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7 In Propria Persona Appellant

8 **UNITED STATES COURT OF APPEALS**  
9 **FOR THE NINTH CIRCUIT**

10  
11 Brian A. Wilkins, ) 9<sup>th</sup> Cir. Case No.  
12 Appellant, )  
13 vs. ) Originating Court Case No.  
14 Maricopa County; Joseph M. Arpaio, in ) CV: 09-01380-PHX-LOA  
15 his individual and official capacity as ) **EMERGENCY MOTION FOR**  
16 Maricopa County Sheriff; Darren ) **STAY OF ORDER FROM THE**  
17 Dauch, in his individual and official ) **DISTRICT OF ARIZONA**  
18 Appellees. )

19 Appellant hereby moves the Court to issue an emergency stay of an order  
20 issued by the U.S. District Court of Arizona on June 2, 2010 in the above  
21 referenced case (Doc # 117). Appellant moved the trial court to stay said order, but  
22 was denied on June 3, 2010 (see attached Exhibit A). No reasons for the denial  
23 were given by the trial court.  
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25  
26 Appellant believes that the trial court erred on the following grounds: 1) by  
27 ordering the Appellant's medical providers to disclose to Appellee Maricopa  
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1 County mental health records when the medical issues being tried in this case  
2 involve only blood pressure medication and a broken bone in his hand; 2) by  
3 overstepping its duties as an impartial decision maker; and 3) not fully considering  
4 the Appellant's motion for sanctions.  
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### 6 **BACKGROUND AND LEGAL ARGUMENT**

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8 This case arises from a 58 day period, from July 22, 2008 – September 17,  
9 2008 that the Appellant was incarcerated in the Maricopa County Jail. At the time,  
10 the Appellant had a broken right hand and was taking daily, doctor-prescribed  
11 blood pressure medication called Benicar. While incarcerated, Maricopa County  
12 failed to provide the Appellant a splint for said broken hand and failed to provide  
13 the Appellant's doctor-prescribed blood pressure medication.  
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15  
16 Since the case survived the Appellees' motion to dismiss, Maricopa County  
17 has relentlessly attempted to obtain the Appellant entire 35-year medical history,  
18 which is obviously beyond the scope of this case and contrary to federal law and  
19 U.S. Supreme Court precedent. See *45 CFR 164.502(b)* and *164.514(d)*; *United*  
20 *States v. Comprehensive Drug Testing, Inc.*, 513 F.3d 1085 (9<sup>th</sup> Cir. 2008); *Doe v.*  
21 *Attorney General*, 941 F.2d 780, 795 (9<sup>th</sup> Cir. 1991) (quoting *Whalen v. Roe*, 429  
22 U.S. 589, 599-600 (1977)).  
23  
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26  
27 On April 14, 2010, Appellee Maricopa County filed a motion to compel the  
28 Appellant to sign authorizations for disclosure of all of his medical records, even

1 though the Appellant had already authorized disclosure of pertinent records for this  
2 case. Appellant responded and also filed a motion for sanctions against the  
3 Appellees on April 20, 2010. The trial court, on May 5, 2010, ordered that  
4 Maricopa County's motion did not comply with local rules, and that it must file a  
5 supplemental brief which provides legal authority which they relied upon to  
6 request medical records beyond the scope of the case, or the motion would be  
7 summarily denied. Though Maricopa County filed said supplemental brief, it  
8 contained no legal authority that gave the Appellees the legal right to the  
9 Appellant's medical records beyond the scope of the case. Though the trial court  
10 acknowledges in the June 2, 2010 order that Maricopa County failed to provide  
11 any legally binding authority which gave them the right to further medical records,  
12 it still partially granted Maricopa County access to non-pertinent mental health  
13 records.  
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19 Earlier in the case, the pro-se Appellant attempted to discover documents  
20 from the Appellees, but did so without knowing he could not before the Rule 16  
21 conference, pursuant to rules of civil procedure. In its January 26, 2010 order  
22 denying the Appellant's motion for discovery, the trial court basically scolded the  
23 Appellant because:  
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26 "the Court expressly advises him that the United States Supreme Court has  
27 made clear that federal "judges have no obligation to act as counsel or  
28

