

1 competency restoration. Two defendants had been awaiting transport for 8 days and one had
2 been waiting 37 days at the time of the hearing.

3 4. On September 25, 2014, Judge Weiss ruled on these matters. I was present
4 telephonically for this ruling.

5 5. In the cases where defendants had been waiting 8 days at the time of the
6 hearing, the court did not find a due process violation and denied the motion for immediate
7 transport. He determined that Wash. Rev. Code § 10.77.220 applies only to NGRIs and that
8 the timeframes in Wash. Rev. Code § 10.77.068 are merely targets, and Washington law is
9 silent on a hard deadline for transport for competency restoration. He also noted that the
10 statutory scheme in Washington was different than the scheme in Oregon at the time of *Oregon*
11 *Advocacy Center v. Mink* and therefore did not find *Mink* on point. He referenced the *Weiss v.*
12 *Thompson* case extensively as the guidepost in Washington.

13 6. In the third matter, where the defendant had been waiting 37 days at the time of
14 the hearing, and 48 days at the time of his ruling, he found a due process violation does exist,
15 beginning at the 45th day. Judge Weiss ordered immediate transport to WSH for this
16 defendant.

17 7. To reach the due process violation, Judge Weiss conducted a balancing test
18 between the government’s compelling interest in detention and the individual’s right to liberty.
19 He considered the seriousness of the underlying criminal allegations as well as evidence of the
20 individual’s mental health status to aid in his determination. Judge Weiss ruled that due
21 process is a case-by-case determination, dependent on the specific facts of a case.

22 8. Additionally, Judge Weiss did not find that WSH had acted inappropriately or
23 in bad faith.

24 9. Judge Weiss, as part of his oral ruling, noted that courts all over Western
25 Washington are considering this issue, and that different trial judges may come to different to
26

1 conclusions. He noted because of that, it is imperative for this issue to be considered by the
2 higher courts.

3 10. Judge Weiss also stated his belief that the short term solution is for Prosecuting
4 Attorneys to more thoroughly assess their cases, determining whether and which defendants
5 really should be held given the long wait times.

6 11. At the conclusion of the case, defense counsel, Cassie Trueblood (next friend of
7 A.B.), requested the court to certify the issue as a controlling issue of law that warrants
8 immediate review at the appellate level pursuant to RAP 2.3(b)(4). The court did so certify.

9 12. Defense counsel has ordered a transcript of the ruling and detailed findings of
10 fact and conclusions of law will be prepared by the parties for entry by the court. Those have
11 not yet been entered as of this writing.

12 13. On September 5, 2014, Judge Patrick Oishi in King County Superior Court
13 ruled on a motion by defense for contempt and immediate transport in the case of Q.M., a
14 named plaintiff. I represented DSHS and WSH in this matter and was present for the hearing.

15 14. Judge Oishi found that defense’s reliance on Wash. Rev. Code 10.77.220 was
16 misplaced because the seven day requirement applies to Not Guilty by Reason of Insanity
17 (NGRI) cases. The court did not find substantive due process violations nor did it find WSH in
18 contempt. The court found that the specific factual and procedural circumstances of the case
19 and the principles of equity and fairness necessitated immediate transport, and so ordered.
20 Attached is a true and correct copy of that court order. Attach. A.

21 15. On September 22, 2014, Judge Oishi held a review hearing to determine
22 whether Q.M. had been transported to WSH as ordered by the court. As of that date, Q.M. had
23 not. Defense brought a motion again for sanctions, and again the court denied imposing those
24 sanctions, but reserved ruling on a finding of contempt. Judge Oishi expressed his frustration
25 with the current system and the lack of viable, effective solutions. He inquired whether he
26 should certify this question as a controlling issue of law that warrants immediate review at the

1 appellate level pursuant to RAP 2.3(b)(4), though he did not so certify at this hearing. Based
2 on consultation with WSH, defense proposed that Q.M. be granted temporary release from jail
3 until his admission date for competency restoration. Judge Oishi agreed he would consider this
4 solution if a motion is brought before the court by defense and prosecution. That motion is
5 scheduled to be heard by Judge Oishi on October 6, 2014.

