

STATE OF MINNESOTA

IN SUPREME COURT

C4-85-1848

OFFICE OF
APPELLATE COURTS

JUL 13 2010

FILED

ORDER AUTHORIZING
ACCESS TO NON-PUBLIC RECORDS
IN CRIMINAL CASE FILES
FOR INNOCENCE PROJECT
SCREENING PROCESS

ORDER

The Innocence Project of Minnesota, the Minnesota State Board of Public Defense, and the Office of the Hennepin County Attorney are collaborating to perform a comprehensive review of all homicide and criminal sexual conduct convictions in Minnesota state court between 1981 and 1999 to identify cases where DNA testing could potentially lead to the exoneration of an actually innocent person. This comprehensive review is referred to herein as the "Screening Process," and is being funded under a grant from the United States Department of Justice Postconviction DNA Testing Assistance Program. The Screening Process is described in more detail in the FY 2009 Minnesota Application for Postconviction DNA Testing that is on file with the Clerk of the Appellate Courts office.

The Screening Process requires access to district court criminal case files which may include court records that are not accessible to the public and which may contain information relevant to the Screening Process. Access by the Innocence Project and its collaborative partners to non-publicly-accessible criminal case records on a county-wide or judicial-district-wide basis can be authorized by district court order but the process for

obtaining such orders is burdensome and inefficient for the judicial branch and the Innocence Project. The Minnesota Supreme Court has authority to authorize access by the Innocence Project and its collaborative partners to non-publicly-accessible criminal case records on a statewide basis. The State Court Administrator's Office (SCAO) desires to facilitate the Screening Process on a statewide basis to minimize the impact on the judicial branch and has entered into appropriate nondisclosure agreements with the Innocence Project of Minnesota, the Minnesota State Board of Public Defense, and the Office of the Hennepin County Attorney, all of which are on file with the Clerk of the Appellate Courts office and an example of which is attached as Exhibit A. SCAO requests that the Court authorize the access necessary to facilitate the Screening Process. After having considered SCAO's request and being fully advised, this Court concludes that facilitating the Screening Process on a statewide basis is necessary to minimize the impact on judicial branch resources.

IT IS HEREBY ORDERED that, under Rules 2 and 4, subdivision 1(g), of the Rules of Public Access to Records of the Judicial Branch, district courts of the State of Minnesota are authorized to provide the Innocence Project of Minnesota, the Minnesota State Board of Public Defense, and the Office of the Hennepin County Attorney, which have entered into appropriate nondisclosure agreements with the SCAO, access to the following records (the "Records"):

1. Subject to the limitations in sections 2 and 3 of this order, the "Records" shall include all of the following non-publicly-accessible criminal case records in all homicide and criminal sexual conduct convictions in

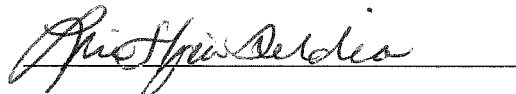
Minnesota state court between 1981 and 1999: identifying information and characteristics of minor victims of criminal sexual conduct violations, BCA reports, police reports, pretrial motions, sentencing transcripts, PSI reports, criminal history reports, victim impact statements, records on genetic information from medical or scientific professionals, psychological evaluations, sentencing worksheets, bail evaluations, and grand jury transcripts.

2. The term “Records” shall not apply to any of the foregoing records to the extent that public access to any of the foregoing records has been limited by specific order of the district court.
3. The term “Records” shall not apply to physical objects or other specimens that would be subject to DNA testing.

IT IS FURTHER ORDERED that access to the Records and use of the Records by Innocence Project of Minnesota, the Minnesota State Board of Public Defense, and the Office of the Hennepin County Attorney is subject to the conditions set forth in their respective nondisclosure agreements entered into with the SCAO.

Dated: July 13, 2010

BY THE COURT:

A handwritten signature in cursive script, appearing to read "Lorie S. Gildea", is written over a horizontal line.

