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**NOTICE OF EMERGENCY DETENTION AND APPLICATION F
(AS 47.30.705)**

G [REDACTED] LD [REDACTED]
DOB: 017 / 88 M 25 YRS
MRN: 00439740
CSN: 9966833

Instructions

2/26/2013 EMERGENCY

AS 47.30.705 authorizes custody for emergency evaluation when safety does not allow initiation of involuntary commitment procedures.



Peace Officers: This form must be completed when you take a person into protective custody under AS 47.30.705. Give the completed form to the health care professional when you deliver the person to the health care facility.

Psychiatrists, Physicians, Psychologists: This form must be completed when a person is brought to a health care facility by someone other than a peace officer, and the person is detained for examination and evaluation.

> If this form is completed and a *Petition for Involuntary Commitment for Evaluation* (form MC-100) is later filed with the court, this form must be attached to the *Petition*.

PERSON IN CUSTODY

Name: D [REDACTED] [REDACTED] G [REDACTED]

Date of Birth: 2/26/13 ^{First} [REDACTED] ^{Middle} [REDACTED] ^{Last} [REDACTED] Gender: M Race: White Married: yes no
11/88

Respondent is a minor. Parents/guardian contact information is as follows:

Name(s): _____

Address: _____

Phone: _____

PROBABLE CAUSE

I certify that probable cause exists under AS 47.30.705 to believe that the above-named person is mentally ill and as a result of that condition is:

- Gravely disabled
- Likely to cause serious harm to self
- Likely to cause serious harm to others

of such an immediate nature that considerations of safety do not allow initiation of involuntary commitment procedures under AS 47.30.700.

Information Supporting Probable Cause:

D [REDACTED]'s father, James, reported D [REDACTED] was making suicidal statements in their home, [REDACTED] Ci. He believed he had potential to hurt himself w/ a knife and he said D [REDACTED] was getting a will out for preparation of suicide. D [REDACTED] stated he had suicidal thoughts because of a bad migraine.

LOCATION OF PERSON IN CUSTODY

Taken into emergency custody on (date) 2/26/13 at (time) 8:50 am pm.

Taken into custody by:

- Peace Officer
- Ambulance
- Other person (name and relationship to patient) _____

Delivered to (facility) Providence Psych on (date) 2/26/13
at (time) 0850 am pm.

I certify that on FEB 26 2013

PERSON MAKING THIS APPLICATION

copies of this form were sent to: AG PO AP8

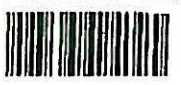
I certify that I am a:

CLERK: BIRDIE JONES

- Peace Officer
- Psychiatrist licensed to practice in Alaska or employed by the federal government
- Physician licensed to practice in Alaska or employed by the federal government
- Clinical psychologist licensed by the state Board of Psychologist and Psychological Associate Examiners

G. J. D.
DOB: 01/17/88 M 25 YRS
MRN: 00439740
CSN: 9966833

2/26/2013 EMERGENCY



[Signature]
Signature of Person Making this Application
A Hostetter
Print or Type Name
907-729-7808
Daytime Telephone Number(s)
4501 Elmore Rd, Anchorage
Mailing Address City State Zip
99502

AS 47.30.705 provides: Emergency detention for evaluation. (a) A peace officer, a psychiatrist or physician who is licensed to practice in this state or employed by the federal government, or a clinical psychologist licensed by the state Board of Psychologist and Psychological Associate Examiners who has probable cause to believe that a person is gravely disabled or is suffering from mental illness and is likely to cause serious harm to self or others of such immediate nature that considerations of safety do not allow initiation of involuntary commitment procedures set out in AS 47.30.700, may cause the person to be taken into custody and delivered to the nearest evaluation facility. A person taken into custody for emergency evaluation may not be placed in a jail or other correctional facility except for protective custody purposes and only while awaiting transportation to a treatment facility. However, emergency protective custody under this section may not include placement of a minor in a jail or secure facility. The peace officer or mental health professional shall complete an application for examination of the person in custody and be interviewed by a mental health professional at the facility.

