

In the Superior Court at Anchorage Alaska

**Media No.:** 3AN6108-190

**Judge:** W. Morse

**Date:** Tuesday, October 28, 2008

**Clerk:** S. Sawhill

**Case Title:** IN THE MATTER OF:

**Case Number:**

WB

3AN-08-01252PR

**Type of Proceedings:** Status

**Parties Present:** Assistant Attorney General: Laura Derry-Telephonic  
~~Robert~~ Gottstein  
 Jim

**Others Present:**

**Court Orders/Master Recommends:** State must respond by noon tomorrow when responds should be due  
 Grants motion to vacate tomorrow's hearing  
 Mr. Gottstein is order to have all immediate access to Mr. Bigley files and API must start generating copies of  
 Mr. Bigley's files from yrs. 07/08  
 All filings by parties need to be hand delivered to each other and filed in Chambers  
 Hearing on 838 Petition on 11-5-08 9 am at API and the court holds in abeyance having the hearing in the  
 Nesbett Courthouse Courtroom 601  
 Court to have the Public Defender present at hearing

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**Summary of Proceedings:**

9:39:42 AM	Court identifies case and parties -my understanding
9:40:10 AM	Gottstein -it was noticed that a closed proceeding and is public -there is no rule one way or the other <b>-AS 47 30 735 B 3 -reads</b> -the hearing b4 said wld be open
9:41:47 AM	Assistant Attorney General -no Objection  Gottstein -alright then I will go remove the sign  Court -okay then will be open
9:42:36 AM	-several days ago the 20 <sup>th</sup> there was a hearing w/Master Lack on a 30 day commitment and he

recommended approved  
-I listened to the CD and granted the petition the commitment and knew petition for medication  
-the state withdrew the original petition for medication

9:43:54 AM -received another petition this morning and master Duggan said would be a hearing and apptd  
the Public Defender as counsel and Office of Public Advocacy as visitor  
-Mr. Gottstein asked for a number of things and wanted tomorrows hearing vacated  
-probably need a Public Defender here

9:44:58 AM Gottstein  
-Mr. Bigley is entitled to being here

Court  
-that is fine what needed to find out the state's intent

9:45:36 AM Gottstein  
-can go forward w/some of the stuff and I didn't receive the new petition

Court  
-leaves bench to make copy

9:46:05 AM Off record

9:46:38 AM On record

9:46:49 AM Court questions

9:46:56 AM Gottstein  
-I handed delivered the motions at 8:45 am

Assistant Attorney General  
-didn't receive

9:47:17 AM Court  
-there is a motion to vacate tomorrows hearing and says happening to quickly  
-is a motion for SJ and affidavits and materials to support  
-state have a position on timing on recent petition  
-47 383 9

9:48:10 AM -hearing has to take place w/in 72 hrs once petition filed

9:48:21 AM Assistant Attorney General  
-on Friday I asked the petition for medication withdrawn  
-wanted to help him re-stabilized and release him and continue on with his life  
-I called the hospital yesterday and Dr. Khari had concerns had decompensate and had to follow  
statutory guidelines to medicate the way he was acting

9:49:35 AM -we have to move forward because API/Dr. feel still in crisis  
-need to have petition

9:50:23 AM Court questions

9:50:52 AM Assistant Attorney General  
-the Dr. could authorize several dosages within that 24 hrs and there would be 3 24 hr periods  
-the Dr. hasn't been doing that  
-trying to get him to eat and sleep and not he has been doing things that will harm him  
-hasn't requested multiple doses

-did one 24 hr dose

Court  
-we are entering the second 2/3 of the 72 hrs  
-when does state think a hearing on 838 petition

9:52:11 AM

9:52:27 AM Assistant Attorney General  
-tried to hold him but still in crises and worried about his due process  
-second petition yesterday by 10 am  
-passed 10 am on the 30<sup>th</sup>  
-trying to protect best interest of staff at API

