

IN THE SUPREME COURT FOR THE STATE OF ALASKA

ROSLYN WETHERHORN,	)	
	)	
Appellant,	)	Supreme Court No. S-12249
	)	
vs.	)	
	)	Trial Court Case No. 3AN 05-459 PR
ALASKA PSYCHIATRIC INSTITUTE,	)	
	)	
Appellee.	)	
	)	

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APPEAL FROM THE SUPERIOR COURT  
THIRD JUDICIAL DISTRICT AT ANCHORAGE  
THE HONORABLE PATRICK J. McKAY, PRESIDING

**REPLY BRIEF OF APPELLANT**

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Filed in the Supreme Court of  
the State of Alaska, this \_\_\_\_\_  
day of \_\_\_\_\_, 2006

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By: \_\_\_\_\_  
Deputy Clerk

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**CONSTITUTIONAL PROVISIONS, STATUTES, COURT  
RULES, ORDINANCES AND REGULATIONS PRINCIPALLY  
RELIED UPON**

**AS 09.60.010**

Sec. 09.60.010 Costs and attorney fees allowed prevailing party.

(a) The supreme court shall determine by rule or order the costs, if any, that may be allowed a prevailing party in a civil action. Unless specifically authorized by statute or by agreement between the parties, attorney fees may not be awarded to a party in a civil action for personal injury, death, or property damage related to or arising out of fault, as defined in AS 09.17.900, unless the civil action is contested without trial, or fully contested as determined by the court.

(b) Except as otherwise provided by statute, a court in this state may not discriminate in the award of attorney fees and costs to or against a party in a civil action or appeal based on the nature of the policy or interest advocated by the party, the number of persons affected by the outcome of the case, whether a governmental entity could be expected to bring or participate in the case, the extent of the party's economic incentive to bring the case, or any combination of these factors.

(c) In a civil action or appeal concerning the establishment, protection, or enforcement of a right under the United States Constitution or the Constitution of the State of Alaska, the court

(1) shall award, subject to (d) and (e) of this section, full reasonable attorney fees and costs to a claimant, who, as plaintiff, counterclaimant, cross claimant, or third-party plaintiff in the action or on appeal, has prevailed in asserting the right;

(2) may not order a claimant to pay the attorney fees of the opposing party devoted to claims concerning constitutional rights if the claimant as plaintiff, counterclaimant, cross claimant, or third-party plaintiff in the action or appeal did not prevail in asserting the right, the action or appeal asserting the right was not frivolous, and the claimant did not have sufficient economic incentive to bring the action or appeal regardless of the constitutional claims involved.

(d) In calculating an award of attorney fees and costs under (c)(1) of this section,

(1) the court shall include in the award only that portion of the services of claimant's attorney fees and associated costs that were devoted to claims concerning

rights under the United States Constitution or the Constitution of the State of Alaska upon which the claimant ultimately prevailed; and

(2) the court shall make an award only if the claimant did not have sufficient economic incentive to bring the suit, regardless of the constitutional claims involved.

(e) The court, in its discretion, may abate, in full or in part, an award of attorney fees and costs otherwise payable under (c) and (d) of this section if the court finds, based upon sworn affidavits or testimony, that the full imposition of the award would inflict a substantial and undue hardship upon the party ordered to pay the fees and costs or, if the party is a public entity, upon the taxpaying constituents of the public entity.

#### **AS 47.30.905**

Sec. 47.30.905 Fees and expenses for judicial proceedings.

(a) The witnesses, expert witnesses, and the jury in commitment proceedings under AS 47.30.660 -- 47.30.915 are entitled to the fees, compensation, and mileage established by the administrative rules of court for other jurors and witnesses. Compensation, mileage, fees, transportation expenses for a respondent, and other expenses arising from evaluation and commitment proceedings shall be audited and allowed by the superior court of the judicial district in which the proceedings are held. To the extent that services of a peace officer are used to carry out the provisions of AS 47.30.660 -- 47.30.915, the officer is entitled to fees and actual expenses from the same source and in the same manner as for the officer's other official duties.

