

## Psychiatric Commitment Denied: Disabled Resident Able To Sue For Malicious Prosecution.

A quadriplegic who has had bilateral leg amputations is a resident of the local county rehab facility. He has no use of his arms but can move his hands a little and can turn his head slightly from side to side.

Despite his physical limitations he is reportedly fully alert and his cognitive functioning is completely intact.

He has been able to communicate with staff, interact socially with other residents, participate in activities and actually ran for election and was elected president of the residents' council.

### Flurry Complaints

#### Leads to Psychiatric Commitment

After his election as patient representative the resident reportedly began a campaign of persistent complaints and reports about conditions at the facility such as alleged inadequate staffing.

After tolerating this behavior for several months the director of the facility reached the limit of his patience.

The director filed a petition with the local probate court to have the resident involuntarily committed to a psychiatric hospital, allegedly for drug and alcohol abuse, threats of self-harm and violent acting-out toward the caregiving staff in the facility.

***Malicious prosecution can be the basis for a civil lawsuit asking for payment of damages.***

***Malicious prosecution occurs when a legal proceeding, civil or criminal, is lodged against another person without probable cause and with malicious intent and the proceeding ends in favor of the person against whom it was lodged.***

***Probable cause for filing a mental health petition against another person is not proven by the mere fact the police came and took the person into custody.***

***To sue for malicious prosecution it is generally required that the legal proceeding resulted in consequences above and beyond the annoyance and expense of successfully defending the legal proceeding itself.***

CIRCUIT COURT, JEFFERSON COUNTY  
ALABAMA  
July 7, 2008

One glaring legal deficiency in the whole process, right off the bat, was that the resident, his attorney and his guardian *ad litem* were never notified of the petition. The resident only found out about it when the police came to the facility and forcibly removed him to the local state hospital.

A court hearing was held at the state hospital about a week after the resident was placed there. The director of the resident's facility did not bother to appear.

The judge reached a decision solely on the basis of the resident's own lucid testimony at the hearing that there were no grounds for involuntary detention for further psychiatric evaluation or mental health treatment.

The resident was returned to the facility under the auspices of a protective order which now bars any changes in his placement without permission from the probate court.

Nevertheless, the resident has suffered a definite degree of isolation and ostracism from staff and other residents.

He also was not able to return to his private room which was given to someone else. Above and beyond the loss of personal privacy his sleep has been affected as he now has a roommate who must be tended to during the night by facility staff.

The jury in the Circuit Court, Jefferson County, Alabama awarded a verdict of \$60,000 as compensatory damages and \$20,000 more as punitive damages. ***Evans v. Walker, 2008 WL 5685463 (Cir. Ct. Jefferson Co., Alabama, July 7, 2008).***