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Attorney for Roslyn Wetherhorn, Respondent

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

In The Matter of the Necessity for the)
Hospitalization of:)
)
Roslyn Wetherhorn,)
Respondent.)
) Case No. 3AN 05-459 P/R

**MEMORANDUM IN SUPPORT OF
MOTION FOR ATTORNEYS FEES**

Respondent Roslyn Wetherhorn has moved for an award of attorneys fees in the amount of \$525 pursuant to Civil Rule 82.¹ Attached hereto as Exhibit 1, is a copy of the invoice for attorneys fees.²

Petitions for 30 day involuntary commitment and involuntary medication filed under AS 47.30.730 and AS 47.30.839, respectively, were granted against Ms. Wetherhorn on April 15, 2005, while Ms. Wetherhorn was represented by the Public Defenders Office.

¹ Twenty percent of \$2,623.50 in fees, rounded from \$524.70.

² James B. Gottstein, Esq., of the Law Offices of James B. Gottstein, provides the services through the Law Project for Psychiatric Rights (PsychRights), bills PsychRights at his normal rate, and then donates the fee to PsychRights as *pro bono publico* service. Any award of attorney's fees will therefore accrue to PsychRights, a tax-exempt, Alaska non profit corporation. That Ms. Wetherhorn is not obligated to pay the fees in no way diminishes the right to such an award. *Cizek v. Concerned Citizens of Eagle River Valley, Inc.*, 71 P.3d 845, 849 (Alaska 2003); *Gregory v. Sausier*, 574 P.2d 445 (Alaska 1978).

The Law Project for Psychiatric Rights, filed a substitution of counsel for respondent on April 26, 2005.³

Petitions for 90 day involuntary commitment and involuntary medication were filed against Ms. Wetherhorn on April 27, 2005, under AS 47.30.740 and AS 47.30.839(e), respectively. Mr. Gottstein filed certain elections on May 5, 2005, including for a jury trial under AS 47.30.745(c), and began preparing for such a trial. However, prior to such trial being set, and substantially because it was facing a jury trial, on or about May 18, 2005, the state moved to dismiss the petitions without prejudice.

Mr. Gottstein filed a Response to the Motion to Dismiss that the dismissal should be with prejudice because it would be improper to restart 90-day petitions, rather than initiate 30-day petitions if the state should decide to do so in the future. This court agreed by issuing an Order on June 16, 2005,⁴ dismissing the action "without prejudice against a new petition pursuant to AS 47.30.730," the 30 day commitment statute. Whether dismissed with or without prejudice, Ms. Wetherhorn is the prevailing party in this matter.

Civil Rule 82(b)(2) provides that ordinarily the court shall award 20 percent of actual attorney's fees to the prevailing party in a case resolved without trial, which

³ As shown on Exhibit 1, Mr. Gottstein began working on this case on Ms. Wetherhorn's behalf starting on April 17, 2005. There were some delays in getting the substitution of counsel signed by the Public Defenders Office and then further delay in getting it approved by the court.

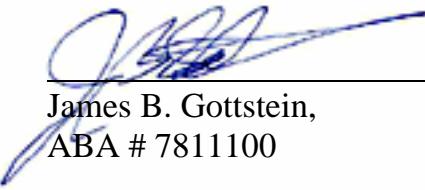
⁴ The clerk's certificate of distribution states it was sent to Mr. Gottstein on June 30, 2005, but as of the filing hereof, such copy has not been received. Instead, Mr. Gottstein obtained a copy by having his assistant go to the clerk of court to check on its status on July 8, 2004.

amounts to \$525 in this case.⁵ Therefore, this court should, at a minimum, award attorney's fees in the amount of \$525.

DATED: July 11, 2005.

Law Project for Psychiatric Rights, Inc.

By:


James B. Gottstein,
ABA # 7811100

⁵ For various reasons, Ms. Wetherhorn believes it is appropriate to award full attorney's fees under Civil Rule 82(b)(3) (E), (G),(H) or (K), or any combination thereof, but since the effort in demonstrating both that full fees should be awarded under such subsections and that §2, Ch. 86 SLA 2003, potentially prohibiting such an award, is invalid for failure to be approved by a two-thirds majority (or otherwise), would likely greatly exceed the amount at stake, has elected not to move for full fees at this time. However, the court may take into account these factors and award more than 20%.