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
AT Anchorage

In the Matter of the Necessity
for the Hospitalization of:

D. G.
Respondent.
Date of Birth: 01/20/1988

Case No. 3AN-13-454 PR

**PETITION FOR INVOLUNTARY
COMMITMENT FOR EVALUATION**

Petitioner, Connie Chevalier, asks the court to enter an order granting this
Petition for Involuntary Commitment for Evaluation, and states as follows:

1. I read the warning notice on page 3 of this petition.

2. I am a (check all that apply):

- | | |
|---|--|
| <input type="checkbox"/> Psychiatrist | <input type="checkbox"/> Counselor |
| <input type="checkbox"/> Physician | <input type="checkbox"/> Psychologist or Psychological Associate |
| <input checked="" type="checkbox"/> Psych. RN, MS | <input type="checkbox"/> Other Mental Health Professional |
| <input type="checkbox"/> Therapist | <input type="checkbox"/> Family Member _____ |
| <input type="checkbox"/> Social Worker | <input type="checkbox"/> Other Interested Person _____ |

"Mental health professional" means a psychiatrist or physician licensed by the State Medical Board to practice in this state or employed by the federal government; a clinical psychologist licensed by the state Board of Psychologist and Psychological Associate Examiners; a psychological associate trained in clinical psychology and licensed by the Board of Psychologist and Psychological Associate Examiners; a registered nurse with a master's degree in psychiatric nursing, licensed by the State Board of Nursing; a marital & family therapist licensed by the Board of Marital and Family Therapy; a professional counselor licensed by the Board of Professional Counselors; a clinical social worker licensed by the Board of Social Work Examiners; and a person who (A) has a master's degree in the field of mental health; (B) has at least 12 months of post-masters working experience in the field of mental illness; and (C) is working under the supervision of a type of licensee listed in this paragraph.

3. Respondent is currently located at (for example, home, hospital, assisted living facility):
Providence Emergency Department

Respondent arrived on (date) 02/26/2013 at 0900 am pm.

4. Respondent is a minor. Parents/guardian contact information is as follows:

Name(s): _____
Address: _____
Phone: _____

5. A completed MC-105, *Notice of Emergency Detention and Application for Evaluation*
 is attached is not attached. (The MC-105 may only be signed by a peace officer, psychiatrist, doctor, or clinical psychologist. See AS 47.30.705.)

This is Not a Court Order

6. Other pending court cases involving the respondent include (list case description and case number): Unknown

7. For the following reasons, I believe that the respondent is mentally ill:
The patient has a history of mental illness during childhood, with multiple hospitalizations and diagnoses

Specific mental illness: Mood disorder, NOS; R/O Mood d.o. due to TBI with depressive

"Mental illness" means an organic, mental, or emotional impairment that has substantial adverse effects on a person's ability to exercise conscious control of their actions or ability to perceive reality or to reason or understand; mental retardation, epilepsy, drug addiction, and alcoholism do not per se constitute mental illness, although persons suffering from these conditions may also be suffering from mental illness. (AS 47.30.915)

8. For the following reasons, I believe that as a result of that mental illness, the respondent is gravely disabled or likely to cause serious harm to himself/herself or others:

The patient has verbalized suicidal ideation multiple times since December, with escalation in frequency of suicidal threat over the past 2 days. He made a noose of a belt yesterday, threatening suicide, made a written will, and today threatened suicide in front of both his parents, reaching for a knife. He threatened violence toward his father yesterday as well as several times in the recent past, purporting to "punch him until he is bloody." He sent many texts to his mother yesterday with content related to wishing he were dead, saying goodbye to his dog, and dying at home in bed. He has suffered a traumatic brain injury, is under significant stress with attempts to get help in the military. He refuses mental health intervention, has no insight into his mood problem and requires involuntary hospitalization for his safety.

