he had provided for attorney Greenstein's investigation of Judge Murphy. See Judge Joannides referral.

All the affidavits stated that not only had attorney Greenstein never contacted the witnesses, had she contacted them they would have all testified they had personally seen Gibbens chauffeuring Judge Murphy *before* Haeg was sentenced – in exact opposition to attorney Greenstein's claims. One witness, Tom Stepnosky, stated in his affidavit that he had contacted attorney Greenstein on his own and specifically told her he had personally seen Trooper Gibbens give Judge Murphy rides before David Haeg was sentenced - in exact opposition to attorney Greenstein's claims of what *all* witnesses testified. See Judge Joannides referral.

Haeg also provided an excerpt of the official court record of his prosecution, which captured Judge Murphy and Trooper Gibbens admitting that Gibbens was chauffeuring Murphy before Haeg was sentenced – in exact opposition to Judge Murphy, Trooper Gibbens, and attorney Greenstein's testimony.

On July 28, 2010 Judge Joannides issued an order for the ACJC to produce attorney Greenstein's record of her investigation of Haeg's complaint against Judge Murphy. Attorney Greenstein failed to ever provide Judge Joannides with the record of her investigation. See Judge Joannides referral.

On August 25, 2010 Judge Joannides disqualified Judge Murphy for cause. See Judge Joannides referral.

On August 27, 2010 Judge Joannides certified that she had sent "Marla Greenstein" a document "REFERRING AFFIDAVITS TO COMMISSION FOR ITS CONSIDERATION". This referral included certified transcriptions of Marla Greenstein's phone conversations with Haeg and his wife Jackie and certified transcriptions of the court record of Haeg's case that captured Judge Murphy and witness Gibbens admitting Gibbens was chauffeuring Murphy before Haeg was sentenced. This record also proves two witnesses Haeg provided attorney Greenstein to the chauffeuring, Tony Zellers and Wendell Jones, were physically present when Murphy and Gibbens admitted this. See Judge Joannides referral.

In this document Judge Joannides also states, *"This court was only tasked with resolving David Haeg's disqualification request. It is not privy to the Commission investigation and the statements made by the witnesses, Judge Murphy, or Trooper Gibbens. Therefore, it takes no position on materials submitted herein. In addition, this order does not resolve any allegations of impropriety. Therefore, the attached materials are being submitted to the Judicial Conduct Commission for its consideration."* See Judge Joannides referral.

Alaska Bar Association grievance complaint against attorney Greenstein

On November 17, 2010 Haeg contacted the ACJA to see what was going to happen because of Judge Joannides referral and attorney Greenstein stated that Judge Joannides never referred anything to the ACJC and that Judge Murphy would not be reinvestigated.

On December 1, 2010 the Alaska Bar Association held a public meeting concerning attorney Greenstein's actions. Bar Chief Counsel Steve Van Goor refused to answer the question if Judge Joannides referral required the Bar to investigate attorney Greenstein. At this meeting irrefutable evidence was presented the Bar had covered up for corrupt attorneys Brent Cole and Scot Leaders and that it was the Bar's pattern and practice to cover up for corrupt attorneys.

On December 22, 2010 Haeg filed a grievance complaint against attorney Greenstein with the Alaska Bar Association. The Bar acknowledged receiving this complaint on December 28, 2010.

On December 23, 2010 Haeg received two documents from the ACJC that were material to his complaint. On December 26, 2010 Haeg emailed these documents to Van Goor, requesting receipt confirmation. When no confirmation resulted, Haeg sent the documents, along with why they were material, to the Bar by certified return receipt USPS. The Bar acknowledged receipt on January 6, 2011.

One document was the witness list Haeg had provided to attorney Greenstein, date stamped as received by the ACJC on April 24, 2006. This proves that the exact same 4 witnesses attorney Greenstein claimed to have documented testifying they had not seen Trooper Gibbens chauffeuring Judge Murphy before Haeg was sentenced, are the very same witnesses who swore on affidavits, under penalty of perjury, that they had never been contacted by anyone investigating Judge Murphy (other than David Haeg) and that had they been contacted they would have testified they had personally observed Trooper Gibbens chauffeuring Judge Murphy before Haeg was sentenced.

The other document was a letter dated December 21, 2010, from the ACJC. This letter claimed the ACJC could not find Jackie Haeg's letter/written statement in the record of attorney Greenstein's investigation of Judge Murphy – and there was no record of the ACJC every having received a statement from Jackie Haeg.

This is the letter/written statement attorney Greenstein acknowledged, during the tape-recorded phone conversations, the ACJC receiving. Attorney Greenstein then tried to use this receipt by ACJC to keep Jackie Haeg from also testifying verbally about the chauffeuring. See Judge Joannides referral.

Attorney Greenstein's response to Haeg's grievance complaint

On January 21, 2011 attorney Greenstein wrote a "verified" letter responding to Haeg's grievance. Haeg has no idea if attorney Greenstein had been presented the two supplemental grievance documents (above) Haeg provided the Bar.

On January 28, 2010 Haeg received a letter from the Bar asking for his "verified" written response to attorney Greenstein's letter.

Haeg's response

(1) Attorney Greenstein does not refute that she falsified the very essence of the testimony of every witness Haeg provided for her investigation.

(2) Attorney Greenstein testifies Haeg's complaint "was fully investigated by staff" This is misleading. Attorney Greenstein is the only investigator and the "staff", other then attorney Greenstein herself, consists of a single secretary.

(3) Attorney Greenstein testifies her investigation was "reviewed and overseen by the full Commission." This is misleading. The "full Commission" only meets a few times per year and only attorney Greenstein is allowed to present evidence to the full Commission. If attorney Greenstein falsifies evidence, or fails to present evidence, the "full Commission" will never know.

(4) Attorney Greenstein testifies, "As a result of the investigation, the complaint was dismissed without any disciplinary action". This proves that as a direct result attorney Greenstein's "investigation" (documenting no chauffeuring of Judge Murphy by witness Gibbens happened before Haeg was sentenced) Judge Murphy was exonerated - when in fact Judge Murphy had been chauffeured by witness Gibbens before Haeg was sentenced, testified falsely about this during attorney Greenstein's investigation into it, and then attorney Greenstein falsified all witness testimony that would have proven Haeg's complaint and that Judge Murphy had lied.

(5) Attorney Greenstein testifies, "Mr. Haeg has subsequently sought to re-open the matter and the Commission has declined to do so." This is not true. Haeg informed the Alaska Supreme Court of what happened and they stated that if Haeg wished to review the actions of the ACJC Haeg should file a complaint with the ACJC and, if Haeg is not satisfied with the results, then Haeg can ask the Alaska Supreme Court to take action. Haeg has yet to file a complaint with the ACJC.

(6) Attorney Greenstein testifies "our Formal Ethics Opinion #025 addresses whether the conduct that Mr. Haeg complains of would constitute a violation of the Alaska Code of Judicial Conduct. This is not true. Opinion #025 states, "A judicial officer who accepted rides *from law enforcement* while on duty in a small village without any form of public transportation did not violate the Code of Judicial Conduct where no ex parte communication concerning the pending criminal matter occurred." Haeg complained *the main witness against him* chauffeured the judge while that same judge presided over Haeg's prosecution. Everyone would agree nothing is wrong with a Trooper chauffeuring a judge in a remote village. No one would agree it is fair for the main witness against a defendant to be chauffeuring the judge while the judge presided over the defendant's prosecution. The replacement of "main witness against Haeg" with "law enforcement" stripped Haeg's complaint of all substance.

(7) Attorney Greenstein testifies, "Whether that opinion [#025] was the result of Mr. Haeg's specific complaint is confidential." This is misleading. In tape-recorded phone conversations attorney Greenstein specifically tells Haeg that Opinion #025 is a direct result of Haeg's complaint. See Judge Joannides referral.

(8) Attorney Greenstein testifies that she interviewed only 2 of the 4 witnesses that Haeg had provided her. This in not true. In a tape-recorded conversation Haeg asked attorney Greenstein, "And *who did you interview* – may I ask?" attorney Greenstein replied, "Well, *in addition to the names you gave me* I talked to Trooper Gibbens and the Judge". . See Judge Joannides referral.

In the same tape-recorded conversation as above Jackie Haeg told attorney Greenstein, "Dave's pretty upset cause they [Judge Murphy and Trooper Gibbens] are both lying – everybody else that was there with us saw it too…*you probably need to ask some more people besides those two.*" Attorney Greenstein replied, "No, *I talked to the people that your husband gave me the list of. I've spoke to them as well."*

In another tape-recorded conversation with attorney Greenstein, over 2 years after the one above, Haeg stated, "The problem I have Marla is I was there with I believe like 7 witnesses and an attorney and – and…"

Attorney Greenstein, *"I talked to everybody.* I talked to the attorneys. *I talked to everybody.* I talked to people in the courtroom. I talked to a bunch of people. And they view things differently than you."

(9) Attorney Greenstein testified, "In Mr. Haeg's matter, I interviewed: Mr. Haeg's attorney Arthur Robinson; Mr. Tony Zellers, a witness and co-defendant who had settled earlier; Tom Stepnosky; Trooper Gibbens; and the subject judge

(who also provided a written statement to the Commission)." This is not true. Tony Zellers has sworn an affidavit that attorney Greenstein never interview him and had she interviewed him, he would have testified exactly opposite to what Greenstein claimed he had testified. See Judge Joannides referral. And Tom Stepnosky testified he contacted attorney Greenstein, so her claim that she "interviewed" him is true; yet Mr. Stepnosky has also sworn an affidavit that attorney Greenstein falsified the very essence of his testimony. See Judge Joannides referral.

(10) Attorney Greenstein testified, "To the extent that Mr. Haeg states that I claimed that I contacted all the witnesses, that is not correct. I did contact the witnesses above [Arthur Robinson, Tony Zellers, and Tom Stepnosky] and believe that I communicated that to Mr. Haeg in various phone conversations with him." This is not true. See #8 and #9 above. See also the complete transcriptions of the "various phone conversations" in Judge Joannides referral.

(11) Attorney Greenstein testified, ***"The witnesses did state that they observed transportation provided by Trooper Gibbens".*** This is not true. Attorney Greenstein's tape-recorded phone conversation with David and Jackie Haeg:

Jackie Haeg: "Dave's pretty upset cause they [Judge Murphy and Trooper Gibbens] are both lying...everybody else that was there with us saw it too and they were all – you know and all the jurors. So – well I don't know what to tell...

Attorney Greenstein: "OK"

Jackie Haeg: "...you probably need to ask some ~~more~~ people besides those two."

Attorney Greenstein: "No, I talked to the people that your husband gave me the list of. I've spoke to them as well."

Jackie Haeg: "And what did they tell you?"

Attorney Greenstein: "- Um – they said they – that they did see – um – a trooper giving her rides and ***– but they – they couldn't identify which – who the trooper was."***

Attorney Greenstein to David Haeg: ***"everyone I interview said ...the rides were provided by somebody else – not Trooper Gibbens"***

See Judge Joannides referral.

(12) Attorney Greenstein testified. "The Commission did not find that those facts *[that a law enforcement giving a judicial officer rides – see Opinion #025]* constituted a violation of the code of judicial Conduct." This is misleading. Haeg's complaint was *the main witness against him was chauffeuring the judge while that same judge was presiding over Haeg's prosecution.* The two situations are completely different.

(13) Attorney Greenstein testified, "Mr. Haeg asserts that Judge Joannides referred affidavits to our office on August 27, 2010. I have enclosed copies of the filings and orders between Judge Joannides and our office. We did not receive anything dated after August 25, 2010." This is not true.

Judge Joannides certified that on August 27, 2010 a 43-page document, that implicated attorney Greenstein in a conspiracy to cover up that Judge Murphy was chauffeured by the main witness against Haeg (Trooper Gibbens) while Judge Murphy presided over Haeg's prosecution, was faxed to "Marla Greenstein". See Judge Joannides August 27, 2010 referral, which states: "August 27, 2010 CONFIDENTIAL ORDER REFERRING AFFIDAVITS TO COMMISSION FOR ITS CONSIDERATION" and "This court was only tasked with resolving David Haeg's disqualification request. It is not privy to the Commission investigation and the statements made by the witnesses, Judge Murphy, or Trooper Gibbens. Therefore, it takes no position on the materials submitted herein. In addition, this order does not resolve any allegations of impropriety. *Therefore, the attached materials are being submitted to the Judicial Conduct Commission for its consideration.*"

(14) Attorney Greenstein testified, "I also searched CourtView to see if any August 27th document issued and have not found any reference to an August 27th document or to affidavits affecting our office." This is misleading. Judge Joannides confidential referral would not have shown up on CourtView. See Judge Joannides referral.

(15) Attorney Greenstein testified, "The court documents also reflect that we filed appropriate requests with the court to reconsider the request for our confidential documents." This is not true. No request was ever made for Judge Joannides to reconsider her request for attorney Greenstein's documentation of the investigation into Judge Murphy because of Haeg's complaint. See court documents and/or CourtView.

(16) Attorney Greenstein testified, "That request [that Judge Joannides reconsider her order for attorney Greenstein's documentation of the investigation into Judge Murphy] was granted. This is not true. Judge Joannides withdrew her request on the same day she granted Haeg' motion to disqualify Judge Murphy for

cause – because after Judge Murphy was disqualified there was no reason for Judge Joannides to see attorney Greenstein's documentation. Judge Joannides specifically stated she "was only tasked with resolving David Haeg's disqualification request." See Judge Joannides referral.

(17) Attorney Greenstein fails to make a single mention of the most shocking grievance claim Haeg made against her – that she completely falsified the testimony from every witness Haeg provided her at her request.

Over and over attorney Greenstein claimed no witnesses observed Trooper Gibbens chauffeuring Judge Murphy before Haeg was sentenced:

Attorney Greenstein: "It sounds like there was no communication about the case and they didn't share any meals together and the rides were provided by somebody else – not Trooper Gibbens.

Haeg: "They said the rides were provided by somebody other…"

Attorney Greenstein: "Yes…"

Haeg: "…than Trooper Gibbens?"

Attorney Greenstein: "Yes."

Haeg: "Well that's the biggest pile of shit I've ever heard in my life."

Attorney Greenstein: "-Um-that's what – that's what everyone I interviewed said."

Haeg: "And who did you interview – may I ask?"

Attorney Greenstein: "Well in addition to the names you gave me I talked to Trooper Gibbens and the Judge".

Jackie Haeg: "Dave's pretty upset cause they are both lying…everybody else that was there with us saw it too and they were all – you know and all the jurors. So – well I don't know what to tell…"

Attorney Greenstein: "Ok"

Jackie Haeg: "you probably need to ask some more people besides those two."

Attorney Greenstein: "No, I talked to the people that your husband gave me the list of. I've spoke to them as well."

Jackie Haeg: "And what did they tell you?"

Attorney Greenstein: "- Um – they said they – that they did see – um – a trooper giving her rides and – but they – they couldn't identify which – who the trooper was."

Jackie Haeg: "Hmmmm…Well I'll let you talk to David again."

David Haeg: *"And you got no indication from anybody that they ever got – ever – the judge ever took a ride with the trooper during my trial or sentencing, correct?"*

Attorney Greenstein: *"Correct."*

David Haeg: *"Didn't I tell you it happened?"*

Attorney Greenstein: *"You – you did but nobody else."*

David Haeg: "Nobody told you it happened?"

Attorney Greenstein: "Right"

Every witness Haeg provided attorney Greenstein has now sworn an affidavit that attorney Greenstein never contacted them and that had they been contacted they all would have testified they had personally observed Trooper Gibbens chauffeuring Judge Murphy before Haeg was sentenced. This exposes all the witnesses to felony perjury charges if attorney Greenstein has documentation, as she states she has, that she contacted these witnesses and they denied they had seen Trooper Gibbens chauffeuring Judge Murphy before Haeg was sentenced.

Disappearance of Jackie Haeg's written statement

The only witness testimony other than Haeg's that was not subject to falsification by attorney Greenstein, because it was in writing, was Jackie Haeg's written statement. Attorney Greenstein acknowledged receiving this written statement 4 different times during the tape-recorded phone conversations – as attorney Greenstein tried to prevent Jackie from verbally testifying about the chauffeuring. See Judge Joannides referral.

Yet this evidence, which attorney Greenstein had an irrefutable duty to make part of the record of her investigation of Haeg's complaint, is "missing" and the ACJC cannot even confirm ever receiving it. See December 21, 2010 ACJC letter.

Because of the tape-record phone conversation between attorney Greenstein and Jackie Haeg we know what Jackie's written testimony was – that Jackie and "everyone else" had personally witnessed Trooper Gibbens chauffeuring Judge Murphy "everywhere" before Haeg was sentenced. Yet now even this physical evidence, that attorney Greenstein admitted receiving, has been removed from the record of attorney Greenstein's investigation of Judge Murphy.

CONCLUSION

In attorney Greenstein's "verified" response she testifies that she did not contact all the witnesses Haeg provided her – in direct opposition to the tape-recordings of her stating she contacted everyone of the witnesses provided by Haeg.

Attorney Greenstein now testifies that she "contacted" only 2 of the witnesses Haeg had provided, Tony Zellers and Tom Stepnosky. Both of these witnesses have sworn under oath attorney Greenstein never contacted them (Tom Stepnosky swore he contacted attorney Greenstein on his own) and that attorney Greenstein falsified the testimony that had been given by Tom Stepnosky and would have been given by Tony Zellers – had he ever been interviewed.

The only other witness attorney Greenstein now testifies she interviewed, other then the complained of Judge Murphy and Trooper Gibbens, was Arthur Robinson – who Haeg had never suggested to attorney Greenstein because of the falling out between Robinson and Haeg. See Judge Joannides referral.

Court records prove Robinson was present during every moment of Haeg's 5-day trial and 2-day sentencing – and thus it was very intelligent for attorney Greenstein to interview him. Attorney Greenstein claimed not a single witness, other than Haeg, had testified they had seen Trooper Gibben's chauffeuring Judge Murphy before Haeg was sentenced – so this also had to be what Robinson testified.

As Haeg was finalizing this response he realized Arthur Robinson was the ***only*** witness attorney Greenstein testified interviewing who had: (1) not claimed attorney Greenstein had falsified contacted him and (2) not claimed attorney Greenstein had falsified their testimony.

On February 4, 2011, to make sure attorney Greenstein had not also falsified the testimony of this last remaining witness, Haeg made contact with Arthur Robinson – in spite of the falling out between them.

The following is a transcription of the conversation (a CD of the actual conversation is attached to prove the transcription is accurate):

HAEG: How goes it?

ROBINSON: Oh pretty good. What's up?

HAEG: Hey I'm -uh- -uh- oh I filed a complaint -uh- you rec -uh- this is David Haeg. I don't know if you recognize me or not but -um- I had filed a complaint -um- about -uh- Trooper Gibbens during my trial and sentencing chauffeuring the Judge.

ROBINSON: Yeah.

HAEG: And it went – I filed it with the Alaska Commission on Judicial Conduct and it's still kind of ongoing what happened there but the – the –lady Marla Greenstein states that she talked to you during her investigation into that. Is that true or not?

ROBINSON: That's not true.

HAEG: Ok so beyond any doubt you can say that …

ROBINSON: Nobody ever contacted me to talk to me about Trooper Gibbens and – and – and – and – and Margaret running around together in the Trooper car.

HAEG: Ok… And do you remember that happening during my trial …

ROBINSON: I saw it.

HAEG: … and or sentencing?

ROBINSON: I saw it during the trial – I believe. I – I could be wrong. You know all those days kind of blend together. But while we were there I saw it.

HAEG: Ok and you're for sure it happened before I was sentenced? And you remember when I got sentenced?

ROBINSON: Well what I'm saying David is I don't – you know it's been a while there. All those days kind of blend together now – looking back on it and I can't say for sure whether it was during trial or during sentencing. I don't remember.

HAEG: Ok but you do remember that before my case was finished before I got sentenced at whatever one or two in the morning that they were …

ROBINSON: Well I – yeah before you –before it was over – yeah I can say that much.

HAEG: Ok well that's -uh- you know all I was calling about. Is because now both Trooper Gibbens and Judge Murphy have testified that no rides ever took place…

ROBINSON: Hmm…

HAEG: … until after I was sentenced and the really funny thing Chuck is the court …

ROBINSON: …till after you were sentenced…

HAEG: … huh?

ROBINSON: David listen. Sentencing went to the wee hours in the morning and I'm pretty sure that what I saw happened before that proceeding ended.

HAEG: Ok yep. Well the funny thing Chuck is the Court Record – you know the tape recordings the Court had running…

ROBINSON: Uh huh…

HAEG: …captured Judge Murphy and Trooper Gibbens laughing and joking about the chauffeuring and so now…

ROBINSON: Before the – before you were – before the sentence was completed?

HAEG: Correct.

ROBINSON: Ok.

HAEG: And so now they have testified that…

ROBINSON: It never happened.

HAEG: …it never happened.

ROBINSON: Till after you were sentenced

HAEG: And – there – there own voices are recorded and it actually is in a posi – in a timeframe when your voice is on the tape, and Tony Zellers is on the tape, mines on the tape. And now -uh- Marla Greenstein is stating that she contacted you and you testified that the rides never took place.

ROBINSON: Oh that never happened. Nobody ever contacted me about any rides.

HAEG: Ok well...

ROBINSON: ...at all.

HAEG: ... of all – you know – you probably understand I'm upset about a lot of things but now I'm – now I'm goanna have – now there's goanna be careers ended here. There's goanna be judges careers ended, troopers careers ended...

ROBINSON: I don't know why they would lie about something like that. I mean you know what they should've said was 'hey McGrath is a small town. I needed a ride so he gave me one.' But you know to say that it never happened and for this other lady to say that she contacted me and talked to me about it - it is bullshit.

HAEG: Ok well she did that in a verified response so I'm goanna – I'm goanna have her career. -Uh- this corruption in this state Chuck is goanna take a big old beating when I'm done with it...

ROBINSON: Well...

HAEG: ...so...

ROBINSON: ...somebody needs to beat it I guess... (05:00)

HAEG: ...well...

ROBINSON: ...it's – it's definitely present...

HAEG: ...well...Chuck if you.

ROBINSON: in a lot of ways.

HAEG: ...if you're as you said if you are one of the good old boys it's great - because then you never get harmed from it. But if you're...

ROBINSON: Right.

HAEG: ... somebody named Dave Haeg or one of the little people you get fucking flattened by it.

ROBINSON: Yeah.

HAEG: And I'm...

ROBINSON: ...Well anyway David I can say for certain that the lady – nobody ever contacted me and asked me a question at all about anything having to do with your trial (laughs) period. So nobody ever contacted me about you know the Judge getting rides from the Trooper.

HAEG: Ok. Well that was it and you know like I said I appreciate it – you calling me back and I – I don't know the - your secretary whatever said you had some family emergency and...

ROBINSON: Yeah my mother died here a week ago and I've been here since about the first part of January – she was here – I was here for about 3 weeks before she died...

HAEG: Well that...

ROBINSON: ... that's why I'm back here...

HAEG: Well I'm sorry to here that and I you know hope - hope you're doing ok on that but...

ROBINSON: Yeah I'm hanging in there David.

HAEG: Ok well thanks again Chuck and -uh- we'll keep plugging away here.

ROBINSON: All right talk to you later

HAEG: Ok thanks. Bye.

ROBINSON: Bye.

In a "verified" response attorney Greenstein has now falsified that she contacted Arthur Robinson – who also would have testified he had personally witnessed Trooper Gibbens chauffeuring Judge Murphy during Haeg's trial and sentencing.

In other words, attorney Greenstein has now committed felony perjury in her "verified" response - to cover up the fact that she did not contact a single witness while investigating Haeg's complaint – when repeatedly she has stated otherwise.

Attorney Greenstein has claimed not one witness (other then Haeg) testified seeing Trooper Gibbens chauffeuring Judge Murphy before Haeg was sentenced. Yet every last witness, even those Haeg did not provide, has now testified that, had they been contacted, they would have testified they had personally witnessed Trooper Gibbens chauffeuring Judge Murphy before Haeg was sentenced.

The reason attorney Greenstein falsified all witness testimony is obvious - to cover up that Judge Murphy and Trooper Gibbens provided Haeg with an unfair and unconstitutional prosecution – which makes it null and void.

Proof that the chauffeuring happened before Haeg was sentenced is beyond doubt, even without witness testimony. The court record of Haeg's prosecution captured Judge Murphy and Trooper Gibbens admitting the chauffeuring was taking place before Haeg was sentenced. Attorney Greenstein documented both Judge Murphy and Trooper Gibbens testified no chauffeuring took place before Haeg was sentenced and Judge Murphy's testimony was in writing. The only way for this cover up to have worked was if attorney Greenstein conspired with Judge Murphy and Trooper Gibbens to make sure all testimony was in agreement – no chauffeuring occurred until after Haeg was sentenced – eliminating, or nearly eliminating, Haeg's claim this made his prosecution unconstitutional.

