



of release from detention until such time as S.D.I. can be afforded his right to trial by jury. The grounds for this motion are:

#### **BACKGROUND**

1. The Supreme Court of Wisconsin, in the order, In Re the Matter of Jury Trials During the COVID-19 Pandemic, dated March 22, 2020, has suspended all jury trials statewide until May 22, 2020;
2. S.D.I. was detained March 6, 2020, pending a preliminary hearing in the above-captioned alcohol commitment matter, by a Circuit Court order temporarily committing him under 51.45(13)(b)3;
3. S.D.I. appeared at a probable cause hearing on March 10, 2020, and the Circuit Court made a finding of probable cause and set the date for jury trial to be Tuesday, March 24, 2020;
4. The Circuit Court ruled on March 23, 2020, that it will not proceed with a jury trial;
5. The Circuit Court has ruled that it will only proceed with a bench trial in this case on March 24, 2020;
6. S.D.I. filed a Motion to Dismiss the Petition, attached and incorporated by reference with the request that it be filed under seal, in the Sauk County Circuit Court on March 23, 2020, citing his right to jury trial, the statutorily mandated time limits for holding his trial, and, specifically,

the Circuit Court's inability to hold a jury trial within the time limits mandated by Wis. Stat. § 51.45;

7. S.D.I.'s Motion to Dismiss the Petition was denied by the Circuit Court in an Order dated March 23, 2020, attached and incorporated by reference with the request that it be filed under seal due to the inclusion of S.D.I.'s full name.

8. S.D.I. also argued in his Motion to Dismiss the Petition to the Circuit Court that because, in the event of a commitment order on March 24, 2020, treatment cannot begin immediately due to facility changes resulting from the current COVID-19 pandemic, the County cannot satisfy its burden under Wis. Stat. § 51.45(13)(g)2, which provides that the Circuit Court "may not order commitment of a person unless it is shown by clear and convincing evidence that ... the county department is able to provide appropriate and effective treatment for the individual."

9. The Circuit Court found that argument regarding the availability of appropriate and effective treatment was premature.

#### **REASONS FOR RELIEF**

6. The trial in an alcohol commitment is presumed to be to a jury unless the subject elects to waive his or her right to trial by jury. Wis. Stat. § 51.45(13)(f);

7. The final hearing must be held within fourteen (14) days of the Court's finding of probable cause. Wis. Stat. § 51.45(13)(e). That same section states that "[a]n extension of not more than 14 days may be granted upon motion of the person sought to be committed upon a showing of cause." No other statutory provisions for extension exist;

8. S.D.I.'s right to trial by jury in this matter within fourteen (14) days is both statutory and constitutional. 51.45(13)(e) It is well settled in Wisconsin that a subject-individual's liberty is at stake in a civil commitment proceeding. *Lessard v. Schmidt*, 349 F. Supp. 1078, 1097 (1972) (which concluded that the Wisconsin civil commitment procedure was constitutionally defective in part because it " . . . permit[ted] detention longer than two weeks without a full hearing on the necessity for commitment . . . .");

9. S.D.I. has not and will not be requesting an extension for his jury trial, and he has not waived his right to trial by jury in this matter, nor will he do so;

10. Under the current, unprecedented public health circumstances and existing orders of the Court, S.D.I. will not be afforded his full procedural due process and statutory rights. Without the existence of a statutory mechanism for relief, he will be forced to proceed to a bench trial against

his will or to languish in detention until such time as a jury trial can be held.

Dated this 23<sup>rd</sup> day of March, 2020

Respectfully submitted,



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Attorney for S.D.I.  
Assistant State Public Defender  
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cc:

Hon. Wendy J.N. Klicko  
Mr. S.D.I.  
Sauk County Department of Human Services  
Attorney Jesse Leichsenring

FILED  
03-23-2020  
Sauk County WI  
Register In Probate  
2020ME000013

STATE OF WISCONSIN      CIRCUIT COURT      SAUK COUNTY

In Re the Condition of  
Scott D. Imhoff  
DOB 2/25/1959

Case No. 20ME13

RECEIVED

MAR 23 2020

NOTICE OF MOTION AND MOTION  
TO DISMISS THE PETITION

CLERK OF SUPREME COURT  
OF WISCONSIN

The subject, Mr. Scott D. Imhoff, appearing specially by his attorney and reserving his right to challenge the court's jurisdiction, moves the court for an order dismissing the petition filed against him.