(b) An attorney appointed for a person under AS 47.30.660 -- 47.30.915 shall be compensated for services as follows:

(1) the person for whom an attorney is appointed shall, if the person is financially able under standards as to financial capability and indigency set by the court, pay the costs of the legal services;

(2) if the person is indigent under those standards, the costs of the services shall be paid by the state.

#### **AS 47.30.910**

Sec. 47.30.910 Liability for expense of placement in a facility.

(a) A patient, the patient's spouse, or the patient's parent if the patient is under 18 years of age shall pay the charges for the care, transportation, and treatment of the patient when the patient is hospitalized under AS 47.30.670 -- 47.30.915 at a state-operated facility, an evaluation facility, or a designated treatment facility providing services under AS 47.30.670 -- 47.30.915. The patient,

the patient's spouse, or the patient's parent if the patient is under 18 years of age shall make arrangements with a state-operated facility, an evaluation facility, or a designated treatment facility for payment of charges, including providing income information necessary to determine eligibility for benefits under AS 47.31.

Charges assessed for services provided under AS 47.30.670 -- 47.30.915 when a patient is hospitalized at a state-operated facility may not exceed the actual cost of care and treatment. The department may, when assessing charges for services provided at a state-operated facility, consider the ability to pay of a patient, a patient's spouse, or a patient's parent if the patient is under 18 years of age. In order to impose liability for a patient's cost of care at a state-operated facility, the department shall issue an order for payment within six months after the date on which the charge was incurred. The order remains in effect unless modified by subsequent court order or department order. The department may not impose liability for a patient's cost of care at a state-operated facility if the patient would otherwise meet the eligibility criteria, other than location of service, in AS 47.31.010.

(b) The department, the evaluation facility, or a designated treatment facility shall make reasonable efforts to determine whether the patient, the patient's spouse, or the patient's parent if the patient is under 18 years of age has a third-party payor or has the available means to substantially contribute to the payment of charges, or whether the patient is eligible for assistance under AS 47.31.

(c) If a patient is hospitalized at a state-operated facility and the patient, the patient's spouse, or the patient's parent if the patient is under 18 years of age fails to provide to the department information necessary to determine whether there is a third-party payor or available means to substantially contribute to the payment of charges, or whether the patient would, if not hospitalized at a state-operated facility, be eligible for assistance under AS 47.31, the department may issue an administrative order imposing full liability for the patient's actual cost of care on the patient, the patient's spouse, or the patient's parent if the patient is under 18 years of age. The order remains in effect unless modified by subsequent court order or department order.

(d) If a person who is hospitalized under AS 47.30.670 -- 47.30.915 at an evaluation facility or a designated treatment facility cannot pay or substantially contribute to the payment of charges described under this section, the patient may apply for assistance under AS 47.31.

(e) The department may charge or accept money or property from a person for the care or treatment of a patient at a state-operated facility.

(f) Money paid by the patient or on the patient's behalf to the department under this section shall be deposited in the general fund.

## Civil Rule 11

Rule 11. Signing of Pleadings, Motions, and Other Papers; Sanctions.

Every pleading, motion and other paper of a party represented by an attorney shall be signed by at least one attorney of record in the attorney's individual name, whose address shall be stated. A party who is not represented by an attorney shall sign the party's pleading, motion, or other paper and state the party's address. Except when otherwise specifically provided by rule or statute, pleadings need not be verified or accompanied by affidavit. The rule in equity that the averments of an answer under oath must be overcome by the testimony of two witnesses or of one witness sustained by corroborating circumstances is abolished. The signature of an attorney or party constitutes a certificate by the signer that the signer has read the pleading, motion, or other paper; that to the best of the signer's knowledge, information, and belief formed after reasonable inquiry it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law, and that it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless expense in the cost of litigation. If a pleading, motion, or other paper is not signed, it shall be stricken unless it is signed promptly after the omission is called to the attention of the pleader or movant.

