

BRIEFING POINTS

TO: Jay Ramras, Chair: House Judiciary Committee
Hollis French, Chair: Senate Judiciary Committee
Talis Colberg, Attorney General
RE: Myers & Wetherhorn Decisions & Related Matters
FROM: James B. Gottstein, Esq.
DATE: February 7, 2007

SUMMARY

Due to the abject failure of the Public Defender Agency to assert the rights of its AS 47.30 clients, Alaska's involuntary commitment and forced drugging process operates largely illegally. The Law Project for Psychiatric Rights (PsychRights) was formed in late 2002 to mount a strategic litigation campaign against unwarranted forced psychiatric drugging. The first two Alaska Supreme Court Decisions arising out of this litigation campaign recently recognized the unconstitutional nature of these proceedings. The objective of this briefing is to facilitate bringing Alaska into legal compliance without, or minimal, additional litigation.

Myers v. API, 138 P.3d 238 (Alaska 2006)

- Held AS 47.30.839 forced psychiatric drugging provisions unconstitutional for failure to require *the court* to find by *clear and convincing evidence* that:
 - (a) it is in the best interests of the person sought to be forcibly drugged, and
 - (b) there are no less restrictive alternatives (available).¹

Wetherhorn v. API, Opinion No. 6091 (January 12, 2007)

- Held people can only be involuntarily committed for being "gravely disabled," if they are "*unable to survive safely in freedom*," essentially invalidating the definition of "gravely disabled" in AS 47.30.915(7)(B).
 - Petition for Rehearing filed with respect to why commitment was not vacated in light of no evidence meeting standard and Court asked the State to respond.
 - Petition for *certiorari* to the US Supreme Court possible on ruling that API does not have to identify witnesses before hearing.
 - Court held direct appeal not proper procedure for attacking effectiveness of counsel (which it found constitutionally required).

MOST IMPORTANT PROSPECTIVE PROCEEDINGS

- Lack of Constitutionally Required Alternatives
- Ineffective Assistance of Counsel
- Psychiatric Drugging of Children in State Custody
- API's Flouting of *Myers*
- Illegal Use of *Ex Parte* proceedings
- Universal Failure to Obtain Informed Consent

¹ It is pretty clear the less restrictive alternative requirement prohibits involuntary commitment and forced drugging if the alternative could be made available, but the State chooses not to (presumably within limits of reasonableness). If the State disagrees, litigation establishing this will likely ensue.