"Gravely disabled" means a condition in which a person as a result of mental illness (A) is in danger of physical harm arising from such complete neglect of basic needs for food, clothing, shelter, or personal safety as to render serious accident, illness, or death highly probable if care by another is not taken [AS 47.30.915(7)(A)]; or (B) will, if not treated, suffer or continue to suffer severe and abnormal mental, emotional, or physical distress, and this distress is associated with significant impairment of judgment, reason, or behavior causing a substantial deterioration of the person's previous ability to function independently. [AS 47.30.915(7)(B)] Note: In *Weltherom v. Alaska Psychiatric Institute*, 156 P.3d 371 (Alaska 2007), the Alaska Supreme Court "concluded that AS 47.30.915(7)(B) is constitutional if construed to require a level of incapacity so substantial that the respondent is not 'capable of surviving safely in freedom.'"

"Likely to cause serious harm" means a person who (A) poses a substantial risk of bodily harm to that person's self, as manifested by recent behavior causing, attempting, or threatening that harm; (B) poses a substantial risk of harm to others as manifested by recent behavior causing, attempting, or threatening harm, and is likely in the near future to cause physical injury, physical abuse, or substantial property damage to another person; or (C) manifests a current intent to carry out plans of serious harm to that person's self or another.

9. Persons who have personal knowledge of the above facts are:

Name	Address	Phone
<u>Dr. Silbaugh, 212-3111</u>	<u>PAMC Emergency Department</u>	<u>212-3111</u>
<u>Officer Hostetter, APD</u>	<u></u>	<u>729-7808</u>

This is Not a Court Order

10. For healthcare professionals only:

- The following facility or facilities currently have capacity to accept persons committed for emergency examination and evaluation:
API
- The following transport service is available to deliver the respondent to the facility:
WEKA

02/26/2013
Date

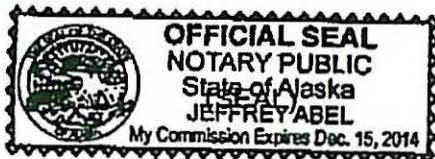
Connie Chevalier
Petitioner's Signature
Connie Chevalier
Print Name of Petitioner
PAMC Psychiatric Emergency Department
Petitioner's Address
Phone: 907-212-2800 Fax: 907-212-2807

I certify that on FEB 26 2013
copies of this form were sent to: AG PD API
CLERK: BIRDIE JONES

Verification or Certification

Verification. [Sign in front of a notary or court clerk. If no notary or court clerk is available, or you do not have ID required by a notary or other official, sign the certification section below.] Petitioner says on oath or affirms that petitioner has read this petition and believes that all statements made in the petition are true.

Subscribed and sworn to or affirmed before me at Anchorage, Alaska on (date) 2/26/13.



Jeffrey Abel
Clerk of Court/Notary Public or other person authorized to administer oaths.
My commission expires: 12/15/14

Certification. [Complete this certificate if no notary or other official is available, or if you do not have the required identification.] Petitioner certifies that all information in this petition is true, and a notary public or other official empowered to administer oaths is not available to administer an oath, or petitioner does not have the ID required by a notary or other official.

Petitioner's Signature

Warning Notice

A person acting in good faith upon either actual knowledge or reliable information who applies for evaluation or treatment of another person under AS 47.30.700-47.30.915 is not subject to civil or criminal liability. [AS 47.30.815(a)]

A person who willfully initiates an involuntary commitment procedure under AS 47.30.700 without having good cause to believe that the other person is suffering from a mental illness and as a result is gravely disabled or likely to cause serious harm to self or others, is guilty of a felony. [AS 47.30.815(c)]

This is Not a Court Order

2. As a result of the mentally ill condition, the court finds the respondent is:

- Likely to cause serious harm to himself or herself because
petitioner alleges respondent is actively suicidal

- Likely to cause serious harm to others because

- Gravely disabled because

ORDER

It is ordered that the *Petition for Involuntary Commitment for Evaluation* is **GRANTED**. It is also **ORDERED** that:

1. The Department of Health and Social Services or Providence or Designee shall arrange for immediate delivery of the respondent to the following nearest appropriate facility for examination and evaluation of the respondent's mental and physical condition:

- Alaska Psychiatric Institute PeaceHealth Ketchikan Medical Center
- Bartlett Regional Hospital Yukon-Kuskokwim Delta Reg. Hospital
- Fairbanks Memorial Hospital Other _____

[AS 47.30.700; AS 47.30.710; AS 47.30.870; and AS 47.30.915(5)]

2. The respondent shall be notified immediately, orally and in writing, of the rights contained in the *Notice of Rights* (court form MC-405, available from the court clerk or online at <http://courts.alaska.gov/forms/mc-405.pdf>). These notifications and a copy of this order shall be given by:

- The person or entity currently detaining the respondent
- Local police _____
- Alaska State Troopers _____
- The petitioner
- Other: API ON ARRIVAL
- Respondent is a minor. Respondent's parent(s)/guardian shall also be notified of the rights contained in the *Notice of Rights*.

3. The evaluation facility shall accept this order and the respondent for an evaluation period not to exceed 72 hours. Within 24 hours after arrival at the facility, the respondent shall be examined and evaluated as to mental and physical condition by a mental health professional and by a physician. [AS 47.30.710(a); AS 47.30.715]

4. The evaluation facility shall timely file a *Notice of Respondent's Arrival at Evaluation Facility* (court form MC-400) with the court and Public Defender Agency upon arrival of the respondent at the facility. Court form MC-400 is available from the court clerk or online at <http://courts.alaska.gov/forms/mc-400.pdf>. If the respondent arrives at the facility between the hours of 9:00 a.m. and 3:00 p.m., notice is timely if filed no later than 3:30 p.m. on the same business day. If the respondent arrives at the facility between the hours of 3:00 p.m. and 9:00 a.m., or at any time during the weekend or on a holiday, notice is timely if filed no later than 9:30 a.m. on the first business day following the respondent's arrival. Notice shall be by fax to the numbers designated on the MC-400 form.
5. If the respondent cannot be delivered to the designated evaluation facility within 24 hours of this order, the Department of Health and Social Services through its attorney shall file a **status report** with this court describing:
 - Respondent's current location;
 - Reason(s) for the delay in transporting the respondent;
 - Steps taken by the Department to ensure that continued detention of the respondent at the current location is necessary and no less restrictive alternatives are available; and
 - Whether an alternative treating facility is now being proposed.
 Filing shall take place within the 24 hour period to the court that issued this order and to the Public Defender Agency.
6. The examination and evaluation shall be completed within 72 hours of the respondent's arrival at the evaluation facility. [AS 47.30.715] A petition for a 30-day commitment shall be filed or the respondent shall be released from the evaluation facility before the end of the 72-hour evaluation period (unless the respondent requests voluntary admission for treatment).
7. If at any time during the 72-hour evaluation period the mental health professional conducting the evaluation determines that the respondent does not meet the standards for commitment in AS 47.30.700, the respondent shall be discharged, and the petitioner and court shall be notified of the discharge using court form MC-410. The MC-410 is available from the court clerk or online at <http://courts.alaska.gov/forms/mc-410.pdf>. [AS 47.30.720]
8. The Public Defender Agency is appointed counsel for the respondent in this proceeding. Counsel is authorized access to medical, psychiatric or psychological records maintained on the respondent at the evaluation facility.
9. Other: _____

Superior Court Judge

This matter was considered directly by the undersigned superior court judge. The *Petition for Involuntary Commitment for Evaluation* is granted.

Date and Time

Superior Court Judge

Type or Print Name

Superior Court Master

The Master recommends that the *Petition for Involuntary Commitment for Evaluation* be GRANTED.