Consequences are enormous. Assistant Attorney General Andrew Peterson, on the court record during Judge Joannides July 9, 2010 scheduling hearing, stated Judge Murphy must be notified of Haeg's allegations Judge Murphy lied during attorney Greenstein's investigation, "because this may be a career ender for Judge Murphy." See July 9, 2010 scheduling hearing.

Requested Relief from the Alaska Bar Association

(1) Attorney Greenstein be disbarred permanently.

(2) Bar recommendation to the ACJC that attorney Greenstein be prosecuted for perjury, corruption, and conspiracy.

(3) Bar recommendation to the ACJC that Judge Murphy be reinvestigated for being chauffeuring by the main witness against Haeg while Judge Murphy presided over Haeg's prosecution.

(4) Bar recommendation to the ACJC that Judge Murphy be prosecuted for conspiracy and testifying falsely during attorney Greenstein's first investigation.

(5) Bar recommendation to the U.S. Department of Justice that attorney Greenstein, Judge Murphy, and Trooper Gibbens be prosecuted for perjury, corruption, and conspiracy, under color of law.

If the Bar fails to take the above action Haeg, and what he believes is an increasing number of those seriously concerned, will fly to Washington DC to demand federal prosecution of the Bar, and all individuals involved, for corruption, conspiracy, and pattern/practice to cover up for attorneys, judges, and law enforcement who, using the color of law, are violating rights to unjustly strip defendants of everything. Haeg will not leave until DOJ agrees to prosecute.

Also, proof of the corruption will be hand delivered to all major news media; including Frontline, 20/20, New York Times, Dateline, and Washington Post.

The above is just the start of what those who died for our constitution demand of all Americans to address the incomprehensible fact that the only investigator of judges in an entire State is falsifying her investigations to cover up for corrupt judges who are conspiring with law enforcement to violate our constitution.

The information I have provided above is true and correct to the best of my knowledge and belief.

David S. Haeg
PO Box 123
Soldotna, AK 99669
907-262-9249
haeg@alaska.net

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT KENAI

Filed in the Trial Courts
State of Alaska, Third District
at Kenai, Alaska

OCT - 7 2011

Clerk of the Trial Courts
By _____ Deputy

DAVID HAEG,

Applicant,

v.

STATE OF ALASKA,

Respondent.

POST-CONVICTION RELIEF
CASE NO. 3KN-10-01295 CI

Trial Case No. 4MC-04-00024 CR

CERTIFICATE OF SERVICE

I certify this document and its attachments do not contain the (1) name of a victim of a sexual offense listed in AS 12.61.140 or (2) residence or business address or telephone number of a victim of or witness to any offense unless it is an address identifying the place of a crime or an address or telephone number in a transcript of a court proceeding and disclosure of the information was ordered by the court.

I hereby certify that on October 3, 2011, correct copies of STATE'S MOTION FOR EXTENSION OF TIME TO FILE REPLY TO APPLICANT'S OPPOSITION TO STATE' NOTICE OF SUPPLEMENTAL AUTHORITY, AFFIDAVIT, and the ORDER were mailed to:

David Haeg
P.O. Box 123
Soldotna, AK 99669

DATED on this 5 day of October, 2011, at Anchorage, Alaska.

Tina Osgood, LOA I

STATE OF ALASKA
DEPARTMENT OF LAW
OFFICE OF SPECIAL PROSECUTIONS AND APPEALS
310 K STREET, SUITE 308
ANCHORAGE, ALASKA 99501
PHONE: (907) 269-6250

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT KENAI

DAVID HAEG,

Applicant,

v.

STATE OF ALASKA,

Respondent.

POST-CONVICTION RELIEF
CASE NO. 3KN-10-01295 CI

Trial Case No. 4MC-04-00024 CR

STATE'S MOTION FOR EXTENSION OF TIME TO FILE REPLY TO APPLICANT'S OPPOSITION TO STATE' NOTICE OF SUPPLEMENTAL AUTHORITY

VRA CERTIFICATION. I certify that this document and its attachments do not contain (1) the name of a victim of a sexual offense listed in AS 12.61.140 or (2) a residence or business address or telephone number of a victim or witness to any crime unless it is an address used to identify the place of the crime or it is an address or telephone number in a transcript of a court proceeding and disclosure of the information was ordered by the court.

COMES NOW the State of Alaska, by and through Assistant Attorney General Gustaf Olson and hereby files this motion for an extension of time to respond to applicant's opposition to notice of supplemental authority. This motion is supported by the attached affidavit of counsel.

DATED this 3rd day of October, 2011, at Anchorage, Alaska

JOHN J. BURNS
ATTORNEY GENERAL

By: _____
Gustaf Olson
Assistant Attorney General
Alaska Bar No. 0311062

STATE OF ALASKA
DEPARTMENT OF LAW
OFFICE OF SPECIAL PROSECUTIONS AND APPEALS
310 K STREET, SUITE 308
ANCHORAGE, ALASKA 99501
PHONE: (907) 269-6250

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT KENAI

DAVID HAEG,

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AFFIDAVIT

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STATE OF ALASKA)
) ss.
THIRD JUDICIAL DISTRICT)

I, Gustaf Olson, being duly sworn, hereby state and depose as follows:

1. I am an Assistant Attorney General in the Office of Special Prosecutions and Appeals. I am covering for A. Andrew Peterson, AAG, the prosecutor assigned to the above-captioned case.

2. All of the statements in the State's motion are true and correct.

3. Mr. Peterson is currently out of the office until October 7, 2011.

4. My assistant emailed Mr. Haeg on October 3, 2011, to ask that he non-oppose the state's motion to continue.

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DEPARTMENT OF LAW
OFFICE OF SPECIAL PROSECUTIONS AND APPEALS
310 K STREET, SUITE 308
ANCHORAGE, ALASKA 99501
PHONE: (907) 269-6250

5. We did not receive any reply prior to filing this motion.

Further your affiant sayeth naught.

DATED at Anchorage, Alaska, this 3rd day of October, 2011.

By: _____
Gustaf Olson
Assistant Attorney General
Alaska Bar No. 0601002

SUBSCRIBED AND SWORN to before me this 3RD day of October, 2011.

STATE OF ALASKA
OFFICIAL SEAL
Christine Osgood
NOTARY PUBLIC
My Commission Expires

_____
Notary Public in and for Alaska
My commission expires: with office.

STATE OF ALASKA
DEPARTMENT OF LAW
OFFICE OF SPECIAL PROSECUTIONS AND APPEALS
310 K STREET, SUITE 308
ANCHORAGE, ALASKA 99501
PHONE: (907) 269-6250

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT KENAI

DAVID HAEG,	)	
	)	
Applicant,	)	
	)	
v.	)	POST-CONVICTION RELIEF
	)	Case No. 3KN-10-01295CI
STATE OF ALASKA,	)	(formerly 3HO-10-00064CI)
	)	
Respondent.	)	
	)	

(Trial Case No. 4MC-04-00024CR)

10-3-11 SUPPLEMENTAL OPPOSITION TO STATE'S NOTICE OF SUPPLEMENTAL AUTHORITY

VRA CERTIFICATION: I certify this document and its attachments do not contain the (1) name of victim of a sexual offense listed in AS 12.61.140 or (2) residence or business address or telephone number of a victim of or witness to any offense unless it is an address identifying the place of a crime or an address or telephone number in a transcript of a court proceeding and disclosure of the information was ordered by the court.

COMES NOW Applicant, DAVID Haeg, and hereby files this supplemental opposition to state's notice of supplemental authority in support of the state's motion to dismiss Haeg's application for post conviction relief.

Prior Proceedings

On September 22, 2011 the state filed a notice of supplemental authority in support of the state's motion to dismiss Haeg's application for post conviction relief, alleging under oath that (1) "when a post-conviction relief alleges ineffective assistance of counsel, the petition is deficient as a matter of law if the defendant fails to confront the attorney with the allegations of incompetence and

seek the attorney's responses"; (2) "Haeg has failed to confront or seek a response to his allegations from any of his attorneys"; and (3) "Haeg's application for post conviction relief is deficient as a matter of law due to the fact that he has not confronted his counsel regarding his allegations of ineffective assistance of counsel". The authority cited by the state was the unpublished opinion of Kukes v. State, Memorandum of Opinion No. 573 – which also states "Kukes does not claim that he asked Hackett [Kukes attorney] to respond to these matters and that Hackett refused. This fact is fatal to Kukes's claims of attorney incompetence."

On 9-29-11 Haeg filed an opposition to state's notice of supplemental authority, proving he had confronted all 3 of his attorneys with his allegations of incompetence, asked all 3 for written affidavits in response to these allegations, and all 3 attorneys had refused to provide an affidavit. Haeg then went on to prove that during the state's deposition of one of his 3 attorneys (Arthur Robinson) Haeg verbally confronted Robinson with his allegations of incompetence and, during Haeg's cross examination of Robinson, required Robinson to respond to the allegations of incompetence. See court record.

Discussion

After he filed his 9-19-11 opposition Haeg realized that, in addition to confronting both Brent Cole and Mark Osterman (Haeg's other 2 attorneys) in writing and asking for affidavits in response, he has, in addition, already verbally confronted Cole and Osterman with his allegations of incompetence and obtained

sworn testimony from both Cole and Osterman in response to these allegations. See Haeg's application for post conviction relief and court record.

During fee arbitration proceedings before the Alaska Bar Association in 2006, Haeg verbally confronted Cole with allegations of incompetence and required sworn testimony from Cole in response to these allegations. See Haeg's application for post conviction relief and court record.

During the remand/representation hearing of August 15, 2006, Haeg verbally confronted Osterman with allegations of incompetence and required sworn testimony from Osterman in response to these allegations. See Haeg's application for post conviction relief and court record.

Conclusion

Haeg first confronted all his former attorneys with written allegations of incompetence and asked for their responses, which they refused to give. Afterward Haeg has verbally confronted all his former attorneys with his allegations of incompetence and required them to respond to these allegations with sworn testimony. This irrefutably meets any and all requirement that Haeg must confront his attorneys with his allegations of incompetence and seek a response.

The state's sworn claim, that Haeg's application for post conviction relief must be dismissed because Haeg has not attempted to confront his attorneys with his allegations of incompetence, is irrefutably false.

In light of the above Haeg respectfully asks the court to deny the state's Notice of Supplemental Authority, to expedite Haeg's PCR, and to schedule an evidentiary hearing as soon as possible.

I declare under penalty of perjury the forgoing is true and correct. Executed on October 3, 2011. A notary public or other official empowered to administer oaths is unavailable and thus I am certifying this document in accordance with AS 09.63.020. In addition I would like to certify that copies of many of the documents and recordings proving the corruption in Haeg's case are located at: www.alaskastateofcorruption.com

David S. Haeg
PO Box 123
Soldotna, Alaska 99669
(907) 262-9249 and 262-8867 fax
haeg@alaska.net

Certificate of Service: I certify that on October 3, 2011 a copy of the forgoing was served by mail to the following parties: Peterson, Judge Gleason, Judge Joannides, U.S. Department of Justice, FBI, and media.
By:

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT KENAI

DAVID HAEG,

Plaintiff,

vs.

STATE OF ALASKA; ALASKA BIG GAME COMMERCIAL SERVICES BOARD

Defendant.

Case No. 3KN-10-1295 Civil

SUPPLEMENTAL CLASS ACTION COMPLAINT

Comes Now Plaintiff, individually and on behalf of all others similarly situated, by and through counsel, and for his Class Action Complaint against defendant, states and alleges as follows:

JURISDICTION AND VENUE

1. This Court has jurisdiction over the subject matter of this action pursuant to AS 22.10.020.
2. Venue is proper in Alaska's Third Judicial District pursuant to Alaska Rule of Civil Procedure 3.

INDIVIDUAL CLAIMS OF PLAINTIFF

3. Plaintiff is a resident of Soldotna, Alaska, in the Third Judicial District.

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Fax 907-258-3804

4. The Alaska Big Game Commercial Services Board is an instrumentality of the State of Alaska.
5. Prior to September 30, 2005, Plaintiff was engaged in the business of a Big Game commercial guide in Alaska by way of a Big Game Commercial Services license issued by the Alaska Big Game Commercial Services Board.
6. On September 30, 2005 following a conviction regarding certain alleged fish and game violations, Plaintiff was sentenced. Plaintiff's sentence included revocation of his master guide license for five years.
7. In 2008 the Alaska Court of Appeals determined that Plaintiff's sentence regarding his guide license should have reflected a five year "suspension" rather than a revocation.
8. On remand the Trial Court modified Plaintiff's sentence to reflect a suspension of Plaintiff's guide license for five years, effective as of September 30, 2005.
9. However, when Haeg called the Big Game Commercial Services Board about reinstating his license on October 1, 2010, he was advised they would not reinstate his license.
10. Consistently when he formally applied for reinstatement of his guiding license on October 21, 2010, the Alaska Big Game Commercial Services Board refused to reissue the Plaintiff's master guide-outfitter license.

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Fax 907-258-3804

11. The stated basis for the denial was the claim that a license could not be reissued if it had not been renewed for four consecutive years, which Haeg could not do, since the license was suspended for 5 years.

12. On July 5, 2011, the Superior Court in *Haeg v State*, 3KN-10-1295 Civ. ruled the denial of a reinstatement of the Plaintiff's guiding license was in violation of the sentence imposed on the Plaintiff and contrary to the regulations and statutes governing the reissuance of a Big Game Commercial Guiding License. (Exhibit 1).

13. Since that time, the Alaska Big Game Commercial Services Board has reissued to Plaintiff his Big Game Commercial Guiding License.

14. However, Plaintiff lost significant amounts of income as a legal result of the Alaska Big Game Commercial Services Board's illegal failure to reissue his license many months previously.

15. The refusal to reinstate Plaintiff's license was an unconstitutional taking, in violation of the US and Alaska Constitutions.

16. The refusal to reinstate Plaintiff's license was an unconstitutional increase in a sentence after it had been served, in violation of the US and Alaska Constitutions.

17. The refusal to reinstate Plaintiff's license was contrary to the applicable rules and regulations governing the reissue of Plaintiff's license.

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18. As a result of Alaska Big Game Commercial Services Board's illegal action in denying Plaintiff is Big Game Commercial Guiding License, Plaintiff was deprived of the opportunity to work in his chosen occupation and lost significant amounts of income he utilized to support himself and his family.

19. Defendant is liable to Plaintiff for his lost income as a result of the Alaska Big Game Commercial Services Board's illegal and unconstitutional failure to reissue his license.

20. Plaintiff's losses which were the legal result of the Alaska Big Game Commercial Services Board's illegal and unconstitutional failure to reissue his license exceed the jurisdictional requirements of this Court.

CLASS ACTION ALLEGATIONS

21. In addition to his individual claims, Plaintiff brings this action as a Class Action pursuant to Alaska Rule of Civil Procedure 23(a) and (b) on behalf of all persons were denied reissuance of their Big Game Commercial Guiding Licenses, based on a suspension or temporary revocation or surrender of their license, as part of the terms of a sentence for violation of Alaska Fish and Game laws or regulations.

22. On information and belief, the Alaska Big Game Commercial Services Board has and is presently denying reinstatement of Big Game Commercial Guiding

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Licenses to Big Game Commercial Guides, who also had their licenses suspended, on the same basis that it denied a license reinstatement to Haeg.

23. Based on information provided by the Alaska Big Game Commercial Services Board to Haeg, the number of similarly situated guides who are illegally being denied reissuance of their licenses on the same basis that Haeg was denied his license are at least nine other guides and believed to be a higher number.

24. The information provided to Haeg consisted of a statement by an official working for the Alaska Big Game Commercial Licensing Board, to the effect that "if we gave your license back we would have to do the same thing for another nine guides in the same situation that you are in".

25. As the Court ruled in *Haeg v State*, 3KN-10-1295 Civ., the denial of the reissuance of a suspended guiding license on basis that if had not been renewed during the period of suspension was illegal.

26. The denial of the reissuance of a suspended guiding license on basis that if had not been consecutively renewed for four years, is illegal, when it could not be renewed due to the suspension is an unconstitutional taking and increase of the sentences previously given all similarly situated persons.

27. All other similarly situated Big Game Commercial Guides whom the Alaska Big Game Commercial Services Board refused to reissue licenses to

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following the end of their license suspension, are entitled to an injunction against any further denial of the reissuance of their Big Game Commercial Guide license.

28. The Alaska Big Game Commercial Services Board is an instrumentality of the State of Alaska.

29. The State of Alaska is legally liable for denial of the reissuance of licenses to all other similarly situated persons.

30. Wherefore, Plaintiff prays for this Court to certify this action pursuant to ARCP 23 as a class action, and permit the common claims of all similarly situated persons to be tried in this action along with the Plaintiff's claims.

31. This class action is necessary to end the past practice of denying reissuance of Big Game Commercial Guiding Licenses based on the inability of the licensee to renew their licenses during the period of their suspension, and to advise those affected by the illegal actions of the Alaska Big Game Commercial Services Board of their right to reissuance of their licenses, given the Court's decision in *Haeg v State*, 3KN-10-1295 Civ. (Exhibit 1).

32. Based on information and belief, the members of the Class are sufficiently numerous that joinder of all members is impracticable. While the exact number of Class members is unknown to plaintiff at the present time,

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plaintiffs believe that they likely number in the tens of persons (estimated at 20-30).

33. Named representative plaintiff claims are typical of the claims of the Class because plaintiff and all of the Class members were denied reissuance of their licenses based on their inability to reinstate their licenses, during the period of suspension of their licenses, which caused similar damages to all members of the class.

34. The damages sustained by the named representative plaintiff is typical of the type of damages sustained by all the Class members.

35. Plaintiff is a representative party who will fully and adequately protect the interests of the Class members. Plaintiff has retained counsel, who are experienced and competent attorneys who have prosecuted class actions previously. Plaintiff have no interests which are contrary to or in conflict with those of the Class they seek to represent.

36. Questions of law and fact common to the members of the Class predominate over any questions which may affect only individual members, in that the conduct complained of applies to the entire Class.

37. In view of the legal, factual and damage similarities among all members of the Class, a class action would be superior to all other available methods for the fair and efficient adjudication of this controversy. For example it would

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be a serious waste of litigation and judicial resources to conduct discovery and depositions of the same defendants in numerous guides' cases and then conduct separate trials on the same liability facts for each victim, which are believed to be in the tens of persons. (estimated at 20-30 persons).

38. Further, it is unlikely that individual actions, besides the named plaintiff, would be pursued in light of Defendants non-disclosures of the *Haeg v State* decision to all other similarly situated persons.

39. Plaintiff knows of no difficulty to be encountered in the management of this action that would preclude its maintenance as a class action.

WHEREFORE plaintiff, on his own behalf and that of the Class, prays for judgment as follows:

1. Declaring this action to be a proper class action pursuant to Alaska Rule of Civil Procedure 23(a)&(b) on behalf of the Class as defined herein;

2. For an injunction, declaring the past practice of the Alaska Big Game Commercial Services Board in denying reissuance of Big Game Commercial Guiding Licenses to licensees whose licenses were suspended, temporarily revoked or surrendered, due a court sentence, is illegal and a violation of Alaska law and the US and Alaska Constitutions, requiring that licenses in such cases be reissued once the suspension period has ended and prohibiting the same or similar conduct in the future;

3. Awarding compensation to the Plaintiff and all similarly situated persons for lost income during periods of time reissuance of licenses were denied based on an illegal or unconstitutional basis and any other remedies permitted at common law for all members of the class, in an amount to be proven at trial but in any case to exceed the jurisdiction limits of this Court;

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4. Recovery of reasonable attorney's fees, costs, and interest as permitted by law;

5. Such other and further relief as the Court deems just and proper.

DATED THIS 26TH DAY OF SEPTEMBER, 2011.

FLANIGAN & BATAILLE
Attorneys for Plaintiff

By Michael W. Flanigan
ABA #7710114

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing *SUPPLEMENTAL CLASS ACTION COMPLAINT* was served by mail this 28th day of September, 2011 on:

Alfred Petersen,
Office of Special Prosecutions and Appeals
310 K Street, Suite 403
Anchorage, Alaska 99501

FLANIGAN & BATAILLE

FLANIGAN & BATAILLE
1029 West 3rd Ave., Suite 250
Anchorage, Alaska 99501
Phone 907-279-9999
Fax 907-258-3804

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT KENAI

DAVID HAEG, Applicant, vs. STATE OF ALASKA, Respondent.	)	CASE NO. 3KN-10-1295 CI

DECISION ON MOTION TO REINSTATE MASTER GUIDE LICENSE

Background: On September 30, 2005, David Haeg ("Haeg") was sentenced in district court following his conviction by a jury of certain criminal charges. Prior to the criminal charges Haeg held a master guide license issued by the Alaska Big Game Commercial Services Board. His sentence included revocation of his master guide license for five years. Court form CR-64 (2/05), entitled "Judgment – Fish and Game," was used. Separate judgments were entered with the 5-year revocation for each of Counts I – V. On appeal, the Alaska Court of Appeals held in pertinent part:

> [W]e conclude that [Judge Murphy] meant to suspend the license for a specified period of time rather than to revoke it permanently. **We therefore order the district court to modify the judgments in this case to show that Haeg's guide license was suspended for five years.**

Haeg v. State, not reported, 2008 WL 4181532 *11 (Alaska App. 2008) (emphasis added).

On remand, on January 26, 2009, the sentencing court entered five amended judgments stating that the defendant's guiding license was suspended for 5 years, effective September 30, 2005.

Exhibit 1
Page 1 of 13
01532

When the five years expired, Haeg sought reinstatement of his master guide license. The Big Game Commercial Services Board ("Big Game Board") within the Division of Occupational Licensing did not reinstate his license, and instead informed Haeg that he would need to apply anew for a new guide license.

Haeg claimed, without dispute, that he earned a living for himself and his family through his Master Guide license.

APPLICABLE LEGAL STANDARDS

In the Haeg decision the Court of Appeals discussed a suspension and a revocation under AS 08.54.720(f)(3) given the authority in AS 12.55.015(c). AS 08.54.720(f) authorizes the court to order the "board" (meaning the Big Game Board) to "suspend" or "to permanently revoke" a guide license, depending upon the offense.

AS 01.10.040 (a) addresses how language used in statutes should be interpreted, which is according to the common and approved usage unless the Legislature has provided a definition or the terms are technical, in which case the special meaning applies.

> Technical words and phrases and those that have acquired a peculiar and appropriate meaning, whether by legislative definition or otherwise, shall be construed according to the peculiar and appropriate meaning.

AS 01.10.040. Chapter 08.54 does not provide a definition of the words suspend, suspension, revoke, or revocation. The ordinary and customary meaning of the verb "suspend" includes "5. to bring to a stop, usu. for a time: to suspend payment. 6. to cause to cease for a time from operation or effect, as a law, privilege, or service: *to suspend ferry service*. 7. to debar, usu. for a limited time, from office, membership, school attendance, etc., esp. as a punishment." Random House Webster's College Dictionary, 1991. The meaning of the noun "suspension" is similar. The ordinary and customary meaning of the

verb "revoke" includes "1. to take back or withdraw. annul or cancel: *to revoke a license.*" The meaning of the noun "revocation" is similar.

Black's Law Dictionary, Eighth Edition, defines "revocation" in pertinent part as follows: "An annulment, cancellation, or reversal, usu. of an act or power." Black's Law Dictionary defines "suspension" as follows:

> 1. The act of temporarily delaying, interrupting, or terminating something <suspension of business> <suspension of a statute>. ... 3. The temporary deprivation of a person's powers or privileges, esp. of office or profession; esp., a fairly stringent level of lawyer discipline that prohibits the lawyer from practicing law for a specified period, usu. from several months to several years <suspension of the bar license>. • Suspension may entail requiring the lawyer to pass a legal-ethics bar examination, or to take one or more ethics courses as continuing legal education, before being readmitted to active practice. ....

Case law in other jurisdictions has distinguished between the meaning and effect of suspension versus revocation. For example, the owner of an adult cabaret in Washington challenged a city decision to revoke the cabaret license based on a determination that it was a public nuisance. The owner argued the license revocation was a prior restraint on protected expression, namely, nude dancing. The owner also argued the statute was overbroad and vague. The appellate court agreed that a law is overbroad if it "sweeps within its prohibitions" activities that are constitutionally protected. However, the court found that the statutory standards of conduct for adult cabarets did not sweep any protected expressions within the prohibitions. The court addressed the distinction between suspension and revocation of a license:

> In issuing the revocation here, the Examiner considered license suspension as an option and considered that there was a moratorium on issuance of new licenses. But the Examiner ultimately decided not to grant a suspension primarily because Heesan did not produce any explanation to warrant suspension. Instead, the Examiner noted, Heesan had acted in a systematic way to permit unlawful conduct.