Lorie S. Gildea
Chief Justice

NONDISCLOSURE AGREEMENT

THIS AGREEMENT is entered into by and between the STATE OF MINNESOTA, STATE COURT ADMINISTRATOR'S OFFICE ("SCAO"), 25 Rev. Dr. Martin Luther King Jr., Blvd. St. Paul, MN 5555, and the Innocence Project of Minnesota, a 501(c)(3) charitable organization, located at 1536 Hewitt Avenue, St. Paul, MN 55104 ("the **Innocence Project**").

Recitals

The Innocence Project is collaborating with the Minnesota State Board of Public Defense, the Office of the Hennepin County Attorney, and the State of Minnesota, Bureau of Criminal Apprehension to perform a comprehensive review of all homicide and criminal sexual conduct convictions in Minnesota state court between 1981 and 1999 to identify cases where DNA testing could potentially lead to the exoneration of an actually innocent person. This comprehensive review is referred to herein as the "**Screening Process**," and is being funded under a grant from the United States Department of Justice Postconviction DNA Testing Assistance Program. The Screening Process is described in more detail in the FY 2009 Minnesota Application for Postconviction DNA Testing.

The Screening Process requires access to district court criminal case files which may include court records that are not accessible to the public and which may contain information relevant to the Screening Process. Access by the Innocence Project and its collaborative partners to non-publicly accessible criminal case records on a county-wide or judicial-district-wide basis may be authorized by district court order. The Minnesota Supreme Court has authority to authorize access by the Innocence Project and its collaborative partners to non-publicly accessible criminal case records on a statewide basis. The SCAO desires to facilitate the Screening Process on a statewide basis to minimize the impact on the judicial branch, and SCAO is willing to submit a request to the Court for disclosure of non-publicly accessible criminal case records subject to the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants, promises and agreements contained herein, SCAO and the Innocence Project agree as follows:

1. **TERM; TERMINATION; ONGOING OBLIGATIONS.** This Agreement shall be effective upon execution by SCAO and shall remain in effect according to its terms. Either party may terminate this Agreement by giving written notice to the other party. The effective date of the termination shall be thirty days after the other party's receipt of the notice of termination, unless a later date is specified in the notice. The provisions of sections 1 and 3 through 18 shall survive any termination of this Agreement.
 - a. Promptly upon termination of this Agreement, the Innocence Project shall either return all copies of the Records to the individual courts from which they were obtained or destroy all copies of the Records and provide written certification of such destruction to the individual court from which they were obtained.

- b. For any case in which the Innocence Project does not enter an appearance as counsel of record, the Innocence Project will promptly follow the requirements of section 1.a., of this Agreement for the Records relating to that particular case.

2. RELEASE OF RECORDS.

- a. The records (“**Records**”) shall mean the following non-publicly accessible criminal case records in all homicide and criminal sexual conduct convictions in Minnesota state court between 1981 and 1999: identifying information and characteristics of minor victims of criminal sexual conduct violations, BCA reports, police reports, pretrial motions, sentencing transcripts, PSI report, criminal history reports, victim impact statements, records on genetic information from medical or scientific professionals, psychological evaluations, sentencing worksheets, bail evaluations, and grand jury transcripts; provided, however, that the term “Records” shall not apply to any of the foregoing records to the extent that public access to any of the foregoing records has been limited by order of the district court, and it shall not apply to physical objects or other specimens that would be subject to DNA testing.
- b. Promptly following the effective date, SCAO shall submit a request to the Minnesota Supreme Court for authorization to disclose the Records pursuant to the terms and conditions of this Agreement. If the request is approved by the Court, SCAO shall forward the authorization to the Innocence Project and to the judicial districts who may make the Records available to the Innocence Project subject to the terms and conditions in this Agreement.