## Civil Rule 82

(a) **Allowance to Prevailing Party.** Except as otherwise provided by law or agreed to by the parties, the prevailing party in a civil case shall be awarded attorney's fees calculated under this rule.

(b) **Amount of Award.**

(1) The court shall adhere to the following schedule in fixing the award of attorney's fees to a party recovering a money judgment in a case:

Judgment and, if awarded, Prejudgment Interest	Contested With Trial	Contested Without Trial	Non- Contested
First \$ 25,000	20%	18%	10%
Next \$ 75,000	10%	8%	3%
Next \$400,000	10%	6%	2%
Over \$500,000	10%	2%	1%

(2) In cases in which the prevailing party recovers no money judgment, the court shall award the prevailing party in a case which goes to trial 30 percent of the prevailing party's reasonable actual attorney's fees which were necessarily incurred, and shall award the prevailing party in a case resolved without trial 20 percent of its actual attorney's fees which were necessarily incurred. The actual fees shall include fees for legal work customarily performed by an attorney but which was delegated to and performed by an investigator, paralegal or law clerk.

(3) The court may vary an attorney's fee award calculated under subparagraph (b)(1) or (2) of this rule if, upon consideration of the factors listed below, the court determines a variation is warranted:

- (A) the complexity of the litigation;
- (B) the length of trial;
- (C) the reasonableness of the attorneys' hourly rates and the number of hours expended;
- (D) the reasonableness of the number of attorneys used;
- (E) the attorneys' efforts to minimize fees;
- (F) the reasonableness of the claims and defenses pursued by each side;
- (G) vexatious or bad faith conduct;
- (H) the relationship between the amount of work performed and the significance of the matters at stake;
- (I) the extent to which a given fee award may be so onerous to the non-prevailing party that it would deter similarly situated litigants from the voluntary use of the courts;
- (J) the extent to which the fees incurred by the prevailing party suggest that they had been influenced by considerations apart from the case at bar, such as a desire to discourage claims by others against the prevailing party or its insurer; and
- (K) other equitable factors deemed relevant. If the court varies an award, the court shall explain the reasons for the variation.

(4) Upon entry of judgment by default, the plaintiff may recover an award calculated under subparagraph (b)(1) or its reasonable actual fees which were necessarily incurred, whichever is less. Actual fees include fees for

legal work performed by an investigator, paralegal, or law clerk, as provided in subparagraph (b)(2).

(c) **Motions for Attorney's Fees.** A motion is required for an award of attorney's fees under this rule or pursuant to contract, statute, regulation, or law. The motion must be filed within 10 days after the date shown in the clerk's certificate of distribution on the judgment as defined by Civil Rule 58.1. Failure to move for attorney's fees within 10 days, or such additional time as the court may allow, shall be construed as a waiver of the party's right to recover attorney's fees. A motion for attorney's fees in a default case must specify actual fees.

(d) **Determination of Award.** Attorney's fees upon entry of judgment by default may be determined by the clerk. In all other matters the court shall determine attorney's fees.

(e) **Equitable Apportionment Under AS 09.17.080.** In a case in which damages are apportioned among the parties under AS 09.17.080, the fees awarded to the plaintiff under (b)(1) of this rule must also be apportioned among the parties according to their respective percentages of fault. If the plaintiff did not assert a direct claim against a third-party defendant brought into the action under Civil Rule 14(c), then

(1) the plaintiff is not entitled to recover the portion of the fee award apportioned to that party; and

(2) the court shall award attorney's fees between the third-party plaintiff and the third-party defendant as follows:

(A) if no fault was apportioned to the third-party defendant, the third-party defendant is entitled to recover attorney's fees calculated under (b)(2) of this rule;

(B) if fault was apportioned to the third-party defendant, the third-party plaintiff is entitled to recover under (b)(2) of this rule 30 or 20 percent of that party's actual attorney's fees incurred in asserting the claim against the third-party defendant.