Heesan Corp. v. City of Lakewood, 75 P.3d 1003, 1007 (Wash.App. Div. 2 2003).

In contrast to the result in the revocation setting in the Heesan case, the Alaska Court of Appeals remanded the Haeg case for the sentencing judge to impose a suspension rather than a revocation of Haeg's master guide license. The Alaska Supreme Court has identified such a license as deserving constitutional due process of law protection. In Herscher v. State, Dept. of Commerce, 568 P.2d 996 (Alaska 1977), the Alaska Supreme Court held:

> We find that Herscher's proprietary interest in the hunting guide license is of sufficient importance to warrant protection under constitutional requirements relating to due process of law. In Frontier Saloon, Inc. v. Alcoholic Beverage Control Board, 524 P.2d 657, 659-660 (Alaska 1974), we held:
>
> > It has long been recognized that an interest in a lawful business is a species of property entitled to the protection of due process. . . . This interest may not be viewed as merely a privilege subject to withdrawal or denial at the whim of the state . . . . Neither may this interest be dismissed as de minimis. A license to engage in a business enterprise is of considerable value to one who holds it. (footnote and citations omitted)
>
> In addition, in Alaska Board of Fish and Game v. Loesche, 537 P.2d 1122 (Alaska 1975), we considered a due process claim by Loesche relating to the suspension of his guide license. While we found it unnecessary to adjudicate the full scope of protections required by due process of law, by implication we found the requirements of adequate notice and opportunity for a hearing were required. 537 P.2d at 1125.

Herscher v. State, Dept. of Commerce, 568 P.2d at 1002.

In another state in another context an appellate court noted that the driver's license statute in that state authorized post-suspension examination prior to terminating suspension of a license. In addressing the nature of the procedural due process for the licensee, the court cited specific statutory authority:

> FN4. Section 13101 provides: "When used in reference to a driver's license, 'revocation' means that the person's privilege to drive a motor vehicle is terminated and a new driver's license may be obtained after the period of revocation."
>
> Section 13102 provides: "When used in reference to a driver's license, 'suspension' means that the person's privilege to drive a motor vehicle upon a

> highway is temporarily withdrawn. The department may, before terminating any suspension based upon a physical or mental condition of the licensee, require such examination of the licensee as deemed appropriate in relation to evidence of any condition which may affect the ability of the licensee to safely operate a motor vehicle."
>
> ....
>
> By its enactment of various provisions of the Vehicle Code, the [California] Legislature has carefully delineated, according to the seriousness of the offenses, the disabilities that are to be suffered by those convicted of drunk driving. As relevant here, these disabilities include suspension or revocation of a driver's license for various periods of time. Under this statutory scheme, neither a prior record of drunk driving nor a past refusal of insurance nor a prior suspension or revocation of a driver's license disqualifies a citizen from owning or driving a vehicle provided the legal disability has been cured and the citizen holds a valid driver's license. (See §§ 13101, 13102[.]) Accordingly, plaintiff implicitly argues that the past legal transgressions of citizens, even though cured in the eyes of the Legislature, should disqualify them from renting cars.
>
> However, we think this detailed statutory scheme reflects a careful balance struck by the Legislature between the dangers of drunk driving and the recognition that driving a car may be "essential in the pursuit of a livelihood." (*Bell v. Burson* (1971) 402 U.S. 535, 539, 91 S.Ct. 1586, 1589, 29 L.Ed.2d 90, 94; *Rios v. Cozens* (1972) 7 Cal.3d 792, 796, 103 Cal.Rptr. 299, 499 P.2d 979.) We see no reason to disturb this carefully considered balance.

Osborn v. Hertz Corp., 205 Cal.App.3d 703, 710-11, 252 Cal.Rptr. 613, 617 (Cal.App. 3 Dist. 1988).

Haeg argues that suspended attorneys are not required to retake the bar examination, and he should therefore not be required to apply anew or take the guide examination again. It is true that suspended attorneys as well as disbarred attorneys normally need not re-take the bar examination. See Alaska Bar Rule 29. Except for interim suspensions based on convictions that are reversed or set aside (Alaska Bar Rule 26(f)), disbarred and suspended lawyers are subject to conditions before their license to practice law is reinstated. Suspended attorneys seeking reinstatement must file a verified petition for reinstatement containing certain information. Alaska Bar Rule 29(b). The first requirement for the petitioner is a verified statement that the suspended/disbarred attorney has met the

terms and conditions of the order imposing suspension or disbarment. Alaska Bar Rule 29(b)(1). The Alaska Supreme Court has acknowledged and approved conditions for reinstatement of suspended attorneys. For example, in one such recent case, the court wrote:

> The Disciplinary Board of the Alaska Bar Association, based on its adoption of an area hearing committee's findings of fact and conclusions of law and a final report of recommended sanctions, recommended that attorney Wevley William Shea be suspended from the practice of law for 25 months and be subject to certain conditions for reinstatement.

In re Shea, 251 P.3d 357 (Alaska 2011) (held; affirmed). Similarly, with regard to another suspended attorney, the court held:

> We also accept the Disciplinary Board's recommendations for conditions of reinstatement. To be reinstated, Brion must complete twelve hours of Bar Association continuing legal education classes relating to law-office management and accounting. During the two years following his reinstatement, Brion also must: (1) retain an office manager (who may not be a relative or a person with a direct financial interest in his practice) with appropriate law-office experience to assist in billing, case management, and trust account management; (2) hire a licensed and insured certified public accountant to oversee all general and trust accounts of the firm and to provide annual written reports to the Bar; and (3) establish a mentor relationship with an attorney approved by the Bar Association and consult with that mentor bi-weekly, for no less than fifteen minutes per meeting, about case management issues.

In re Disciplinary Matter Involving Brion, 212 P.3d 748, 756 (Alaska 2009).

Alaska is not unique in conditioning the reinstatement of suspended or revoked lawyers. A conditional reinstatement was imposed on appeal in a recent proceeding in Wisconsin. The court rejected the referee's rejection of the lawyer's petition for reinstatement following his 1992 petition for voluntary revocation of his license (because of embezzlement) and held:

> ¶ 49 IT IS ORDERED that the petition for reinstatement is granted and the license of David V. Jennings III to practice law in Wisconsin is conditionally reinstated effective the date of this order.

> ¶ 50 IT IS FURTHER ORDERED that the conditions set forth in this order, including compliance with the current Continuing Legal Education requirements, are imposed on the license of David V. Jennings III to practice law in Wisconsin. If he fails to comply with the conditions required by this order and absent a showing to this court of his inability to do so, the license of David V. Jennings III to practice law in Wisconsin shall be suspended until further order of the court.

In re Disciplinary Proceedings Against Jennings, __ N.W.2d __, 2011 WL 2474282, 11 (Wis. 2011). In its review of a referee's recommendation to reinstate a lawyer's license to practice after a suspension, the Supreme Court of Wisconsin held:

> ¶ 13 After review of the record we conclude that Selmer has established by clear, satisfactory, and convincing evidence that he has satisfied all the criteria for reinstatement. Accordingly, we adopt the referee's findings of fact and conclusions of law and we agree with the referee's recommendation that Mr. Selmer's license to practice law in Wisconsin be reinstated. We conclude further that he should be required to pay the costs of this reinstatement proceeding.
>
> ¶ 14 IT IS ORDERED that the petition for reinstatement of the license of Scott E. Selmer to practice law in Wisconsin is granted, effective the date of this order, subject to compliance with current continuing legal education requirements.
>
> ¶ 15 IT IS FURTHER ORDERED that within six months of the date of this order Scott E. Selmer pay to the OLR the costs of this proceeding. If the costs are not paid within the time specified, and absent a showing to this court of his inability to pay the costs within that time, the license of Scott E. Selmer to practice law in Wisconsin shall be suspended until further order of the court.

In re Disciplinary Proceedings Against Selmer, 698 N.W.2d 695, 697 (Wis. 2005). In another case the Supreme Court of Wisconsin imposed an additional two-year suspension of an attorney's license to practice law for failure to comply with court-imposed conditions following his reinstatement of a previous suspension of his license to practice law. See In re Disciplinary Proceedings Against Wright, 428 N.W.2d 549 (Wis. 1988).

Cases involving the suspension or revocation of licenses to practice medicine provide insights by analogy. For example, a doctor in Pennsylvania appealed a Medical Board rejection of his petition for reinstatement of his revoked license to practice medicine.

In its decision the Commonwealth Court of Pennsylvania distinguished between a suspended license to practice and a revoked license. The court held:

> [Doctor] Pittenger's reliance upon *Brown v. State Board of Pharmacy*, ... 566 A.2d 913 (1989) is misplaced. In *Brown* we were presented with a situation in which a holder of a suspended license to practice pharmacy petitioned for reinstatement of his license. In rendering our determination, we interpreted provisions of the Pharmacy Act similar to the relevant provisions of the MPA in this case. We determined that because the license was "susceptible to revival," the applicant possessed a property right which was entitled to due process protection. We further determined that imposition of a waiting period for application for renewal or reissuance of a license imposed a burden which was unconstitutional if applied retroactively to impede an applicant's right to petition the Board for license reinstatement. However, Pittenger fails to grasp the distinction between *Brown* and the matter *sub judice*. In *Brown*, ... 566 A.2d at 915, we distinguished between suspension and revocation of a professional license, stating:
>
> > Undoubtedly, the holder of a valid and existing professional license has a property interest in such license. "[T]he right to practice a profession, once acquired, does constitute a property right in the license." *Brady v. State Board of Chiropractic Examiners*, ... 471 A.2d 572, 575, *appeal dismissed*, ... 483 A.2d 1376 (1984). Once that license has been revoked, however, "through a procedure consistent with the individual's due process guarantees, that individual is stripped of whatever property interest he possessed in the license." *Keeley v. State Real Estate Commission*, ... 501 A.2d 1155, 1158 (1985).
>
> It is undisputed that Pittenger's license was revoked. In *Keeley*, this court previously determined:
>
> > [W]hen a license or privilege is revoked, it is extinguished and the former possessor is returned to the same position he occupied had the license or privilege never been issued. The term "revoke" is defined as "[t]o annul or make void by recalling or taking back; to cancel, rescind, repeal or reverse." Black's Law Dictionary 1188 (5th Ed.1979). Therefore, once the license has been voided or annulled, any property rights or interest stemming from that license are likewise voided or annulled. ... 501 A.2d at 1158.
>
> As such, Pittenger possesses no commensurate property right in a medical license which has been revoked consistent with due process of law.
>
> As to Pittenger's argument of an unconstitutional retroactive application by the Board of Section 43(b), it is a well-settled principle that application of subsequent legislative revision involving procedural rather than substantive change is not improper. *Brown; Long v. County of Delaware*, ... 490 A.2d 20 (1985). Having

> determined that Pittenger possesses no property right in the revoked medical license, no substantive rights are affected. In this case, Section 43(b) of the MPA did not alter Pittenger's substantive rights, it merely fixed a time period when Pittenger may apply for reinstatement of the license.

Pittenger v. Department of State, Bureau of Professional and Occupational Affairs, ... 596 A.2d 1227, 1229-30 (Pa.Cmwlth. 1991) (footnotes omitted). The context in the Brown case, cited in Pittenger, involved whether the Board could lawfully apply against pharmacist Brown a statute enacted shortly after his suspension. The statute imposed a 10-year waiting period before a petition for reinstatement by a pharmacist convicted of certain criminal charges could be considered. The court found retroactive application of the statute to Brown to be unconstitutional.

The North Carolina Court of Appeals reviewed a Medical Board rejection of a physician's quest to have his license reinstated. The court held:

> we disagree with the Board's contention that, under the Medical Practice Act, the Board has complete statutory discretion to deny or limit permission to resume the practice of medicine once a physician's right to practice has been terminated "by any action or for any period of time." N.C.Gen.Stat. Sec. 90-14(a) lists thirteen grounds upon which the Board may "deny, annul, suspend, or revoke" a license to practice medicine.

In re Magee, 362 S.E.2d 564, 567 (N.C.App. 1987). The trial court had directed the Board of Medical Examiners to establish rules and procedures relating to reinstatement of licenses automatically suspended under North Carolina statutory law. The Board balked, but the appellate court found the trial court order was proper.

Haeg cites cases and propositions concerning double jeopardy, common sense, avoiding absurd results, and the rule of lenity with sundry examples in other contexts. The Alaska Court of Appeals has held:

> As we have stated: "If a statute establishing a penalty is susceptible of more than one meaning, it should be construed so as to provide the most lenient penalty."[FN43]

FN43. *State v. Andrews*, 707 P.2d 900, 907 (Alaska App.1985), *opinion adopted by State v. Andrews*, 723 P.2d 85, 86 (Alaska 1986); *see also Wells v. State*, 706 P.2d 711, 713 (Alaska App.1985) ("It is well established that, in accordance with the rule of lenity, ambiguities in penal statutes must be resolved in favor of the accused.").

State v. Stafford, 129 P.3d 927, 933 (Alaska App. 2006).

THE SENTENCE BY JUDGE MURPHY

District Court Judge Murphy considered the Cheney criteria and announced the sentence after hearing testimony from witnesses and sentencing arguments. The court imposed a combination of active and suspended jail time on nine counts, fines, court surcharges, forfeiture of the PA 12 airplane, the guns involved, the ammo, and hides, a 5-year revocation of the guide license, and 7 years of probation. The amended judgments show a suspension of the guiding license for 5 years from September 30, 2005.

ANALYSIS

AS 08.54 authorizes the court to order the Board to suspend or to revoke a hunting guide license. Here the sentencing court initially ordered a revocation of Haeg's license for five years. The Court of Appeals remanded on the suspension versus revocation point, writing:

> We therefore order the district court to modify the judgments in this case to show that Haeg's guide license was suspended for five years.

The Court of Appeals did not direct the sentencing judge to order the Board to change the license status of the defendant from revoked to suspended. Nor, on remand, did the sentencing court remand to the Board or order the Board to change the status accordingly. The change from revoked to suspended status was effected directly by the Amended Judgments. It is clear that the Court of Appeals intended the revocation to be changed to a

suspension ab initio, as of the date of the original sentence in 2005. And it is clear that the sentencing judge did so on remand.

Under the law of Alaska Haeg has constitutionally protected property interests in his suspended master hunting guide license. See Herscher, supra. His rights are not limited by the due process protection at issue in Herscher.

Unlike a revocation setting, the court finds that Haeg as the holder of a suspended guide license cannot be required to go through a new application/examination process to get his license back. Termination of the suspension or reinstatement of a suspended license (whether that be a driver's license, license to practice law, or license to practice medicine) can be subject to reasonable conditions, but only to a limited degree consistent with not treading upon the constitutionally protected property interest Haeg has in his suspended license.

On reflection the State agreed with the argument by Haeg that it would not be proper for the Board to preclude reactivating his license based on his conviction and sentencing in 2005 when he voluntarily surrendered his license in 2004 as a result of the same incident.

The State provided a photocopy of Haeg's Master Guide license. Exhibit 2 to the State's June 10, 2011 Opposition to the pending motion ("Exh. 2"). The license shows that it was issued on November 13, 2003, with an expiration date of December 31, 2005. The license number is # 146.

Haeg filed a license renewal application with the Big Game Board dated October 21, 2010, roughly three weeks after the expiration of his suspension. Exh. 3. Haeg also filed a license renewal application dated October 29, 2010, with the same information. Exh. 5.

The State provided a November 4, 2010, response letter to Haeg from Big Game Board Licensing Examiner Karl Marx which states that "the master guide-outfitter license" which you previously held "lapsed 9/30/2005." Exh. 4. The letter brings to Haeg's attention that AS 08.54.670 applies because Haeg failed to renew his license for four consecutive years, and the Department may therefore not issue a license "unless the person again meets the qualifications for initial issuance of the license." The State also provided a November 4, 2010, letter from Don Habeger, Director Corporations, Business, & Professional Licensing ("Habeger"), informing Haeg that the Department was unable to process his license renewal based on AS 08.54.670. The letter informs Haeg he will need to submit an "initial license application[.]" Exh. 6.

By letter of December 28, 2010, to Haeg, Habeger took the position that AS 08.54.670 is not inconsistent with AS 08.74.710(e). Habeger explains that the Department and the Board are separate entities; each with its own duties under AS 08.01. Habeger concludes that Haeg is "no longer eligible for a Master Guide license renewal per AS 08.54.670, AS 08.01.100(d) and AS 08.54.610(b)."

Haeg's license # 146 did not "lapse" on September 30, 2005, it was suspended by court order. The district court judgment did not impose any conditions on reinstatement of the guide license following expiration of the five years. Bearing in mind the tension between AS 08.54.670 and 08.54.710(e), common sense, the avoidance of double jeopardy and absurd results, and the rule of lenity, the court finds that it would be an impermissible imposition on Haeg's protected property interests in his Master Guide license to permit the Board or the Department to deny reinstatement of Haeg's license # 146 based on the provisions of AS 08.54.670, AS 08.01.100(d), or AS 08.54.610(b). The guide license held by Haeg was

suspended by the sentence in the criminal case, so he could not lawfully renew the license until the period of suspension terminated. The suspension period has run. No conditions for reinstatement were imposed by the sentencing court. Haeg is therefore entitled to reinstatement of his Master Guide license # 146 forthwith.

ORDERS

For the reasons set forth above, the court orders the Big Game Board and the Division of Occupational Licensing, Department of Commerce and Economic Development to reinstate Master Guide license # 146 to David Haeg without further ado, forthwith.

Dated at Kenai, Alaska, this 5th day of July, 2011.

Carl Bauman
SUPERIOR COURT JUDGE

CERTIFICATION OF DISTRIBUTION
I certify that a copy of the foregoing was mailed to the following at their addresses of record: Jake
Haeg, Peterson
7-5-11 Roberts
Date Clerk

Exhibit 1
Page 13 of 13
01544

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT KENAI

DAVID HAEG,

Plaintiff,

vs.

STATE OF ALASKA,

Defendant.

Case No. 3KN-10-01295 Civil

LIMITED ENTRY OF APPEARANCE

Comes Now, Flanigan & Bataille, and hereby enter their limited appearance on behalf of Plaintiff, David Haeg, for the limited purpose of representing David Haeg and the Class, in a Supplemental Class Action Complaint, that Haeg is concurrently filing with this Entry of Appearance. Haeg will continue to represent himself regarding the other claims in this action.

It is therefore requested that all further pleadings and orders regarding the Supplemental Class action complaint be served on:

FLANIGAN & BATAILLE,
1029 W. 3rd Ave., Ste 250,
Anchorage, Alaska, 99501
Tel. No. 907-250-6174, Fax No. 907-258-3804

DATED THIS 28th DAY OF SEPTEMBER, 2011.

FLANIGAN & BATAILLE
1029 West 3rd Ave., Suite 250
Anchorage, Alaska 99501
Phone 907-279-9999
Fax 907-258-3804

FLANIGAN & BATAILLE
Attorneys for Plaintiff

By Michael W. Flanigan
ABA #7710114

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing
Entry of Appearance
was served by mail this 28th day of September, 2011 on:

Alfred Petersen,
Office of Special Prosecutions and Appeals
310 K Street, Suite 403
Anchorage, Alaska 99501

FLANIGAN & BATAILLE

FLANIGAN & BATAILLE
1029 West 3rd Ave., Suite 250
Anchorage, Alaska 99501
Phone 907-279-9999
Fax 907-258-3804

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT KENAI

DAVID HAEG,

Plaintiff,

vs.

STATE OF ALASKA,

Defendant.

Case No. 3KN-10-01295 Civil

MOTION AND MEMORANDUM TO PERMIT FILING OF SUPPLEMENTAL CLASS ACTION COMPLAINT

Comes Now, David Haeg, by and through counsel, Flanigan & Bataille, and moves the Court pursuant to ARCP 15(a & c) and 18(a) to permit the joinder and filing of a Supplemental Class Action Complaint in this matter, which is concurrently lodged in this matter.

Following this Court's 7/11/11 Order holding that the Big Game Commercial Services Board illegally denied the reinstatement of Haeg's Big Game Guiding license in October, 2010, Haeg decided to seek an injunction against the Big Game Commercial Services Board denying guiding licenses to other guides similarly situated and to seek compensatory damages for himself and all others similarly situated.

FLANIGAN & BATAILLE
1029 West 3rd Ave., Suite 250
Anchorage, Alaska 99501
Phone 907-279-9999
Fax 907-258-3804

A Class action complaint styled as a Supplemental Class Action Complaint, was prepared containing those claims for relief and has been filed concurrently in this case, herein. The reason for filing a separate "supplemental complaint" rather than an "amended complaint", is to keep a clear dividing line between those criminally related claims to set aside Haeg's conviction, in which Haeg is representing himself, and the civil claims for compensation and an injunction, described in the Supplemental Class Action Complaint, which undersigned counsel have agreed to pursue.

The two also need to be kept separate since the parties to the class action, other than Haeg and the State have no interest in the outcome of Haeg's efforts to set aside his criminal conviction.

The reason for filing the "Supplemental Class Action Complaint" in this case, rather than filing a new case, is for two reasons. First, Alaska law prohibits "claim splitting", which is defined as the filing of separate actions regarding the same occurrence, *Beegan v. State, Dotpf*, 195 P.3d 134, n. 10 (Alaska 2008):

> Our cases have clarified that the "could have been asserted" test is limited to claims against a party arising out of the same transaction being litigated. The rule against claim splitting is "`a conventional application of the doctrine of res judicata.' The rule against claim splitting provides that `all claims arising out of a single transaction must be brought in a single suit, and those that are not become extinguished by the judgment in the suit in which some of the claims were brought.'"

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1029 West 3rd Ave., Suite 250
Anchorage, Alaska 99501
Phone 907-279-9999
Fax 907-258-3804

Robertson v. Am. Mech., Inc., 54 P.3d 777, 780 (Alaska 2002):

> "all claims arising out of a single transaction must be brought in a single suit, and those that are not become extinguished by the judgment in the suit in which some of the claims were brought." When analyzing claim splitting, "the relevant inquiry is not whether the two claims are grounded in different theories, but whether they arise out of the same transaction or core set of facts.

McDowell v. State, 23 P.3d 1165, 1166 (Alaska 2001):

> The McDowells may not litigate their 1998 trespass complaint because to do so would violate the longstanding rule prohibiting the "splitting" of a claim by advancing one part of the claim in an initial suit and reserving the remaining parts for a later suit. The rule against claim splitting provides that "all claims arising out of a single transaction must be brought in a single suit, and those that are not become extinguished by the judgment in the suit in which some of the claims were brought."

Also see Osborne v. Buckman, 993 P.2d 409, 412 (Alaska 1999).

The rule against claim splitting is not limited to civil damages cases, but has also been applied to criminal cases where the defendant sought relief from a conviction or sentence, *Hurd v. State*, 107 P.3d 314, 327-329 (Alaska App. 2005)

The penalty for "claim splitting" as discussed in the above referenced cases, is the dismissal of the claims in the second suit, which were not included in the first suit, once the first suit has concluded. Thus Haeg's claims for damages and the concurrent class action suit must be filed in this action.

Another reason for granting this motion for permission to file the Supplemental Class Action Complaint in this case, is to avoid inconsistent decisions

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1029 West 3rd Ave., Suite 250
Anchorage, Alaska 99501
Phone 907-279-9999
Fax 907-258-3804

and a multitude of separate actions and appeals on what is a very narrow issue of law. On 7/11/11 this Court held that the State's long standing practice of denying reinstatement of Big Game Guiding licenses that had been temporarily suspended because they had not been renewed during the period of suspension was illegal. According to what the Board officials told Haeg, there are at least nine others in the same position as he was in, and Haeg believes that probably understates the problem by X2 or X3. It would be a waste of judicial resources to litigate the same issues this Court addressed in its 7/11/11 Order in 20-30 cases in various courts around the state, whether an injunction should lie against the practice this court found to be illegal and whether the guides so denied their licenses are entitled to compensation. The best practice from a conservation of judicial resources approach is to litigate those decisions for Haeg and all persons similarly situated in one proceeding with one appeal. Whatever the outcome, it will provide the legally correct result for all involved with the least expenditure of time, energy and resources by the affected guides, the state and the Alaska Court System.

Since Haeg established in this case that the practice of the Big Game Commercial Services Board in denying reinstatement of suspended licenses was illegal, and it appears that other guides denied their licenses for the same reasons have not been advised of this Court's decision and/or given their licenses, Haeg is

FLANIGAN & BATAILLE
1029 West 3rd Ave., Suite 250
Anchorage, Alaska 99501
Phone 907-279-9999
Fax 907-258-3804

the appropriate Class representative, and this Court the appropriate forum for further decisions regarding this Court's 7/11/11 Order.

DATED THIS 28th DAY OF SEPTEMBER, 2011.

