

FILED
US DISTRICT COURT
DISTRICT OF NEBRASKA
OCT 26 2018
OFFICE OF THE CLERK

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

IN RE: PHYSICAL AND MENTAL)
DISABILITY OF JUDGES)
PRESIDING OVER CASES IN THE)
DISTRICT OF NEBRASKA)
_____)
No. 2018-05
GENERAL ORDER

Every judge of this court, including active district judges, senior district judges, magistrate judges and the bankruptcy judge have agreed to the entry of this order. This order is entered pursuant to 28 U.S.C. § 137 (West 2018),¹ 28 U.S.C. § 294 (b)&(c) (West 2018),² such other statutes as may be relevant and the inherent power of this court acting en banc and with unanimous consent of all judges. *See, e.g., In re McBryde*, 117 F.3d 208, 225 (5th Cir. 1997) (recognizing a “chief judge’s acknowledged power to reassign cases in situations involving the recusal, death,

¹ That statute provides in pertinent part as follows:

The business of a court having more than one judge shall be divided among the judges *as provided by the rules and orders of the court.*

The chief judge of the district court shall be responsible for the observance of such rules and orders, and shall divide the business and assign the cases so far as such rules and orders do not otherwise prescribe.

(Emphasis added.)

² Providing in pertinent part that senior district judges “may be designated and assigned by the chief judge of his court to perform such judicial duties in such court as he is willing and *able* to undertake.” (Emphasis added.)

disability, or new appointment of a judge.”) (emphasis added) (citing Hvass v. Graven, 257 F.2d 1, 4 (8th Cir. 1958)).

IT IS ORDERED that:

1. No judge (including any active or senior district judge, magistrate judge, bankruptcy judge or any judge from another district or circuit designated to sit in this court) may preside over any case or controversy or engage in the governance of this court when such a judge is physically or mentally incapable³ of performing *all* of the essential functions of a judge and *properly* participating in the governance of the court *except* to the extent contemplated by this order. (See paragraphs 3 and 4 of this order.)
2. The chief judge of the district court, in that judge’s sole discretion, but only after consultation with the other active district judges, shall be responsible for the observance, implementation and interpretation of this order. In the event the chief judge’s physical or mental health is at issue, the active district judge, who is not the chief judge, with the greatest seniority shall be responsible for the observance, implementation and interpretation of this order. Whenever the words “chief judge” are used, they shall be construed to also mean the active district judge with the greatest seniority when the chief judge’s physical or mental health is at issue. If the chief judge disputes the authority of the active district judge with greatest seniority to act under this order, then the active district judges shall resolve the dispute by a majority vote of all the active

³The phrase “physically or mentally incapable” shall be construed broadly to include infirmities such as impaired eye sight, impaired hearing, impaired ability to remain awake, habituation to drugs or alcohol, impaired memory, impaired impulse control and otherwise.

district judges. In the event of a tie vote of the active district judges regarding this issue, then the Chief Judge of the United States Court of Appeals for the Eighth Circuit may exercise the powers of the chief district judge pursuant to this order.

3. The chief judge shall have the exclusive power and sole discretion to determine, pursuant to the provisions of this order, whether a judge is physically or mentally incapable of performing some or all of the essential functions of a judge and properly participating in the governance of the court. That determination shall not be subject to review by any court but may be reviewed by the Chief Judge of the United States Court of Appeals for the Eighth Circuit, or should the Chief Judge of the Court of Appeals determine, by the Judicial Council of the United States Court of Appeals for the Eighth Circuit or any committee thereof. If such a review is sought, the application for review shall be filed no later than 10 days after the decision of the chief judge for which review is sought. During the pendency of any such review, the chief judge's decision and related actions shall remain in effect. The pendency of such review shall not preclude the chief judge from entering such further and other orders or directions as the chief judge may determine to be necessary or proper, in the chief judge's sole discretion.
4. When the chief judge has reasonable grounds to believe that a judge is physically or mentally incapable of performing some or all the essential functions of a judge and properly participating in the governance of the court, the chief judge shall consult with the other active district judges and attempt to consult with the judge in question. Thereafter, and in the sole discretion of the chief judge, the chief judge may take one or more of the following actions:

- A. Direct the judge to undergo a physical or mental evaluation or both by medical or mental health practitioners selected by the chief judge and direct the judge and the evaluators to provide the results and underlying data and information to the chief judge, the clerk of the district court and the deputy clerk of the district court. In order to facilitate that process, the judge shall execute and provide to the chief judge, the clerk of the district court and the deputy chief clerk of the district court a "HIPAA Privacy Authorization" which conforms to Exhibit A attached hereto. The costs of the evaluation shall be borne by such judge.
- B. Direct the judge to follow the recommendations of the medical or mental health practitioners referred to in the immediately preceding subparagraph.
- C. Limit the activity of such judge such as by directing the judge to perform work only in chambers.
- D. Reassign some or all the cases of such judge to another judge and, where not impractical, do so by random reassignment.
- E. Bar or limit the judge regarding participation in the governance of the court.
- F. Take such further actions and issue such further directives that are necessary or proper to insure the integrity and fairness of the judicial process and the governance of the court.

5. This order is independent of and in addition to any other provisions of law or regulation including but not limited to the Judicial Conduct and Disability Act of 1980, 28 U.S.C. §§ 351-364 and the Rules for Judicial-Conduct and Judicial-Disability Proceedings. It is understood and agreed that this order sets a lower threshold for action and is broader than the Judicial Conduct and Disability Act of 1980 and regulations issued thereunder.
6. This order supersedes all orders and rules adopted by this court at any time that may be in conflict herewith except to the extent this order is rescinded or amended as provided herein.
7. This order is binding upon all judges whether now serving or whether appointed or designated in the future.
8. This order may be rescinded or amended only by a majority vote of the active district judges for the District of Nebraska. No active district judge from another district who has been designated to sit in this court shall be entitled to vote.

Dated: October 26, 2018

BY THE COURT:

s/Laurie Smith Camp
Chief United States District Judge

Exhibit A

HIPAA Privacy Authorization

Authorization for Use or Disclosure of Protected Health Information

(As required by the Health Insurance Portability and Accountability Act, see 45 C.F.R. Parts 160 and 164)

1. *Authorization*

I authorize any hospital, clinic or any other provider of physical or mental health services to use and disclose all information, records, test results or opinions they or any of them may possess or may possess in the future regarding my care or evaluations of me to:

The Chief Judge of the United States District Court for the District of Nebraska (presently Laurie Smith Camp) or her successor;

The Clerk of the United States District Court for the District of Nebraska (presently Denise Lucks) or her successor; and

The Chief Deputy Clerk of the United States District Court for the District of Nebraska (presently Gabriela Acosta) or her successor.

2. *Effective Period*

This authorization for release of information covers the period of healthcare for all past, present, and future periods.

3. *Extent of Authorization*

I authorize the release of my complete health record (including records relating to mental healthcare, communicable diseases, HIV or AIDS, and treatment of alcohol or drug abuse).

4. Use of Information

This medical or mental health information, more particularly described above, may be used by the persons I authorize to receive it to determine whether I am capable of performing my duties as a federal judge and for any other purpose they deem necessary.

5. Duration

This authorization shall be in force and effective until 180 days following my death.

6. Waiver of Revocation

Because this authorization may be used to determine whether I am capable of performing my duties as a federal judge, I intend this authorization to be irrevocable. In any event, I understand that a revocation is not effective to the extent that any person or entity acts in reliance on this authorization.

7. Understanding of Rights

I understand that my treatment, payment, enrollment, or eligibility for benefits will not be conditioned on whether I sign this authorization. I also understand that information used or disclosed pursuant to this authorization may be disclosed by the recipient and may no longer be protected by federal or state law.

Signature of Patient

Date

Printed Name of Patient

WITNESS:

Signature of Witness

Date

Printed Name of Witness