2-26-13 345PM

Date and Time

Superior Court Master
JONATHON H. LACK

Type or Print Name

Review by Superior Court Judge

- The Master's order of commitment is approved.
- The Master's order of commitment is not approved. The respondent shall be released immediately.
- It is further ordered:

Date and Time

Superior Court Judge
FRANK PFIFFNER

Type or Print Name

Clerk's Certificates of Distribution

I certify that on FEB 26 2013
at _____ am pm, a copy of the following documents:

- this Order with master's signature
- Petition for Invol. Commitment for Eval.
- Notice of Rights (MC-405)
- Order for Screening Investigation
- Screening Investigation Report with Coversheet (no distribution to petitioner)

were sent to the following persons/entities:

- Petitioner
- Respondent
- Parent/Guardian of Minor Respondent
- PDA _____
- AGO _____
- API to fax (907) 269-7129
- Bartlett Reg. to fax (907) 796-8439
- Fairbanks Mem. to fax (907) 458-5255
- PeaceHealth Med. to fax (907) 228-8333
- Y-K Delta Reg. to fax (907) 543-6099

By Clerk BIRDIE JONES

Clerk's Certificates of Distribution

I certify that on _____
at _____ am pm, a copy of the following documents:

- this Order with judge's signature
- Petition for Invol. Commitment for Eval.
- Notice of Rights (MC-405)
- Order for Screening Investigation
- Screening Investigation Report with Coversheet (no distribution to petitioner)

were sent to the following persons/entities:

- Petitioner
- Respondent
- Parent/Guardian of Minor Respondent
- PDA _____
- AGO _____
- API by fax to (907) 269-7129
- Bartlett Reg. to fax (907) 796-8439
- Fairbanks Mem. to fax (907) 458-5255
- PeaceHealth Med. to fax (907) 228-8333
- Y-K Delta Reg. to fax (907) 543-6099

By Clerk _____

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT, AT ANCHORAGE

In The Matter of the Necessity for the)
Hospitalization of:)

D [REDACTED] G [REDACTED])

Respondent)

Case No. 3AN 13-00454 PR

COPY
Original Received
Probate Division
FEB 28 2013

Clerk of the Trial Courts

MOTION TO VACATE *EX PARTE* ORDER

Respondent D [REDACTED] G [REDACTED] moves to vacate the February 26, 2013, Order on Petition for Involuntary Commitment for Evaluation (*Ex Parte* Order), entered without notice to Respondent or opportunity for Respondent to be heard.

DATED: February 28, 2013.

Law Project for Psychiatric Rights

By: 

James B. Gottstein, ABA # 7811100

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT, AT ANCHORAGE

In The Matter of the Necessity for the)
Hospitalization of:)
)
D [REDACTED] . G [REDACTED])
)
Respondent)

COPY
Original Received
Protective Division
FEB 28 2013

Clerk of the Trial Courts

Case No. 3AN 13-00454 PR

**MEMORANDUM IN SUPPORT OF
MOTION TO VACATE *EX PARTE* ORDER**

Respondent D [REDACTED] . G [REDACTED] has moved to vacate the February 26, 2013 Order on Petition for Involuntary Commitment for Evaluation (*Ex Parte* Order), entered without notice to Respondent or opportunity for Respondent to be heard.

I. The *Ex Parte* Order Was Entered in Violation of Due Process

The hallmarks of due process are meaningful notice, and a meaningful opportunity to be heard. *Hamdi v. Rumsfeld*, (2004) 542 U.S. 507, 124 S.Ct. 2633, 2648-2649:

"For more than a century the central meaning of procedural due process has been clear: 'Parties whose rights are to be affected are entitled to be heard; and in order that they may enjoy that right they must first be notified.' It is equally fundamental that the right to notice and an opportunity to be heard 'must be granted at a meaningful time and in a meaningful manner.' "

In *Hoffman v. State*, 834 P.2d 1218, 1219 (Alaska 1992), the Alaska Supreme Court held, "We have consistently held that, except in emergencies, due process requires the State to afford a person an opportunity for a hearing before the State deprives that person of a protected property interest," citing *Graham v. State*, 633 P.2d 211, 216 (Alaska 1981).

