OAH 21-1100-36734

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE DEPARTMENT OF CORRECTIONS

In the Matter of the Risk Level Determination of Mathew M. Glad	**ORDER VACATING NOTICE AND ORDER OF HEARING**

This matter is pending before Administrative Law Judge Kimberly Middendorf pursuant to a Notice of Risk Level Review dated March 16, 2020.

Peter Magnuson, Assistant Attorney General, represents the End-of-Confinement Review Committee (ECRC). Mathew M. Glad (Petitioner) represents himself without legal counsel.

On June 22, 2020, the parties were served with the First Prehearing Order, which set forth the pretrial deadlines and the date of hearing in this matter. On June 30, 2020, the ECRC filed a Notice and Order for Hearing.

Based upon the records in this proceeding,

IT IS HEREBY ORDERED:

1. The Notice and Order for Hearing filed by the ECRC on June 30, 2020, in this matter, is **VACATED**.

2. The hearing, including all prehearing deadlines applicable to this matter, is governed by the First Prehearing Order issued by the Administrative Law Judge on June 22, 2020.

3. The Petitioner is notified of the following:

a. The hearing in this matter will be conducted pursuant to Minn. Stat. §§ 244.052, subd. 6 (2018), 14.57-.62 (2018), and Minn. R. 1400.5010-.8400 (2019). Hearings at the Office of Administrative Hearings are conducted in accordance with the Minnesota Rules of Professional Conduct and the Professionalism Aspirations adopted by the Minnesota State Bar Association. Copies of the applicable rules and statutes are available on the website of the Minnesota Revisor of Statutes at https://www.revisor.mn.gov.

b. The Petitioner has the burden of proof to show, by a preponderance of the evidence, that the ECRC's risk level assignment is

erroneous. Following the hearing, the Administrative Law Judge will decide whether the ECRC's risk level assignment is erroneous and shall either uphold or modify the ECRC's determination.

c. The Petitioner has the right to be present at the hearing, to present evidence in support of his position, and to call or cross-examine witnesses.

4. The Administrative Law Judge may be contacted by mail at the Office of Administrative Hearings, P.O. Box 64620, St. Paul, Minnesota 55164-0620, or by contacting Judge Middendorf's legal assistant, Lisa Armstrong, at lisa.armstrong@state.mn.us or (651) 361-7888.

Dated: July 20, 2020

KIMBERLY MIDDENDORF
Administrative Law Judge

MEMORANDUM

A contested case is commenced by an agency's service of a notice and order for hearing, pursuant to Minn. R. 1400.5600. The rules set forth specific requirements for the basic contents of a notice and order for hearing. In this case, the ECRC initiated the proceeding, as it does in many of its cases, by filing a Notice of Risk Level Review.[1] The Notice of Risk Level Review is a document created by the ECRC, which is in part a modified version of the Notice and Order for Hearing. It includes some, but not all, of the elements required by Minn. R. 1400.5600. For example, it does not contain a statement advising the Petitioner that failure to appear at a prehearing conference, or hearing, or to comply with any order of the judge, may result in the issues or allegations set out being deemed proved.[2]

The Administrative Law Judge presumes that the ECRC filed the Notice and Order for Hearing on June 30, 2020, in an attempt to cure its failure to comply with Minn. R. 1400.5600 when it initiated the contested case. However, in doing so, it included language and a date which contradict the Administrative Law Judge's First Prehearing Order. Once the Administrative Law Judge assumes jurisdiction in a contested case hearing, however, the agency has no authority to issue orders.[3] In a contested case, the ECRC is a party and, as such, lacks authority to issue orders. The

[1] ECRC's Notice of Risk Level Review (March 16, 2020).
[2] Minn. R. 1400.5600, subp. 2 L.
[3] *See* Minn. Stat. §§ 14.50, 14.58 (2018); *see also* Minn. R. 1400.7600.

time for the ECRC to issue a fully compliant Notice and Order for Hearing is at the initiation of the contested case process, as required by Minn. R. 1400.5600. The Notice and Order for Hearing was issued without proper authority, was untimely, and will likely confuse the Petitioner. Therefore, the Administrative Law Judge has vacated it.

To protect the integrity of this administrative process, and to ensure that the Petitioner has the notice required by Minn. R. 1400.5600, and that the ECRC intended to provide, the Administrative Law Judge has included in this Order paragraphs that were not included either in the Notice of Risk Level Review or in the First Prehearing Order. Given the confusion caused by the shortcomings in the ECRC's filings, the Administrative Law Judge strongly urges the ECRC to initiate future contested cases with a notice that fully complies with Minn. R. 1400.5600. A conforming notice is not only a legally required minimum, but also best reflects our state's commitment to accountability, uniformity, and fairness in contested case proceedings.[4]

K. J. M.

[4] Minn. Stat. § 14.001 (2018).