(f) **Effect of Rule.** The allowance of attorney's fees by the court in conformance with this rule shall not be construed as fixing the fees between attorney and client.

### Civil Rule 95(a)

(a) For any infraction of these rules, the court may withhold or assess costs or attorney's fees as the circumstances of the case and discouragement

of like conduct in the future may require; and such costs and attorney's fees may be imposed upon offending attorneys or parties.

**Child in Need of Aid Rule 1(e) &(f)**

**RULE 1. Title--Scope--Construction--Situations Not Covered By The Rules**

\* \* \*

(e) Civil Rules Applicable. Civil Rules 3(b)--(g), 4, 5, 5.1, 6, 10, 11, 15, 42, 45(a)--(f), 46, 53, 59, 60, 61, 63, 76, 77, 81, 90, 98, and 100 apply to child in need of aid proceedings except to the extent that any provisions of these civil rules conflict with the Child in Need of Aid Rules.

(f) Situations Not Covered by These Rules. Where no specific procedure is prescribed by these rules, the court may proceed in any lawful manner, including application of the Civil Rules, applicable statutes, the Alaska and United States Constitutions or the common law. Such a procedure may not be inconsistent with these rules and may not unduly delay or otherwise interfere with the unique character and purpose of child in need of aid proceedings.

## ARGUMENT

### I. Civil Rule 82 Applies to AS 47.30 Involuntary Commitment and Medication Proceedings.

#### A. Crittell's Holding Is Not Limited to "Fraudulently Brought Claims."

In her opening brief, Ms. Wetherhorn relies on *Crittell v. Bingo*, 83 P.3d 532, 535 (Alaska 2004) for the application of Civil Rule 82 , quoting the following:

The Crittells argue that the trial court erred by awarding Civil Rule 82 attorney's fees because the civil rules do not apply to probate proceedings. They further contend that awards under Rule 82 are barred by AS 13.16.435, a provision of the probate code. Neither argument is persuasive.

(footnotes omitted). Appellee Alaska Psychiatric Institute (API) asserts *Crittell* is distinguishable, arguing that *Crittell* only authorized the fees because "fraudulently brought claims" were involved. However, *Crittell*, clearly holds that Civil Rule 82 applies to probate contests, unless there is a specific statute or rule to the contrary ("Alaska's Probate Rules confirm that the Civil Rules apply in Alaska probate cases when the Probate Rules fail to include a controlling provision"). *Id.*

#### B. That Civil Rule 82 Does Not Apply to Proceedings Under the Child In Need of Aid Rules Is Beside the Point.

In arguing that Civil Rule 82 does not apply, API relies very heavily on an asserted parallel between Child In Need of Aid (CINA) cases and Involuntary Commitment/Medication cases, citing *Cooper v. State*, 638 P.2d 174 (Alaska 1981).<sup>1</sup> API's argument is flawed in two key respects. First, unlike the Probate Rules, the CINA

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<sup>1</sup>*Cooper* was decided under former Children's Rule 1

Rules include a list of Civil Rules that apply, which list specifically excludes Civil Rule 82.<sup>2</sup> The second is that in *Myers v. Alaska Psychiatric Institute*, 138 P.3d 238 (Alaska 2006), this Court has recently rejected the rationale asserted by API in another context.

