

FAX TRANSMISSION

EIGHTH JUDICIAL DISTRICT COURT
LAS VEGAS TOWNSHIP, JUSTICE COURT

JOE TOMMASINO
STAFF ATTORNEY

200 Lewis Avenue
Las Vegas, Nevada 89155
702-671-3424
Fax: 702-671-4548

To: ROSS GOODMAN, Esq. Date: 9/16/10

Fax #: 385-5088 Pages: 4 including this cover sheet.

From: JCT.

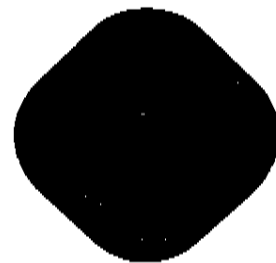
Subject: PUBLIC RECORDS REQUEST.

COMMENTS:

Please see the attached.



CLARK COUNTY COURTHOUSE
200 Lewis Avenue
Las Vegas, Nevada 89155



Eighth Judicial District Court
(702) 671-4528

Las Vegas Justice Court
(702) 671-3100

September 16, 2010

Ross C. Goodman, Esq.
520 South Fourth Street, Second Floor
Las Vegas, Nevada 89101

Margaret A. McLetchie
ACLU
732 South Sixth Street
Suite 200A
Las Vegas, NV 89101

Dear Mr. Goodman and Ms. McLetchie,

My name is Joe Tommasino, and I am one of the Staff Attorneys for the Clark County Courts.

Recently, Justice of the Peace Tony Abbatangelo received your public records requests relating to the upcoming inquest involving Erik Scott. The procedural posture of these requests is unusual since no "case" has been filed with the Las Vegas Justice Court, and no "motion" was filed with the Clerk of that Court. Nevertheless, in accordance with the requirements of NRS 239.0107, I am preparing this formal response on behalf of the Court.

Judge Abbatangelo has been presented with the argument that the Clark County Code vests him, as the presiding officer, with the general authority to "insure a fair and just hearing." However, that argument is misleading. Section 2.12.080 of the Clark County Code states, in pertinent part, the following:

CCC 2.12.080--Inquests—Duties and procedures.

...
(m) The presiding officer shall preside over the inquest and shall insure that the inquest is conducted as an investigatory proceeding and not an adversarial proceeding. The presiding officer should substantially comply with the following procedure:

(1) Once an inquest is convened, the presiding officer shall select at random seven jurors from the jury panel to sit as an inquest jury. He shall then conduct a voir dire examination of each juror. If any bias, prejudice or other good and sufficient reason manifests itself during the examination, the juror shall be dismissed and another juror shall be selected.

(2) At the inception of the proceedings, the presiding officer shall identify all interested parties that will be permitted to participate in the proceedings and shall make an opening statement indicating that an inquest is not an adversarial proceeding but a fact finding procedure and that the presiding officer, prosecutor and the jurors will be the only individuals allowed to question witnesses. Any other interested parties must submit any proposed questions in writing to the presiding officer or the inquest clerk. After reviewing the proposed questions, the presiding officer may: (a) ask the witness the question; or (b) not ask the question. If the question is not asked, the presiding officer shall orally read the question into the record at the next available opportunity outside the presence of the jury. All unasked questions shall be orally read into the record before the conclusion of the proceedings.

(3) The presiding officer in his discretion may allow witnesses who are not subpoenaed to testify, after he has reviewed such testimony outside the presence of the jury.

(4) The examination of witnesses shall be under oath but informal and the usual rules of evidence shall not apply. The presiding officer shall, however, have the authority to control the questioning of witnesses.

(5) The exclusionary rule shall be invoked as to all witnesses that are subpoenaed or that may wish to testify.

(6) The presiding officer shall admonish the jury at each adjournment of the inquest not to:

(A) Converse among themselves or with anyone else on any subject connected with the inquest;

(B) Read, watch or listen to any report of or commentary on the inquest or any person connected with the inquest by any medium of information, including without limitation newspapers, television and radio; or

(C) If they have not been charged, form or express any opinion on any subject connected with the inquest until the cause is finally submitted to them.

(7) The presiding officer shall have such other authority and power to conduct the inquest as he deems necessary to insure a fair and just hearing. **However, the inquest must be conducted so that it is consistent with subsections (m)(1) through (6) of this section. [Emphasis added].**

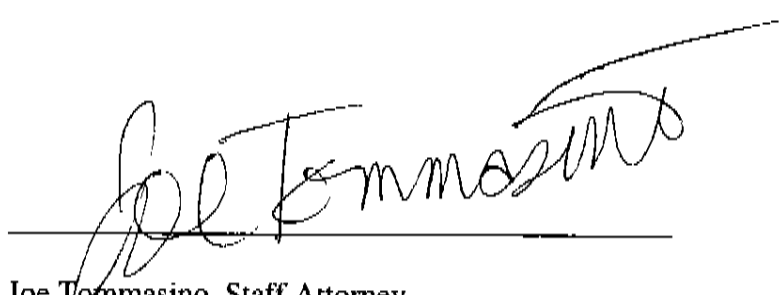
Judge Abbatangelo is only empowered to “conduct the inquest as he deems necessary to insure a just and fair hearing” such that the inquest is conducted to be “consistent with

subsections (m)(1) through (6) of [Section 2.12.080].” The cited provisions of Section 2.12.080 do not contain any language that would enable inspection of evidence before the time of the inquest.

Moreover, Section 2.12.080(i) merely requires the presiding officer and the coroner to “obtain a copy of all records, exhibits or other evidence that they determine to be relevant to the matter under investigation.” Nothing in Chapter 2.12 confers any broad public right of access to such “records, exhibits, or other evidence” in this non-adversarial proceeding, nor does NRS Chapter 259 announce any broad public right of access in this respect.

Nevertheless, resolution of the issues discussed above is premature at this stage. Under NRS 239.0107, the Court is required to respond “[n]ot later than the end of the fifth business day after the date on which the person **who has legal custody or control of a public book or record** of a governmental entity receives a written request from a person to inspect or copy the public book or record.” [*Emphasis added*]. Simply put, the Court does not yet have “legal custody or control” of any of the items that are sought in the respective record requests. Therefore, under NRS 239.0107(1)(b), the Court is hereby providing written “[n]otice of that fact” as required by Nevada law.

Please feel free to contact me if you have any questions.



Joe Tommasino, Staff Attorney
Clark County Courts