the waitlist and sanctions issues. CRC 3.541 and 3.542 suggest that a coordination trial judge
7 could include a case in the JCCP and then remand all issues except waitlist and sanctions issues
8 back to the county of origin. That suggests that a JCCP arguably could be limited to certain
9 issues without managing all aspects of all the included cases. (*Volkswagen of America, Inc. v.*
10 *Superior Court* (2001) 94 Cal.App.4th 695, 704-705 [“The Judicial Council could not have
11 intended [CRC 3.400] to stand like an unarmed sentry warning courts of impending disaster from
12 complex litigation while leaving them powerless to take the steps necessary to meet the
13 onslaught”].) This appears to be a novel issue.

14
15 The court holds as a matter of law that the court potentially could coordinate civil cases
16 only for certain purposes. This would be similar to class certification for the resolution of
17 discrete issues but not for resolution of all issues. California law permits single issue
18 certification. (CRC 3.765(b).) Federal law permits single issue certification. (FRCP 23(c)(4).)
19 (See also *Russell v. Educational Commission for Foreign Medical Graduates* (3rd Cir., 2021) 15
20 F.4th 259; *Mejdrech v. Met-Coil Sys. Corp.* (7th Cir. 2003) 319 F.3d 910, 911; *In re Chiang* (3rd
21 Cir. 2004) 385 F.3d 256, 267; *In re Tetracycline Cases* (W.D. Mo 1985), 107 F.R.D. 719, 727;
22 *Hernandez v. Motor Vessel Skyward* (S.D. Fla. 1973) 61 F.R.D. 558, 561.)

23
24 The court probably should coordinate cases for limited purposes only where the
25 coordinated aspects of the cases could be cleanly separated from other issues. In the colorful
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1 language of *In re Rhone-Poulenc Rorer Inc.* (7th Cir. 1995) 51 F.3d 1293, 1302, the Court “must
2 carve at the joint.” Having determined that the court could in theory coordinate parts of (civil)
3 cases, the court moves to whether it should do so on the facts of these cases.
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5 THE PETITION IS NOT MOOT

6 All of the cases other than *Stiavetti* are moot. Counsel for the DSH and DDS states: “I
7 have diligently reviewed the status of each included sanctions case and determined that all of
8 them are now moot, either because the defendant began receiving competency services or the
9 court issued a ruling on the sanctions issue.” (Schoell Dec. para 4.) There are no pending cases
10 to coordinate.
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12 The DHS and DDS argue that there should be a JCCP because there are many IST
13 defendants and new cases can or will be added to the JCCP as others conclude. (CRC 3.544.) A
14 coordination motion judge should hear a petition within 30 days. (CRC 3.527.) On the facts of
15 this case, there were three months between when the petition was filed on 9/14/22 and the
16 hearing on 12/7/22. The rationale for a JCCP when the court can anticipate a stream of similar
17 cases that should conclude is a short time period is similar to the rationale for hearing an issue
18 that is “capable of repetition, but evading review.” (*People v. Alsafar* (2017)8 Cal.App.5th 880,
19 886.) The court finds that a JCCP might be appropriate on the facts of this situation even if there
20 are currently no cases to coordinate.
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1 THE COORDINATION FACTORS

2 WILL PROMOTE THE ENDS OF JUSTICE.

3 Coordination would promote a more rational statewide approach to providing services to
4 IST defendants (the waitlist issue). Currently there are limited DHS and DDS facilities and the
5 IST defendants in different cases are competing for access to those services. A common
6 judicially approved waitlist procedure would rationalize the process so that the DHS and DDS
7 have an accepted guideline or protocol to determine which IST defendant is next in line for
8 which available services. This should be a short-term problem because the DHS and DDS
9 should be in compliance with the Stiavetti 28 day standard by February 2024.
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11 At the hearing on 12/6/22, counsel for DHS pointed out that the DSH already has a
12 waitlist procedure in the form of 9 CCR 4710, which states: "In scheduling the admission of
13 individuals judicially committed to the Department of State Hospitals as Incompetent to Stand
14 Trial, the Department shall admit each individual to a state hospital according to the date the
15 court committed the individual to the Department." Counsel for DHS stated that the problem is
16 that trial judges in the relevant jurisdictions are issuing orders for the benefit of individual IST
17 defendants. It is unclear whether the judges ignoring 9 CCR 4710, which would be a problem,
18 or are issuing orders that give priority as expressly permitted by 9 CCR 4710(a)(2), which would
19 be fact specific decisions of the type made daily by trial judges.
20

21 A coordination trial judge would likely be reluctant to reconsider the decisions of the trial
22 judges in the relevant jurisdictions. (*In re Alberto* (2002) 102 Cal. App. 4th 421, 427 ["For one
23 superior court judge, no matter how well intended, even if correct as a matter of law, to nullify a
24 duly made, erroneous ruling of another superior court judge places the second judge in the role
25 of a one-judge appellate court."].) A coordination trial judge could, however, ensure consistency
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1 going forward by having a consistent application of 9 CCR 4710 and being able to weigh the
2 needs of the various IST defendants and the resources at the various DSH and DDS facilities.
3 This weighs in favor of coordinating the special proceedings.