The theory asserted by API is that should this Court allow Civil Rule 82 fees to psychiatric respondents whom API unsuccessfully attempts to involuntarily commit and medicate, it will "chill" the state's involuntary commitment and medication efforts.<sup>3</sup> Unlike, CINA proceedings, however, where it is not questioned that the state makes decisions based on its perceptions of the best interests of the child, this Court recently recognized in *Myers*, n 84, that it is well known state authorities use involuntary medication for many non-therapeutic purposes, such as "a form of control and as a substitute for treatment," "staff convenience, rather than for legitimate treatment needs," "expediency," "punishment," "bureaucratic needs . . . for passivity, obedience and submission," and to "solve all types of management problems."<sup>4</sup>

Frankly, Ms. Wetherhorn respectfully suggests, some "chilling" of these abuses would be a good thing. However, unfortunately, award of partial attorney's fees under Civil Rule 82 for successfully defending against involuntary commitment and/or medication is unlikely to have much impact because it is not enough to encourage the private bar to undertake such representation. That is why, as addressed in Section IV,

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<sup>2</sup> CINA Rule 1(e). CINA Rule 1(f) parallels Probate Rule 1(e), but there is no Probate Rule comparable to CINA Rule 1(e).

<sup>3</sup> Pages 8,10, & 12.

<sup>4</sup> In *Myers*, this Court also directly rejected API's asserted analogy to minors in arguing the right to be free from unwanted psychotropic medication is not a fundamental right.

below, Ms. Wetherhorn is seeking a rule that prevailing AS 47.30 respondents normally be awarded full, reasonable attorney's fees.

**C. That AS 47.30.905(b) Provides for the Payment of Appointed Counsel Is Irrelevant.**

API, in Section I.D., of its Argument, asserts that because AS 47.30.905(b) provides for the payment of appointed counsel, a Civil Rule 82 Award is precluded when private counsel is retained, saying "she [Ms. Wetherhorn] should remain responsible for payment."<sup>5</sup> However, that is beside the point. Civil Rule 82 is a fee shifting provision, not a fee responsibility provision.

At footnote 37 API argues another reason why Ms. Wetherhorn should not be awarded Civil Rule 82 fees is that would mean unsuccessful AS 47.30 psychiatric respondents would "theoretically" be subject to Civil Rule 82 awards against them.

However, under AS 47.30.910, people involuntarily committed and medicated are currently charged \$1,016.16 for each day they are involuntarily held at API. Adding what would likely be less than \$100 in partial attorney's fees to this would be *de minimis*.<sup>6</sup> To be sure, if AS 47.30 involuntary commitment and medication respondents were to receive vigorous representation, this would go up, but this Court could still rule fees should not be awarded against unsuccessful AS 47.30 involuntary commitment and medication respondents. Moreover, since the vast majority of AS 47.30 respondents are

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<sup>5</sup> API Brief at 14.

<sup>6</sup> It can reasonably be assumed API's attorney normally spends no more than one hour on the typical case. If an hourly rate of \$225 were applied to the Civil Rule 82(a)(2) 30%  
-----(footnote continued)

indigent and have nothing with which to pay such an award, any significant attorney's fee award would be meaningless. Finally, API could voluntarily eschew seeking such fees.

## **II. Ms. Wetherhorn Is the Prevailing Party.**

API's position with respect to whether or not Ms. Wetherhorn is the prevailing party is a *post hoc* rationalization of counsel. After Ms. Wetherhorn filed the fee motion, counsel made the factual assertion that Ms. Wetherhorn's discharge had nothing to do with the Law Project for Psychiatric Rights' (PsychRights) entry into the case and vigorous assertion of her rights. However, there are no sworn facts to support this self-serving assertion<sup>7</sup> which strains credulity in light of the sequence of events and the conflicting evidence that is in the record as pointed out in Ms. Wetherhorn's opening brief.<sup>8</sup>

It was arbitrary and capricious and manifestly unreasonable and therefore an abuse of discretion for the trial court judge, who did not participate in the substantive proceedings, to merely recite that Ms. Wetherhorn was not the prevailing party without explanation and without any attempt to determine the facts. Ms. Wetherhorn respectfully suggests, dismissal of the petition, in itself makes her the prevailing party. If not, an

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(Continued footnote)-----  
factor after trial where no money judgment is received, this would result in a fee assessment of \$67.50.