IN FURTHER SUPPORT, Mr. Imhoff asserts:

1. The Supreme Court of Wisconsin, in the order, In Re the Matter of Jury Trials During the COVID-19 Pandemic, dated March 22, 2020, has suspended all jury trials statewide until May 22, 2020;
2. The Supreme Court of Wisconsin issued a second order, In Re the Matter of Remote Hearings During the COVID-19 Pandemic, on March 22, 2020, suspending certain in-person proceedings for the same amount of time;
3. Mr. Imhoff was detained March 6, 2020, pending the preliminary hearing in this matter, by an order temporarily committing him under 51.45(13)(b)3;
4. Mr. Imhoff appeared at a probable cause hearing on May 10, 2020, and the Court made a finding of probable cause and set the date for the final hearing to be Tuesday, March 24, 2020;
5. The final hearing must be held within fourteen (14) days of the Court's finding of probable cause, 51.45(13)(e). That same section states that "[a]n extension of not more than 14 days may be granted upon motion of the person sought to be committed upon a showing of cause." No other statutory provisions for extension exist;
6. Mr. Imhoff's right to trial by jury in this matter within fourteen (14) days is both statutory and constitutional. 51.45(13)(e) It is well settled in Wisconsin that a subject-individual's liberty is at stake in a civil commitment proceeding. *Lessard v. Schmidt*, 349 F. Supp. 1078, 1097 (1972) (which concluded that the Wisconsin civil commitment procedure was constitutionally defective in part because it "... permit[ted] detention longer than two weeks without a full hearing on the necessity for commitment . . .");
7. Mr. Imhoff has not and will not be requesting an extension for trial, and he invoked his right to trial by jury in this matter and is not waiving that right;

- 8. The Sauk County Circuit Court will violate Wis. Stat. § 51.45(13)(e) if it fails to hold a jury trial within fourteen (14) days of the probable cause finding;
- 9. On information and belief, even if an Order of Commitment were to be entered on March 24, 2020, due to the current public health crisis and bed availability, there are currently no beds available for treatment in the Tellurian residential treatment facility, the treatment facility to which the County is seeking to admit Mr. Imhoff. Therefore, the County cannot satisfy the requirement under 51.45(13)(g)2. that "the county department is able to provide appropriate and effective treatment for the individual." It is also not known at this point, in light of the current public health crisis, when that facility would be able to accommodate Mr. Imhoff, if at all;
- 10. The Court may not order commitment under Wis. Stat. § 51.45 unless the County can show by clear and convincing evidence that the county department is able to provide appropriate and effective treatment for Mr. Imhoff;

The Court cannot comply with the Orders of the Supreme Court of Wisconsin suspending jury trials and in-person appearances and afford Mr. Imhoff the full scope of his Constitutionally guaranteed due process rights. Nor can the Court comply with the time limits and rights mandated by the laws of the State of Wisconsin. In the interest of justice, this petition must be dismissed.

WHEREFORE, Mr. Imhoff respectfully requests that the Court dismiss the petition against him.

Dated this 23<sup>rd</sup> day of March, 2020 at Baraboo, Wisconsin.

State Public Defender  
Attorneys for the Subject

Electronically signed by Annie Getsinger  
Attorney Annie Getsinger  
State Bar No. 1101371  
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Baraboo, WI 53913  
606-355-0615

FILED  
03-23-2020  
Sauk County WI  
Register In Probate  
2020ME000013

DATE SIGNED: March 23, 2020

Electronically signed by Wendy J.N. Klicko  
Circuit Court Judge

STATE OF WISCONSIN	CIRCUIT COURT	SAUK COUNTY	<b>RECEIVED</b>  MAR 23 2020  CLERK OF SUPREME COURT OF WISCONSIN
In Re the Condition of Scott D. Imhoff DOB 2/25/1959	Case No. 20ME13		

**ORDER DENYING SUBJECT INDIVIDUAL'S  
MOTION TO DISMISS THE PETITION**

A hearing on the Subject Individual's Motion to Dismiss the Petition was held via telephone in Branch 2 of the Sauk County Circuit Court on Monday March, 23, 2020. The subject, Mr. Scott D. Imhoff, appeared by his attorney, Annie Getsinger, of the Office of the State Public Defender. The County appeared by Attorney Jesse Leichsenring. The Court ordered the following:

1. Mr. Imhoff's Jury Trial scheduled for March 24, 2020, will not proceed as scheduled due to the Supreme Court of Wisconsin's Order, In Re the Matter of Jury Trials During the COVID-19 Pandemic, suspending all jury trials statewide until May 22, 2020;
2. The Circuit Court retains jurisdiction and competence to proceed in this matter;
3. The Circuit Court is ready and able to conduct a bench trial under Wis. Stat. § 51.45(13)(f);
4. Argument that the County's current inability to provide Mr. Imhoff with the residential treatment currently recommended in the event of a commitment order is premature and does not constitute a showing that the County Department is unable to provide appropriate and effective treatment for Mr. Imhoff pursuant to Wis. Stat. § 51.45(13)(g)2.



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## FAX TRANSMISSION

**Date:** 3/23/2020

**To:** Clerk of Supreme Court

**Fax No.:** 608-267-0640

**From:** Atty. Annie Getsinger  
Baraboo Trial Office

**RECEIVED**

**MAR 23 2020**

**CLERK OF SUPREME COURT  
OF WISCONSIN**

**Number of pages including cover page:** 9

**HARD COPY WILL**  **WILL NOT**  **FOLLOW:**

Please accept for filing the attached Motion  
for Emergency Exception to Statewide Suspension  
of Jury Trials.

Respectfully,

Annie E. Getsinger SBN 1101371

Please call if you experience any transmission problems.

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