FLANIGAN & BATAILLE
Attorneys for Plaintiff

By Michael W. Flanigan
ABA #7710114

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing *Motion And Memorandum To Permit Filing Of Supplemental Class Action Complaint* was served by mail this 28th day of September, 2011 on:

Alfred Petersen,
Office of Special Prosecutions and Appeals
310 K Street, Suite 403
Anchorage, Alaska 99501

FLANIGAN & BATAILLE

FLANIGAN & BATAILLE
1029 West 3rd Ave., Suite 250
Anchorage, Alaska 99501
Phone 907-279-9999
Fax 907-258-3804

You must use black ink to fill out this form.

Your Name: Mark D. Osterman

Mailing Address: P.O. Box 312

Moose, IN 47308

Telephone: 765-38-0331 Message phone: _____

NOTE: If for any reason you do not wish the other party to know your physical address, you must still provide a mailing address so that the court and the other party can serve you by mail.

FILED in the Trial Courts
State of Alaska Third District
at Kenai, Alaska
SEP 29 2011
Clerk of the Trial Courts
1:07 pm
Deputy

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
AT Kenai
City or Town where the Court is located

In the Matter of David Avey
Plaintiff,

vs.

Defendant.

Your Case No. 3KN-10-1295CI

NOTICE OF Filing Affidavit

I, Mark D. Osterman, hereby give notice that I filed an
Print your full name here

Affidavit of Counsel.

☐ More pages are attached and incorporated by reference.

I have filed the following documents with this Notice: Affidavit of Former Appellate Counsel Mark D. Osterman

9/29/11
Date

Your Signature (In blue ink if possible)

I certify that on 9/29/11 a copy of this *Notice* and all supporting documents that are attached as indicated above was ☐ mailed ☐ hand delivered to:

☒ Opposing Party Hay
☐ Opposing Lawyer _____
☒ AG _____ ☐ CI _____

9

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA AT MCGRATH

In the matter of the Post
Conviction Relief of:
DAVID HAEG

4MC-09-006 CI
3KN-10-1295CI

AFFIDAVIT OF FORMER APPELLATE ATTORNEY MARK D. OSTERMAN

Comes Mark D. Osterman, being duly sworn deposes and states:

1. I am an attorney admitted to practice law in the State of Alaska and was retained by David Haeg to pursue an appeal on his behalf. I took no part in the underlying trial and I was fired by Mr. Haeg before a final product could be produced to the Alaska Court of Appeals.

2. I am aware of the standards necessary for a petition for Post Conviction Relief. Upon a complete review of Mr. Haeg's allegations, I am unable to find any allegation or statement that the work I performed failed to meet any discernible standard for an appellate attorney. I became aware at a Post Conviction Relief (PCR) Petition had been filed by Haeg when I was contacted by Assistant Attorney General Peterson with respect to allegations being made against me as contributing to Mr. Haeg's conviction.

3. Attached to this affidavit is a copy of a docketing sheet (Exhibit 1) routinely maintained by office personnel through a program called Trialworks. This docketing evidences the flow of documents and items in and out of the office including scheduled hearings and deadlines.

4. Mr. Haeg initially met with me on March 20, 2006 and on March 23, 2006 I agreed to take this case on behalf of my law office.

5. With respect to paragraph SS of the PCR, I admit that the client had been harmed by the conduct of prior counsel based upon the representations of Mr. Haeg at the time of my initial encounters around March 20, 2006. I DENY any statement that I felt that there were millions of dollars in any malpractice lawsuit against any attorney. Indeed, if there is any credence to Mr. Haeg's transcript known as Exhibit 24, Mr. Haeg was cautioned to take matters one step at a time and to solve his appeal before he proceeded down the path of malpractice.

6. With respect to paragraph TT, on its face this statement is false that I stated I charged between $3000 and $5000 per point on appeal that the entire fixed sum would be $12,000. My electronic files establish that on May 9, 2006 a letter was mailed to Mr. Haeg with a postscript (See Exhibit 2) states:

> " P.S. A copy of the bill is coming out. I have substantially trimmed the bill as is necessary but nevertheless I would anticipate that you would satisfy the requirements of the bill. When we met, I told you that $8,000 was the going rate per issue. As you can see, we are well beneath that number but we had substantial issues to take up."

This statement establishes that the allegation of price alleged by Mr. Haeg is false. Mr. Haeg was aware that the speed of preparing the document within deadlines, the dedicated manpower to listen to and review trial transcripts and perform necessary research would require substantial financial injection. This price also included the fact that Mr. Haeg presented himself as a difficult person, one who was intent on wasting as much time of mine as possible and under the circumstances, his fee was based upon the level of difficulty in dealing with him as much as the merits of his case.

7. If Mr. Haeg had paid a flat fee, then Mr. Haeg would not be billed.

8. With respect to paragraph UU this is absolutely false. A copy of the draft brief was provided to Mr. Haeg along with explanation. Mr. Haeg was told that he had input into the issues being developed, but that the brief had to comply with the requirements of an appeal. Mr. Haeg seemed more intent on venting his spleen about unrelated issues of economic harm he believed had been caused to him by judges and lawyers. During the first 3 days after meeting with Mr. Haeg, Mr. Haeg had been in touch with Jay Fayette, an AAG handling the Appeal, and had so angered Mr. Fayette that a letter was forwarded to my office as well as several angry telephone calls concerning Mr. Haeg's telephone calls and accusations. I do not have the letter, but I do have notes taken from the conversation I had with Mr. Fayette. This was not the only time that Mr. Haeg became uncooperative and difficult. At the end of the case, his conduct toward my staff and me caused me to call his former counsel and someone who had known him for many years, Mr. Robinson, and ask if Haeg was or could be violent. The response I received prompted the appearance of firearms in the office and discussions about how to proceed if Haeg appeared in the office and was belligerent. Because of his behavior, when the Haeg file was surrendered to him, it was surrendered through a 3rd party.

9. With respect to paragraph UU, I deny any statement taken out of context. I did not refuse to pursue the attorneys that had caused misconduct to Mr. Haeg. On April 24, 2006 Haeg contacted my office looking for forms concerning legal malpractice. At that time I refuse to provide that information to him. I was paid to focus on an appeal. Malpractice was an issue after the appeal had been won or was substantially underway.

10. I continuously tried to inform Mr. Haeg that while we cannot not raise a PCR issue in the appeal, however, we could collaterally attack those issues in the appeal. Step 1 was

to draft the major issues. Step 2 was to apply and insert the collateral issues strategically. However, I also told him that in drafting the appeal and preparing those collateral issues, we needed to develop strong appellate issues first and then include the collateral issues.

11. As the attached docketing establishes, Haeg was aware of those issues and picked up and received a copy of the Draft Brief.

12. Haeg's letter firing me in my office from his appeal was unexpected. As I had produced a draft, I had also cleared my docket of any other appointments and court appearances in an effort to dedicate all time necessary to perfect the appeal. I also had an associate attorney (on contract) retained specifically for this appeal in particular, to develop the factual record in preparation for drafting. I was researching the law and preparing the arguments.

13. On August 26, 2006 Haeg contacted my office asking that I prepare an affidavit establishing that I had committed malpractice or in the alternative, that I had been ineffective assistance of counsel. I refused at that time to prepare any such affidavit. Until provided with a copy of this PCR on September 21, 2011, I was unaware of the claims by David Haeg.

14. I could not have committed an act that would provide Mr. Haeg relief. The following demonstrate the failure by Haeg to articulate a reason how I could have contributed to the trouble Haeg has made for himself:

(A) I had no part in the underlying trial causing conviction.

(B) my office under my supervision, efforts and direction drafted a Brief in preparation for an appeal.

(C) I was specifically retained by Mr. Haeg at $8000 in issue to prepare an appellate brief. As the Supplemental Issues (Exhibit 3) attached demonstrates, many of the issues Mr. Haeg demanded that I pursue were contemplated and those that we could not find merit to bring were being considered for collateral use.

(D) the draft brief did not meet Mr. Haeg's requirements, he provided no input into the brief as he had requested, and without notice he fired my office and refused to pay the balance due on his bill.

(E) Haeg is failed to provide to this court any objective standard to establish that my conduct or that of my office was so ineffective that it prevented him from relief. I was hired after a judgment had been entered in his case and substituted for his trial attorney in the appeal. I was fired approximately 8 days before the appeal brief was due. (See docket entries 26 and 32 of Exhibit 1). The only document submitted on Mr. Haeg's behalf were those necessary for the purposes of entering the appeal and departing the appeal (Docket entries 2, 12, and 26). Simply because my draft brief did not meet Mr. Haeg's tastes, absent some standard, is not grounds for post-conviction relief. Nor does Mr. Haeg bring any allegation that the draft brief failed to conform with any standards for the preparation of a draft brief.

15. Case law requires that Haeg present issues to me for my response and comment. Asking 5 years ago that I provide an affidavit to him does not satisfy those requirements. Asking me to provide him with an affidavit that I was ineffective assistance, which is what he did, fails to comply with the requirements of law.

16. Matters concerning Mr. Haeg's allegations of his Ex. 24:

(A) There was no letter of April 4, 2006 (Ex 24, p218) ever transmitted to my office by David Haeg. He did call with cases and demand my input on them, they were researched and discussed with Haeg. No records exist of mail or fax. Mr. Haeg has the file my office maintained for him and it may have been hand-delivered.

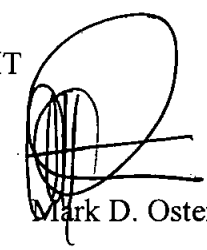
(B) There was no telephone conversation between me and David Haeg on March 15, 2006. I never met Haeg until March 20, 2006.

(C) There was no telephone call of 5/19/2006. I do not deny the threatening character of Haeg found in his transcript That conversation substantially occurred and that he at some point intended physical harm to all that he believed had caused him harm (Exh 24m, page 188-192--threats: everyone was hiding important things from him including me and he wanted physical harm to all lawyers and judges).

(D) There was no telephone conversation on 5/22/2006 as Mr. Haeg's letter firing me and my office from his case was received and logged at 11:47 AM. On that date and because of the transcript mentioned above, Mr. Haeg would not be allowed in the office and his wife appeared for him.

17. I am willing to testify concerning the matters of this Affidavit provided that my expenses are paid and that Mister Haeg is ordered to compensate me for his overdue billing.

FURTHER AFFIANT SAYETH NAUGHT



Mark D. Osterman

I certify that Mark D. Osterman appeared before me and being known by me did affirm that the information contained above was true to the best of his knowledge, information and belief.

Notary Public W/ Ofe

I certify that I mailed this Document And Exhibits to David Hacg and Assistant Attorney General Peterson on this ~~the~~ date by 1st Class Mail

Mark D. Osterman Law Office, P.C.

215 Fidalgo Drive, Suite 106
Kenai, Alaska 99611

ostermanlaw@alaska.net

Phone: 907-283-5660
Fax: 907-283-5677

May 9, 2006

David Haeg
P.O. Box 123
Soldotna, AK 99669

Re: Haeg vs. State, Court of Appeals Case

Dear Dave,

It has been over a week since I spoke with you and I still have not heard from you. Unfortunately, we have to proceed with this case and that means I can no longer stop the staff from working on the issues as set forth in the Brief. When we undertook this matter, I told you that we would develop issues for your approval. What and how we said and dealt with those issues was a matter of discretion between me and other members of my staff.

I can only give you approximately 10 more days. As of the 20th of May, 2006 I shall believe that we have satisfied your requirements with regard to the issues to present to the Court of Appeals and we will go forward from there. The reason being is that we wish to spend several days in going through the draft to make sure that the best possible language is put together in a fashion that attracts the attention of the reader and satisfies the requirements of telling our version of the events.

I look forward to hearing from you before the 20th with any concerns that you might have.

Sincerely yours,

Mark D. Osterman
MDO/mn

P.S. A copy of the bill is coming out. I have substantially trimmed the bill as is necessary but nevertheless I would anticipate that you would satisfy the requirements of the bill. When we met, I told you that $8,000 was the going rate per issue. As you can see, we are well beneath that number but we had substantial issues to take up.

Exhibit 2
Page 1 of 1

Mark D. Osterman, Attorney
Osterman Law Office, P.C.
215 Fidalgo Drive, Suite 106
Kenai, Alaska 99611
907-283-5660

IN THE COURT OF APPEALS
FOR THE STATE OF ALASKA

DAVID HAEG, Appellant, vs. STATE OF ALASKA, Appellee	Appeals Case No. A-09455 Trial Court No. 4MC-S04-024 CR

SUPPLEMENTAL STATEMENT OF POINTS ON APPEAL

1. The trial court erred in failing to dismiss the first and second amended informations in this case because the court lacked subject-matter jurisdiction to proceed with the case where the information was not based on probable cause supported by oath or affirmation in violation of the Fourth Amendment to the United States Constitution and Article I, Section 14 of the Alaska Constitution.

2. The trial court erred in failing to dismiss the first and second amended informations in this case

Docket for Haeg, David vs. State of Appeals

No.	*Date*	*Time*	*Description*	*Completed*
1	3/23/2006		incoming from James Fayette-- letter about David not calling his office any longer (David is represented by counsel)	
2	3/24/2006		out going to Court of Appeals, and Roger Rom, Proof of Service; Substitution of counsel, Notice of Appearance, Order Granting Substitution, Unopposed motion for 60 days to file appellate brief and Order of the court	
3	3/27/2006		incoming fax from David-- letter written to Scot Leaders by Brent Cole regarding the plea offer (Brent Cole ASSUMING statements were pursuant to our settlement discussions	
4	4/3/2006		out going to David - a letter in the form of a fee agreement	
5	4/4/2006		incoming letter from Special prosecutions -- about an interview with Trooper Doerr and wolves (or was it the Moose) ????and not filing criminal charges on Trooper Doerr	
6	4/5/2006		incoming letter from James Fayette, about not filing charges against Trooper Doerr	
7	4/5/2006		incoming from James Fayette- letter addressed to Mark asking or telling Mark to inform David that his letter (David's) will not be answered and tell David to address his problems and question to his attorney (Mark) and or the Bar Assc and or the Office of victims of	
8	4/7/2006		out going to David-- letters that came to us from the AG office (these letters were letters that were in response to letters that David wrote to the AG office)	
9	4/11/2006		incoming from David Haeg-- signed fee agreement	
10	4/12/2006		incoming from the office of special prosecutions, 14 different people contacted the Office of Special Prosecutions regarding David's case and Special Prosecutuion responded to there contacts (we received the copys of the response letters,)	
11	4/17/2006		out going to David Haeg-- copy of the 14 responces from the AG office ($ 1.35)	
12	4/24/2006		out going to court of appeals, (2) and Rom, and David Haeg, Proof of service, motion for stay of forfeiture, judgment of restitution, and license suspension pending appeal, and memo, and order and exhibit A and Exhibit B	
13	4/24/2006		incoming from State of Alaska, Alaska police Standards Council. Correspondence that was not opened, it was sent directly to David	
14	4/25/2006		incoming from court of appeals, ORDER for extension, brief is due on the 06/02/2006 substitution of attorney is GRANTED	
15	5/8/2006		incoming from Court of appeals, Tempory Transfer return of record	
16	5/9/2006		incoming from State of Alaska-- opposition to motion for stay of forfeiture, judgment of restitution and licenses suspensiion pending appeal and memo	
17	5/9/2006		out going to Haeg, copy of Opposition to motion for stay of forfeiture, judgment of restitution and licenses suspension pending appeal and memo	
18	5/9/2006		out going to David-- letter stating that we need to move forward and he needs to get in touch with Mark by may 20th	

Exhibit 1
Page 1 of 5

No.	Date	Time	Description	Completed
19	5/10/2006		incoming from State of Alaska-- Motion to except late filed opposition, affidavit,	
20	5/16/2006		incoming from court- summary of proceedings for status hearing	
21	5/17/2006		incoming from Court of Appeals, ORDER- accept late filed brief is GRANTED , stay the order imposing restitution is GRANTED. And stay the order suspending master guide license and forfeiting the airplane is DENIED	
22	5/18/2006		out going by mail and fax - letter and Appearance for requesting tapes, this was sent to Magistrate Woodmancy in Aniak	
23	5/19/2006		incoming from Aniak court- a tape requested by Joel (4mc-05-17)	
24	5/22/2006	11:47 AM	incoming from David - letter firing Mark as counsel	
25	5/25/2006		hand delivered by Haeg's wife-- Waiver of hearing on motion to	
26	5/26/2006		Outgoing to court, David Haeg, Attorney General's Office. Motion to withdraw as councel for Appellant, Correspondence from Haeg indicating that he fired us, waiver of hearing on motion to withdraw, affidavit of councel, notice of appellant's address, and order allowing counsel to withdraw. AG Office $ 0.78 David Haeg $ 0.78 Clerk of the Court $ 1.59	
27	5/30/2006		incoming from David-- a letter stating that David wants Mark to sign an affidavit and needs it by a certain date	
28	5/31/2006		incoming from Department of law - James Fauette- a letter responding to Davids letters about David wanting the Troopers	
29	6/1/2006		incoming from the court of appeals, (stamped WITH FILE DATE) Motion to withdraw as counsel for appellant, Davids letter, waiver of hearing on motion to withdraw, affidavit of counsel, notice of appellants address, and order	
30	6/1/2006		incoming from Alaska Court System, Doug Wooliver Administrative attorney, a copy of the affidavit that David Haeg sent to Judge	
31	6/2/2006		incoming from Roger Rom-- letter about him not responding to Haeg's pleadings until they are filed with court and is Mark going to withdraw as counsel, I left a voice message on Rom's voice mail stating that I neglected to send him copy' s of the pleadings, however upon further investigation that may not be true, I went over my notes in trial works again and I did send the pleadings to the AG office, but perhaps to Fayette? ??? At any rate I faxed the pleading 's to Rom and re-mailed them as well, and left a message stating that we did not send the brief on 06/02/2006 and it did not leave from this office	
32	6/2/2006		Brief is due	
33	6/6/2006		incoming from Roger Rom-- response to motion to withdraw as counsel for appellant	
34	6/22/2006		incoming from court- ORDER,- case is REMANDED to District court to determine whether Haeg knowingly and intelligently waives his right to counsel and if he is competent. Superior court ORDER on remand is due immediately on ussuance. Remand will expire 08/21/2006, Motion to extend time is GRANTED. Brief due date is vacated, all other motions are DENIED. (a Corrected order came in on 06/23/2006 that sent this issue back to district court not superior) the hard copy of the order to send back to District Court came in on	

No.	Date	Time	Description	Completed
35	6/28/2006		incoming mail from David Haeg- sent certified, a letter requesting Marks malpractice carrier	
36	7/7/2006		out going to ALPS-- letter to agent about Haeg wanting to bring suit and copy of withdraw as counsel for appellant, letter from Haeg firing Mark, Waiver of hearing on motion to withdraw, affidavit of counsel, Notice of appellants address, order allowing counsel to withdraw, and Corrected order from court of appeals,	
37	7/10/2006		incoming fax from Aniak court that was sent to Anial by David Haeg, -- Motion to Recuse Magistrate Woodmancy from handling of remand, affidavit of defendant, Order, Motion to expedite decision & Request for Defendant to appear telephonically, affidavit of defendant,	
38	7/21/2006		Incoming fax from mcgrath court, notice of next court appearance for david haeg. 08/15/06 @ 10:30 AM in mcgrath court	
39	8/10/2006		incoming from McGrath Court-- ORDER-- parties must file written arguments and supporting case law by Aug 11, 2006 and must fax to 907-675-4278 and responses by the 14th	
40	8/11/2006		incoming fax from Roger Rom-- Request for Extension of time to file pre trial memorandum	
41	8/11/2006		incoming from Aniak Court by fax -- ORDER, state's request for 2 day extension id GRANTED.	
42	8/14/2006		incoming from McGrath court- date and time of hearing for the 15th of August at 10:30am	
43	8/15/2006	10:30 AM	representation hearing	
44	8/17/2006		incoming from Aniak Court -- notice of next court appearance, order for psychiatric examination, and note to Chief Executive office of API from Haeg requesting a provider on the Kenai Peninsula	
45	8/17/2006	4 :30 PM	Haeg-- all parties responses will be due in aniak court by 4:30pm on the 17th of August 2006	
46	8/22/2006		incoming from court-- ORDER, Mark is still counsel of record until Haeg is either pro se or has a new attorney	
47	8/25/2006		incoming from Aniak court- Affidavit of Defendant, Dated June 30th 2006, Motion to recuse Magistrate Woodmancy from Handling of remand and order,and Motion to expedite decision & request for defendant to appear telephonically, Taped interview of Tony Zellers by Prosecutor Leaders & Trooper Gibbens dated 6/23/2006 and map,, affidavit of Defendant dated 26th day of July, Motion for return of property & to suppress evidence, motion for return of property & to suppress evidence, affidavit of Defendant, signed 18th of July and order, Motion to expedite Decision & request for defendant to appear telephonically and affidavit of defendant, motion for evidence and discovery, Motion to compel witness in favor of defendant, motion to proceed Pro Se, Motion for reconsideration of stay of guide license suspension pending appeal, Motion to compel witness in favor of defendant, letter to Honorable Dennis Cummings, motion for return of property & to suppress evidence, affidavit of defendant, and order, Motion for extension, Motion to recall Mr. Osterman as a witness & motion for written ruling from magistrate Woodmancy, affidavit of defendant, and order and order,and order, affidavit of defendant, order, Motion for reconsideration of ruling denying motion for return of property and to suppress evidence, Motion for reconsideration of ruling denying post conviction releif filing in this district court, Motion for reconsideration, affidavit of Defendant signed August 19, 2006 and order	

No.	Date	Time	Description	Completed
48	9/5/2006		incoming from the Appeals court- ORDER for extension, the remand will expire on the 10/02/2006	
49	9/7/2006		incoming from Kathy Bond (a rural court trainer) a letter that was sent to David Haeg regarding his complaint about a magistrate and Mark Osterman	
50	9/7/2006		incoming from Aniak court--a mental health report on David from API and an order which states that all attorneys have until Sept 18, 2006 to submit any additional written arguments regarding competence -- arguments must be sent to McGrath District Court at P. O. Box 147, Aniak, Alaska 99557	
51	9/12/2006		incoming from State of Alaska, Roger Rom- cert of service, opposition to appellant's motion to supplement the record and to allow him to represent himself during remand, memorandum of law, affidavit of counsel, and order (Mark said he was not responding to this opposition)	
52	9/18/2006		incoming from Rom-- opposition to motion to proceed Pro se, memo,	
53	9/18/2006		any arguments regarding Haeg's competence must be submitted by this day	
54	9/22/2006		incoming from court of appeals , ORDER -- the motion to supplement record and to allow defendant to represent himself during remand is DENIED	
55	9/25/2006		out going to court (fax) and R Rom-- motion to continue representation hearing and order	
56	9/25/2006		incoming from Roger Rom-- Cert of service, opposition to motion and request for evidentiary hearing and oral argument and order	
57	9/29/2006		incoming-- an order, Motion for summary Judgment, Motion for emergency hearing, reply to opposition to motion & request for evidentiary hearing and oral argument, affidavit of defendant, Affidavit of Jackie Haeg, a map, exhibits and 3 different orders	
58	10/4/2006		incoming from Aniak Court- opposition to motion to strike pleadings improperly filed by a represented party and motion to supplement the record with official Alaska Bar Association proceedings concerning David Haeg including all records, documents, files, hearings, evidence, and testimony presented therin, Reply to opposition to motion to proceed pro se, affidavit of Defendant, IAC argument,	
59	10/5/2006		incoming from McGrath court-- Order Granting Motion to proceed Pro-se (Mark permitted to withdraw) Hard copy came in on 10/10/2006	
60	10/20/2006		incoming from Kenai court-- (no case numbers on documents) Motion for expedited consideration, order, affidavit of David Haeg, Affidavit of Jackie Haeg, Affidavit of David Haeg, Affidavit of Jackie Haeg, Motion for return of property & to suppress evidence, Motion for Expedited Consideration and order, Affidavit of Jackie Haeg, affidavit of David Haeg, Motionfor return of property & to suppress	
61	10/20/2006		incoming from Appeals court-- ORDER, appellants opening brief is due on or before 11/21/2006	
62	10/20/2006	2 :35 PM	I spoke to David Haeg today, Is going to stop by Monday to pick up papers/File or send a friend to get them, the friends name is Greg Stomba(not sure how to say the last name) But we have David's permission to pass papers off to Greg.	
63	10/26/2006	3 :30 PM	Haeg picked up Box of files today at 3:30pm	

No.	Date	Time	Description	Completed
64	11/21/2006		appellants brief is due	
65	12/18/2007		Out going statement of attorney fees	

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT KENAI

DAVID HAEG,

Applicant,

v.

STATE OF ALASKA,

Respondent.