LAW PROJECT FOR PSYCHIATRIC RIGHTS, INC.
406 G Street, Suite 206
Anchorage, Alaska 99501
(907) 274-7686 Phone ~ (907) 274-9493 Fax

Certainly, the due process protections from the "massive curtailment of liberty" represented by psychiatric confinement¹ deserves as least as great protection.

The unconstitutionality of non-emergency *ex parte* orders was explicitly recognized by the Washington Supreme Court. *In re Harris*, 654 P.2d 109, 113 (Wash. 1982) ("The danger must be impending to justify detention without prior process.").

Here, the Respondent was in custody and there is no justification whatsoever to deny him meaningful notice and opportunity to respond.

II. The *Ex Parte* Order is *Ultra Vires*

The *Ex Parte* Order was signed by the Master and implemented without the signature of the a Superior Court Judge and was therefore *ultra vires*—beyond the authority of the Master. Its voidness should be recognized.

III. The *Ex Parte* Order Is Insufficient On Its Face

A. The *Ex Parte* Order Was Issued Without Inquiry

Even assuming *arguendo* that *ex parte* orders are constitutionally permitted without an emergency, the court still has the "duty to make a searching inquiry as to the validity of the facts," *State v. Malkin*, 772 P.2d 943, 947 (Alaska 1986). The *Ex Parte* Order merely recites the allegations contained in the Petition for Involuntary Commitment for Evaluation (*Ex Parte* Petition) without any inquiry into their validity at all.

It is respectfully suggested that the Alaska Supreme Court's admonition in the forced drugging context in *Myers v. Alaska Psychiatric Institute*, 138 P.3d 238 251

¹ *Wetherhorn v. Alaska Psychiatric Institute*, 156 P3d 371 (Alaska 2007)

(Alaska 2006), citing *Jarvis v. Levine*, 418 N.W.2d 139, 147-148 (Minn.1988) with approval, is also applicable here:

When medical judgments collide with a patient's fundamental rights, ... it is the courts, not the doctors, who possess the necessary expertise....

In issuing the *Ex Parte* Order, the Court abdicated its responsibility to protect the Respondent's legal rights by failing to make any, let alone a searching, inquiry into the validity of the facts.

B. The Findings Are Insufficient to Support the *Ex Parte* Order

The *Ex Parte* Order found,

[T]here is probable cause to believe the respondent is mentally ill based on the allegations that Respondent has a diagnosis of mood disorder, not otherwise specified, rule out mood disorder due to TBI, with depression.

However, AS 47.30.915(12) defines mental illness as follows:

(12) "mental illness" means an organic, mental, or emotional impairment that *has substantial adverse effects on an individual's ability to exercise conscious control of the individual's actions or ability to perceive reality or to reason or understand*; mental retardation, epilepsy, drug addiction, and alcoholism do not per se constitute mental illness, although persons suffering from these conditions may also be suffering from mental illness;

(emphasis added). Neither the *Ex Parte* Petition, nor the *Ex Parte* Order contain any facts that support a finding that Respondent is not able to exercise conscious control of his actions or ability to perceive reality or to reason or understand. The *Ex Parte* Order should also be vacated for this reason.

C. The *Ex Parte* Order's Reliance Solely on Hearsay is Improper

The *Ex Parte* Order relies solely on what appears to be hearsay evidence, explicitly stating it was based solely on the "allegations" in the petition. These allegations are hearsay. The Respondent vigorously disputes a number of these hearsay allegations. In *Crawford v. Washington*, 541 U.S. 36, 124 S.Ct. 1354, (2004), the United Supreme Court held such "testimonial" statements are not allowed under the Confrontation Clause of the United States Constitution, regardless of whether they are admissible under the rules of evidence. In *People v. Goldstein*, 843 N.E. 2d 727 (New York 2005), New York's high court held the rule applied to psychiatric testimony. While this isn't a Confrontation Clause case, it is respectfully suggested, reliance on hearsay was improper.