1 paralegal to *pro se* litigants” because requiring trial judges to explain the  
2 details of federal procedure or act as the *pro se*’s counsel “would undermine  
3 [federal] judges’ role as impartial decision makers.” *Pliler v. Ford*, 542 U.S.  
4 225, 226-227 (2004). A *pro se* litigant “does not have a constitutional right  
5 to receive personal instruction from the trial judge on courtroom procedure”  
6 and that “the Constitution [does not] require judges to take over chores for a  
7 *pro se* [litigant] that would normally be attended to by trained counsel as a  
8 matter of course.” *Id.* (citing *Martinez v. Court of Appeal of Cal., Fourth*  
9 *Appellate Dist.*, 528 U.S. 152, 162 (2000)).

10 See Doc. #46. It would only be reasonable to assume that these rules also apply to  
11 parties who are in fact represented by counsel. The court reasoned, in its June 2,  
12 2010 order that, “The patient-physician privilege does not exist at federal common  
13 law and the Ninth Circuit has not recognized a physician-patient privilege . . . .”  
14 *Soto v. City of Concord*, 162 F.R.D. 603, 618 (N.D.Cal. 1995). This reasoning is  
15 non-binding, as the case which the trial court cited was decided before the Health  
16 Insurance Portability and Accountability Act of 1996 (“HIPAA”), Pub. L. No. 104-  
17 191, 110 Stat.1936 (1996). Further, the trial court made several preemptive  
18 assumptions as to Appellee Maricopa County’s reasoning for wanting medical  
19 records beyond the scope of this case, which obviously “undermine[s the] [federal]  
20 judges’ role as impartial decision maker. See *Pliler*, supra. Again, the trial ordered  
21 Appellee Maricopa County to provide its own legal reasoning to compel the  
22 Appellant to disclose medical records beyond the scope of this case. Instead, the  
23 trial court provided said authority for the Appellee. However, again, Appellant  
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1 believes the authority which the trial court relies on was rendered non-binding after  
2 the HIPAA of 1996.  
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4 It also needs to be noted that the Appellant brought four reasons to the trial  
5 court why Maricopa County should be sanctioned for its conduct (Doc. #101). The  
6 trial court, however, only ruled on one of these reasons, and completely discounted  
7 the others. "When one party seeks sanctions against another, the Court must  
8 determine whether any provisions of Rule 11 have been violated. *Fed. R. Civ. P.*  
9 *11(b)(1) and (b)(2); Warren v. Guelker*, 29 F.3d 1386, 1388, 1389 (9th Cir. 1994).  
10  
11 The trial court ruled that Maricopa County's motion to compel was not legally  
12 frivolous and thus summarily denied the other grounds for sanctions brought by the  
13 Plaintiff.  
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### 16 CONCLUSION

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18 The Appellant requests expedited review of this motion, as the trial court has  
19 ordered open access to the Appellant medical records, contrary to federal law.  
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21 Further, Appellant requests this Court stay the trial court's June 2, 2010 order, and  
22 further stay all proceedings in this case, pending the appeal of said order.  
23

24 Respectfully submitted on this 4th day of June, 2010.

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26 \_\_\_\_\_  
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**CERTIFICATE OF FILING AND SERVICE**

I hereby certify that on June 4, 2010, I faxed the foregoing document and exhibit to the Clerk's Office for the Ninth Circuit Court of Appeals at 415-355-8561, and electronically served the attorneys for Appellees, at the following addresses:

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Brian A. Wilkins

**CERTIFICATE OF COMPLIANCE**

1 I hereby certify that the Motion for Emergency Stay complies with the  
2 provisions for filing motions in the appellate courts, pursuant to Fed. R. App. P.  
3 27.  
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 Brian A. Wilkins  
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