) POST-CONVICTION RELIEF
) Case No. 3KN-10-01295CI
) (formerly 3HO-10-00064CI)

(Trial Case No. 4MC-04-00024CR)

9-29-11 OPPOSITION TO STATE'S NOTICE OF SUPPLEMENTAL AUTHORITY

VRA CERTIFICATION: I certify this document and its attachments do not contain the (1) name of victim of a sexual offense listed in AS 12.61.140 or (2) residence or business address or telephone number of a victim of or witness to any offense unless it is an address identifying the place of a crime or an address or telephone number in a transcript of a court proceeding and disclosure of the information was ordered by the court.

COMES NOW Applicant, DAVID Haeg, and hereby files this opposition to state's notice of supplemental authority in support of the state's motion to dismiss Haeg's application for post conviction relief.

Prior Proceedings

On November 21, 2009 (nearly 2 years ago) Haeg filed an application for post conviction relief alleging specific facts proving that (1) Haeg's conviction and sentence were in violation of the Constitution of the United States and constitution and laws of this state; (2) that there exists evidence of material facts, not previously presented and heard by the court, that requires vacation of Haeg's

conviction and sentence in the interest of justice; and (3) that Haeg was not afforded effective assistance of counsel. Haeg certified under penalty of perjury that he confronted his attorneys with his allegations, requested affidavits from all his attorneys in response to his allegations, and the attorneys refused to provide the affidavits. See court record.

On February 23, 2010 the state (through Assistant Attorney General Peterson) filed a motion to dismiss Haeg's PCR application, claiming Haeg did not provide affidavits from his counsel and did not indicate why affidavits could not be provided. See court record.

On March 19, 2010 Haeg opposed the state's motion to dismiss, citing the fact that he had specifically complied with the rule that a PCR applicant alleging ineffective assistance of counsel must provide affidavits of counsel or must indicate why they could not be obtained. See court record.

On April 7, 2010 the state specifically waived their right to reply to Haeg's opposition. See court record.

On September 9, 2011 the state deposed Haeg's trial attorney Arthur Robinson. During the deposition Haeg confronted Robinson on the facts Haeg alleged in his PCR application and compelled Robinson to answer. In addition to providing responses regarding Haeg's allegations of incompetence, Robinson testified he had previously refused to provide Haeg with an affidavit after Haeg had requested he provide one answering the questions regarding Haeg's allegations of incompetence.

From September 21, 2011 to September 23, 2011 Haeg attempted to confirm with the state that he would be able to confront attorneys Cole and Osterman when the state deposed these last 2 attorneys of Haeg's. See attachment.

On September 22, 2011 the state filed a notice of supplemental authority in support of the state's motion to dismiss Haeg's application for post conviction relief, alleging under oath that (1) "when a post-conviction relief alleges ineffective assistance of counsel, the petition is deficient as a matter of law if the defendant fails to confront the attorney with the allegations of incompetence and seek the attorney's responses"; (2) "Haeg has failed to confront or seek a response to his allegations from any of his attorneys"; and (3) "Haeg's application for post conviction relief is deficient as a matter of law due to the fact that he has not confronted his counsel regarding his allegations of ineffective assistance of counsel". The authority cited by the state was the unpublished opinion of Kukes v. State, Memorandum of Opinion No. 573 – which also states "Kukes does not claim that he asked Hackett [Kukes attorney] to respond to these matters ands that Hackett refused. This fact is fatal to Kukes's claims of attorney incompetence."

Discussion

1. As he did in his February 23, 2010 motion to dismiss Haeg's PCR application, state AAG Peterson again makes the false claim that Haeg has not confronted his attorneys with his allegations of incompetence – as Haeg had certified he had done in his application for post conviction relief. And on September 9, 2011 AAG Peterson himself placed Robinson (one of Haeg's 3

attorneys) under oath and recorded Robinson testifying that Haeg had confronted him with his allegations of incompetence and that he had refused to provide the affidavits Haeg requested in response to the allegations – just as Haeg's other 2 attorneys had refused. More disturbing yet is that during Robinson's deposition AAG Peterson recorded Haeg verbally confronting Robinson with his allegations of incompetence and requiring Robinson to respond to these allegations.

In other words AAG Peterson himself recorded the proof he committed perjury when he swore out the affidavit supporting his notice - claiming Haeg has yet to confront or seek a response from any of his attorneys.

2. AAG Peterson goes on to claim that Haeg's attorneys are now willing to provide an affidavit in response to Haeg's allegations. Yet the caselaw governing PCR applications states that an applicant must first ask the attorney for an affidavit (as Haeg did), and then, if the attorney refuses to provide one (as Haeg's attorneys did) the PCR applicant may then compel the attorney to testify in person. See State v. Jones, 759 P.2d 558 (AK 1988).

In other words the opportunity for Haeg's attorneys to answer by means of affidavit has passed – Haeg can now require in person testimony – as he most certainly demands.

3. AAG Peterson makes it seem as if Haeg's only post conviction relief claim is ineffective assistance of counsel – so if Haeg's IAOC claim is without merit Haeg's PCR application must be dismissed. This is not true. Just one of Haeg's PCR issues other than IAOC – that regarding the ongoing corruption,

conspiracy, and cover up by Haeg's trial Judge Margaret Murphy, Trooper Brett Gibbens (the main witness against Haeg), and judicial conduct investigator Marla Greenstein - is so criminal, prejudicial, and unacceptable it alone will overturn Haeg's conviction and land the parties in prison. See court record.

4. The attached emails between Haeg and AAG Peterson prove indigent Haeg is making every effort to avail himself of any and all opportunities to confront and question his attorneys in a manner he can afford. Indigent Haeg cannot afford more subpoenas and Superior Court Judge Stephanie Joannides ruled Haeg's PCR claims are best resolved by questioning his attorneys and other witnesses in an evidentiary hearing before the court. See court record.

5. The sworn oral testimony by Haeg's former attorney Arthur Robinson (who Haeg cross examined for 3 hours), along with the over 600 pages of discovery provided by Robinson, irrefutably proved that nearly all Haeg's allegations of incompetence are true. Testimony from Cole and Osterman (Haeg's other 2 attorneys) will prove the rest of Haeg's allegations of incompetence.

Conclusion

It is clear the state and AAG Peterson are willing to do anything, even to the extent of committing perjury in an official court document, to end Haeg's post conviction relief proceeding before attorneys Cole and Osterman must testify in person and before an evidentiary hearing can take place before the court. This known perjury by AAG Peterson will be added to Haeg's claim the state is intentionally denying him fundamentally fair proceedings. In addition Haeg will

continue to carefully document the ever-expanding evidence his own attorneys and the state conspired to frame him and are now committing perjury to cover this up.

In light of the above Haeg respectfully asks the court to deny the state's Notice of Supplemental Authority, to expedite Haeg's PCR, and to schedule an evidentiary hearing as soon as possible.

I declare under penalty of perjury the forgoing is true and correct. Executed on September 29, 2011. A notary public or other official empowered to administer oaths is unavailable and thus I am certifying this document in accordance with AS 09.63.020. In addition I would like to certify that copies of many of the documents and recordings proving the corruption in Haeg's case are located at: www.alaskastateofcorruption.com

David S. Haeg
PO Box 123
Soldotna, Alaska 99669
(907) 262-9249 and 262-8867 fax
haeg@alaska.net

Certificate of Service: I certify that on September 29, 2011 a copy of the forgoing was served by mail to the following parties: Peterson, Judge Gleason, Judge Joannides, U.S. Department of Justice, FBI, and media.
By:

Haeg

From: "Peterson, Andrew (LAW)" <andrew.peterson@alaska.gov>
To: "Haeg" <haeg@alaska.net>
Sent: Friday, September 23, 2011 12:05 PM
Subject: RE: Cole and Osterman Depositions

Mr. Haeg,

Mr. Osterman's deposition is on hold pending the court's ruling on his motion. I will make time for you to cross examine him once the court gives the state the green light to proceed. I think the easiest way to do this is to set up a teleconference in advance. I will check with your availability prior to setting a new date.

With respect to Mr. Cole, I will definitely give you notice if I decide to schedule a deposition.

Andrew

Andrew Peterson
Assistant Attorney General
State of Alaska
Office of Special Prosecutions
310 K. Street, Suite 403
Anchorage, AK 99501
907-269-7948

From: Haeg [mailto:haeg@alaska.net]
Sent: Thursday, September 22, 2011 6:17 PM
To: Peterson, Andrew (LAW)
Subject: Re: Cole and Osterman Depositions

What about Osterman, will I be able to question him if the court allows your deposition?

Also, please inform me when you decide whether or not you are going to depose Cole in-person.

David Haeg
907-262-9249

> ----- Original Message -----
> **From:** Peterson, Andrew (LAW)
> **To:** Haeg
> **Sent:** Thursday, September 22, 2011 9:26 AM
> **Subject:** RE: Cole and Osterman Depositions
>
> Mr. Haeg,
>
> The subpoena issued by the state to Mr. Cole was for a records deposition only, not for an in-person deposition. I do not want to depose Mr. Cole until I have an opportunity to look through all of the documents he produces. You have the right to send out a notice of deposition to Mr. Cole and if you want. I would be willing to allow you to use the conference room at my office. This will save you from having to pay travel costs to Mr. Cole and fees for a conference room in Soldotna.

I may decide to notice up an in-person deposition of Mr. Cole once I have had an opportunity to review all of the documents that are produced. I will have all documents produced by Mr. Cole copied and sent to you in Soldotna.

Andrew

Andrew Peterson
Assistant Attorney General
State of Alaska
Office of Special Prosecutions
310 K. Street, Suite 403
Anchorage, AK 99501
907-269-7948

From: Haeg [mailto:haeg@alaska.net]
Sent: Wednesday, September 21, 2011 8:14 PM
To: Peterson, Andrew (LAW)
Subject: Re: Cole and Osterman Depositions

Mr. Peterson,

I would like to question Brent Cole directly (as you and I did with Robinson) and I formally ask that his deposition include this, as I requested in my original email. Will you arrange this or ask for it? In addition, is your deposition of Osterman just for records or will he be asked questions directly (either in person or telephonically)? I formally ask that I be allowed to question Osterman directly - as I was able to of Robinson. Will you arrange this or ask for it happen?

I already waived claims of attorney client privilege in my application for post conviction relief.

Please get back to me as soon as possible.

David Haeg
907-262-9249

----- Original Message -----
From: Peterson, Andrew (LAW)
To: Haeg
Sent: Wednesday, September 21, 2011 10:44 AM
Subject: RE: Cole and Osterman Depositions

Mr. Haeg,

The deposition of Brent Cole is merely a records deposition, not an in person deposition. I will provide you with a copy of all records produced.

The deposition of Mr. Osterman is on hold as Osterman is challenging the state's ability to depose him based on his claim of attorney client privilege. This issue could be cleared up by you informing the court that you are

waiving that privilege and asking for the deposition. If the court orders the deposition to proceed, I will set up a conference line for the telephonic deposition. We can conduct the deposition at a time that is mutually convenient.

Andrew

Andrew Peterson
Assistant Attorney General
State of Alaska
Office of Special Prosecutions
310 K. Street, Suite 403
Anchorage, AK 99501
907-269-7948

From: Haeg [mailto:haeg@alaska.net]
Sent: Wednesday, September 21, 2011 10:16 AM
To: Peterson, Andrew (LAW)
Subject: Cole and Osterman Depositions

Mr. Peterson,

Can you confirm that the depositions you are conducting of Brent Cole and Mark Osterman will include an opportunity for me to question them under oath as was the case with Arthur Robinson? If you were not planning on this I hereby request to be able to do so.

Let me know what to expect as soon as possible.

David Haeg
907-262-9249

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT KENAI

DAVID HAEG

Applicant

v.

STATE OF ALASKA

Respondent

POST-CONVICTION RELIEF
CASE NO. 3KN-10-01295 CI

Trial Case No. 4MC-04-00024 CR

STATE'S NOTICE OF SUPPLEMENTAL AUTHORITY IN SUPPORT OF THE STATE'S MOTION TO DISMISS APPLICATION FOR POST-CONVICTION RELIEF

VRA CERTIFICATION. I certify that this document and its attachments do not contain (1) the name of a victim of a sexual offense listed in AS 12.61.140 or (2) a residence or business address or telephone number of a victim or witness to any crime unless it is an address used to identify the place of the crime or it is an address or telephone number in a transcript of a court proceeding and disclosure of the information was ordered by the court.

COMES NOW the State of Alaska, by and through Assistant Attorney General Andrew Peterson and hereby files this notice of supplemental authority in support of the state's motion to dismiss Haeg's application for post-conviction relief.

On September 14, 2011, the Court of Appeals issued the unpublished opinion of Kukes v. State, Memorandum of Opinion No. 573. See Exh. 1; see also McCoy v. State, 80 P.3d 757, 764 (Alaska App. 2002) (judges and lawyers may rely on unpublished decisions for whatever persuasive power those decisions might have). Kukes provides that "when a petition for post-conviction relief alleges ineffective assistance of counsel, the petition is deficient as a matter of law if the defendant fails to

STATE OF ALASKA
DEPARTMENT OF LAW
OFFICE OF SPECIAL PROSECUTIONS AND APPEALS
310 K STREET, SUITE 308
ANCHORAGE, ALASKA 99501
PHONE: (907) 269-6250

confront the attorney with the allegations of incompetence and seek the attorney's responses." See id., p. 5; citing Steffensen v. State, 837 P.2d 1123, 1126 (Alaska App. 1992).

In the pending PCR, Haeg alleged ineffective assistance of counsel against all of his former attorneys. Haeg, however, failed to confront or seek a response to his allegations from any of these attorneys. The state has confronted all of Haeg's prior attorneys and received assurances from each of them that they would in fact respond to Haeg's allegations of ineffective assistance of counsel if asked by Mr. Haeg. Haeg's application for post-conviction relief is deficient as a matter of law due to the fact that he has not confronted his counsel regarding his allegations of ineffective assistance of counsel.

DATED this 22nd day of September, 2011, at Anchorage, Alaska

JOHN J. BURNS
ATTORNEY GENERAL

By: _____
Andrew Peterson
Assistant Attorney General
Alaska Bar No. 0601002

This is to certify that on this date, a correct copy of the forgoing was mailed to:
David Haeg
9/22/11
Signature Date

STATE OF ALASKA
DEPARTMENT OF LAW
OFFICE OF SPECIAL PROSECUTIONS AND APPEALS
310 K STREET, SUITE 308
ANCHORAGE, ALASKA 99501
PHONE: (907) 269-6250

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT KENAI

DAVID HAEG Applicant v. STATE OF ALASKA Respondent	)	POST-CONVICTION RELIEF CASE NO. 3KN-10-01295 CI

Trial Case No. 4MC-04-00024 CR

AFFIDAVIT

VRA CERTIFICATION. I certify that this document and its attachments do not contain (1) the name of a victim of a sexual offense listed in AS 12.61.140 or (2) a residence or business address or telephone number of a victim or witness to any crime unless it is an address used to identify the place of the crime or it is an address or telephone number in a transcript of a court proceeding and disclosure of the information was ordered by the court.

STATE OF ALASKA)
) ss.
THIRD JUDICIAL DISTRICT)

I, A. Andrew Peterson, being duly sworn, hereby state and depose as follows:

1. I am an Assistant Attorney General in the Office of Special Prosecutions and Appeals, Fish and Game Unit, and I am assigned to the above-captioned case.

2. All of the statements in the State's motion are true and correct.

STATE OF ALASKA
DEPARTMENT OF LAW
OFFICE OF SPECIAL PROSECUTIONS AND APPEALS
310 K STREET, SUITE 308
ANCHORAGE, ALASKA 99501
PHONE: (907) 269-6250

3. On September 9, 2011, the state took the deposition of Chuck Robinson. Mr. Robinson stated that he would provide a response to Mr. Haeg's allegations in the form of an affidavit is asked by Mr. Haeg.

4. Following the deposition of Mr. Robinson, I personally spoke with both Mr. Cole and Mr. Osterman and both agreed to file an affidavit responding to Mr. Haeg's allegations of ineffective assistance of counsel.

Further your affiant sayeth naught.

DATED at Anchorage, Alaska, this 22nd day of September, 2011.

By: _____
Andrew Peterson
Assistant Attorney General
Alaska Bar No. 0601002

SUBSCRIBED AND SWORN to before me this 22 day of September 2011.

STATE OF ALASKA
OFFICIAL SEAL
Christine Osgood
NOTARY PUBLIC
My Commission Expires with office

Notary Public in and for Alaska
My commission expires: with office.

STATE OF ALASKA
DEPARTMENT OF LAW
OFFICE OF SPECIAL PROSECUTIONS AND APPEALS
310 K STREET, SUITE 308
ANCHORAGE, ALASKA 99501
PHONE: (907) 269-6250

IN THE COURT OF APPEALS OF THE STATE OF ALASKA

JONATHAN KUKES, Appellant, v. STATE OF ALASKA, Appellee.	Court of Appeals No. A-10797 Trial Court No. 4FA-04-2731 Civ MEMORANDUM OPINION No. 5743 — September 14, 2011

Appeal from the Superior Court, Fourth Judicial District, Fairbanks, Douglas L. Blankenship, Judge.

Appearances: David K. Allen, Sechelt, British Columbia, for the Appellant. Kenneth M. Rosenstein, Assistant Attorney General, Office of Special Prosecutions and Appeals, Anchorage, and John J. Burns, Attorney General, Juneau, for the Appellee.

Before: Coats, Chief Judge, and Mannheimer and Bolger, Judges.

MANNHEIMER, Judge.

In 2002, Jonathan Kukes was indicted on a total of eight felony counts. The State alleged that Kukes had sexually abused his two daughters over the course of ten years. The most serious charges against Kukes were five counts of first-degree sexual

abuse of a minor and one count of first-degree sexual assault. (Both of these offenses are unclassified felonies). Kukes was represented by attorney James Hackett.

In April 2003, on the second day of Kukes's trial, Kukes decided to accept a plea bargain agreement offered by the State. Under the terms of this agreement, Kukes pleaded no contest to two counts of the lesser offense of second-degree sexual abuse of a minor, and the State agreed that Kukes would serve no more than 10 years in prison.

In July 2003, before Kukes was sentenced, Kukes told Hackett that he wished to withdraw his pleas because he believed that Hackett had failed to represent him competently. A new attorney, Robert S. Noreen, was appointed to represent Kukes, but Noreen reviewed the case and concluded that Kukes had no colorable claim against Hackett — and that Kukes therefore had no valid ground for withdrawing his no contest pleas. In September 2003, Kukes was sentenced in accordance with the plea bargain: 10 years to serve, with an additional 6 years suspended.

One year later, in September 2004, Kukes filed a petition for post-conviction relief, again seeking to withdraw his pleas on the ground that he received ineffective assistance of counsel from Hackett. Specifically, Kukes alleged that Hackett had concluded early on that Kukes was guilty, that Hackett did little to acquaint himself with the evidence against Kukes, and that Hackett failed to adequately investigate potential defenses and potential pre-trial motions — including a potentially dispositive motion to dismiss the case for violation of Alaska's speedy trial rule, Criminal Rule 45. Kukes asserted that, as a result of these failings, Hackett was not in a position to represent him and advise him competently concerning the decision whether to accept the State's offered plea bargain.

Hackett filed an affidavit responding to Kukes's assertions of incompetence. In this affidavit, Hackett listed the work he did on Kukes's case, including copies of correspondence between himself and Kukes, records that

demonstrated Hackett's investigation of Kukes's case, and a list of pre-trial motions that Hacket filed.

Superior Court Judge Douglas L. Blankenship concluded that Kukes's petition should be dismissed because Kukes had failed to set forth a prima facie case for relief. Judge Blankenship noted that Kukes's claim that Hackett failed to file pre-trial motions was disproved by the court's own file in Kukes's case, which contained many pre-trial motions filed by Hackett. The judge further noted that the litigation of these motions tolled the running of the speedy trial clock under Criminal Rule 45 — and, thus, it was clear (from the contents of the court's file) that Kukes was brought to trial within the time limits of Rule 45.

With regard to Kukes's claim that Hackett failed to acquaint himself with the State's case, and failed to investigate potential defenses, Judge Blankenship concluded that Kukes's petition for post-conviction relief (and its supporting documents) "fail[ed] to describe [what] evidence a more thorough investigation would have revealed and how [that] evidence would have created a potential defense that a competent attorney in Mr. Hackett's position would have pursued." The judge observed that, even though Kukes's petition referred to potential defense witnesses, Kukes did not explain what testimony any potential witnesses would have provided if they had been contacted by Hackett. As a result, Judge Blankenship concluded that Kukes had failed to make a prima facie showing that Hackett was incompetent in his investigation of potential defenses. The judge also found that Kukes had failed to make a prima facie showing that Hackett represented him incompetently with regard to the decision whether to accept the plea bargain — because Kukes failed to explain "how this unidentified evidence would have affected Kukes' decision [concerning] the State's offer[,] or how [this unidentified] evidence would have changed a competent attorney's advice about whether Kukes should accept the offer."

Kukes now appeals the superior court's dismissal of his petition.

In his petition for post-conviction relief, Kukes asserted that Hackett failed to discover or investigate the following alleged facts that were potentially favorable to Kukes:

> (1) that one of his daughters was raped by an unspecified 35-year-old man, and "they brought charges against [him] after[wards]";
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> (2) that Kukes contacted the police chief of Nenana, who "told [Kukes] about [his] daughter", and "nothing was done";
>
> (3) that "while [Kukes was jailed] in [the Fairbanks Correctional Center], [unspecified] men [told Kukes that his] wife was teaching [his daughters] about sex [by using Kukes's] son and the [unspecified] rapist";
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> (4) that an unspecified man told Kukes that his wife had asked him to engage in "sex games";
>
> (5) that "[Kukes's] son and [daughters] had no problem while [he] was home", and that "only after [Kukes] was gone [did] this happen[]"; and that "[Kukes's] son went [to] jail while under [his] wife's care, [and he] was released to her[,] and he went back to jail again, under [Kukes's] wife's care";
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> (6) that Kukes's wife admitted to being abused, and that she used drugs; and
>
> (7) that Kukes's wife's lover uses cocaine.

The State contends that there is nothing in Kukes's pleadings to show that he ever informed Hackett of these matters.[1] Although the record is not clear on this issue, there are some indications that Kukes communicated these matters to Hackett. In his petition, Kukes declares that "[some] people [whom] I told [my] lawyer about never were contacted." And in a March 2003 letter from Hackett to Kukes, Hackett asked Kukes to provide him with contact information for "potential witnesses you have identified in your letter to the court." We therefore conclude that, at least for purposes of deciding whether the superior court correctly granted judgement to the State on the pleadings, Kukes presented some evidence that he informed Hackett of these potential avenues of investigation.

However, the record also shows that Kukes failed to confront Hackett with these assertions and solicit his response to these claims of incompetence. Hackett's affidavit does not mention any of this information, and Kukes does not claim that he asked Hackett to respond to these matters and that Hackett refused. This fact is fatal to Kukes's claims of attorney incompetence. This Court has repeatedly held that when a petition for post-conviction relief alleges ineffective assistance of counsel, the petition is deficient as a matter of law if the defendant fails to confront the attorney with the allegations of incompetence and seek the attorney's response.[2]

Kukes's pleadings suffer from another deficiency. Many of the assertions of fact in Kukes's petition depend on information that was not known to Kukes

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[1] *See Steffensen v. State*, 837 P.2d 1123, 1126 (Alaska App. 1992) ("To establish prima facie entitlement to post-conviction relief, it was essential for [the defendant's] pleadings to establish either that he communicated his version of events to his attorney or that his attorney refused him any reasonable opportunity to do so.").

[2] *See, e.g., State v. Savo*, 108 P.3d 903, 909 (Alaska App. 2005); *Peterson v. State*, 988 P.2d 109, 114 (Alaska App. 1999); *Steffensen v. State*, 837 P.2d 1123, 1127 (Alaska App. 1992).

personally, but rather was known to other people — people who later communicated this information to Kukes. This being so, Kukes was required to support these assertions of fact with affidavits from the people who had direct knowledge of these matters (or else provide an explanation of why he was unable to procure these affidavits). [3]

Finally, even if we assume that Kukes could prove all of the assertions of fact listed in his petition, this does not lead to the conclusion that Hackett's representation of Kukes was incompetent. The information recited by Kukes does not tend to demonstrate that Kukes was innocent of sexually abusing his daughters. At best, this information would provide material that might be used to impeach the State's witnesses, but would not directly contradict the State's allegations against Kukes. Moreover, some of this information appears to be inadmissible under Evidence Rule 404 (the restrictions on the use of character evidence) and, potentially, under Alaska's rape-shield statute, AS 12.45.045(a).

In his brief to this Court, Kukes argues that even if no single fact alleged in his petition bespeaks Hackett's incompetence, the *set* of facts alleged in the petition, "[when] taken together, ... provide a tenable theory of defense", and thus "it is at least [arguable] that [further investigation of these matters] would have led to admissible evidence which could ... have improved ... Kukes' position as trial approached."

