IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT, AT ANCHORAGE

In The Matter of the Necessity for the Hospitalization of William Bigley,

Respondent

Case No. 3AN 08-1252PR

REPLY TO PUBLIC DEFENDER AGENCY'S RESPONSE TO MOTION TO CLARIFY STATUS OF NOVEMBER 20 & 21, 2008 HEARINGS

The Law Project for Psychiatric Rights, (PsychRights®) hereby replies to the Public Defender Agency's Response to the Law Project for Psychiatric Rights Motion to Clarify Status (Response).[1]

The Public Defender Agency's Response can be boiled down to two propositions: One, that an involuntary commitment or forced drugging hearing should be considered closed unless an affirmative election has been made to have it open, and Two, that Respondent's election to have the 30 day commitment and forced drugging hearings open to the public "does not mean that respondent waives his right to confidentiality on all issues." PsychRights believes the PDA is wrong about the former and that while the latter is true, an election to make the hearing public necessarily includes the transcript.

The Public Defender Agency misstates PsychRights' motion as seeking an order that the 90-day commitment hearing was open to the public. What PsychRights actually

[1] As set forth in Attachment A, Respondent has moved to dismiss his appeal of this Court's November 25, 2008 Order for the reasons stated therein. While this means there is no longer any need to determine whether the transcript of the November 20 & 21 hearings are confidential for purposes of that appeal, whether or not the 90-day commitment hearing was open or closed to the public should still be determined.

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seeks is a determination of whether the hearing was open or closed. For the reasons stated in the motion, PsychRights does believe the hearing was open to the public, but the main point is a determination must be made whether the November 20 & 21 hearings were open or closed to the public. The Public Defender's position is that flouting the AS 47.30.735(b) requirement of an election means that the hearings were closed. This is the primary point of disagreement between PsychRights and the Public Defender Agency.

Respondent elected to have the 30-day commitment and forced drugging hearings open to the public and there is no reason to think he desired to change this election. It is notable that the Public Defender Agency does not assert Respondent wanted or wants the 90-day commitment hearings closed to the public.[2]

The Public Defender Agency also asserts that electing to have the hearing open to the public does not make the information in the case file public. However, this Court has already ruled against this position.[3]

The Public Defender Agency also cites AS 47.30.845 for the propositions that "treatment information is confidential unless the patient authorizes release of that information" and "there is no presumption that this information is automatically public because there was a court hearing." The Public Defender Agency fails to distinguish between records obtained in the course of the investigation, etc., from those that are used at

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[2] In contrast, the Respondent has reiterated to PsychRights that he wants "open court."
[3] November 25, 2008, Order at 8. Whether, and under what conditions, the Superior Court is authorized to close the file to the public after an election has been made to have the hearing open to the public is currently on appeal to the Alaska Supreme Court in S-13015.

trial. This was the essence of this Court's prior ruling on the issue and is completely supported by AS 47.30.845, which provides in pertinent part:

> Information and records obtained in the course of a screening investigation, evaluation, examination, or treatment are confidential and are not public records, *except as the requirements of a hearing under AS 47.30.660--47.30.915 may necessitate a different procedure*.

(emphasis added).[4]

Finally, the Public Defender Agency asks this Court to order that any appeals from this case be confidential. It would not appear this Court has authority to do so.

DATED: January 9, 2009.

Law Project for Psychiatric Rights

By: _____
James B. Gottstein, ABA # 7811100

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[4] At footnote 4 of its Response, without citing any authority, the Public Defender Agency asserts that in "an appeal regarding an involuntary commitment at API, counsel is required to submit two briefs; one with initials in order to preserve confidentiality." This is not PsychRights' experience. PsychRights' experience is that if the proceeding was confidential below, the briefs are to be filed with initials or pseudonyms and if it was not, the appellant's real name is used. Thus, in *Myers v. Alaska Psychiatric Institute*, 138 P.3d 238 (2006), and *Wetherhorn v. Alaska Psychiatric Institute*, 156 P.3d 371 (Alaska 2007), the Alaska Supreme Court used the Respondents' names, while in *Wayne B. v. Alaska Psychiatric Institute*, 192 P.3d 989 (Alaska 2008), it did not. Frankly, with one possible exception, PsychRights is unaware of any appeals by the Public Defender Agency to any involuntary commitment or forced drugging orders, so it is hard for PsychRights to see how the Public Defender Agency can even make this assertion.

