RECENT INVOLUNTARY COMMITMENT CASE LAW

This memorandum discusses a 1999 United States Supreme Court case relating to the application of the federal Americans with Disabilities Act to individuals with mental disabilities. This memorandum also discusses case law relating to other issues relating to involuntary civil commitment laws of other states.

OLMSTEAD V. L.C.

Olmstead v. L.C., 527 U.S. 581 (1999), is a United States Supreme Court case regarding discrimination against people with mental disabilities. In this case, the Court held under the federal Americans with Disabilities Act, 42 U.S.C. 126, individuals with mental disabilities have the right to live in the community rather than in institutions if, in the words of the opinion of the Court, "the State's treatment professionals have determined that community placement is appropriate, the transfer from institutional care to a less restrictive setting is not opposed by the affected individual, and the placement can be reasonably accommodated, taking into account the resources available to the State and the needs of others with mental disabilities." The case was brought by the Atlanta Legal Aid Society, Inc.

In this case the Court decided mental illness is a form of disability and that "unjustified isolation" of a person with a disability is a form of discrimination under Title II of the federal Americans with Disabilities Act. The Court held that community placement is only required and appropriate when "[a] the State's treatment professionals have determined that community placement is appropriate, [b] the transfer from institutional care to a less restrictive setting is not opposed by the affected individual, and [c] the placement can be reasonably accommodated, taking into account the resources available to the State and the needs of others with mental disabilities. Unjustified isolation is discrimination based on disability."

About 10 years after the Olmstead decision, the State of Georgia and the United States Department of Justice entered a settlement agreement to cease all admissions of individuals with developmental disabilities to state-operated, federally licensed institutions ("State Hospitals") and, by July 1, 2015, "transition all individuals with developmental disabilities in the State Hospitals from the Hospitals to community settings," according to a Department of Justice fact sheet about the settlement. The settlement also calls for serving 9,000 individuals with mental illness in community settings.

Other entities and jurisdictions have also reached settlement agreements with the Department of Justice regarding the Olmstead decision, including United Cerebral Palsy of Oregon and Southwest Washington (2015), Marion County Nursing Home District in Missouri (2013), Laguna Honda Hospital and Rehabilitation Center in San Francisco (2008), Rhode Island (2014), New Hampshire (2014), New York (2013), Texas (2013), Virginia (2012), Delaware (2010), North Carolina (2012), Nebraska (2008), and Puerto Rico (1999). The settlement agreements were reached as a result of complaints or suits filed in the various jurisdictions while others were the result of findings letters issued directing the entity or jurisdiction to comply with the Olmstead decision. Attached as Appendix A is a list of the cases around the country, by issue, relating to the enforcement of the Olmstead decision.

INVOLUNTARY CIVIL COMMITMENT LAWS

Generally speaking, there are three reasons why an individual would be subject to involuntary civil commitment under modern statutes--mental illness, developmental disability, and substance addiction. In the case of mental illness, dangerousness to self or others defines the typical commitment standard, with almost all states construing the inability to provide for one's basic needs as dangerousness to self. In terms of process, every state provides for a hearing, the right to counsel, and periodic judicial review, while most states have statutory quality standards for treatment and hospitalization environment.

North Dakota's law regarding involuntary civil commitment of mentally ill individuals is contained in North Dakota Century Code Chapter 25-03.1. Section 25-03.1-02(12), however, specifically exempts an individual with an intellectual disability from the definition of mentally ill person:

> "Mentally ill person" or "person who is mentally ill" means an individual with an organic, mental, or emotional disorder that substantially impairs the capacity to use self-control, judgment, and discretion in the conduct of personal affairs and social relations. The term does not include an individual with an intellectual disability of significantly subaverage general intellectual functioning that originates during the developmental period and is associated with impairment in adaptive behavior, although an individual who is intellectually disabled may also be a person who is mentally ill. Chemical dependency does not per se constitute mental illness, although a person who is chemically dependent may also be a person who is mentally ill.

In 2014 the Treatment Advocacy Center published a report entitled *Mental Health Commitment Laws: A Survey of the States* (Appendix B). This publication examined the laws each state uses to determine who within its population might qualify to receive involuntary treatment and for what duration and graded each state on two measures of the state's response to the mental health treatment--"Quality of Involuntary Treatment" and "Use of Involuntary Treatment Laws." Pages 28 and 29 of this report contain the state-by-state grades in each area.

INVOLUNTARY CIVIL COMMITMENT CASE LAW

The following are several examples of state and federal court decisions relating to various nuances involving involuntary civil commitment laws:

- **Involuntary Commitment Law for Intellectually Disabled** - On October 15, 2015, in *J.R. v. Hansen*, 2012 WL 1886438, the 11th Circuit Court of Appeals declared Florida's involuntary commitment law for people with intellectual disabilities unconstitutional because it does not provide for periodic review of the continued confinement. In this case, an individual involuntarily admitted to "non-secure" residential services brought an action against the Agency for Persons with Disabilities facially challenging the constitutionality of Florida's statutory scheme for involuntarily admitting intellectually disabled persons to residential services. The 11th Circuit said Florida's law "is constitutionally infirm because it does not require periodic review of continued involuntary commitment by a decision-maker with the duty to consider and the authority to order release."

- **Jury Trial** - In the Wisconsin case of *In re Mary F.*, 839 N.W.2d 581 (WI 2013), the county filed for involuntary commitment of an individual. The Wisconsin Supreme Court held the equal protection challenge to the state statute that requires only a six-person jury for involuntary commitment proceeding with five of six needed for a determination, as compared to statute governing civil commitment of sexually violent persons which provided for 12-person jury and requirement of unanimity, was subject to rational basis review. The court also held the statutory distinction between the rights to a jury trial for commitment of mentally ill for involuntary treatment and sexually violent persons did not violate equal protection.

- **Least Restrictive Alternative Placement** - In the case of *In re Joan K.*, 273 P.3d 594 (AK 2012), a physician sought the involuntary commitment of a patient for mental health treatment. The patient appealed the superior court's 30-day commitment order. The Alaska Supreme Court affirmed the lower court decision holding clear and convincing evidence supported finding that the patient suffered from a mental illness and as a result she posed a substantial risk of bodily harm to herself and evidence supported the finding that involuntarily committing the patient for treatment at a mental health hospital was the least restrictive alternative placement.

  In 2014 a similar case was decided by the Montana Supreme Court. In this case, *In re S.M.*, 339 P.3d 23 (MT 2014), the state petitioned for involuntary commitment of a mental health patient who suffered from bipolar disorder. The patient appealed from the district court's involuntary commitment order. The Montana Supreme Court held the evidence was sufficient to support a finding that the patient was substantially unable to care for her own health and safety and the evidence was sufficient to support a finding that commitment of the patient to the state hospital was the least restrictive placement option.

- **Due Process** - In the Arizona case of *In re MH*, 236 P.3d 405 (AZ 2010), the Supreme Court held the admission of telephonic testimony by the evaluating physician at the commitment hearing did not deprive the patient of procedural due process.

- **Minors** - In 2010 in the case of *In re F.C. III*, 2 A.3d 1201 (PA 2010), a minor sought the review of a county court order committing him to involuntary drug and alcohol treatment. The Pennsylvania Supreme Court held the statute permitting a parent or guardian to petition for commitment of minor to involuntary drug and alcohol treatment services did not violate due process protections required by the Fourteenth Amendment and the minor's due process rights were not violated by virtue of his shackling, restraint, and detention during the hearing on the petition.