Kukes's argument of this point misapprehends a defendant's duty of pleading in post-conviction relief litigation. A defendant seeking post-conviction relief must do more than simply allege that their defense attorney might have pursued other

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[3] *See Allen v. State*, 153 P.3d 1019, 1025 (Alaska App. 2007) ("[I]f the parties choose to submit affidavits, the affidavits must be based upon personal knowledge, must set forth facts that would be admissible evidence at trial, and must affirmatively show that the affiant is competent to testify to the matters stated."). *But see Adkins v. Nabors Alaska Drilling, Inc.*, 609 P.2d 15, 22 (Alaska 1980) (holding that a court may consider a hearsay affidavit if no party objects).

avenues of investigation, and that this proposed additional investigation conceivably might have led to admissible evidence that potentially would have improved the defendant's chances at trial.

As this Court emphasized in *State v. Jones*, 759 P.2d 558 (Alaska App. 1988), "a mere conclusory or speculative allegation of harm" will not suffice to establish that the defendant received ineffective assistance of counsel. A petition for post-conviction relief must offer "a specific factual showing that [the alleged] incompetence [of the defendant's attorney] had some actual, adverse impact on the case". 759 P.2d at 573. It is not enough for the defendant to "assert, conclusorily, that the attorney's mistakes must have affected the result". *Billy v. State*, 5 P.3d 888, 889 (Alaska App. 2000).

When a defendant seeks post-conviction relief on the ground that their attorney failed to adequately investigate potential defenses, the defendant must offer evidence that the proposed investigation would, in fact, have yielded fruit. In other words, the defendant (or their attorney or investigator) must actually pursue the proposed investigation and, in the petition for post-conviction relief, must offer evidence tending to show that, if this investigation had been undertaken by the defendant's original attorney, it would have uncovered admissible evidence that would have significantly benefited the defendant's position in the underlying criminal proceedings.

See *LaBrake v. State*, 152 P.3d 474, 481-82 (Alaska App. 2007), where this Court affirmed the superior court's dismissal of a petition for post-conviction relief because the defendant did not explain how further investigation of the case would have yielded a viable defense to the charges, or how additional investigation of the case would have caused a competent attorney to recommend that the defendant reject the State's proposed plea bargain.

Accordingly, we agree with Judge Blankenship that Kukes failed to set forth any reason to believe that Hackett's preparation of the defense case would have been significantly different if he had investigated the information listed in Kukes's petition, nor any reason to believe that this information would have affected Hackett's advice to Kukes concerning whether to accept the State's proposed plea agreement.

Because Kukes's petition for post-conviction relief failed to set forth a prima facie case that he received ineffective assistance from his trial attorney, the judgement of the superior court is AFFIRMED.

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT KENAI

DAVID HAEG,	)
	)
Applicant,	)
	)
v.	) POST-CONVICTION RELIEF
	) Case No. 3KN-10-01295CI
STATE OF ALASKA,	) (formerly 3HO-10-00064CI)
	)
Respondent.	)
	)

(Trial Case No. 4MC-04-00024CR)

9-23-11 MOTION FOR PROTECTION ORDER IN RESPONSE TO STATE'S DISCOVERY REQUEST

VRA CERTIFICATION: I certify this document and its attachments do not contain the (1) name of victim of a sexual offense listed in AS 12.61.140 or (2) residence or business address or telephone number of a victim of or witness to any offense unless it is an address identifying the place of a crime or an address or telephone number in a transcript of a court proceeding and disclosure of the information was ordered by the court.

COMES NOW Applicant, DAVID HAEG, and hereby files this motion for a protection order in response to state's discover request - to protect Haeg's rights - especially his rights against self-incrimination and the equal protection of the law - past, present, and future.

Prior Proceedings

On August 4, 2011 the state mailed Haeg a 28 page "First Set of Discovery Requests". Stating "civil rules" required it, this request asked Haeg to answer, under oath, many of the same questions Haeg had previously been forced to answer under the state's grant of immunity before trial. See attachment.

On August 23, 2011 the state called Haeg to see if everything concerning Haeg's case could be resolved in a "civil compromise" before it went any further. After offering to return the airplane they seized if Haeg gave up further litigation, the state claimed they would retry Haeg if he overturned his conviction. During this conversation Haeg asked if he had immunity for answers to the state's 8-4-11 discovery request and the state refused to answer. Haeg then asked if his responses to the state's discovery request would be used against him and the state replied "absolutely". When Haeg asked why the state was again asking him the same exact things prosecutor Leaders and Trooper Gibbens asked Haeg before trial and then used against Haeg at trial, the state claimed there were no recordings of the statement Haeg gave to Leaders and Gibbens. Again the state claimed they would retry Haeg if he overturned his conviction.

Introduction

The reason for this motion is Haeg wishes to protect his constitutional rights that ensure a fair trial and sentencing – past, present, and future.

The state claims the "civil rules" require Haeg to answer the questions presented in the state's discovery request and that the state can then use these answers against Haeg, eliminating Haeg's right against self-incrimination.

It is clear the state is attempting to do this to "cure" their previous incomprehensible violation of Haeg's rights when they forced Haeg to give a statement before trial by granting him immunity, prosecuted him in violation of AS 12.50.101, and used his compelled statement to do so.

Law

Haeg researched to see if defendants are forced to give up the right against self-incrimination during post-conviction relief proceedings.

American Bar Association Standard 22-4.6 (c)(iv):

"By pursuing an application for postconviction relief, an applicant does not waive the privilege against self-incrimination."

Lefkowitz v. Turley, 414 U.S. 70, (U.S. Supreme Court 1973)

The Fifth Amendment is not an inert right, for its very purpose is to protect a defendant against **"official questions put to [an accused] in any proceeding, civil or criminal, formal or informal, where the answers might incriminate him in future proceedings."**

State v. Hannagan, 559 P.2d 1059 (AK Supreme Court 1977):

"We therefore hold that a post-conviction relief proceeding ...is similar to an independent civil proceeding such as a habeas corpus proceeding for purposes of the state's ability to appeal, and that consequently the state has the right to appeal in this case. **Our holding is limited to the determination of the state's right to appeal. The issue of whether [the PCR proceeding] is 'civil in nature' for purposes of other criminal procedural or substantive safeguards is not now before the court and considered in this decision."**

Hoffman v. United States, 341 U.S. 479 (U.S. Supreme Court 1951).

"**The privilege afforded not only extends to answers that would in themselves support a conviction . . . but likewise embraces those which would furnish a link in the chain of evidence needed to prosecute** . . . . [I]f the witness, upon interposing his claim, were required to prove the hazard . . . he would be compelled to surrender the very protection which the privilege is designed to guarantee. **To sustain the privilege, it need only be evident from the implications of the question, in the setting in which it is asked, that a responsive answer to the question or an explanation of why it cannot be answered might be dangerous because injurious disclosure could result."**

Thus, not only may a defendant or a witness in a criminal trial, including a juvenile proceeding, In re Gault, 387 U.S. 1, 42-57 (1967), claim the privilege **but so may a party or a witness in a civil court proceeding**, McCarthy v. Arndstein, 266 U.S. 34 (1924), a potential defendant or any other witness before a grand jury, Reina v. United States, 364 U.S. 507 (1960); Counselman v. Hitchcock, 142 U.S. 547, 563 (1892), or a witness before a legislative inquiry, Watkins v. United States, 354 U.S. 178, 195-96 (1957); Quinn v. United States, 349 U.S. 155 (1955); Emspak v. United States, 349 U.S. 190 (1955), or before an administrative body. In re Groban, 352 U.S. 330, 333, 336-37, 345-46 (1957); ICC v. Brimson, 154 U.S. 447, 478-80 (1894).

Further, the Court held inadmissible at the subsequent trial a defendant's testimony at a hearing to suppress evidence wrongfully seized, since use of the testimony would put the defendant to an impermissible choice between asserting his right to remain silent and invoking his right to be free of illegal searches and seizures. **The Court also proscribed the introduction at a second trial of the defendant's testimony at his first trial,** given to rebut a confession which was subsequently held inadmissible, **since the testimony was in effect "fruit of the poisonous tree," and had been "coerced" from the defendant through use of the confession.** Harrison v. United States, 392 U.S. 219 (U.S. Supreme Court 1968).

Wisconsin v. Schwarz, No. 00-1636 (WI 2001)

The Fifth Amendment guarantees that a defendant may refuse to answer questions "where the answers might incriminate him in future criminal proceedings." *Minnesota v. Murphy*, 465 U.S. 420, 426 (1984) (citation omitted). Where a realistic threat of incrimination in a separate criminal proceeding does exist, a probationer can invoke his or her Fifth Amendment privilege. **We believe that it is important that the trial bench and criminal bar be made aware that there is a Fifth Amendment right which survives conviction and is very much alive and active while a direct appeal is pending.**

In short, a new trial is a subsequent criminal proceeding. **Our supreme court has held that if an appeal is pending on the very case in which a probationer is asked to make an admission, it is a legitimate fear that an admission may later be used against him or her if awarded a new trial.**

Darling v. State, Nos. SC09-1249 (Florida Supreme Court 2010)

Technically, habeas corpus and other postconviction relief proceedings are classified as civil proceedings. **Unlike a general civil action, however, wherein parties seek to remedy a private wrong, a habeas corpus or other**

postconviction relief proceeding is used to challenge the validity of a conviction and sentence. See, e.g., [Murray v. Giarratano, 492 U.S. 1, 13 (1989)] (O'Connor, J., concurring) (postconviction proceeding is a civil action designed to overturn a presumptively valid criminal judgment); O'Neal v. McAninch, 513 U.S. 432, 440 (1995) (habeas is a civil proceeding involving someone's custody rather than mere civil liability). Consequently, **postconviction relief proceedings, while technically classified as civil actions, are actually quasi-criminal in nature because they are heard and disposed of by courts with criminal jurisdiction.**

Discussion

In a civil case, a private party files the lawsuit and is the plaintiff. In a criminal case, the government always files the litigation. In a criminal case, a guilty defendant may be punished by incarceration. In contrast, a defendant in civil litigation is never incarcerated. Because criminal cases have greater consequences - the possibility of jail - criminal cases have many more protections in place.

Haeg's PCR proceeding concerns a criminal prosecution by the government for which Haeg was sentenced to nearly 2 years in jail. Haeg has only served a little over one month of his sentence and **still has the better part of two years in jail hanging over his head.** The state cannot, as it has, claim this is a "civil" proceeding and that Haeg can be forced to give answers which will help the state maintain its conviction over him or help the state to convict Haeg again if he succeeds in overturning his present conviction. To do so would effectively eviscerate the right against self-incrimination. The U.S. Supreme Court has consistently held, "Constitutional rights are durable, and not easily eviscerated." And, as the American Bar Association has ruled, "By pursuing an application for

postconviction relief, an applicant does not waive the privilege against self-incrimination."

Also, justifying Haeg's concern the discovery request is a ploy by the state to obtain the same information in a non-immunized form, so it can be used against Haeg, is the fact the state already has in its possession very nearly all information now requested from Haeg.

Another disturbing aspect of the state's actions in seeking "new" incriminating information is that Haeg was given a grant of immunity to compel a statement, as Haeg's attorney at the time (Brent Cole) and another attorney working with him have both testified under oath was the case – **thus, according to Alaska law, there can be no prosecution of Haeg for actions discussed during the 5-hour statement. Yet not only was Haeg prosecuted in violation of the law, his immunized statement was irrefutably used to do so.** The United States Supreme Court has consistently held any use at all of a defendants compelled statement (as Haeg can irrefutably prove occurred in his case) renders a resulting conviction invalid, **even if the statement was completely unnecessary to the conviction.** In other words, nothing the state does or obtains now can cure the fact they prosecuted Haeg in violation of law; used Haeg's compelled statement to do so; that either of these requires Haeg's conviction to be overturned; and that further prosecution is barred.

Chapman v. California, 386 U.S. 18 (U.S. Supreme Court 1967)

When involuntary confessions have been introduced at trial, the Court has always reversed convictions regardless of other evidence of guilt. As we stated in *Lynumn v. Illirois,* 372 U. S. 528, 372 U. S. 537, the argument that the error in admitting such a confession "was a harmless one . . . is an impermissible doctrine." That conclusion has been accorded consistent recognition by this Court. *Malinski v. New York,* 324 U. S. 401, 324 U. S. 404; *Payne v. Arkansas,* 356 U. S. 560, 356 U. S. 568; *Spano v. New York,* 360 U. S. 315, 360 U. S. 324; *Haynes v. Washington,* 373 U. S. 503, 373 U. S. 518-519; *Jackson. v. Denno,* 378 U. S. 368, 378 U. S. 376-377. **Even when the confession is completely "unnecessary" to the conviction, the defendant is entitled to "a new trial free of constitutional infirmity."** *Haynes v. Washington, supra,* at 373 U. S. 518-519.

Excerpt Out of Haeg's PCR Memorandum and Affidavit – Pages 11-16

D. No Right Against Self-Incrimination

1. Law

The Fifth Amendment of the United States Constitution and Article 1, Section 9 of the Alaska Constitution prohibit compelling defendants to be witnesses against themselves.

"[A] defendant in a criminal case is deprived of due process of law if his conviction is founded, in whole or in part, upon an involuntary [statement], without regard for the truth or falsity. . . even though there is ample evidence aside from the [statement] to support the conviction." Jackson v. Denno, 378 U.S. 368 (U.S. Supreme Court 1964)

"A defendant can be required to give an incriminating statement if he is granted immunity equal to that of the right against self-incrimination, as risk of self-incrimination is removed." Counselman v. Hitchcock, 142 U.S. 547 (U.S. Supreme Court 1892)

The federal government holds that a defendant required to give a statement can still be prosecuted for actions referred to in the statement as long as there is no use whatsoever made of the statement. "The Government must do more than negate the taint; it must affirmatively prove that its evidence is derived from a legitimate

source wholly independent of the compelled testimony." Kastigar v. United States, 406 U.S. 441 (U.S. Supreme Court 1972)

This requires no direct, indirect, evidentiary, or non-evidentiary use or derivative use of the statement. It precludes use such as the decision to prosecute, use of witnesses exposed to the immunized testimony, and requires actions such as sealing the immunized testimony and a keeping a log of who was exposed to it, with no one exposed allowed to be part of the prosecuting team:

"[N]one of the testimony or exhibits...became known to the prosecuting attorneys...either from the immunized testimony itself or from leads derived from the testimony, directly or indirectly...we conclude that the use of immunized testimony by witnesses to refresh their memories, or otherwise to focus their thoughts, organize their testimony, or alter their prior or contemporaneous statements, constitutes evidentiary use rather than nonevidentiary use. This observation also applies to witnesses who studied, reviewed, or were exposed to the immunized testimony in order to prepare themselves or others as witnesses.

When the government puts on witnesses who refresh, supplement, or modify that evidence with compelled testimony, the government uses that testimony to indict and convict.

From a prosecutor's standpoint, an unhappy byproduct of the Fifth Amendment is that Kastigar may very well require a trial within a trial (or a trial before, during, **or after the trial**) if such a proceeding is necessary for the court to determine whether or not the government has in any fashion used compelled testimony to indict or convict a defendant. If the government chooses immunization, then it must understand that the Fifth Amendment and Kastigar mean that it is taking a great chance that the witness cannot constitutionally be indicted or prosecuted.

Finally, and most importantly, an ex parte review in appellate chambers is not the equivalent of the open adversary hearing contemplated by Kastigar. See United States v. Zielezinski, 740 F.2d 727, 734 (9th Cir.1984) Where immunized testimony is used... the prohibited act is simultaneous and coterminous with the presentation; indeed, they are one and the same. There is no independent violation that can be remedied by a device such as the exclusionary rule: the...process itself is violated and corrupted, and the [information or trial] becomes indistinguishable from the constitutional and statutory transgression.

This burden may be met by establishing that the witness was never exposed to North's immunized testimony, or that the allegedly tainted testimony contains no evidence not "canned" by the prosecution before such exposure occurred.

If the government has in fact introduced trial evidence that fails the Kastigar analysis, then the defendant is entitled to a new trial. If the same is true as to grand jury evidence, then the indictment must be dismissed." United States v. North, 910 F.2d 843 (D.C.Cir. 1990)

Alaska's constitution and law holds that a defendant cannot ever be prosecuted for actions referred to in a compelled statement. See AS 12.50.101 and State of Alaska v. Gonzalez, 853 P2d 526 (Ak Supreme Court 1993):

"We do not doubt that, in theory, strict application of use and derivative use immunity would remove the hazard of incrimination. Because we doubt that workaday measures can, in practice, protect adequately against use and derivative use, we ultimately hold that [former] AS 12.50.101 impermissibly dilutes the protection of article I, section 9.

Procedures and safeguards can be implemented, **such as isolating the prosecution team or certifying the state's evidence before trial**, but the accused often will not adequately be able to probe and test the state's adherence to such safeguards.

One of the more notorious recent immunity cases, United States v. North, 910 F.2d 843 (D.C.Cir.) modified, 920 F.2d 940 (D.C.Cir.1990) illustrates another proof problem posed by use and derivative use immunity.

First, the prosecution could use the compelled testimony to refresh the recollection of a witness testifying at North's criminal trial. The second problem, however, is more troublesome. In a case such as North, **where the compelled testimony receives significant publicity, witnesses receive casual exposure to the substance of the compelled testimony through the media or otherwise.** Id. at 863. In such cases, a court would face the insurmountable task of determining the extent and degree to which "the witnesses' testimony may have been shaped, altered, or affected by the immunized testimony." Id.

The second basis for our decision is that the state cannot meaningfully safeguard against nonevidentiary use of compelled testimony. Nonevidentiary use "include assistance in focusing the investigation, deciding to initiate prosecution, refusing to plea-bargain, interpreting evidence, planning cross-examination, and otherwise generally planning trial strategy." United States v. McDaniel, 482 F.2d 305, 311 (8th Cir.1973). **Innumerable people could come into contact with the compelled testimony, either through official duties or, in a particularly notorious case, through the media. Once**

persons come into contact with the compelled testimony they are incurably tainted for nonevidentiary purposes.

This situation is further complicated if potential jurors are exposed to the witness' compelled testimony through wide dissemination in the media.

When compelled testimony is incriminating, the prosecution can "focus its investigation on the witness to the exclusion of other suspects, thereby working an advantageous reallocation of the government's financial resources and personnel." With knowledge of how the crime occurred, the prosecution may refine its trial strategy to "probe certain topics more extensively and fruitfully than otherwise." Id. These are only some of the possible nonevidentiary advantages the prosecution could reap by virtue of its knowledge of compelled testimony.

Even the state's utmost good faith is not an adequate assurance against nonevidentiary uses because there may be "non-evidentiary uses of which even the prosecutor might not be consciously aware." State v. Soriano, 68 Or.App. 642, 684 P.2d 1220, 1234 (1984) (only transactional immunity can protect state constitutional guarantee against nonevidentiary use of compelled testimony). We sympathize with the Eighth Circuit's lament in McDaniel that "we cannot escape the conclusion that the [compelled] testimony could not be wholly obliterated from the prosecutor's mind in his preparation and trial of the case." McDaniel, 482 F.2d at 312. **This incurable inability to adequately prevent or detect nonevidentiary use, standing alone, presents a fatal constitutional flaw in use and derivative use immunity.**

Because of the manifold practical problems in enforcing use and derivative use immunity we cannot conclude that [former] AS 12.50.101 is constitutional. Mindful of Edward Coke's caution that 'it is the worst oppression, that is done by colour of justice,' **we conclude that use and derivative use immunity is constitutionally infirm**." State of Alaska v. Gonzalez, 853 P2d 526 (Ak Supreme Court 1993)

2. Facts

Cole, Haeg's first attorney, told Haeg that the SOA had given Haeg "immunity" in order to compel him to give a statement – that Haeg was going to be "king for a day" for this statement. [Exhibit 4]

On June 11, 2004 **Haeg gave the 5-hour immunized statement to prosecutor Leaders and trooper Gibbens, who had Haeg mark all wolf kill locations, all of which Haeg was later prosecuted for, on a map provided by prosecutor**

Leaders and trooper Gibbens. [Exhibit 5] This statement incriminated both Haeg and Zellers. [Exhibit 5]

Prosecutor Leaders and trooper Gibbens, the very same people who took Haeg's immunized statement, used Haeg's statement and map in numerous ways to build their case against Haeg, including **releasing Haeg's incriminating statement to Alaska's biggest newspapers; obtaining and/or finding witnesses against Haeg; modifying all witness testimony with Haeg's statement; and specifically using Haeg's statement in the charging information as probable cause for all charges against Haeg.** [Exhibits 9, 11, 12, 14, 17, 19, 30, and TR]

On June 23, 2004, because of Haeg's statement, Zellers cooperated with and gave a statement to trooper Gibbens and prosecutor Leaders. [Exhibit 6] Both Zellers and Fitzgerald, Zellers attorney, testified under oath Zellers statement and cooperation was a direct result of Haeg's statement. [Exhibit 6] During Zellers interview prosecutor Leaders and trooper Gibbens used the same map upon which Haeg had marked all wolf kill sites, told Zellers that Haeg had made the marks, and asked Zellers to confirm the marks were wolf kill sites that he and Haeg had participated in. [Exhibit 7] **Fitzgerald testified under oath that both Zellers and Haeg had "transactional" immunity for their statements.** [Exhibit 29] "Transactional" immunity means there can be no prosecution for actions referred to in the statement.

Cole then told Haeg that the SOA could prosecute Haeg for the crimes referred to in his compelled statement and that the SOA could use Haeg's statement to prosecute Haeg. [Exhibit 4]

In a May 6, 2005 reply brief to an unrelated motion prior to trial, Haeg's second attorney, Robinson, wrote that it was a violation of Evidence Rule 410 for Haeg's statement to be used by prosecutor Leaders to support the charging information. [Exhibit 17] Robinson did not protest that Haeg had also been given immunity to compel the statement or protest the other innumerable uses of Haeg's statement (or ask for the required Kastigar hearing) - just the completely obvious and direct use in the written charging information which specifically stated that David Haeg was interviewed, this is what he said, and this is why the SOA is charging him with crimes. [TR] Even though this reply was copied to both prosecutor Leaders and the court no action was taken and Haeg proceeded to trial on an information that specifically and directly used his immunized statement as probable cause for all charges. [Exhibit 12]

Robinson told Haeg that he could be prosecuted after giving a compelled statement and that since the SOA was only going to present the incriminating parts

of the statement against him at trial Haeg had to testify at trial to bring the exculpatory parts. [Exhibits 15 and 33 – TR 741-908]

At trial Haeg's immunized statement was used against him in numerous ways. **The map Haeg had created during his statement, upon which he had marked and numbered all wolf kill sites he was being prosecuted for, was the primary trial exhibit (exhibit #25) against him.** [Exhibit 5 – TR 280-286, 331-612, 645-646, 914]] **Zellers testified against Haeg at trial because of Haeg's statement.** [Exhibit 6] State Biologist Toby Boudreau's trial testimony was unarguably tainted by Haeg's statement, repeatedly referring to "Tony Lee", a material witness who the SOA learned of from Haeg's statement. [Exhibit 19 – TR 271-272] Haeg's testimony at trial was a direct result of Haeg's statement. [Exhibits 15 and 33 – TR 741-908] Finally, prosecutor Leaders was Haeg's prosecutor at trial and trooper Gibbens was a witness against Haeg at trial, even though they were the very people who took Haeg's statement and thus "incurably tainted" for use at trial. This "taint" was irrefutably proved by Leaders arguments –citing innumerable facts from Haeg's statement – **before any witnesses or evidence was presented at trial.** [Exhibit 5 and TR 97-109]

On September 8, 2006, the SOA specifically used Haeg's immunized statement to oppose Haeg's appeal: **"In June 2004 both hunters [Haeg and Zellers] were interviewed by troopers and admitted the knew nine wolves were shot from the airplane while outside the permit area.** Both men were charged with various criminal accounts. Zellers case resolved by way of a plea agreement and Haeg proceeded to jury trial where he was convicted." [Exhibit 30 and AR]

The Alaska Court of Appeals, in deciding Haeg's appeal, held that Robinson could not bring up Haeg's statement use in a reply brief, it had to be brought up in a new motion, thus Haeg's right to protest the statement use was "waived." [AP] In other words the Court of Appeals ruled Robinson committed an "unprofessional error" proving "deficient performance".

