

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS  
FOR THE DEPARTMENT OF CORRECTIONS

In the Matter of the Risk Level  
Determination of Anthony Raymond Shafer

**ORDER GRANTING  
PETITIONER'S REQUEST  
FOR ADDITIONAL TIME**

This matter is pending before Administrative Law Judge Jeanne M. Cochran pursuant to a Notice and Order for Hearing filed with the Office of Administrative Hearings on October 20, 2015.

Karen Andrews, Assistant Attorney General, represents the End-of-Confinement Review Committee (ECRC). Anthony Raymond Shafer (Petitioner) represents himself without legal counsel.

On October 27, 2015, the ECRC filed a Motion for Summary Disposition of Risk Level Administrative Review. On October 26, 2015, Petitioner filed a letter requesting additional time to prepare his response to any dispositive motion and to consult with an attorney.

Based upon the record and for good cause shown, the Administrative Law Judge makes the following:

**ORDER**

Petitioner's request for additional time is **GRANTED**. Petitioner must file his response to the ECRC's Motion for Summary Disposition by **December 4, 2015**. The response must be received at the Office of Administrative Hearings by **4:30 p.m.** on that date.

Dated: November 4, 2015

s/Jeanne M. Cochran  
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JEANNE M. COCHRAN  
Administrative Law Judge

## MEMORANDUM

On October 27, 2015, the ECRC filed a Motion for Summary Disposition. On that same date, the ECRC also filed: 1) a memorandum of law in support of its motion; 2) the ECRC Packet; 3) the MnSOST 3.1.2 Coding Rules; 4) Curriculum Vitae of Dr. Donn Nelson; and 5) a CD-R containing the audio of the ECRC meeting. With the exception of the CD-R, all of these documents were also served on Petitioner.<sup>1</sup>

On October 26, 2015, Petitioner filed a letter making several requests. First, Petitioner requests “additional time to make a response.”<sup>2</sup> Petitioner also feels additional time is warranted to “contact Karen Andrews at the Attorney General’s Office to discuss possible disposition of this matter and/or discovery.”<sup>3</sup> Second, Petitioner requests access to an attorney. Petitioner asserts that he “would be remiss not to consult with counsel” because he does “not understand what, if any, rights [he] might have or retain throughout these proceedings.”<sup>4</sup> Petitioner asks whether he needs to contact the Hennepin County Public Defender’s Office to request legal assistance.<sup>5</sup> Finally, Petitioner seeks a subpoena to acquire records from the Department of Corrections “pertinent to this case.”<sup>6</sup>

Petitioner’s request for additional time is granted. Pursuant to Minn. R. 1400.6600 (2015), Petitioner has ten working days from service of the ECRC’s Motion for Summary Disposition to respond. However, due to the possibility that summary disposition may result in dismissal of Petitioner’s appeal, and the fact that Petitioner is currently unrepresented, additional time to prepare a response is reasonable. Accordingly, the Administrative Law Judge will give Petitioner additional time to submit a response to the ECRC’s motion.

Although the Administrative Law Judge understands Petitioner’s interest in receiving legal representation in this case, Petitioner does not have a right to appointment of an attorney. The Minnesota Legislature specifically eliminated funding for the Minnesota Public Defender’s Office to represent indigent offenders in ECRC appeals.<sup>7</sup> Case law establishes that an offender seeking administrative review of his risk level assignment has no right to counsel.<sup>8</sup> Because this matter is an administrative review of whether the ECRC assigned Petitioner an appropriate risk level and does not involve a criminal penalty, there is no constitutional right to a court-appointed attorney.<sup>9</sup> Petitioner,

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<sup>1</sup> Affidavit of Personal Service by Douglas Gruber (October 27, 2015).

<sup>2</sup> Petitioner’s Letter filed October 26, 2015.

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> 2012 Minn. Laws ch. 212, § 1 at 1.

<sup>8</sup> *State v. Her*, 862 N.W.2d 692, 700 (Minn. 2015).

<sup>9</sup> See *Thole v. Comm’r of Pub. Safety*, 831 N.W.2d 17, 20 (Minn. Ct. App. 2013) (parties to civil proceedings have no constitutional right to counsel appointed at public expense); *Boutin v. LaFleur*, 591 N.W.2d 711, 717-18 (Minn. 1999) (Minnesota’s registration and community notification laws are “regulatory” because they do not impose an affirmative disability or restraint, are not historically regarded as a punishment, and do not promote retribution and deterrence.).

however, does have the right to retain his own attorney to represent him in this matter.<sup>10</sup> The Administrative Law Judge is also granting the Petitioner's request for additional time to allow Petitioner the opportunity to retain an attorney to represent him in this matter if he so chooses.

Finally, the Administrative Law Judge concludes Petitioner's request for a subpoena is premature and lacks sufficient specificity. The ECRC included almost 300 pages of records related to this matter with its Motion for Summary Disposition. If Petitioner feels additional records are needed, he can request the records from counsel for the ECRC. If Petitioner still feels he requires other documents, he may request a subpoena from the Administrative Law Judge.

**J. M. C.**

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<sup>10</sup> Minn. R. 1400.5800 (2015).