3. GUARANTEES OF CONFIDENTIALITY. Subject to section 4 hereof, the Innocence Project agrees:

- a. Not to disclose to any third party (except the Minnesota State Board of Public Defense and the Office of the Hennepin County Attorney, each of which must first sign a nondisclosure agreement in the form approved by the SCAO) any information in the Records that are not accessible to the public under the Rules of Public Access to Records of the Judicial Branch promulgated by the Minnesota Supreme Court as the same may be amended from time to time, including, without limitation, any information in the Records from which the identity of any minor victim of criminal sexual conduct or other characteristic that could uniquely identify any minor victim of criminal sexual conduct is ascertainable.
- b. To take all appropriate action, whether by instruction, agreement, or otherwise, to insure the protection, confidentiality and security of the Records and to satisfy the Innocence Project's obligations under this Agreement. Without limiting the foregoing, the Innocence Project shall ensure that all Records it obtains in electronic format are stored on password-protected medium at all times and that all hard copy

versions of the Records are maintained in a secure, confidential manner or locked environment at all times.

- c. To limit the use of and access to the Records to the Innocence Project's bona fide employees, board members, independent contractors, and volunteers whose use or access is necessary to effect the purposes of this Agreement, and shall advise each employee, board member, independent contractor and volunteer who is permitted access to any of the Records of the restrictions upon disclosure and use contained in this Agreement, and shall require each employee, board member, independent contractor and volunteer who is permitted access to the Records to acknowledge in writing that the employee has read and understands such restrictions in the form set forth in Appendix A which is attached to and made a part of this Agreement. Employees, board members, independent contractors and volunteers shall present a copy of such form to any judicial branch personnel upon request when attempting to obtain access to the Records.
 - d. That the limitations on disclosure of the Records by the Innocence Project shall extend to any of the Records that were provided to the Innocence Project by any Minnesota Judicial Branch court prior to execution of this Agreement and any related Minnesota Supreme Court order.
 - e. That, without limiting paragraph 1 of this Agreement, the obligations of the Innocence Project with respect to the confidentiality and security of the Records shall survive the termination of this Agreement.
 - f. That, notwithstanding any federal or state law applicable to the Innocence Project's nondisclosure obligations hereunder, such obligations of the Innocence Project are founded independently on the provisions of this Agreement.
4. **LIMITATIONS ON NONDISCLOSURE.** The Innocence Project's obligations under section 3 of this Agreement do not apply to information that is accessible to the public pursuant to the Rules of Public Access to Records of the Judicial Branch promulgated by the Minnesota Supreme Court.
5. **INJUNCTIVE RELIEF.** The Innocence Project acknowledges that SCAO and the Minnesota Judicial Branch will be irreparably harmed if the Innocence Project's obligations under this Agreement are not specifically enforced and that SCAO and the Minnesota Judicial Branch would not have an adequate remedy at law in the event of an actual or threatened violation by the Innocence Project of its obligations. Therefore, the Innocence Project agrees that SCAO and the Minnesota Judicial Branch shall be entitled to an injunction or any appropriate decree of specific performance for any actual or threatened violations or breaches by the Innocence Project without the necessity of SCAO or the Minnesota Judicial Branch showing actual damages or that monetary damages would not afford an adequate remedy. The Innocence Project shall be liable to the SCAO and the Minnesota Judicial Branch for reasonable attorneys fees incurred by the SCAO and the

Minnesota Judicial Branch in obtaining any relief pursuant to this Agreement.

If the SCAO and/or the Minnesota Judicial Branch come to the conclusion that the Innocence Project has engaged in conduct which constitutes an actual or threatened violation or breach of this Agreement, the SCAO and the Minnesota Judicial Branch agrees to provide the Innocence Project with reasonable notice of that conclusion.