Haeg filed a grievance with the Alaska Bar Association of prosecutor Leaders use of Haeg's statement in the prosecuting information. Prosecutor Leaders, in a sworn response, testified under oath he did not use Haeg's statement and the proof it was not used was that Haeg's attorneys would have filed a motion to suppress if it had. [Exhibit 2] Yet because of Robinson's May 6, 2005 reply brief protest of prosecutor Leaders use of Haeg's statement, copied to both prosecutor Leaders and the court, it is irrefutable prosecutor Leader knew he had used Haeg's statement and that Haeg's attorneys also knew it was being used – proving prosecutor Leaders committed perjury in his sworn response to cover up he had violated Haeg's constitutional right against self incrimination – and used the "errors" of Haeg's attorneys to help do so. [Exhibit 17 and MR]

3. Prejudice

AS 12.50.101 and State of Alaska v. Gonzalez prove beyond doubt that Haeg could not be prosecuted for actions referred to in his compelled statement, and thus the counsel from Haeg's attorneys that he could be prosecuted for actions referred to in his compelled statement was false, an "unprofessional error" proving "deficient performance" – the first criteria of IAOC. In addition, State of Alaska v. Gonzalez and United States v. North prove beyond doubt that, even if Alaska law had allowed Haeg to be prosecuted, his statement could not be used, and thus the counsel from Haeg's attorneys that his immunized statement could be used against him was false, an "unprofessional error" proving "deficient performance" – the first criteria of IAOC.

The prejudice caused by this "deficient performance" was devastating. **Had his attorneys told him the truth (1) Haeg could never been prosecuted at all, no matter what evidence the SOA had, after his compelled statement** - proving the prejudice of the false counsel and (2) even if Alaska law allowed Haeg to be prosecuted Haeg would have required the SOA to prove, during a Kastigar hearing, that the charging information and all evidence, witnesses, jurors, and prosecutors had no taint whatsoever from his statement – and **as Haeg has irrefutable proof that all these were tainted it means the prosecution would have ended** - proving the prejudice of the false counsel.

The result is a absolute certainty of a difference in the outcome of Haeg's case, when the second criteria that must be met to prove IAOC only requires a reasonable doubt of a different outcome.

Conclusion

In light of the above Haeg respectfully asks the court to grant his motion for a protection order that he not be required to give up his right against self-incrimination and allow him to answer the state's questions as Haeg has already done in the attached discovery request. In addition, Haeg would like to point out the state's discovery request is itself irrefutable proof of how the taint of Haeg's

immunized statement continues to spread – proving even state attorney Andrew Peterson is now irreparably tainted.

I declare under penalty of perjury the forgoing is true and correct. Executed on September 23, 2011. A notary public or other official empowered to administer oaths is unavailable and thus I am certifying this document in accordance with AS 09.63.020.

David S. Haeg
PO Box 123
Soldotna, Alaska 99669
(907) 262-9249 and 262-8867 fax
haeg@alaska.net

Certificate of Service: I certify that on September 23, 2011 a copy of the forgoing was served by mail to the following parties: Peterson, Judge Gleason, Judge Joannides, U.S. Department of Justice, FBI, and media.
By:

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT KENAI

DAVID HAEG Applicant v. STATE OF ALASKA Respondent, Trial Case No. 4MC-04-00024 CR	)	POST-CONVICTION RELIEF CASE NO. 3KN-10-01295 CI

RESPONDENT STATE OF ALASKA'S FIRST SET OF DISCOVERY REQUESTS TO PETITIONER DAVID HAEG

Respondent STATE OF ALASKA, by and through its counsel, Assistant Attorney General Andrew Peterson, hereby submits its First Set of Discovery Requests to Applicatn David Haeg. These discovery requests are issued pursuant to Alaska R.Crim.P. 35.1(g) (third sentence), Alaska R.Civ.P. 33, 34 and 36 (interrogatories to parties, requests for production, and requests for admission).

I. ATTORNEYS' PROFESSIONAL OBLIGATION TO PROVIDE LEGITIMATE DISCOVERY

Attorneys have an affirmative professional obligation to comply with the discovery rules of the tribunal. The Alaska Code of Professional Conduct states that lawyers have an affirmative obligation to make reasonably diligent efforts to comply with the opponent's proper discovery requests.[1] Alaska law is quite clear that civil

[1] Alaska R. Prof. Conduct 3.4(c)–(d); Supreme Court Order 1690, effective April 15, 2009.

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OFFICE OF SPECIAL PROSECUTIONS AND APPEALS
310 K STREET, SUITE 308
ANCHORAGE, ALASKA 99501
PHONE: (907) 269-6250

discovery rules apply to post-conviction proceedings. *See* Alaska R. Crim.P. 35.1(g) (with exceptions not relevant to these discovery requests, all civil discovery procedures are available in post-conviction relief proceedings).

II. DEFINITIONS

The words "claim" or "claims" mean all causes of action in plaintiff's Complaint (or the most recent amended complaint) and all factual allegations supporting the petition.

The word "Complaint" means plaintiff's original complaint in this case or, if the complaint has been amended, the most recent amended complaint.

The word "document" whenever used herein means any form of data compilation or graphic matter (*e.g.*, written, printed, typed, drawn, punched, taped, filmed, recorded, photographed) which you or your counsel possess, control, or have custody of. This definition encompasses all copies, reproductions, or facsimiles of documents via whatever means made. If copies of documents are not identical, for whatever reason, including handwritten notations, date stamps, initials, or identification marks, each non-identical copy is a separate document within the meaning of this definition.

Without limiting the foregoing, "document" includes correspondence, telegrams, telexes, electronic mail, memoranda, reports, notes, drafts, minutes, contracts, agreements, books, records, vouchers, invoices, diaries, logs, calendar notes, computer print-outs or information stored on a computer hard drive or disc, ledgers, journal, notices, affidavits, court papers, minutes or records of conferences, meetings or

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telephone calls, brochures, receipts, drawings, charts, photographs, negatives, and tape recordings within your possession, or subject to your control.

The word "identify" as used in these discovery requests means, in relation to persons, that you state their full name, their address, and their telephone number. In identifying any specific conversation, meeting or event, please state the date in which the conversation, meeting or event occurred, the place it occurred, any witnesses to it, and describe with particularity the substance of the conversation, meeting or event. In relation to documents, "identify" means that you state the type of document (e.g., letter, handwritten note, diary, contract, etc.), the date the document was prepared or a date indicated on the document, and the author of the document.

III. PROCEDURE

A. Objections and Privilege Claims

If you object to a discovery request for privilege or for any other reason, you are required to state your objections and specify your reasons.

If you contend that you are entitled to withhold from production any or all documents requested herein on the basis of the attorney-client privilege, the work-product doctrine, or any other ground, then with respect to each and every document:

(a) describe the nature of the document (*e.g.*, letter or memorandum);

(b) state the date the document was created;

(c) identify the person(s) who sent and received the original and a copy of the document;

(d) state the subject matter of the document;

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(e) state the basis upon which you contend you are entitled to withhold the document from production.

B. Duty to Supplement

The following requests for production are governed by the Alaska Rules of Civil Procedure. In this regard, you are reminded that Alaska R. Civ. P. 26(e)(2), which is applicable to this case pursuant to Alaska R.Crim.P. 35.1(g), imposes upon you an affirmative duty to supplement any of your responses to the following discovery requests in the event that you should subsequently discover that any of your responses are incorrect, incomplete, misleading, or no longer correct.

IV. RESPONSE

In accordance with Alaska R.Civ.P. 33(b)(3), 34(b), and 36(a), you are requested to answer under oath the following interrogatories, and respond to these requests for admission and production on or before the thirtieth (30th) day after service.

REQUEST FOR ADMISSION NO. 1: Please admit that on June 11, 2004, you provided a truthful and detailed interview to Trooper Gibbens and Attorney Scott Leaders regarding your activities during the wolf control program.

RESPONSE:

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OFFICE OF SPECIAL PROSECUTIONS AND APPEALS
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REQUEST FOR ADMISSION NO. 1: Please admit that on June 11, 2004, you provided a truthful and detailed interview to Trooper Gibbens and Attorney Scott Leaders regarding your activities during the wolf control program.

RESPONSE: The state already has this information and I was given immunity for it.

REQUEST FOR PRODUCTION NO. 1: If your response to the above request for admission is anything other than unqualified admissions, please identify any and all statements, written record, or supporting witness, who can substantiate your denial.

RESPONSE: Please refer to (1) my application for post conviction relief; (2) my statement; (3) the information the state used to require me stand trial: "David S. Haeg was interviewed in Anchorage on 6/11/04" - followed by four pages of my statements that were used to justify the charges against me; (4) the November 10, 2004 Anchorage Daily News article by Tataboline Brant; and (5) witnesses Scot Leaders, Brett Gibbens, Brent Cole, Kevin Fitzgerald, Jackie Haeg, Tom Stepnosky, and Tony Zellers.

REQUEST FOR ADMISSION NO. 2: Please admit that you chose to testify at your trial of your own free will.

RESPONSE: I did not testify at trial of my own free will. Attorney Robinson stated that the state was going to use only the "bad" parts of my statement against me at trial and for the "good" parts of my statement to be heard I had to testify. I felt as if the state was using my statement like a gun to my head to force me to testify.

REQUEST FOR PRODUCTION NO. 2: If your response to the above request for admission is anything other than unqualified admissions, please identify any and all statements, written record, or supporting witness, who can substantiate your denial.

RESPONSE: Please refer to (1) my application for post conviction relief; (2) my statement; (3) the information the state used to require me stand trial: "David S. Haeg was interviewed in Anchorage on 6/11/04" - followed by four pages of my statements that were used to justify the charges against me; (4) the November 10, 2004 Anchorage Daily News article by Tataboline Brant; and (5) witnesses Scot Leaders, Brett Gibbens, Brent Cole, Kevin Fitzgerald, Jackie Haeg, Tom Stepnosky, and Tony Zellers.

REQUEST FOR ADMISSION NO. 3: Please admit that your testimony at trial was consistent with your statement provide to Trooper Gibbens and Attorney Scott Leaders on June 11,2004.

RESPONSE: The state already has this information.

REQUEST FOR PRODUCTION NO. 3: If your response to the above request for admission is anything other than unqualified admissions, please identify any and all statements, written record, or supporting witness, who can substantiate your denial.

RESPONSE: Please refer to (1) my statement; (2) the information the state used to require me stand trial: "David S. Haeg was interviewed in Anchorage on 6/11/04" - followed by four pages of my statements that were used to justify the charges against me; (3) the November 10, 2004 Anchorage Daily News article by Tataboline Brant; (4) court record; and (5) witnesses Scot Leaders, Brett Gibbens, Brent Cole, Kevin Fitzgerald, Arthur Robinson, Jackie Haeg, Tom Stepnosky, and Tony Zellers.

REQUEST FOR ADMISSION NO. 4: Please admit that you filed a complaint against Brent Cole in an Alaska Bar Association fee arbitration matter, file number 2006F007.

RESPONSE: This has already been answered.

REQUEST FOR PRODUCTION NO. 4: If your response to the above request for admission is anything other than unqualified admissions, please identify any and all statements, written record, or supporting witness, who can substantiate your denial.

RESPONSE: See my application for post conviction relief.

REQUEST FOR ADMISSION NO. *5:* Please admit that the fee arbitration board ruled against you in the fee arbitration matter, file number 2006F007.

RESPONSE: The arbitrator's ruled against me.

REQUEST FOR PRODUCTION NO. *5:* Please provide all documents associated with the fee arbitration hearing, including all exhibits submitted by either party, the written decision of the fee arbitration board, any taped recording of the hearing, and any transcript of the hearing.

RESPONSE: These have already been provided in my application for post conviction relief.

REQUEST FOR ADMISSION NO. 6: Please admit that the basis of your complaint in the fee arbitration matter, file number 2006F007, was based upon your belief that Brent Cole committed malpractice in handling your case.

RESPONSE: The fee arbitrators ruled, "Mr. Haeg's complaint is that Mr. Cole's services to him had so little value that he should be excused from paying a fee."

REQUEST FOR PRODUCTION NO. 6: If your response to the above request for admission is anything other than unqualified admissions, please identify any and all statements, written record, or supporting witness, who can substantiate your denial.

RESPONSE: Fee arbitration decision.

REQUEST FOR ADMISSION NO. 7: Please admit that on or about November 8, 2004, you submitted a written statement in the form of a letter to the court in McGrath in which you

detailed that your participation in the Wolf Control Program ("WCP") was necessary for the survival of the program as more wolves needed to be taken.

RESPONSE: This has already been answered.

REQUEST FOR PRODUCTION NO. 7: If your response to the above request for admission is anything other than unqualified admissions, please identify any and all statements, written record, or supporting witness, who can substantiate your denial. Also please provide a copy of the letter submitted.

RESPONSE: See my application for post conviction relief.

REQUEST FOR ADMISSION NO. 8: Please admit that on or about November 8, 2004, you submitted a written statement in the form of a letter to the court in McGrath in which you stated that you believed you needed to take more wolves in order for the WCP to survive.

RESPONSE: This has already been answered.

REQUEST FOR PRODUCTION NO. 8: If your response to the above request for admission is anything other than unqualified admissions, please identify any and all statements, written record, or supporting witness, who can substantiate your denial.

RESPONSE: See my application for post conviction relief.

REQUEST FOR ADMISSION NO. 9: Please admit that on or about November 8, 2004, you submitted a written statement in the form of a letter to the court in McGrath in which you claimed that you were instructed to falsify the location of wolf kills if you killed wolves outside of the WCP area.

RESPONSE: This has already been answered.

REQUEST FOR PRODUCTION NO. 9: If your response to the above request for admission is anything other than unqualified admissions, please identify any and all statements, written record, or supporting witness, who can substantiate your denial.

RESPONSE: See my application for post conviction relief.

REQUEST FOR ADMISSION NO. 10: Please admit that all of the wolves taken by you in 2004 as part of your involvement in the WCP were taken outside of the WCP area.

RESPONSE: This has already been answered.

REQUEST FOR PRODUCTION NO. 10: If your response to the above request for admission is anything other than unqualified admissions, please identify any and all statements, written record, or supporting witness, who can substantiate your denial.

RESPONSE: See my statement, the state's charging information taking me to trial, and the November 10, 2004 Anchorage Daily News article by Tataboline Brant.

REQUEST FOP ADMISSION NO. 11: Please admit that Attorney Robinson cross examined Trooper Gibbens during trial about the location of the wolf kills?

RESPONSE: This has already been answered.

REQUEST FOR PRODUCTION NO. 11: If your response to the above request for admission is anything other than unqualified admissions, please identify any and all statements, written record, or supporting witness, who can substantiate your denial.

RESPONSE: See trial record.

REQUEST FOR ADMISSION NO. 12: Please admit that Trooper Gibbens clarified the location of the wolf kills during his cross examination testimony at trial.

RESPONSE: Trooper Gibbens changed his testimony only after he was aware his false testimony had been discovered. After Gibbens was aware his false testimony had been found out he could not retract or "clarify" his testimony. See AS 11.56.235. Retraction as a Defense.

REQUEST FOR PRODUCTION NO. 12: If your response to the above request for admission is anything other than unqualified admissions, please identify any and all statements, written record, or supporting witness, who can substantiate your denial.

RESPONSE: See trial record and AS 11.56.235.

REQUEST FOR ADMISSION NO. 13: Please admit that Trooper Gibbens' clarification at trial on cross examination as to the location of the wolf kills was in fact accurate.

RESPONSE: Trooper Gibbens could not retract or "clarify" his testimony after he was confronted and knew his falsification had been found out. It does not matter if his testimony after he was found out was truthful. This is proven by Judge Murphy's subsequent material use of Trooper Gibbens false testimony as the specific justification for my sentence.

REQUEST FOR PRODUCTION NO. 13: If your response to the above request for admission is anything other than unqualified admissions, please identify any and all statements, written record, or supporting witness, who can substantiate your denial.

RESPONSE: See sentencing record and AS 11.56.235.

REQUEST FOR ADMISSION NO. 14: Please admit that on or about June 23, 2004, Tony Zellers gave prosecutor Leaders and Trooper Gibbens a detailed interview of his participation in the WCP.

RESPONSE: The state already has this information in its possession.

REQUEST FOR PRODUCTION NO. 14: If your response to the above request for admission is anything other than unqualified admissions, please identify any and all statements, written record, or supporting witness, who can substantiate your denial.

RESPONSE: Please refer to Zellers statement, the information the state used to require me stand trial, and the November 10, 2004 Anchorage Daily News article by Tataboline Brant.

REQUEST FOR ADMISSION NO. 15: Please admit that Tony Zellers testimony at trial was consistent with his detailed interview given on or about June 23,2004.

RESPONSE: The state already has this information in its possession.

REQUEST FOR PRODUCTION NO. 15: If your response to the above request for admission is anything other than unqualified admissions, please identify any and all statements, written record, or supporting witness, who can substantiate your denial.

RESPONSE: Please refer to Zellers statement, the information the state used to require me stand trial, the November 10, 2004 Anchorage Daily News article by Tataboline Brant, and court record.

REQUEST FOR ADMISSION NO. 16: Please admit that Tony Zeller's statement given on or about June 23, 2004 was factually consistent with the statement you provided on or about June 11,2004.

RESPONSE: The state already has this information in its possession.

REQUEST FOR PRODUCTION NO. 16: If your response to the above request for admission is anything other than unqualified admissions, please identify any and all statements, written record, or supporting witness, who can substantiate your denial.

RESPONSE: Please refer to the statements of Tony Zellers and myself, to the information the state used to require me stand trial, and the November 10, 2004 Anchorage Daily News article by Tataboline Brant.

REQUEST FOR ADMISSION NO. 17: Please admit that you provided the State of Alaska with a map detailing the kill locations of the wolves taken in 2004.

RESPONSE: The state already has this information in its possession.

REQUEST FOR PRODUCTION NO. 17: If your response to the above request for admission is anything other than unqualified admissions, please identify any and all statements, written record, or supporting witness, who can substantiate your denial. Also provided a copy of the map as well as any letter and/or memo that accompanied the map.

RESPONSE: Please refer to my application for post conviction relief, my statement, trial exhibit # 25, the court record, and witnesses Scot Leaders, Brett Gibbens, Brent Cole, Kevin Fitzgerald, Tony Zellers, Jackie Haeg, and Tom Stepnosky.

REQUEST FOR ADMISSION NO. 18: Please admit that you rejected the written plea offer you received from the State of Alaska on or about August 18,2004.

RESPONSE: I do not know if I got a "written plea offer" as attorney Brent Cole was negotiating on my behalf at this time and stated he "dealt on his word". I do know there was a finalized verbal plea agreement that both the State and I had agreed to – a plea agreement that was scheduled to be presented to the McGrath court on November 9, 2004, a plea agreement the state broke at the last minute by changing the already agreed to and filed charges to charges far more severe and never agreed to.

REQUEST FOR PRODUCTION NO. 18: If your response to the above request for admission is anything other than unqualified admissions, please identify any and all statements, written record, or supporting witness, who can substantiate your denial. Also provide a copy of the plea offer and any letter or memo from Attorney Brent Cole regarding this offer as well as any letter or memo from the State that accompanied or referred to the offer.

RESPONSE: This has already been provided. See application for post conviction relief and witnesses Brent Cole, Kevin Fitzgerald, Jackie Haeg, Tony Zellers, Tom Stepnosky, and Drew Hilterbrand.

REQUEST FOR ADMISSION NO. 19: Please admit that you never received a written plea agreement following the first plea agreement in August 2004.

RESPONSE: As stated above Brent Cole was negotiating for me "on his word."

REQUEST FOR PRODUCTION NO. 19: If your response to the above request for admission is anything other than unqualified admissions, please identify any and all statements, written record, or supporting witness, who can substantiate your denial.

RESPONSE:

REQUEST FOR ADMISSION NO. 20: Please admit that your statements provided to Attorney Scott Leaders and Trooper Brett Gibbens on June 11,2004 were never used against you in trial.

RESPONSE: My statements, which I provided to Leaders and Gibbens, were used against me at trial. In addition, the statement could not be used in any way whatsoever, even outside of trial.

REQUEST FOR PRODUCTION NO. 20: If your response to the above request for admission is anything other than unqualified admissions, please identify any and all statements, written record, or supporting witness, who can substantiate your denial.

RESPONSE: Please see (1) my application for post conviction relief; (2) my statement; (3) court record – especially Exhibit #25; (4) the information the state used to require Haeg stand trial: "David S. Haeg was interviewed in Anchorage on 6/11/04" - followed by four pages of Haeg's statements that were used to justify the charges against Haeg; (5) November 10, 2004 Anchorage Daily News article by Tataboline Brant; (6) Robinson's May 6, 2005 Reply; (7) Leaders October 4, 2007 Alaska Bar Association "verified" response; and (8) witnesses Scot Leaders, Brett Gibbens, Brent Cole, Kevin Fitzgerald, Arthur Robinson, Jackie Haeg, Tom Stepnosky, and Tony Zellers. The state already has all the forgoing written documents. See also AS 12.50.101; State of Alaska v. Gonzales, 853 P2d 526 (AK supreme Court 1993); United States v. North, 910 F.2d 843 (D.C. Cir. 1990); Kastigar v. United States, 406 U.S. 441 (U.S. Supreme Court 1972); Jackson v. Denno, 378 U.S. 368 (U.S. Supreme Court 1964)

REQUEST FOR ADMISSION NO. 21: Please admit that Judge Murphy instructed you prior to your testimony at trial that the decision about testifying was your decision and your decision only?

RESPONSE: I do not remember if Judge Murphy told me this and I cannot find this in the trial transcriptions. I do know Arthur Robinson told me over and over I had to testify because the state was going to use the "bad" parts of my statement against me and for the "good" parts to be heard I had to testify.

REQUEST FOR PRODUCTION NO. 21: If your response to the above request for admission is anything other than unqualified admissions, please identify any and all statements, written record, or supporting witness, who can substantiate your denial.

RESPONSE: See (1) my application for post conviction relief; (2) my statement; (3) court record – especially Exhibit #25; (4) the information the state used to require Haeg stand trial: "David S. Haeg was interviewed in Anchorage on 6/11/04" - followed by four pages of Haeg's statements that were used to justify the charges against Haeg; (5) November 10, 2004 Anchorage Daily News article by Tataboline Brant; (6) Robinson's May 6, 2005 Reply; (7) Leaders October 4, 2007 Alaska Bar Association "verified" response; and (8) witnesses Scot Leaders, Brett Gibbens, Brent Cole, Kevin Fitzgerald, Arthur Robinson, Jackie Haeg, Tom Stepnosky, and Tony Zellers.

REQUEST FOR ADMISSION NO. 22: Please admit that the State ultimately offered you a plea deal with a 16 month big game guide license suspension.

RESPONSE: I believe at some point Brent Cole told me the state offered plea agreement with a 16 month guide license suspension as long as I agreed to also forfeit the seized airplane. I said no to this because the original plea agreement (for which I had already given up a year of guiding and which the state broke at the last minute by greatly increasing the severity of the already filed and agreed to charges) did not require the airplane to be forfeited.

REQUEST FOR PRODUCTION NO. 22: If your response to the above request for admission is anything other than unqualified admissions, please identify any and all statements, written record, or supporting witness, who can substantiate your denial. Please provide a copy of the letter dated July 6,2005.

RESPONSE: Witnesses Brent Cole, Kevin Fitzgerald, Tom Stepnosky, Tony Zellers, Jackie Haeg, and Drew Hilterbrand.

REQUEST FOR ADMISSION NO. 23: Please admit that you rejected the offer of a 16 month big game guide license suspension.

RESPONSE: Yes, because the original plea agreement (for which I had already given up a year of guiding and which the state broke at the last minute by greatly increasing the severity of the already filed and agreed to charges) did not require the airplane to be forfeited.

REQUEST FOR PRODUCTION NO. 23: If your response to the above request for admission is anything other than unqualified admissions, please identify any and all statements, written record, or supporting witness, who can substantiate your denial.

RESPONSE: Witnesses Brent Cole, Tom Stepnosky, Tony Zellers, Jackie Haeg, and Drew Hilterbrand.

REQUEST FOR ADMISSION NO. 24: Please admit that your sentence following trial was more severe than that of Tony Zeller's negotiated Rule 11agreement.

RESPONSE: This has already been answered.

REQUEST FOR PRODUCTION NO. 24: If your response to the above request for admission is anything other than unqualified admissions, please identify any and all statements, written record, or supporting witness, who can substantiate your denial.

RESPONSE: See sentences of Tony Zellers and David Haeg.

REQUEST FOR ADMISSION NO. 25: Please admit that the location of the wolf kill sites near Lime Village were closer to your lodge than the WCP permitted area of Unit 19D-east.

RESPONSE: This has already been answered.

REQUEST FOR PRODUCTION NO. 25: If your response to the above request for admission is anything other than unqualified admissions, please identify any and all statements, written record, or supporting witness, who can substantiate your denial.

RESPONSE: Please see my statement and court record.

REQUEST FOR ADMISSION NO. 26: Please admit that you were previously represented by Brent Cole, Chuck Robinson, and Mark Osterman.

RESPONSE: This has already been answered. See my application for post conviction relief.

REQUEST FOR PRODUCTION NO. 26: Please execute the attached waiver of attorney-client privilege to allow inspection of your legal files held by each of the attorneys identified in the immediately preceding Interrogatory.

