



Gordon Warren Epperly
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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

Gordon Warren Epperly,)	
)	
Petitioner,)	Case No. <u>1:07-CV-00011-JWS</u>
)	
vs.,)	
)	
Allen Weinstein,)	Notice Of Exception
Archivist of the United States)	
National Archives and)	Taken To Court Order
Record Administration)	
Respondent.)	

COMES NOW the Petitioner (Plaintiff) Gordon Warren Epperly, hereby notifies the Court that he takes Exception to the Court Order dated July 30, 2007 wherein the Court has Ordered the Petitioner to file a Motion to have his Computer Diskette that was filed with his initial Pleading as Exhibit "B" to be considered as a part of the Court Record:

1. A '*Court Order in the Nature of Mandamus*' upon an Executive Officer is always a proceeding for judicial review of the Administrative Record of an Agency of the executive branch of government. The judicial review of the Administrative Record that is before this Court is not a proceeding '*de novo*' and it is govern by enactments of law of the Congress of the United States.

In the administrative law context in the United States, the requirement that mandamus can be used only to compel a ministerial act has largely been abandoned. By statute or by judicial expansion of the writ of mandamus, acts of Administrative Agencies are now subject to judicial review for abuse

of discretion. Judicial review of Agencies of the United States Federal Government for abuse of discretion is authorized by the Administrative Procedure Act (APA).^{1/}

Under 5 USC 706, the Congress of the United States has mandated that “*the court shall review the whole record or those parts cited by a party, . . .*”. The Petitioner made it clear within his Petition for an Order in the Nature of Mandamus that he has submitted the whole record of the Administration of the Archivist of the United States for review which includes the Computer Diskette (CD)^{2/} that has been submitted into the Record of the Court as Exhibit ‘B’.^{3/} With the law of 5 USC 706, the Judicial Officers of the Federal Courts have no discretion to exclude any part of the Administrative Record from the Record of the Court including Computer Diskettes notwithstanding any Rule of the Federal Courts. This Computer Diskette has been served with the initial Pleadings of the Petitioner upon the Respondent, Allen Weinstein, the United States Attorney at Anchorage, Alaska, and the Attorney General for the United States at Washington, D.C..

It appears that the Judicial Officer of this U.S. District Court for the District of Alaska would like to acquire authority to make a determination as to what parts of the Administrative Record may or may not be included into the Record of the Court by mandating the filing of Motions for Consideration by the Petitioner. The Petitioner does not grant this authority to the Court.

2. The local Rule 10.1(b)(3)[B] of the U.S. District Court of Alaska Local Rules (D.Ak.LR.) cited by U.S. District Court Judge John W. Sedwick at item 5 of

^{1/} The text of the APA can be found under Title 5 of the United States Code, beginning at Section 500.

^{2/} For inclusion of the Computer Diskette into the Administrative Record, see Page 25 of Exhibit ‘A’ (*Letter to Archivist of the United States, Allen Weinstein*) which is a part of the initial Pleadings of the Petitioner.

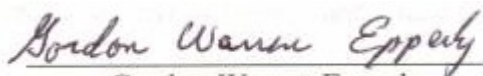
^{3/} See Page 5 of Petitioner’s Petition for ‘*Petition for an Order in Nature of Mandamus*’ under the heading of “*Record for Judicial Review*.”

the Court Order is not found in the local Rules that is posted on the U.S. District Court for the District of Alaska web site:

<http://www.akd.uscourts.gov/reference/rules/lr/LR%2012-06.pdf>

The local Rule 10.1(b)(3)[B] also cannot be located in the law library of the Diamond Court House Building at Juneau Alaska nor may it be found at the library for the University of Alaska Southeast. As this cited local Rule is not available to the General Public, the Petitioner is at a disadvantage to formulate a Motion as per Order of the Court.

DATED this 8th day of August, 2007.


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Gordon Warren Epperly,)	
)	
Petitioner,)	Case No. <u>1:07-CV-00011-JWS</u>
)	
vs.,)	
)	
Allen Weinstein,)	Certificate of Mailing
Archivist of the United States)	
National Archives and)	
Record Administration)	
Respondent.)	

In Witness, Knowing the punishment for bearing false witness before Almighty God and Men, I solemnly aver that the attached "Notice of Exception Taken to Court Order" and "Certificate of Mailing" was Mailed to:

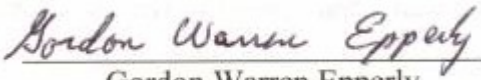
Office of U.S. Attorney
Civil Process Clerk
Federal Building & Court House
Anchorage, Alaska 99513

Attorney General
Alberto R. Gonzales
U.S. Department of Justice
950 Pennsylvania Avenue N.W.
Washington, D.C. 20530-0001

Allen Weinstein
Archivist of the United States
National Archives
700 Pennsylvania Avenue N.W.
Washington, D.C. 20408

by depositing said "Notice of Exception Taken to Court Order" and "Certificate of Mailing" with the United States Postal Service at Juneau, Alaska.

DATED this 8th day of August, 2007.


Gordon Warren Epperly