6. **INDEMNIFICATION.** The Innocence Project and SCAO agree that, except as otherwise expressly provided herein, each party will be responsible for its own acts and the results thereof to the extent authorized by law and shall not be responsible for the acts of any others and the results thereof. Liability of the SCAO shall be governed by the provisions of the Minnesota Tort Claims Act, Minnesota Statutes, section 3.376, and other applicable law. The Innocence Project shall carry general professional liability insurance in the amount of one million dollars, shall make the Minnesota judicial branch a certificate holder under such policy, and shall make such policy available to SCAO upon request.
7. **ACCURACY AND USE DISCLAIMER.** THE INNOCENCE PROJECT IS SOLELY RESPONSIBLE FOR ASSURING PROPER ANALYSIS, VERIFICATION, AND INTERPRETATION OF THE RECORDS. SCAO IS UNDER NO OBLIGATION TO ASSIST THE INNOCENCE PROJECT IN THE ANALYSIS, VERIFICATION, OR INTERPRETATION OF THE RECORDS.
8. **MUTUAL REPRESENTATION AND WARRANTY OF AUTHORITY.** The Innocence Project and SCAO each represent and warrant to the other that:
 - a. It has the full right, power and authority to enter into this Agreement and to perform fully all of its obligations hereunder; and
 - b. It is free of any obligation or restriction that would prevent it from entering into this Agreement or from performing fully any of its obligations hereunder; and
 - c. It has not entered into and will not enter into any contract which would impede the full performance of its obligations hereunder or would in any way limit or restrict the rights of the other under this Agreement.
9. **PASSWORDS.** [RESERVED]
10. **LIMITATIONS.**
 - a. **ACCURACY AND COMPLETENESS OF INFORMATION.** SCAO MAKES NO WARRANTIES AS TO THE ACCURACY OR COMPLETENESS OF THE INFORMATION CONTAINED IN THE RECORDS. THE INNOCENCE

PROJECT HEREBY RELIEVES SCAO AND ITS RESPECTIVE OFFICERS, AGENTS, AND EMPLOYEES OF ANY LIABILITY FOR ANY AND ALL DAMAGES RESULTING FROM INACCURATE OR INCOMPLETE INFORMATION OR ANY OTHER INFORMATION CONTAINED IN THE RECORDS.

- b. **EXCLUSION OF DAMAGES.** SCAO AND ITS RESPECTIVE OFFICERS, AGENTS AND EMPLOYEES SHALL NOT BE LIABLE FOR ANY LOST PROFITS OR SAVINGS, OR FOR SPECIAL, INDIRECT, INCIDENTAL, OR CONSEQUENTIAL DAMAGES OF ANY KIND WHATSOEVER (INCLUDING, WITHOUT LIMITATION, ATTORNEY FEES), REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT OR IN TORT, INCLUDING NEGLIGENCE, RELATING IN WHOLE OR IN PART TO THE INNOCENCE PROJECT'S RIGHTS UNDER THIS AGREEMENT OR USE OF, OR INABILITY TO USE, THE INFORMATION CONTAINED IN THE RECORDS, EVEN IF SCAO AND ITS RESPECTIVE OFFICERS, AGENTS OR EMPLOYEES HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

11. **RELATIONSHIP OF THE PARTIES.** The Innocence Project is an independent contractor and shall not be deemed for any purpose to be an employee, partner, agent or franchisee of SCAO. Neither the Innocence Project nor SCAO shall have the right nor the authority to assume, create or incur any liability or obligation of any kind, express or implied, against or in the name of or on behalf of the other.
12. **NOTICE.** Any notice to SCAO or the Innocence Project hereunder shall be deemed to have been received when personally delivered in writing or seventy-two (72) hours after it has been deposited in the United States mail, first class, proper postage prepaid, addressed to the party to whom it is intended at the address set forth on page one of this Agreement or at such other address of which notice has been given in accordance herewith.
13. **NON-WAIVER.** The failure by either party at any time to enforce any of the provisions of this Agreement or any right or remedy available hereunder or at law or in equity, or to exercise any option herein provided, shall not constitute a waiver of such provision, remedy or option or in any way affect the validity of this Agreement. The waiver of any default by either Party shall not be deemed a continuing waiver, but shall apply solely to the instance to which such waiver is directed.
14. **FORCE MAJEURE.** Neither party shall be responsible for failure or delay in the performance of their respective obligations hereunder caused by acts beyond their reasonable control.
15. **SEVERABILITY.** Every provision of this Agreement shall be construed, to the extent possible, so as to be valid and enforceable. If any provision of this Agreement so construed is held by a court of competent jurisdiction to be invalid, illegal or otherwise unenforceable,

such provision shall be deemed severed from this Agreement, and all other provisions shall remain in full force and effect.