IV. The *Ex Parte* Petition Is Defective

In addition to the facts alleged in the *Ex Parte* Petition being insufficient as a matter of law to support granting an *ex parte* order, AS 47.30.700(b) provides, in pertinent part that "the petition . . . must specify the factual information on which that belief is based including the names and addresses of all persons known to the petitioner who have knowledge of those facts through personal observation." The *Ex Parte* Petition lists only Dr. Silbaugh and Officer Hostetter, neither of whom can have such knowledge.

V. Conclusion

For the foregoing reasons the February 26, 2013 Order on Petition for Involuntary Commitment for Evaluation, entered without notice to Respondent or opportunity for Respondent to be heard should be **VACATED** and **RESPONDENT ORDERED TO BE DISCHARGED IMMEDIATELY.**

RESPECTFULLY SUBMITTED February 28, 2013.

Law Project for Psychiatric Rights

By: 

James B. Gottstein, ABA # 7811100

LAW PROJECT FOR PSYCHIATRIC RIGHTS, INC.
406 G Street, Suite 206
Anchorage, Alaska 99501
(907) 274-7686 Phone ~ (907) 274-9493 Fax

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
AT Anchorage

In the Matter of the Necessity)
for the Hospitalization of:)
C , D)
Respondent.)

Case No. 3AN-13-00454 PR
NOTICE OF RELEASE

Release After Involuntary Commitment for Evaluation. Respondent was admitted to Alaska Psychiatric Institute for evaluation on 2/26/13 and was discharged from the facility on, 2/28/13 at 1125 hrs.

because the evaluation personnel did not find that respondent met the standards for commitment specified in AS 47.30.700;

because, as specified in AS 47.30.780, the respondent is no longer gravely disabled or likely to cause serious harm as a result of mental illness.

Release After 30/90/180-day Commitment. Respondent was committed for treatment on _____ for _____ days. Respondent was released on _____.

Certificate of Early Discharge. Respondent was committed for treatment on _____ for _____ days. I certify that on _____, respondent was discharged early because:

respondent is no longer gravely disabled or likely to cause serious harm as a result of mental illness.

Other: _____

I request the court to enter an order officially terminating the involuntary commitment.

2/28/13 Rosemary Pavageau
Date Signature

Rosemary Pavageau, Paralegal I API Legal Desk
Print Name and Title

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT ANCHORAGE

In the Matter of the Necessity for the Hospitalization of:)
)
)
D. [REDACTED] C. G. [REDACTED],)
)
)
Respondent.)
_____)

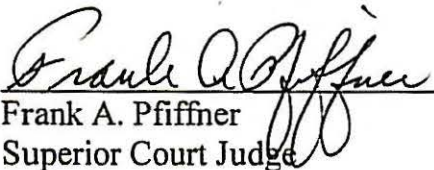
RECEIVED
MAR 8 2013
BY: _____

Case Nos. 3AN-13-454PR

ORDER

D. [REDACTED] G. [REDACTED]'s February 28, 2013, motion to vacate ex parte order is moot in light of Alaska Psychiatric Institute's notice of release also dated February 28, 2013. The motion to vacate is denied.

DATED at Anchorage Alaska this 6th day of March, 2013.



Frank A. Pfiffner
Superior Court Judge

I certify that on MAR - 6 2013
copies of this form were sent to: AG, JG, API,
CLERK: BIRDIE JONES

Law Project for Psychiatric Rights
James B. Gottstein, Esq.
406 G Street, Suite 206
Anchorage, Alaska 99501
(907) 274-7686
Alaska Bar No. 7811100
Attorney for Appellant

IN THE SUPREME COURT FOR THE STATE OF ALASKA

ROSLYN WETHERHORN,)
 Appellant,)
) Supreme Court No. S-11939
vs.)
) Trial Court Case No. 3AN 05-459 PR
ALASKA PSYCHIATRIC INSTITUTE)
 Appellee.)