4 Coordination would promote a more rational statewide approach to any award of
5 sanctions against the DHS and DDS (the sanctions issue). Currently judges in different cases in
6 different counties can consider awarding sanctions against DHS and DDS based on the facts of
7 single cases and they might not have information about the competition for the DHS and DDS
8 services, the efforts of DHS and DDS, or the cumulative effect of sanctions in multiple cases.
9 This should be a short-term problem because the DHS and DDS should be in compliance with
10 the Stiavetti 28 day standard by February 2024.

12 The proposed coordination would not include the timely provision of services to IST
13 defendants. Coordination would not promote the ends of justice in that regard. *Stiavetti v.*
14 *Clendenin* (2021) 65 Cal.App.5th 691, states that the Constitutional standard is that DSH and
15 DDS must commence substantive services designed to return defendants in California who have
16 been found incompetent to stand trial (IST) to competency within 28 days of service of the
17 transfer of responsibility document. The Stiavetti amended judgment of 12/16/21 states that the
18 DSH and DDS must commence substantive services with timelines decreasing from 60 days in
19 August 2022, to 45 days in February 2023, to 33 days in August 2023, to 28 days in February
20 2024. The time spent adding cases to the potential JCCP (CRC 3.544), filing motions with the
21 Coordination Trial Judge, hearing motions in the potential JCCP, and then transmitting orders
22 back to the home jurisdictions will take longer than the resolution of those issues in the home
23 jurisdiction. This strongly suggests that the logistics of coordination will not serve the ends of
24 justice.
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2 COMMON QUESTIONS OF LAW OR FACT.

3 The common questions of law and fact are limited to the waitlist issue and the sanctions
4 issue.

5 Regarding the waitlist issue, the judge in the Stiavetti case is already overseeing the
6 efforts of the DSH and DDS to bring their work into compliance with the Constitutional
7 standard. If the DSH and DDS want a statewide protocol for the wait list issue, then they can
8 work with counsel for Stiavetti in the Stiavetti litigation to develop a protocol, and then submit a
9 stipulation or motion for approval of a waitlist protocol. A judicially approved Stiavetti
10 statewide protocol for allocating resources while the DSH and DDS make progress in meeting
11 the Stiavetti 28 day standard might have issue preclusion effect in the various individual criminal
12 cases or might simply be granted some deference by the judges overseeing the various individual
13 criminal cases.
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15 The judges in the individual special proceedings arising out of criminal cases have the
16 discretion to set deadlines that are shorter than the gradually shortening deadlines in the Stiavetti
17 judgment or the Constitutional standard in Stiavetti. The Stiavetti amended judgment gave the
18 DSH and DDS a three year time period to bring their services into compliance with the
19 Constitutional standard. A judge in an individual case might, based on the facts of that case,
20 determine that an individual IST defendant requires treatment more quickly than the pace of
21 statewide compliance required by the Stiavetti amended judgment or by the Constitutional
22 minimum due process standard elucidated in Stiavetti. (9 CCR 4710(a)(2) ["Actual date of
23 admission may change upon consideration of ... Whether the individual exhibits psychiatric
24 acuity which may indicate the need for admission to a facility"].) Although nothing prevents an
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1 individual trial judge from setting deadlines for DHS and DDS to provide services to an IST
2 defendant, the court anticipates that individual trial judges might defer to a judicially approved
3 Stiavetti statewide protocol.

4 Regarding the sanctions issue, the court considers pending and prospective sanctions
5 motions. There are no pending sanctions motions. Counsel for the DHS and DDS states: "I have
6 diligently reviewed the status of each included sanctions case and determined that all of them are
7 now moot, either because the defendant began receiving competency services or the court issued
8 a ruling on the sanctions issue." (Schoell Dec, para 4.) The court cannot pre-judge prospective
9 sanctions motions, but the court can observe that the Stiavetti amended judgment has been in
10 effect since 12/16/21 and the DHS and DDS have been submitting progress reports. A trial
11 judge in an individual case might consider any request for sanctions in light of whether the DHS
12 and the DDS are on track to meet their statewide obligations in Stiavetti or might rely on the
13 Stiavetti trial judge to impose sanctions if DHS and the DDS are not on track to meet the
14 Stiavelli standard at the local level.
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18 CONVENIENCE OF COUNSEL, PARTIES, AND WITNESSES.