6 16. On September 10, 2014, Judge Gary Tabor in Thurston County Superior Court
7 ruled on a motion by defense for contempt, due process violations, and immediate transport in
8 the case of K.R., a named plaintiff. I represented the DSHS and WSH in this matter and was
9 present for the hearing.

10 17. Judge Tabor provided an oral ruling indicating he did not find WSH in
11 contempt. He indicated the Wash. Rev. Code § 10.77.220 applies to NGRI patients only, and
12 Wash. Rev. Code § 10.77.068 sets a seven day target that does not form a basis for sanctions,
13 but indicates a guideline that reasonable minds can agree upon. Judge Tabor further found that
14 there is a philosophical problem in ordering one defendant over another, when he knows others
15 are waiting, and did not order immediate transport. Judge Tabor inquired whether other
16 actions were on appeal, and stated it would be helpful to know what other courts are doing. He
17 noted it is a statewide issue that necessitates thoughtful and creative solutions, such as
18 temporary release, a State dismissal without prejudice, or a dismissal pursuant to CrR 8.3(b).
19 Judge Tabor expressed his frustration with the current system and wanted to be able to find a
20 solution. Following a brief consultation between defense counsel and myself, defense
21 proposed to the court that K.R. could possibly be placed on temporary release to the
22 community until reaching his admission date for competency restoration. On September 26,
23 2014, defense counsel communicated that the request for temporary release was granted, and
24 K.R. was released to the community pending his bed date. He was admitted to WSH on
25 October 3, 2014.
26

1 18. On September 2, 2014, Judge Vicki Hogan in Pierce County Superior Court
2 ruled on a motion requesting that DSHS and WSH be held in contempt in the case of S.H.
3 Attached is a true and correct copy of that September 2, 2014 Pierce County Superior Court
4 order, which holds that Wash. Rev. Code § 10.77.220 controls criminal defendants awaiting
5 competency services, that the Department failed to comply with the courts order and the
6 statutory timeline, and levying remedial and punitive contempt sanctions. Attach. B. A notice
7 of appeal has been filed in this case, requesting that the Washington State Court of Appeals
8 review the court's order.

9 19. In the past few months, WSH has appeared in show cause hearings in King,
10 Pierce, Snohomish, Thurston, and Kitsap counties. We have appeared in superior, district and
11 municipal courts. The state courts are not making consistent findings on the statutory
12 timelines, the existence or not of due process violations, or the appropriate remedies if
13 violations or contempt are found. State courts would greatly benefit from clarification of these
14 several issues at the appellate level.

15 I declare under penalty of perjury under the laws of the State of Washington that the
16 foregoing is true and correct to the best of my knowledge.

17 DATED at Tumwater, Washington, this 6th day of October, 2014.

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20 _____
21 AMBER L. LEADERS, WSBA No. 44421
22 Assistant Attorney General
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24
25
26

CERTIFICATE OF SERVICE

Beverly Cox, states and declares as follows:

I am a citizen of the United States of America and over the age of 18 years and I am competent to testify to the matters set forth herein. I hereby certify that on this 6th day of October 2014, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following:

David Carlson: davide@dr-wa.org

Emily Cooper: emilyc@dr-wa.org

Sarah A. Dunne: dunne@aclu-wa.org

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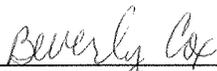
Anita Khandelwal: anitak@defender.org

Christopher Carney: Christopher.Carney@CGILaw.com

Sean Gillespie: Sean.Gillespie@CGILaw.com

I certify under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

Dated this 6th day of October 2014, at Olympia, Washington.



BEVERLY COX
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