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Attorney for Appellant

IN THE SUPREME COURT FOR THE STATE OF ALASKA

WILLIAM BIGLEY, Appellant, vs. ALASKA PSYCHIATRIC INSTITUTE Appellee.	) Supreme Court No. S-13353)))))) Trial Court Case No. 3AN 08-1252 P/R

MOTION TO DISMISS APPEAL

Appellant William Bigley hereby moves to dismiss this appeal pursuant to Appellate Rule 511(b). Because

(i) Mr. Bigley failed in his attempt to obtain a stay of the Superior Court's November 25, 2008, forced drugging order pending appeal, and

(ii) the 90-day involuntary commitment Order also appealed herein will have long expired before this Court will rule on this appeal,

it does not appear any practical relief can be obtained for Mr. Bigley in this appeal that would not be obtained in his appeal under Case No. S-13116. Thus, even though the judgment is still in place and therefore this appeal may not be technically moot under *City of Valdez v. Gavora*, 692 P.2d 959, 960 (Alaska 1984) and *United States Bancorp*

Mortgage Co., v. Bonner Mall Partnership, 513 U.S. 18, 115 S.Ct. 386 (US 1994), it seems pointless for Mr. Bigley to pursue this particular appeal.

For other possible appellants the continued existence of a judgment that they (a) were mentally ill and a danger to themselves or others and (b) were incompetent to decline the drugs, would be a reason to continue an appeal, but for this particular appellant, who has many such judgments, it is not. The determination that the stay pending appeal in S-13116 does not apply to the forced drugging order issued below in this appeal, and the Superior Court's and this Court's denials of Mr. Bigley's motion for a stay pending appeal here, means there is now no relief that this Court could order here that can't be provided in S-13116, which is now ripe for decision.

In addition to preventing being drugged against his will pending a determination of his rights in this appeal, Mr. Bigley sought three things in this appeal: (1) a decision reversing the Superior Court's conclusion that the forced drugging was in his best interests, (2) an order requiring the state to provide him with an available less intrusive alternative, and (3) a decision that the 90-day commitment order was improperly granted. Absent the currently pending appeal of S-13116, it would make sense to continue the appeal, especially to obtain an order requiring the state to provide Mr. Bigley with an available less intrusive alternative. However, S-13116 is currently ripe for decision and if Mr. Bigley does not obtain an order from this Court in that appeal requiring the State to provide an available less intrusive alternative, it does not seem possible to obtain such relief in this appeal. It is for these reasons Mr. Bigley moves to dismiss this appeal.

Appellate Rule 511(c) provides that a motion to dismiss under Appellate Rule 511(b) include a certification that the settlement information required under AS 09.68.130 and Appellate Rule 511(c) has been submitted to the Alaska Judicial Counsel unless exempted under AS 09.68.130 and Appellate Rule 511(e). Such information has not been provided because Mr. Bigley believes the certification requirement does not apply. First, civil commitment and forced drugging cases under AS 47.30 are the same sorts of cases exempted by both the statute and the rule and it appears the rule and statute overlooked them. Second, the type of information to be provided on the Judicial Counsel form is inapplicable to this type of case. Third, Appellee Alaska Psychiatric Institute (API) has cross-appealed the November 25, 2008, Order appealed here under Case No. S-13353 and therefore this case has not been resolved.

Dated this 16th day of January, 2009.

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