

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

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

In the Matter of  
A Request for Information

Case No. 3AN-16-00695DN

**ALASKA PUBLIC DEFENDER AGENCY'S COMMENTS ON COURT'S  
PROPOSED ORDER DATED NOVEMBER 4, 2019**

The Public Defender Agency joins in the comments of the Alaska Psychiatric Institute.<sup>1</sup> The Agency also contends that the requiring the Alaska Public Defender Agency to seek consents is outside the scope of the Agency's permissible representation and would impermissibly interfere with the attorney-client relationship. The court should set a short evidentiary hearing to develop the record regarding the court's proposal and the potential harmful impact of this process on the respondents.

The proposal that Agency attorneys assist in obtaining consents from clients would violate the Agency's authorizing statute. Alaska Statute 18.85.100 governs the scope of the Agency's work on behalf of its clients. The key parts of the statute describe the Agency's responsibilities:

(a) An Indigent person . . . against whom commitment proceedings for mental illness have been initiated, is entitled

(1) to be represented, in connection with the . . . proceeding, by an attorney to the same extent as a person retaining an attorney is entitled; and

---

<sup>1</sup> API Comment on Court's Proposal of November 4, 2019 (November 20, 2019).

Alaska Public Defender Agency  
Linda R. Beecher • linda.beecher@alaska.gov  
900 W. 5th Avenue, Suite 200 • Anchorage, AK 99501  
Phone: (907) 334-4438 • Fax: (907) 868-2588  
Service: PdaCivilDivision@alaska.gov

1  
2 (2) to be provided with the necessary services and facilities of this  
3 representation, including investigation and other preparation.<sup>2</sup>

4 The Agency's representation is made at "public expense." Nothing in this statute  
5 authorizes Agency attorneys to undertake legal work to obtain consents for the study  
6 proposed by Dr. Gotzsche. The study has nothing to do with defending a respondent  
7 in the civil commitment case and compelling the Agency's attorneys to cooperate in  
8 this effort would take away already scarce resources from existing clients.  
9

10 The court's proposal also implicates the ethical obligations of attorneys. In  
11 representing respondents in civil commitment matters the Agency follows rules  
12 governing the representation of clients with impaired capacity.<sup>3</sup> Those rules provide:

13 (a) When a client's capacity to make adequately considered decisions  
14 in connection with a representation is impaired, whether because of  
15 minority, mental impairment, or for some other reason, the lawyer shall,  
16 as far as reasonably possible, maintain a normal client-lawyer  
relationship with the client.<sup>4</sup>

17 However, in those cases where the client is at risk of "substantial physical, financial,  
18 or other harm unless action is taken" the attorney can take "protective action."<sup>5</sup> It is  
19 not hard to imagine that some of the Agency's clients could be detrimentally  
20 impacted by being asked to participate in the study. If the attorney felt this were the  
21 case, the attorney could reasonably decide, in accordance with ethical rules, that it  
22 was not appropriate to seek the client's consent. Requiring attorneys to seek  
23

24  
25  
26 <sup>2</sup> AS 18.85.100.

27 <sup>3</sup> AK R. Prof. Conduct 1.14.

28 <sup>4</sup> *Id.*

<sup>5</sup> *Id.*

Alaska Public Defender Agency  
Linda R. Beecher • linda.beecher@alaska.gov  
900 W. 5th Avenue, Suite 200 • Anchorage, AK 99501  
Phone: (907) 334-4438 • Fax: (907) 868-2588  
Service: PdaCivilDivision@alaska.gov

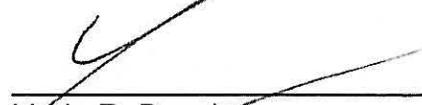
1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

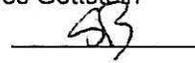
consents could also unduly interfere with the attorney-client relationship in the representation in the civil commitment proceeding and have unintended consequences regarding the respondent's legal position in any ongoing litigation.

The court has asked about the practicality of its order. To understand what the court's proposal would look like in practice it should hear from both the clinicians at the Alaska Psychiatric Institute and the attorneys who might be asked to obtain consent. Accordingly, the court should set a short evidentiary hearing to address these issues.

ALASKA PUBLIC DEFENDER AGENCY

DATE 11/25/19

  
\_\_\_\_\_  
Linda R. Beecher  
Deputy Public Defender  
Alaska Bar No. 8606041

I certify that on 11/25/19 a copy of this document and its attachments was served as follows: delivered to: AG-Bookman; emailed to: lawtitle47.30@alaska.gov; and mailed to: James Gottstein  
By: 

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

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

In the Matter of  
A Request for Information

Case No. 3AN-16-00695DN

**ORDER FOR SCHEDULING CONFERENCE**

A scheduling conference is set for:

---

Before the Honorable William Morse in courtroom 601.

Parties may appear telephonically by calling:

---

DATE \_\_\_\_\_

\_\_\_\_\_  
SUPERIOR COURT JUDGE

**Alaska Public Defender Agency**  
Linda R. Beecher • linda.beecher@alaska.gov  
900 W. 5th Avenue, Suite 200 • Anchorage, AK 99501  
Phone: (907) 334-4438 • Fax: (907) 868-2588  
Service: PdaCivilDivision@alaska.gov