16. **ASSIGNMENT AND BINDING EFFECT.** Except as otherwise expressly permitted herein, neither Party may assign, delegate and/or otherwise transfer this Agreement or any of its rights or obligations hereunder without the prior written consent of the other. This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and assigns, including any corporation or other legal entity into, by or with which the Board may be merged, acquired or consolidated or which may purchase the entire assets of the Innocence Project.
17. **GOVERNING LAW, VENUE AND JURISDICTION.** This Agreement shall in all respects be governed by and interpreted, construed and enforced in accordance with the laws of the United States and of the State of Minnesota. Any action arising out of or relating to this Agreement, its performance, enforcement or breach will be venued in a state or federal court situated within the State of Minnesota. The Innocence Project hereby irrevocably consents and submits itself to the personal jurisdiction of said courts for that purpose.
18. **INTEGRATION.** This Agreement sets forth the entire Agreement and understanding between the Parties regarding the subject matter hereof and supersedes any prior representations, statements, proposals, negotiations, discussions, understandings, or agreements regarding the same subject matter provided that all prior agreements between the parties shall remain except as modified by this Agreement. Any amendments or modifications to this Agreement shall be in writing signed by both Parties.


IN WITNESS WHEREOF, the Parties have, by their duly authorized officers, executed this Agreement in duplicate, intending to be bound thereby.

1. THE INNOCENCE PROJECT

By 

Title Executive Director

Date 6-25-10

2. SCAO
By 

Title Dep SCA

Date 7-7-10

Appendix A
Employee, Independent Contractor and Volunteer Nondisclosure Agreement

I, _____, an employee/independent contractor/volunteer / board member with the following indicated organization(s) ("Organization"):

- Innocence Project of Minnesota
- Minnesota State Board of Public Defense
- Office of the Hennepin County Attorney

acknowledge that the Organization has been granted certain access to non-public data and records of the Minnesota Judicial Branch pursuant to a nondisclosure agreement (the "Organization Nondisclosure Agreement") between the Organization and the State Court Administrator's Office ("SCAO"). I further acknowledge that such information contains valuable confidential information of the Minnesota Judicial Branch.

To the extent that I come into possession of any non-public data or records (including without limitation non-public data or records as defined in the Rules of Public Access to Records of the Judicial Branch promulgated by the Minnesota Supreme Court, as the same may be amended from time to time), I will not use any such information for any purpose other than performance of the Screening Process described in the Organization Nondisclosure Agreement and will not disclose any such information except as expressly permitted in the Organization Nondisclosure Agreement. I agree that my obligations with respect to the confidentiality and security of all information disclosed to me shall survive the termination of any agreement or relationship between the SCAO and the Organization and/or me.

I acknowledge and agree that a breach by me of any of the covenants set forth in this Agreement will cause irreparable injury to the SCAO and the Minnesota Judicial Branch or others for which damages, even if available, will not constitute an adequate remedy. Accordingly, I agree that the SCAO and the Minnesota Judicial Branch, in addition to any other remedy available at law or in equity, shall be entitled to the issuance of injunctive relief (including, without limitation, specific performance) in order to enforce the covenants and agreements contained herein.

This Agreement shall be interpreted in accordance with the laws of the state of Minnesota. Any action arising out of or relating to this Agreement, its performance, enforcement or breach, will be venued in a state court situated within Ramsey County, Minnesota.

ACKNOWLEDGED AND ACCEPTED:
The Organization

Employee/Independent Contractor/
Volunteer Signature

Name – please print

Date: _____

By: _____

Name: _____

Title: _____

Date: _____