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Probate Division

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Clerk of the Trial Courts

January 18, 2007

EMERGENCY/EXPEDITED CONSIDERATION REQUESTED

Judge Morgan Christen
C/O Probate Clerk
303 K Street
Anchorage, AK 99501

Re: Request for Copy of Completed Jury Verdict Form in 3AN 07-598 P/R

Dear Judge Christen:

This letter is to request a copy of the completed jury verdict form in the trial on the petition for 90-day commitment in what I am pretty sure is case number 3AN 07-598 P/R, held in mid June, 2007, I believe. For reasons that I do not consider my fault, I need this immediately so it may be included in an appendix for a reply brief that is technically late, but for which there is a pending motion for extension until this coming Monday, January 21, 2007. I am therefore requesting a decision and access to the court file review it and at least copy the requested completed jury verdict form by the close of business today, Thursday, January 18, 2007, so that I may seek timely relief in the Supreme Court, if this request is denied.

I testified as a witness in this case and, as I recall, (a) you were the judge and (b) the respondent elected to have the hearing open to the public. In spite of the election to have the hearing open, I assume I will be refused access when I go to the Probate Clerk's Office, which is my next stop. If, as expected, I am refused, I will ask the clerk to call you. If I am allowed access without your being called, I will immediately inform you.

AS 47.30.735(b)(3), provides "the respondent has the right . . . (3) to have the hearing open or closed to the public as the respondent elects." As indicated, my belief is the respondent elected to have the hearing open to the public. However, even if he did not, for the reasons that follow, I should be allowed access to it under Administrative Rule 37.7, which provides:

(a) Allowing Access to Non-Public Records. The court may, by order, allow access to non-public information in a case or administrative record if the court finds that the requestor's interest in disclosure outweighs the potential harm to the person or interests being protected, including but not limited to:

- (1) risk of injury to individuals;
- (2) individual privacy rights and interests;
- (3) proprietary business information;
- (4) the deliberative process; or
- (5) public safety.

Non-public information includes information designated as confidential or sealed by statute or court rule and public information to which access has been limited under Administrative Rule 37.6. A request to allow access may be made by any person or on the court's own motion as provided in paragraph (b).

(b) Procedure. Any request to allow access must be made in writing to the court and served on all parties to the case unless otherwise ordered. The court shall also require service on other individuals or entities that could be affected by disclosure of the information. A request to allow access, the response to such a request, and the order ruling on such a request must be written in a manner that does not disclose non-public information, are public records, and shall not themselves be sealed or made confidential.

In reality, even if the file is properly closed, which it is not, I should be allowed access to the file as the respondent's attorney in another case, but it is not clear this is what is meant by Administrative Rule 37.5(b)(2)(D) (granting access to "the parties to a case or their lawyers regarding access to records in their case"). In any event, I am asserting the right to access on that basis.

The file was not properly closed unless the respondent affirmatively elected the hearing to be closed under AS 47.30.735(b)(3), which I don't believe it was.

The parties to civil proceedings have the constitutional free speech right to have them open to the public.¹ Like other fundamental constitutional rights this free speech right of access can be overridden only by a showing of an important or compelling countervailing governmental interest and there are no less restrictive alternatives.² There is also a common law right of public access to civil trials.³ In short, "A trial is a public event. What transpires in the court room is public property"⁴ However, these rights can be overridden in certain circumstances, such as to protect privacy interests,⁵ and to ensure the integrity of the adjudicatory process.⁶ These are precisely the types of considerations reflected in Administrative Rule 37.6, severely limiting what Court records may be closed to the public.

People who have jobs or go to school, have relationships and reputations to protect, etc., have good reason to want to keep involuntary commitment and forced drugging proceedings confidential. However, many other psychiatric respondents, especially those that no longer have any reputation to protect, want the world to know what is happening to them. That is their right and my recollection is the respondent in this case affirmatively elected to exercise that right.

The election to have the "hearing" open to the public includes the court file. One of the cases cited with approval in *Nixon* is *State ex rel Williston Herald*, in which the court held the right to have the "hearing" open to the public necessarily includes access to the court file, subject to reasonable regulation.⁷

In *Kamakana v. Honolulu*, the Ninth Circuit recently reviewed the common law right to access to court proceedings and under what circumstances access might be limited:

¹ *Westmoreland v. Columbia Broadcast System*, 752 F.2d 16, 21-22 (2nd Cir. 1984).

² *Publicker Industries, Inc. v. Cohen*, 733 F.2d 1059, 1070, 1071 (3rd Cir.1984).

³ *Nixon v. Warner Communications*, 435 U.S. 589, 597, 98 S.Ct. 1306, 1312 (1978).

⁴ *Craig v. Harney*, 331 U.S. 367, 374, 67 S.Ct. 1249, 1254, 91 L.Ed. 1546 (1947)

⁵ *North Jersey Media Group, Inc. v. Ashcroft*, 308 F.3d 198, n10 (3rd Cir. 2002).

⁶ *Gentile v. State Bar of Nevada*, *Gentile v. State Bar of Nevada*, 111 S.Ct. 2720, 111 S.Ct. 2720 (1991)

⁷ 151 N.W.2d 758, 762-763 (N.D.1967).

Historically, courts have recognized a " general right to inspect and copy public records and documents, including judicial records and documents." This right is justified by the interest of citizens in " keep[ing] a watchful eye on the workings of public agencies." . . .

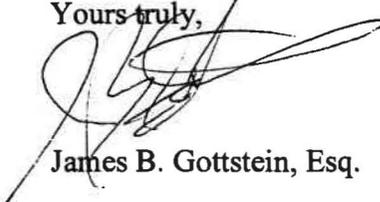
Nonetheless, access to judicial records is not absolute. . . .

[A] "strong presumption in favor of access" is the starting point. A party seeking to seal a judicial record then bears the burden of overcoming this strong presumption by meeting the " compelling reasons" standard. That is, the party must " articulate[] compelling reasons supported by specific factual findings," that outweigh the general history of access and the public policies favoring disclosure, such as the " ' public interest in understanding the judicial process.' " In turn, the court must " conscientiously balance[] the competing interests" of the public and the party who seeks to keep certain judicial records secret. After considering these interests, if the court decides to seal certain judicial records, it must " base its decision on a compelling reason and articulate the factual basis for its ruling, without relying on hypothesis or conjecture."⁸

Here, since the respondent wants access to the record in his own case for his own purposes in another case, there is absolutely no justification under Administrative Rule 37.7(a) for denying access: (1) there is no risk of injury, (2) the only cognizable individual privacy right is respondent's and it is he seeking to obtain access through his attorney so that it may be used on his behalf in his appeal in another case, (3) there is no proprietary business information involved, (4) the deliberative process is not involved, and (5) public safety is not involved.

For the foregoing reasons I am requesting immediate access to the court file, including to make a copy of the completed jury verdict form, and possibly other documents.

Yours truly,



James B. Gottstein, Esq.

cc: Chambers Copy (Hand Delivered)
George Davenport (Hand Delivered)
Elizabeth Russo (Hand Delivered)

⁸ 447 F.3d 1172, 1178-79 (CA9 2006), citations and footnotes omitted.