

On March 7, 2011, the SJC announced its decision in the case of [*Kirk v. Commonwealth*](#), 459 Mass. 67 (2011).

The question before the court was whether commitment hearings brought under G.L. c. 123, § 16(c) should be open to the public and, if so, under what circumstances, if any, could the public be excluded.

The court decided that civil commitment proceedings, pursuant to § 16(c), are presumptively open to the public as a matter of common law. However, upon motion of either party, a hearing or portion of a hearing may be closed if the court finds that the party has “an overriding interest that is likely to be prejudiced” in a public hearing. The trial court first must consider reasonable alternatives to closure, but if closure is allowed, it must be “no broader than necessary to protect that interest.” The court must make specific findings adequate to support closure. The court can close a portion of the hearing if that will suffice to protect the party’s overriding interest in closure.

In considering the specific concerns that might be raised by a respondent seeking closure, the SJC said that the trial judge should take account of any alleged prejudice to a patient’s treatment and therapeutic progress that could come about by virtue of the public disclosure of the patient’s medical information. The patient has the burden of demonstrating that prejudice is likely to occur.

Although the Kirk case was limited on its facts to proceedings brought under section 16(c), we believe that the decision applies to all commitments under G.L. c. 123.

The SJC did not address the location of the “public hearing.” Furthermore, the SJC noted that the civil commitment statute permits, at G.L. c. 123, § 5, hearings to be held at the facility, or Bridgewater State Hospital. However, Judge Minehan has informed Bridgewater that the current arrangement for conducting hearings inside the administration building of the state hospital does not afford the public adequate access to hearings. The hospital imposes a very strict and intimidating Department of Corrections scrutiny of all persons who attempt to enter. She has informed the hospital that she expects to conduct all Bridgewater hearings at the court house.

We believe that the private hospitals and DMH are planning to hold their hearings in public spaces within each facility that are not on locked units, or hold them at the court house.

We have always believed that holding commitment hearings at psychiatric facilities was a violation of our clients’ equal protection and due process rights, a violation of the Americans with Disabilities Act, and not in our client’s best clinical interests. We believe that this ruling can be an effective mechanism by which this pernicious practice can be ended once and for all. Hearings at the courthouse are clearly the most “publicly accessible” hearings.

In every case in which a hearing is scheduled to be conducted at a facility, we suggest that counsel explain to his or her client that, if the client wishes, counsel will move to hold the hearing in court. Obviously, counsel must explain that the hearing will be open to the public, as it would be at the facility. Counsel should discuss the Kirk criteria regarding closure and take appropriate steps in accordance with the client’s wishes, regardless of “venue” – courthouse or facility.

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