9:53:34 AM -are we violating his due process  
-want the hearing tomorrow, yes

9:53:57 AM Court questions  
9:53:58 AM Gottstein  
-Re: Myers and Weatherhorn  
-his liberty interest with force medication and protection shouldn't be sacrificed  
-a week from today and I need to conduct discovery and review the chart  
-I got some of 2007 charts but no 2008 charts

9:55:44 AM -I don't know he has been there a little over a week  
-2007/2008 are the charts want  
-I don't know how much I have he has been there over a week  
-I have a fair amount till the first of Sept 2007 and may be gaps in it

9:56:56 AM -I want all 2007/08 to get the full picture  
-I don't know how many admissions  
-2008 probably 1/2 dozen admissions

9:57:32 AM Court questions  
9:57:34 AM Assistant Attorney General Derry  
-my concern is the date from April 2008  
-not sure but since April there 10 times  
-of those 10 I can't say exact amount of time  
-all initiated by the police dept

9:58:45 AM Court  
-I will say turn over the last yr of charts

9:58:59 AM Assistant Attorney General  
-can give him access and then don't have to make copies  
-he is his atty and can have access

9:59:29 AM Gottstein  
-I need copies

9:59:37 AM Court  
He can have immediate access but API needs to start generating copies  
-are you his exclusive sole atty

10:00:15 AM Gottstein  
-sole/legal with forced medication issues

10:01:00 AM Court  
-I am going to have the Public Defender participate  
-if due process trumps 72 hr provision and then have a hrg next Tues  
-can you respond?

Assistant Attorney General Derry  
-if what court finds due process trumps then the hospital will continue to treat

10:01:58 AM Court  
-need to hear your position

10:02:09 AM Assistant Attorney General  
-the hospital wants to move as quickly as possible because of giving the medication  
-want tomorrow

10:02:50 AM Court questions  
Assistant Attorney General Derry  
-if absolutely necessary state will medicate if appropriate and legally appropriate under 838  
-want to protect his health and mental illness  
-the stay and protecting him the hospital has made emergency only to protect him

Gottstein  
-b4 did this pursuant to 838 w/o legal predicate existing  
-need to discover what really happen  
-I need a opportunity

10:04:19 AM

Court  
-can immediately inspect charts and get copies  
-will get the ones generate w/in last 24 hrs , 2 weeks  
-the 838 authority not making rulings in advance  
-Monday or Wednesday better?

10:04:42 AM

Gottstein  
-want Wednesday

10:05:45 AM

Assistant Attorney General Derry  
-Wednesday is fine

10:05:54 AM

Court  
-granting motion to vacate tomorrows hearing and set at API 11-5 and Mr. Gottstein will have immediate access to charts  
-the two of you can arrange discovery

10:06:03 AM

Gottstein  
-concerns me to proceed w/Supreme court stay

10:07:24 AM

Court  
-if deny petition don't have to worry about stay if grant will address  
-will address old stay  
-say old stay trumps or new facts trumps

10:08:13 AM

-if say the new one supersedes then will grant a brief stay to allow Mr. Bigley to go to Supreme  
-better to reveal my tentative thoughts

10:09:55 AM

Gottstein

-it seems in light of this as a public proceeding any hearing here

10:10:16 AM

Court

-as of now will be heard at API

-I will explore that having it here

-I will set this at 9 am as well and will contact API and see if okay

-and will hold in abeyance hearing held in this bldg

10:11:57 AM

Gottstein

-state needs to responds to the SJ motion

10:12:12 AM

Court

-state needs to respond tomorrow at noon when responds shld be due

10:13:05 AM

Gottstein

-they tend to mail

Court

-hand deliver documents to other parties and file pleadings in chambers

10:14:05 AM

Gottstein

-confused about motion to dismiss

Court

-earlier petition was moot

10:14:46 AM

-can file something that say re-filing old is fine

10:15:02 AM

Off record