<sup>7</sup> At page 20 of its brief, API states that it often happens that petitions are dismissed before the scheduled hearing. This is another factual assertion that is not in the record, does not ring true, depending perhaps on what "often" means, and should be disregarded by the Court.

evidentiary hearing should have been conducted to determine whether the petitions would have been dismissed if PsychRights had not entered the case.

**III. Ms. Wetherhorn Should Be Awarded Enhanced or Full Attorney's Fees.**

Ms. Wetherhorn will rely on her opening brief for why she should be awarded enhanced or full attorney's fees under the Civil Rule 82(b)(3)(E),(G),(H),(I) or (K), or any combination thereof.

**IV. Prevailing AS 47.30 Psychiatric Respondents Should Be Awarded Full Reasonable Attorney's Fees.**

At note 46 of its Brief, API misconstrues Ms. Wetherhorn's argument with respect to her request that as a matter of policy this Court should hold prevailing psychiatric respondents under AS 47.30 involuntary commitment and medication petitions be awarded full, reasonable attorney's fees under the same criteria as prevailing public interest litigants. Ms. Wetherhorn did not make the request based on all such respondents being public interest litigants, but to further this Court's interest in the proper administration of justice in its courts.

API complains such a rule should not be fashioned "based on one person's dissatisfaction with the Public Defender Agency," but fails to address the fundamental issue of the systemic failure of the Public Defender Agency to interpose meaningful defenses on behalf of AS 47.30 psychiatric respondents which has led to the systemic

(Continued footnote)-----

<sup>8</sup> At pp 16-17, API goes to great length to try and convince this Court the Notice of Release (Exc. 29) should be construed to support its factual assertion when it does nothing of the sort.

failure of justice in Alaska's courts in these proceedings. The request for a rule that full, reasonable attorney's normally be awarded to successful AS 47.30 involuntary commitment and/or medication respondents is a way to partially address this systemic failure of justice by encouraging the private bar to undertake such cases.

Ms. Wetherhorn spent 2 1/2 pages of her opening brief demonstrating this systemic problem (pp 22-24), which the State does not dispute. Instead, at footnote 15, API asserts this is not an appropriate forum for this Court to address the systemic problem because this is not an ineffective assistance of counsel claim, nor a class action. However, it is entirely appropriate for Ms. Wetherhorn to seek a rule to address this systemic failure within the context of her attorney fee claim. No class action is required.<sup>9</sup>

API cites to *Goetz v. Crosson*, 967 F.2d 29, 34-5 (2d Cir. 1992), for the proposition that these types of proceedings "are not entirely adverse."<sup>10</sup> This attitude towards the deprivation of the fundamental rights which involuntary commitment and medication involve is precisely the problem and implicitly endorses the current situation where the Public Defender Agency does not interpose any meaningful defense because it has decided their clients should be locked up and drugged against their will. This ends up being pretend representation, which is worse than no representation because it creates the illusion of a legitimate judicial process. This is precisely the evil which the request is fashioned to address.

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<sup>9</sup> And Ms. Wetherhorn has raised the ineffectiveness of counsel problem in her appeal of her 30-day commitment, Case No. S-11939, which the Public Defender Agency lost after interposing essentially no defense whatsoever.

In *In the Matter of K.G.F*, 29 P.3d 485, 492-3 (Montana 2001), the Montana Supreme Court discusses this systemic problem as follows:

"[R]easonable professional assistance" cannot be presumed in a proceeding that routinely accepts--and even requires--an unreasonably low standard of legal assistance and generally disdains zealous, adversarial confrontation.

\* \* \*

As a starting point, it is safe to say that in purportedly protecting the due process rights of an individual subject to an involuntary commitment proceeding--whereby counsel typically has less than 24 hours to prepare for a hearing on a State petition that seeks to sever or infringe upon the individual's relations with family, friends, physicians, and employment . . . our legal system of judges, lawyers, and clinicians has seemingly lost its way in vigilantly protecting the fundamental rights of such individuals.