19 Coordination on the waitlist issue would be more convenient for counsel for the DHS and
20 DDS, but not for counsel for the individual defendants. Any coordinated proceeding would
21 appear to require coordination with District Attorneys, Public Defenders, private counsel, and
22 other persons in each county. The Attorney General could represent the DHS and the DDS in all
23 of the cases because the common clients are the DHS and the DDS. There is a realistic
24 prospect that a single District Attorney (or the Attorney General) could represent "the People" in
25 all of the cases because the common client is "the People."
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1 There is no reasonable prospect that a single Public Defender (or a private defense
2 counsel) could represent each of the IST defendants in all of the cases because each of the IST
3 defendants is competing with the other IST defendants for the available DHS and DDS services.
4 Analogizing to civil cases, this is not similar to multiple individual plaintiffs pursuing similar
5 claims against a single defendant arising from an allegedly defective common product. The
6 more apt comparison is claimants in a bankruptcy case fighting over limited resources.

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8 The DHS and the DDS suggest that the Office of the State Public Defender can serve as
9 liaison counsel for the individual IST defendants. This is sensible from an administrative
10 standpoint. The court has concerns that the Office of the State Public Defender might have
11 ethics problems representing IST defendants with competing interests. At the hearing on
12 12/6/22, counsel for the DHS and the DDS acknowledged that he had not yet asked the Office of
13 the State Public Defender if it could or would serve as liaison counsel. At the hearing, counsel
14 for the IST defendants stated that had contacted the Office of the State Public Defender and it
15 expressed reservations about the client conflict issues it might have if it represented several IST
16 defendants and each were competing with the other for the DHS and DDS resources.

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18 Coordination on the waitlist issue would not be more convenient for the parties. The
19 People, the DHS, and the DDS could appear through counsel. The defendants in the individual
20 criminal cases would have Constitutional rights to appear at hearings, and the logistical
21 challenges of providing access to each individual defendant would be challenging.

22 In contrast, coordination on the sanctions issues might be more convenient for counsel for
23 all parties. Sanctions concern the non-Constitutional issue of the payment of money rather than
24 the Constitutional issue of whether a person who has not been convicted of a crime is being held
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1 in custody for an unreasonable time while awaiting IST services. As a result, the responsibilities
2 of counsel and the rights of the criminal defendants are somewhat less acute.

3 4 DUPLICATION

5 Coordination on the waitlist issue will prevent duplicative and inconsistent rulings,
6 orders, or judgments on that issue. That noted, the DSH and DDS could address that issue in
7 substantial part by seeking a judicially approved Stiavetti statewide protocol for allocating
8 resources while the DSH and DDS make progress in meeting the Stiavetti 28 day standard.
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10 Coordination on the sanctions issue will prevent duplicative and inconsistent rulings,
11 orders, or judgments on that issue. That noted, the pending sanctions motions are moot and the
12 DSH and DDS could address future sanctions motions in part by meeting the requirements in the
13 Stiavetti amended judgment.

14 15 JUDICIAL EFFICIENCY.

16 The DSH and the DDS in *Stiavetti v. Clendenin* (2021) 65 Cal.App.5th 691, 712-716,
17 argued that the trial court could not or should not impose a statewide deadline for providing
18 services to IST defendants, implicitly arguing that issues about the timing of providing services
19 to IST defendants should be resolved by individual judges in individual cases. The Court of
20 Appeal found that a statewide minimum constitutional standard was appropriate. The DSH and
21 the DDS now argue that there is judicial efficiency if a single judge presides over the waitlist and
22 sanctions issues.
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24 Theoretically, there would be judicial efficiency if a single judge presides over the
25 waitlist and sanctions issues. Practically, there are significant barriers to that efficiency. That
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1 being said, the trial judge in *Stiavetti* can achieve a substantial amount of efficiency if the court
2 approves a waitlist protocol in the *Stiavetti* case, monitors the progress of the DHS and DDS in
3 the *Stiavetti* case, and imposes sanctions as required in the *Stiavetti* case.
4

5 CONCLUSION

6 The Court DENIES the petition for coordination. (CCP 404.1; CRC 3.529.) CCP 404
7 plausibly permits coordination of special proceedings arising out of criminal cases. The court has
8 the authority to order coordination for the limited purpose of the waitlist issue and the sanctions
9 issue. The court finds on the facts of this case that the interests of justice would not be furthered
10 by coordination of the waitlist issue and the sanctions issue. The court finds that the trial judge
11 in *Stiavetti* can issue orders with statewide effect that will likely be persuasive, even if not
12 binding, on the waitlist and sanctions issues in the individual special proceedings arising out of
13 criminal cases. As a result, there is no need to create the administrative infrastructure of a JCCP
14 to have substantially the same effect.
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16 The court encourages the parties to the *Stiavetti* case to develop, propose, and seek
17 approval of a waitlist procedure that the DHS and the DDS will be required to use until they
18 meet the requirements of the *Stiavetti* amended judgment, and perhaps also for after they meet
19 the requirements of the *Stiavetti* amended judgment.
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1 LIFTING OF STAY

2 Any stay imposed by the petition for coordination or by this court's order of 9/29/22 is
3 lifted.

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5 Dated: December 9, 2022

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8 Evelio Grillo
9 Judge of the Superior Court
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