PETITION FOR REHEARING

Appellant, Roslyn Wetherhorn, by and through her attorney, pursuant to Appellate Rule 506(a)(2), hereby petitions this Court for rehearing with respect to the Court's affirmance of the petition for commitment in Opinion No. 6091, January 12, 2007.

In the Conclusion,¹ this Court held:

We conclude that the definition of "gravely disabled" in AS 47.30.915(7)(B) is constitutional if construed to require a level of incapacity so substantial that the respondent is incapable of surviving safely in freedom.

(emphasis added). This was immediately followed by:

And because we conclude that Wetherhorn's other challenges to the petition for thirty-day commitment . . . are without merit, we AFFIRM the superior court's order granting that petition.

(emphasis added).

¹ This same language is also in the Court's Introduction on page 2 of the Slip Opinion, No. 6091.

The involuntary commitment petition was granted against Ms. Wetherhorn for being gravely disabled without satisfaction of the constitutional requirement that she be "incapable of surviving safely in freedom." Ms. Wetherhorn respectfully suggests that even if the "other challenges" to the petition failed, this one succeeded, and the involuntary commitment petition should therefore be vacated or reversed or the Opinion be clarified in this regard.

It seems this court overlooked this material fact or proposition of law and rehearing is appropriate under Appellate Rule 506(a)(2) to consider this point.

As it stands now, by affirming the involuntary commitment, an inference could be drawn that this Court found the "incapable of surviving safely in freedom" standard had been met when there is no evidence in the record to support it and no real indication it was the intent of the Court to find the standard had been met.

In connection with whether imminence is required,² the Court recited the following facts in the record:

The petition stated that Wetherhorn had shown a manic state, a lack of insight, and non-compliance with her medication for the past three months. And during the hearing, Dr. Kiele testified that Wetherhorn remained confused and agitated and that her difficulties with insight had not changed since she had been at the hospital. He further noted that she had struck people³ and therefore presented "a direct risk of harm to others and more of an indirect risk of harm to herself." Because all these examples of

² Although not rising to the level that would cause counsel to seek rehearing, since rehearing is being sought on another ground, it seems worth noting that Ms. Wetherhorn did not argue that "imminence" was required, but instead argued that there must be "some immediacy," *See*, Opening Brief at 19, and Reply Brief at 2.

³ It is particularly unfortunate that this assertion by API went unchallenged by Ms. Wetherhorn's counsel because it is extremely suspect.

specific behavior were drawn from the recent past, they were sufficient to meet the evidentiary standards established by those states that have addressed the question of imminence.⁴


In connection with the Court's discussion of mootness the Court recited the following facts in the record:

For example, her beliefs that the owner of the local grocery store was going to transport her to the Pope's funeral and that she had bought a church indicated that she lacked insight. She was diagnosed with bipolar disorder, the most recent episode of which was manic. She had also struck people at the hospital and was alternately confused and agitated and had trouble sleeping.⁵

It is respectfully suggested that none of these facts establish that Ms. Wetherhorn was "incapable of surviving safely in freedom." For this reason, Ms. Wetherhorn requests rehearing to either vacate or reverse the granting of the involuntary commitment petition, or clarify that by affirming the granting of the petition for involuntary commitment, this Court was not concluding the "incapable of surviving safely in freedom" standard had been met.

Dated this 22nd day of January, 2007, at Anchorage, Alaska.

LAW PROJECT FOR PSYCHIATRIC RIGHTS

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⁴ Page 14 of the slip opinion.

⁵ Page 18 of the slip opinion.

IN THE SUPREME COURT FOR THE STATE OF ALASKA

ITMO the Hospitalization of D.G.)
) Supreme Court No. S-15100
)
)
_____)
Trial Court Case No. 3AN 13-454PR

APPEAL FROM THE SUPERIOR COURT
THIRD JUDICIAL DISTRICT AT ANCHORAGE
THE HONORABLE FRANK A. PFIFFNER, PRESIDING

APPELLANT'S EXCERPT OF RECORD
VOLUME 1 OF 1

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