(footnote omitted).

Adopting the requested rule is a reasonable, if only partial, way to address this problem with Alaska's administration of justice in these proceedings.<sup>11</sup>

#### **V. Ms. Wetherhorn Should Be Awarded Civil Rule 95 Fees.**

In seeking Civil Rule 95 fees, Ms. Wetherhorn charges API violated Civil Rule 11 by (1) misstating *Cooper* as holding there has to be a statutory provision allowing such fees, and (2) pretending that the dismissal of the petitions against Ms. Wetherhorn's release was unrelated to PsychRights' efforts on her behalf.

(Continued footnote)-----

<sup>10</sup> API Brief, footnote 12.

<sup>11</sup> As mentioned in her opening brief, Ms. Wetherhorn's other pending appeal, S-11939, seeks to establish meaningful standards for representation in these cases and to the extent such standards are adopted and implemented the necessity for the relief requested here is diminished. However, even if such standards are adopted and implemented, there would seem to be little negative impact in establishing the rule sought here.

In its opposition brief, at 22, API notes that in its Supplemental Reply below,<sup>12</sup> it asserted:

In *Cooper v. State*, the Alaska Supreme Court determined that, AS 09.60.010 did not give courts authority to order that attorney's fees be awarded to the prevailing party in a Child in Need of Aid Proceeding.

(footnotes omitted). However, what this Court actually held in *Cooper*, 638 P.2d at 178 was that it was unauthorized because there was no statute or court rule or order ("nor have we promulgated any rule or order").

In its Brief, at 23, API appears to deliberately attempt to mislead this Court when it states, "Under AS 09.60.010, fees could be awarded only if allowed by statute or court rule"<sup>13</sup> as if it had acknowledged below that the fee could be authorized by court rule. It also asserts its misstating *Cooper* was a "reasonable distillation of the court's analysis."

API argues this type of misstatement of this Court's opinion is insufficient to constitute a violation of Civil Rule 11, triggering Civil Rule 95. Ms. Wetherhorn hopes this Court disagrees.

As set forth in Ms. Wetherhorn's opening brief and at Exc. 92-95, there is no real question but that the petitions were dismissed as a result of PsychRights' entry into the case and vigorous assertion of Ms. Wetherhorn's rights. API's unsworn, self-serving statements of counsel to the contrary are palpably untrue and not credible. As with the misstatement of this Court's holding in *Cooper*, Ms. Wetherhorn believes this is a sufficient violation of Civil Rule 11 to trigger Civil Rule 95. However, most important is

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<sup>12</sup> Exc. 81.

that a bright line rule be adopted that a dismissal of a filed petition for involuntary commitment or medication makes the AS 47.30 respondent the prevailing party.

## **CONCLUSION**

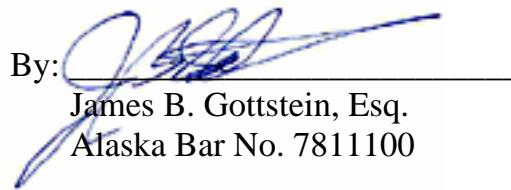
For the foregoing reasons, Appellant respectfully requests this Court reverse and hold:

1. Ms. Wetherhorn was the prevailing party below,
2. Full reasonable attorneys fees in the amount of \$2,623.50 be awarded to Ms. Wetherhorn,
3. Full reasonable attorneys fees should normally be awarded to prevailing AS 47.30 psychiatric respondents under Civil Rule 82; and
4. Ms. Wetherhorn be awarded \$10,746 in Civil Rule 95(a) fees.

RESPECTFULLY SUBMITTED this 3rd day of November, 2006.

LAW PROJECT FOR PSYCHIATRIC RIGHTS, INC.

By:

  
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Alaska Bar No. 7811100

(Continued footnote)-

<sup>13</sup> (emphasis added)