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March 30, 2020

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Representative of Harris County Sheriff's Office:

Major Patrick Dougherty, patrick.dougherty@sheriff.hctx.net

Re. Executive Order No. GA-13 & Compliance with Rule 9

Dear Parties:

I am writing to provide guidance on implementation of the Consent Decree as it relates to (1) Governor Greg Abbott's Executive Order No. GA-13, issued on March 29, and (2) the continued importance of making a finding of necessity to detain in any case where a Hearing Officer or Judge requires a person to pay an unattainable amount of secured bail. I write in my capacity as Monitor in the *ODonnell* Consent Decree.

1. The Executive Order Does Not Affect Implementation of Rule 9 and the Consent Decree:

On March 29, 2020, Texas Governor Greg Abbott issued an Executive Order purporting to prohibit personal bonds for certain people arrested for misdemeanor or felony offenses in Harris County. The Order is likely unconstitutional under state and federal law. But regardless of whether it is ultimately challenged and/or implemented, **Executive Order No. GA-13 does not affect any terms of the pre-existing ODonnell Consent Decree. Indeed, the state Order cannot affect the Consent Decree, because the Decree was entered by a federal court and is binding on all Parties regardless of any subsequent changes in state law. Accordingly, all Parties must continue to implement Rule 9 and all provisions of the Consent Decree without interruption.**

If anyone responsible for implementing or complying with the Consent Decree has any questions about the effect of the Executive Order, COVID-19, or any other state or local policy or practice on implementation or compliance with the Consent Decree, they are instructed to contact me immediately through any of the Party's representatives and I will provide prompt clarification.

2. Judges and Hearing Officers Must Make the Findings Required by Rule 9:

Additionally, I write to provide guidance on implementation of the provisions in Rule 9 requiring Judges and Hearing Officers to make specific findings on the record by clear and convincing evidence before detaining a person using unaffordable money bail.

The Consent Decree, and Rule 9, continues to fully apply in Harris County. Given the crisis concerning COVID-19, it is all the more important that the Judges and Hearing Officers take extreme care to ensure that no one is detained in the jail unless "necessary" to meet a compelling government interest. **To that end, Judges and Hearing Officers must ensure that they are making the individualized determinations required by the Decree. These include the on-the-record determinations, based on clear and convincing evidence, regarding ability to pay, and if a person cannot pay the amount required, that there is no less-restrictive condition(s) that can reasonably assure safety or to reasonably assure against flight. Rule 9.12.7.** ("These findings and procedures must be provided if the court imposes an order of pretrial detention, either through an unattainable financial condition or directly through an order of pretrial detention.").

We note that even in our initial review, upon assuming recently this role as Monitor, we have already observed instances of misdemeanor defendants detained without any clear or supportive findings. Indeed, we have even observed examples of cases in which individuals who do not fall into carve-out categories under Rule 9 have nevertheless been detained. We will continue to follow up through counsel based on those concerns.

Our Monitor Team will be carefully examining the Harris County system to ensure that there are no interruptions to implementation of Rule 9 and the Consent Decree due to either the March 29 Executive Order or the COVID-19 crisis. In particular, we will be reviewing video recordings of the bail hearings and the judges' and Hearing Officers' written findings to assure that there is sufficient grounds to support any detention decisions regarding eligible misdemeanor defendants. As stated above, I remain available as needed if questions arise regarding the effects of state or local action on Rule 9 or the Consent Decree.

Many thanks for all of the hard work you are doing during this time of urgent crisis in Harris County.

Very truly yours,



Brandon L. Garrett