

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

In the Matter of:)
)
William S. Bigley,)
)
Respondent.)
_____)

REC'D JAN 26 2009

Case No. 3AN-08-01252PR

ORDER

Motion to Clarify Status of November 20 & 21, 2008 Hearings

James Gottstein is William Bigley's counsel regarding API's petition to administer psychotropic medication to him. Gottstein does not represent Bigley regarding API's petitions to commit him for 30 or 90 days; the Public Defender Agency does. The Court held a lengthy hearing on the medication petition. Bigley, through Gottstein, asked that the hearing be open to the public, pursuant to AS 47.30.735(b)(3). The Court opened the hearing.¹

On 20 and 21 November 2008 the Court held hearings regarding the requested 90-day commitment. The Public Defender Agency represented Bigley at those hearings. The Court did not address whether the hearing should be open or

¹ Bigley's rights at a hearing on a petition for a 30-day commitment are specified in AS 47.30.735. He could elect to have the hearing open or closed to the public. AS 47.30.735(b)(3). He had the same rights at the hearing on a petition for a 90-day commitment. AS 47.30.745. The statute that allows the State to seek court approval of the administration of psychotropic medication after a hearing does not address whether the hearing should be open or closed. Nor does it allow for (or preclude) an election as in commitment hearings. AS 47.30.839. Gottstein, API, and the Court all proceeded as if AS 47.30.735 applied to the medication hearing.

closed. No party raised the subject. No member of the public attempted to attend the hearing.

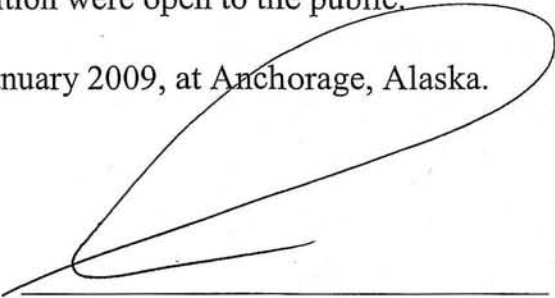
Gottstein now seeks clarification of whether those hearings were open or closed to the public. Traditionally, as a matter of practice, the Court understands that these hearings have been closed. That has most likely been because the institutional parties (i.e., the Department of Law, representing API, and the Public Defender Agency, representing the patient) having been comfortable with closed hearings.

API had opposed having the medication hearing open. The Public Defender Agency had opposed allowing Gottstein to enter a limited appearance for the medication petition. It is fair to assume that had these two entities been involved in the medication hearing, rather than Gottstein, there would have been no request for an open hearing. The Court is not suggesting that when Gottstein requested that the hearing be open that he was acting on his own behalf, rather than on behalf of Bigley. The Court accepted Gottstein's representation that he was articulating Bigley's desire, as expressed at some earlier point in time when Bigley was more cogent.

The statutes do not create a default of either a closed or open hearing. Instead, AS 47.30.735(b)(3) allows the patient to choose. If the Court had addressed the status of the 90-day commitment hearing at the time, and if it had no assertion of a new election by Bigley, it would have found that the hearing should be open. It would have inferred from Bigley's desire concerning the medication

hearing (held only a few days earlier) that he would want the subsequent commitment hearing to be open as well. Much, but not all, of the evidence relating to the medication issue was germane to the commitment issue. There is no obvious reason why a person would differentiate between the two hearings, electing to have one open and the other closed. Thus the Court concludes that the November hearings on the 90-day commitment petition were open to the public.

DONE this 23rd day of January 2009, at Anchorage, Alaska.



William F. Morse
Superior Court Judge

I certify that on 23 January 2009
a copy of the above was mailed to
each of the following at their
addresses of record:

AG-Derry
Gottstein
PD – Gillian-Gibson

 Ellen Bozzini
Judicial Assistant