RESPONSE: This has already been provided. See application for post conviction relief.

REQUEST FOR ADMISSION NO. 27: Please admit that you do not possess and have not filed an affidavit from any of your attorneys which explains their failure to seek enforcement of the Rule 11 agreement you believe was in place on November 8.2004.

RESPONSE: This has already been answered. See my application for post conviction relief.

REQUEST FOP PRODUCTION NO. 27: Please identify and produce all written correspondence or record in which any of your attorneys offered an explanation about why they did not attempt to enforce the Rule 11agreement you believe was in place prior to November 8, 2004.

RESPONSE: This has already been provided. See my application for post conviction relief.

REQUEST FOR ADMISSION NO. 28: Please admit that you appealed the ruling in the Alaska Bar Association fee arbitration matter, file number 2006F007, to the Superior Court in Kenai.

RESPONSE: Yes.

REQUEST FOR PRODUCTION NO. 28: Please identify and produce all written correspondence, documents or exhibits filed or produced by you or Attorney Brent Cole in this matter, including the ruling from the Superior Court.

RESPONSE: I believe the court sealed this and we no longer have the paperwork.

REQUEST FOR ADMISSION NO. 29: Please admit that you appealed the Superior Court ruling pertaining to the Alaska Bar Association fee arbitration ruling to the Supreme Court for the Sate of Alaska.

RESPONSE: Yes.

REQUEST FOR PRODUCTION NO. 29: Please identify and produce all written correspondence, documents or exhibits filed or produced by you or Attorney Brent Cole in

this matter before the Supreme Court of the State of Alaska, including the ruling from the Supreme Court.

RESPONSE: I believe the court sealed this and we no longer have the paperwork.

REQUEST FOR PRODUCTION NO. 30: Please identify and produce all written correspondence or record in which any of your attorneys offers an explanation why they did not allege ineffective representation of any other of your attorneys.

RESPONSE: This has already been provided. See my application for post conviction relief.

REQUEST FOR PRODUCTION NO. 30: Please signed the attached waiver authorizing the release of all documents, exhibits and rulings by the Alaska Bar Association in fee arbitration matter 2006F007.

RESPONSE: I believe the court sealed this.

INTERROGATORY NO. 1: Please identify all agencies or persons to whom you have previously raised your complaint or claim regarding your attorneys' alleged failure to provide effective representation. State whether you raised this issue with the Superior Court directly, whether you have filed a complaint against any of your attorneys with the Alaska Bar Association, whether you have brought a civil malpractice suit against any attorney or agency, and whether you have consulted with any person regarding such a complaint or lawsuit.

RESPONSE: All filed complaints are referenced in my application for post conviction relief. I have not filed any malpractice suits against any attorney or agency. In addition to those above and in my application for post conviction relief I have consulted with so many other people and agencies I cannot list them all. A short list of some not identified above or in my application for post conviction relief is as follows: United States Department of Justice; Federal Bureau of Investigation; U.S. Attorneys Office; FBI Section Chief Doug Klein; FBI Assistant Special Agent in Charge David Heller; Congressman Don Young; Senator Lisa Murkowski; Senator Mark Begich, Senator Tom Wagoner; Senator Hollis French; Representative Mike Chenault; Representative Kurt Olson; Trooper Colonel Keith Mallard; Trooper Captain Pete Mlynarik; ACLU; Safari Club International; Sullivan Arena General Director Joe Wooden; KTUU Channel 2; Associated Press; Anchorage Daily News; Peninsula Clarion; Homer Daily News; Alaska Professional Hunters Association; Ombudsman; Alaska Family Council; Civil Action Group; Joint Base Elmendorf/Richardson; and Federal Aviation Administration.

INTERROGATORY NO. 2: Please identify all persons who have expressed an opinion that your attorneys provided effective representation to you.

RESPONSE: No one has expressed an opinion that my attorneys provided me with effective representation.

INTERROGATORY NO. 3: Please identify all persons who testified at the Alaska Bar Association fee arbitration hearing number 2006F007.

RESPONSE: This has already been answered. See application for post conviction relief.

I declare under penalty of perjury the forgoing is true and correct. Executed on September 23, 2011. A notary public or other official empowered to administer oaths is unavailable and thus I am certifying this document in accordance with AS 09.63.020.

David S. Haeg
PO Box 123
Soldotna, Alaska 99669
(907) 262-9249 and 262-8867 fax
haeg@alaska.net

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT KENAI

DAVID HAEG

Applicant

v.

STATE OF ALASKA

POST-CONVICTION RELIEF
CASE NO. 3KN-10-01295 CI

Trial Case No. 4MC-04-00024 CR

STATE'S OPPOSITION TO APPLICANT'S 9-15-11 MOTION FOR TRANSCRIPTION

VRA CERTIFICATION. I certify that this document and its attachments do not contain (1) the name of a victim of a sexual offense listed in AS 12.61.140 or (2) a residence or business address or telephone number of a victim or witness to any crime unless it is an address used to identify the place of the crime or it is an address or telephone number in a transcript of a court proceeding and disclosure of the information was ordered by the court.

COMES NOW the State of Alaska, by and through Assistant Attorney General Andrew Peterson and hereby files this opposition to the Applicant's 9-15-11 motion for transcription. The state's opposition is supported by included proposed order.

On September 9, 2011, the State deposed Haeg's trial counsel Arthur Robinson. Haeg was present for the deposition and was provided three hours of time to cross examine Mr. Robinson. Haeg video recorded and audio recorded the deposition and maintains possession of these items.

The state audio recorded the deposition and is looking into the cost of having the deposition transcribed. The current estimates are $900 for the

STATE OF ALASKA
DEPARTMENT OF LAW
OFFICE OF SPECIAL PROSECUTIONS AND APPEALS
310 K STREET, SUITE 308
ANCHORAGE, ALASKA 99501
PHONE: (907) 269-6250

transcription and this cost has not been approved by the Department of Law. If the cost is approved and a transcription made, the state will provide a copy to Haeg in the form of discovery and/or through motions.

Haeg is asking this Court to afford him a right he was not entitled to as criminal defendant. In a criminal case, the state is obligated to provide a defendant with a copy of all audio recordings, but nothing in case law nor court rules requires that the state transcribe audio recordings for the defendant. The state should not be ordered to provide the defendant with more discovery in a civil case than it would be obligated to provide in a criminal matter.

DATED: September 21, 2011.

JOHN J. BURNS
ATTORNEY GENERAL

By: _____
Andrew Peterson
Assistant Attorney General
Alaska Bar No. 0601002

This is to certify that on this date, a correct copy of the forgoing was mailed to:
David Haeg
9/21/11
Signature Date

STATE OF ALASKA
DEPARTMENT OF LAW
OFFICE OF SPECIAL PROSECUTIONS AND APPEALS
310 K STREET, SUITE 308
ANCHORAGE, ALASKA 99501
PHONE: (907) 269-6250

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT KENAI

DAVID HAEG,	)	
	)	
Applicant,	)	
	)	
v.	)	POST-CONVICTION RELIEF
	)	Case No. 3KN-10-01295CI
STATE OF ALASKA,	)	(formerly 3HO-10-00064CI)
	)	
Respondent.	)	
	)	

(Trial Case No. 4MC-04-00024CR)

9-15-11 MOTION FOR TRANSCRIPTION

VRA CERTIFICATION: I certify this document and its attachments do not contain the (1) name of victim of a sexual offense listed in AS 12.61.140 or (2) residence or business address or telephone number of a victim of or witness to any offense unless it is an address identifying the place of a crime or an address or telephone number in a transcript of a court proceeding and disclosure of the information was ordered by the court.

COMES NOW Applicant, DAVID Haeg, and hereby files this motion for an order that the state must transcribe their deposition of Arthur Robinson and to provide this transcription to Haeg.

Prior Proceedings

On September 9, 2011 the state deposed Haeg's trial attorney Arthur Robinson.

On September 12, 2011 Haeg called the state and asked if they were going to transcribe the deposition and if Haeg could get a copy of this transcription if this was the case.

On September 12, 2011 the state emailed Haeg that they did not know if they were going to transcribe the deposition and that they would oppose a motion from Haeg that they must pay for Haeg's transcription costs.

Discussion

This court has declared Haeg "indigent" for purposes of his PCR proceedings. See court record.

The public defenders office indicated that the state should bear Haeg's costs of conducting his PCR even if he were representing himself. See court record.

The sworn testimony of Haeg's trial attorney Arthur Robinson is critical to deciding Haeg's claim of ineffective assistance of counsel. A transcription of this testimony would be invaluable to everyone, including the court, in deciding Haeg's claim.

As Haeg is indigent he cannot afford to have the state's deposition transcribed.

Conclusion

Because of the above Haeg respectfully asks the court to order the state to transcribe the deposition of Arthur Robinson and to make this transcription available at no charge to indigent PCR applicant Haeg.

I declare under penalty of perjury the forgoing is true and correct. Executed on September 15, 2011. A notary public or other official empowered

to administer oaths is unavailable and thus I am certifying this document in accordance with AS 09.63.020. In addition I would like to certify that copies of many of the documents and recordings referenced above are located at:

www.alaskastateofcorruption.com

David S. Haeg
PO Box 123
Soldotna, Alaska 99669
(907) 262-9249 and 262-8867 fax
haeg@alaska.net

Certificate of Service: I certify that on September 15, 2011 a copy of the forgoing was served by mail to the following parties: Peterson, Judge Gleason, Judge Joannides, U.S. Department of Justice, FBI, and media.
By: _____

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT KENAI

DAVID HAEG,	)	
	)	
Applicant,	)	
	)	
v.	)	POST-CONVICTION RELIEF
	)	Case No. 3KN-10-01295CI
STATE OF ALASKA,	)	(formerly 3HO-10-00064CI)
	)	
Respondent.	)	
	)	

(Trial Case No. 4MC-04-00024CR)

9-2-11 REPLY TO STATE'S OPPOSITION TO HAEG'S 1-5-11 MOTION FOR HEARINGS AND RULINGS BEFORE DECIDING STATE'S MOTION TO DISMISS

VRA CERTIFICATION: I certify this document and its attachments do not contain the (1) name of victim of a sexual offense listed in AS 12.61.140 or (2) residence or business address or telephone number of a victim of or witness to any offense unless it is an address identifying the place of a crime or an address or telephone number in a transcript of a court proceeding and disclosure of the information was ordered by the court.

COMES NOW Applicant, DAVID HAEG, and hereby files this reply to state's opposition to Haeg's 1-5-11 motion for hearings and rulings before deciding state's motion to dismiss Haeg's post-conviction relief application.

Prior Proceedings

On January 5, 2011 Haeg filed a motion for hearing and rulings before Haeg's PCR court decided the state's motion to dismiss. See court record.

Seven months later, on August 3, 2011, the court ordered the state to respond to Haeg's 1-5-11 motion for hearings and rulings. See court record.

On August 24, 2011 the state filed an opposition to Haeg's motion. See court record.

Discussion

1. In their opposition to Haeg's request for a hearing before the state's motion to dismiss is decided, the state claims that Haeg (in his January 5, 2011 motion) requested an "evidentiary" hearing and that Haeg is not yet entitled to an evidentiary hearing. See court record. Yet, in direct conflict with the state's claim, Haeg did not ask for an "evidentiary" hearing in his motion. Citing Civil Rule 77 Haeg expressly asked for "a hearing" before the court decided the state's motion to dismiss.

Post-conviction relief proceedings are governed "primarily by the rules of civil procedure" (Hensel v. State, 604 P.2d 222 (AK 1979)). In addition, Civil Rule 77 (e) expressly states:

Rule 77. Motions.

(e) Oral Argument.

(1) If either party desires oral argument on the motion, that party shall request **a hearing** within five days after service of a responsive pleading or the time limit for filing such a responsive pleading, whichever is earlier.

(2) **Except on motions to dismiss**; motions for summary judgment; motions for judgment on the pleadings; other dispositive motions; motions for delivery and motions for attachment, **oral argument shall be held only in the discretion of the judge.** The amount of time to be allowed for oral argument shall be set by the judge.

It is clear Haeg requested a "hearing" exactly as required by Civil Rule 77(e)(1). It would also seem clear that Haeg must be provided the hearing if he

requested one in response to a motion to dismiss – as is the case. And it is hard to dispute the importance of opposing the state's motion – if it is granted Haeg's PCR proceeding, into which he has invested many years of his life, will be over.

2. In their opposition to Haeg's request concerning the illegality of modifying the judgment against him, over 5 years after the fact, the state claims:

"Absent a modified judgment, the state will be unable to dispose of the airplane in any manner and the asset will simply sit in storage indefinitely."

The state is now baldly claiming the end (selling the airplane Haeg used to provide a livelihood – so they don't have to give it back if Haeg prevails in his PCR and to cover up the fact they never provided the due process required when seizing property used as the primary means to provide a livelihood) justifies the means (modifying Haeg's judgment over 5 years after the fact when the law states no judgment may be modified more than a 180 days after judgment is pronounced). See AS 12.55.088 and State v. T.M., 860 P.2d 1286 (AK 1993).

The state, after being informed by Haeg that doing so would violate the law, asked Aniak Magistrate David Woodmancy (when Judge Bauman had already been assigned to Haeg's case and Haeg had subpoenaed Magistrate Woodmancy as a material witness in his PCR case) to modify the judgment against Haeg over 5 years after the fact. On June 8, 2011 Magistrate Woodmancy, who was also shown this would be in violation of the law and who has stated he has no legal training, granted this motion – in direct violation of the law. It is as if the state and Magistrate Woodmancy conspired to knowingly break the law.

The state fails to acknowledge all the due process requirements that were violated in their seizure and forfeiture of the airplane Haeg used to provide a livelihood – including the **required** postseizure hearing, "within days if not hours" to protest anything (including illegality) about the seizure. See Waiste v. State, 10 P.3d 1141 (AK Supreme Court 2000).

The state, on all airplane seizure warrants, falsified all evidence locations to Haeg's guide area and then specifically cited the false location to make the case against Haeg and for airplane seizure/forfeiture. But because the required hearing never took place the state's devastating and intentional falsification of the sworn warrant affidavits was never litigated. Now the state wants to further cover up this incredible breakdown in justice by illegally modifying the judgment against Haeg **so they can cover up they did not follow the law and so there will never be the required hearings that would prove the illegality of the seizure.**

In its opposition the state claims that since Haeg was convicted this all that is necessary to forfeit and sell an airplane that was owned by a corporation that was never charged with anything. The state fails to address the fact that long after seizure the corporation asked for the required hearings concerning its airplane, the state opposed the hearings, and the hearings were denied. Now, over seven years later, the state is still trying to cover up they illegally denied the hearings that had to be provided "within days if not hours" of seizure – hearings that, had they been held, would have proven the seizure and Haeg's prosecution were illegal.

Yet the most incomprehensible issue is that the state continues to persist in claiming Haeg's judgment can be modified in direct violation of the law to cover up their prior constitutional violations. **The government is simply not allowed to break the law to prosecute the common citizen – no matter what the reason.**

Haeg and a growing number of others have discussed the situation in detail and want the court and state to clearly understand the following:

1. That the state told Haeg, who had no prior criminal history whatsoever, that he must take specific actions to save the Wolf Control Program because this was necessary to save the moose resource for all who depended on it. In other words, they told Haeg he had to be the "knight in shining armor" to save an incredibly important and vital state resource.

2. The state then prosecuted Haeg for the exact actions they told him he must take to save the moose resource.

3. To prosecute Haeg the state: (a) falsified all evidence locations (proven by the state's own GPS coordinates) to the Game Management Unit in which Haeg guided; (b) specifically cited the false evidence locations for charging Haeg with guide crimes and for airplane seizure; (c) failed to provide the required prompt hearing so Haeg could dispute the airplane seizure and refused to let Haeg bond the airplane out, as required – crippling Haeg's ability to make a livelihood before he was even charged; (d) forced Haeg to give a 5-hour statement by a grant of immunity (which, **by law**, prevented any further prosecution for the acts Haeg was required to talk about) – and then used Haeg's immunized statement in nearly

everyway possible to prosecute Haeg, going so far as publishing Haeg's statement in the Anchorage Daily News, Alaska's most widely published paper before trial, specifically citing Haeg's statement as reason for the charges Haeg went to trial on, and using Haeg's statement at trial; (e) promised Haeg a plea agreement that only required Haeg to give up one year of guiding and did not require the airplane to be forfeited - and then, after Haeg had already given up the guide year and it was past - changed the already filed charges so they would require the court to take Haeg's guide license for far longer than one year; (f) having their main witness against Haeg (Trooper Brett Gibbens) chauffeur the judge presiding over Haeg's case (Judge Margaret Murphy) during Haeg's trial and sentencing; (g) falsifying the evidence locations during Haeg's trial; (h) testified falsely, during Haeg's sentencing, that they did not know why Haeg had given up a year of guiding before he was ever convicted and sentenced; (i) testified falsely after sentencing that they had not used Haeg's immunized statement – depriving Haeg of any benefit of nearly destroying his business before even being charged; and (j) testified falsely after sentencing that Trooper Gibbens had not chauffeured Judge Murphy before Haeg was sentenced.

4. All 3 of Haeg's attorneys told him the above actions by the state was legal and that there was nothing they could do about it.

5. All evidence that the state told Haeg he must take the very actions the state later charged him with doing was removed out of the official court record

while a cover letter, proving the evidence had been admitted, remained in the official court record.

6. Judge Murphy specifically cited the state's false evidence locations as her reason for sentencing Haeg to the destruction of his guide business – and then testified falsely, during the official investigation into it, that Trooper Gibbens had not chauffeured her before Haeg was sentenced.

7. Judicial conduct investigator Marla Greenstein, in order to corruptly exonerate Judge Murphy, falsified her investigation of Haeg's complaint that Judge Murphy, while she presided over Haeg's case, was chauffeured by Trooper Gibbens, the main witness against Haeg.

8. Judicial conduct investigator Greenstein, to cover up that she falsified her investigation of Judge Murphy, falsified a verified response to Haeg's Alaska Bar Association complaint against Greenstein.

9. The state – to cover up they had (a) seized an airplane with false warrants; (b) did not conduct the required hearing after seizure; (c) refused to let the airplane be bonded out as required; (d) refused the hearing requests by the corporation which owned the airplane; and (e) successfully convinced an ignorant magistrate to illegally modify Haeg's judgment 5 years after the fact to include a judgment against a corporation which had never been charged or convicted of anything – is now asking this court to become a party to the injustice by allowing the illegal modification of Haeg's judgment to stand unaddressed.

10. The proof of the above events is overwhelming.

Conclusion

The justification for our adversarial judicial system is that "truth is best discovered by powerful statements on both sides of the question" and that everyone is "entitled to a fair hearing before an impartial arbitrator." And, as the United States Supreme Court has held in United States v. Cronic, 466 U.S. (1984):

> [I]f the process loses its character as a confrontation between adversaries, the constitutional guarantee is violated. As Judge Wyzanski has written: "While a criminal trial is not a game in which the participants are expected to enter the ring with a near match in skills, neither is it a sacrifice of unarmed prisoners to gladiators."

Yet nearly all of Haeg's true "powerful statements" were prevented from being made or were removed from the court record after they were made. No one ever heard that the state itself told him he must take the actions they then prosecuted him for (which means Haeg could never have been charged and would have destroyed the state's theory Haeg's intent was to benefit his business). No one ever got to hear that the state falsified all the evidence to Haeg's guide area so they could claim the motive behind Haeg's acts were to benefit his guide business. No one ever heard the state had granted Haeg immunity to force him to give a 5-hour statement. No one ever heard that the state then used Haeg's immunized statement to prosecute him. No one ever heard that Haeg gave up a year of he and his wife's only livelihood for a plea agreement with minor charges and after this year was past the state changed the charges to major ones.

And over and over everyone heard the state's false "powerful statements" – that Haeg killed the wolves where he guided to benefit his guide business and that Haeg's actions had nothing to do with the Wolf Control Program - so he must be convicted of guide crimes and sentenced to the destruction of his guide business.

How could truth be "discovered" or a "fair" hearing be had when Haeg was prevented from making powerful true statements and the state was allowed to make powerful false statements?

Who would agree that Haeg had an "impartial arbitrator" when his judge was being chauffeured every morning, noon, and night of his trial by the main witness against him? And then lied about this during the investigation into it?

Haeg's attorneys, by lying to deprive him of every defense and weapon, effectively threw Haeg naked and defenseless into the ring to do battle with the state's seasoned gladiators who were armed to the teeth with unopposed falsehoods. There was no contest.

If attorneys are allowed to lie to their clients and the state prosecution is allowed to break the law, anyone can be convicted of anything – no matter how innocent they are. This is unacceptable and why so many citizens around the world are now determined to end this at any and all cost.

As promised, Haeg will continue to carefully document the growing corruption and cover up in his case; will continue carefully exhausting all state remedies; and will, along with a growing number of those seriously concerned, eventually demand federal prosecution of everyone involved for corruption,

conspiracy, and pattern/practice to cover up for attorneys, judges, and law enforcement who, using the color of law, are violating rights to unjustly strip defendants of everything.

In light of the enormous issues involved, including the most important basis upon which our nation is founded – that we live in a nation of **LAW** - Haeg again asks the court for a hearing before deciding the state's motion to dismiss; again asks the court to declare the order illegally modifying the judgment against Haeg, over 5 years after imposition, illegal and invalid; and asks the court for an order that the state must return the illegally taken aircraft to its registered owner, the Bush Pilot, Inc.

I declare under penalty of perjury the forgoing is true and correct. Executed on September 2, 2011. A notary public or other official empowered to administer oaths is unavailable and thus I am certifying this document in accordance with AS 09.63.020.

David S. Haeg
PO Box 123
Soldotna, Alaska 99669
(907) 262-9249 & 262-8867 fax
haeg@alaska.net

Certificate of Service: I certify that on September 2, 2011 a copy of the forgoing was served by mail to the following parties: Peterson, Judge Gleason, Judge Joannides, U.S. Department of Justice, FBI, and media.
By:

KENAI TRIAL COURT
COPY REQUEST FORM

Please allow 5 working days to complete your request. You will be notified by telephone at the number you provide below when your request is completed and ready for pick-up. If copies are not picked up within 5 days of notification, they may be destroyed.

☐ Call for pick-up ☐ Put in box ☒ Mail to address below (please check choice)

Name of Requestor/Firm: David Haas	
Mailing Address: PO Box 123 Soldotna AK 99669	
Today's Date: 9-2-11	**Telephone:**
Case Number: 3KN-10-01295 CI	**Case Title:** Haas v. SOA

Instructions for listing audio number and log numbers: The media number is located in the upper-left side of the in-court clerk's log notes. The log numbers are listed in the left-hand column of the log notes.

CD REQUEST ($10.00 nonrefundable deposit is required)

FILED in the Trial Courts
State of Alaska Third District
at Kenai, Alaska
SEP - 2 2011
By _____ Clerk of the Trial Courts
Deputy

Complete the information below or attach a copy of the log notes.

☐ CD formatted for Windows

☐ CD formatted for *FTR Gold Software* (**recorded before 10/28/09**)

☐ CD formatted to play for compact disk player (recorded **after** 10/28/09)

☐ CD formatted for transcription (recorded after 10/28/09)
Anything recorded after 10/28/09 will not have media numbers.
The case number, case title, date and times will be required.

NOTE: Failure to provide complete and accurate information may delay the processing of your order.

Date of Proceeding(s):	Media Number:	Beginning Log Number:	Ending Log Number:

PHOTOCOPY REQUEST (.25 per page) (a deposit may be required for large requests)

Check the appropriate box for photocopy request:

☐ Entire Case File

☐ Divorce/Dissolution Decree

☒ Other: July 5, 2011 Decision to reinstate Master Guide License

☐ Log Note
Date of Hearing: _____

☐ Judgment

☐ Review File

Done 9.6.11 AC

To be completed by court

Clerk Assigned: _____ Date of Assignment: _____
Date Completed: _____ Date Requestor Notified: _____
Total Billing: _____ Date Paid/Receipt Number: _____

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT KENAI

Filed in the Trial Courts
State of Alaska, Third District
at Kenai, Alaska

AUG 26 2011

Clerk of the Trial Courts
By _____ Deputy

DAVID HAEG

Applicant

v.

STATE OF ALASKA

Respondent

POST-CONVICTION RELIEF
CASE NO. 3KN-10-01295 CI

Trial Case No. 4MC-04-00024 CR

STATE'S OPPOSITION TO APPLICANT'S 1-5-11 MOTION FOR HEARING AND RULINGS BEFORE DECIDING STATE'S MOTION TO DISMISS

VRA CERTIFICATION. I certify that this document and its attachments do not contain (1) the name of a victim of a sexual offense listed in AS 12.61.140 or (2) a residence or business address or telephone number of a victim or witness to any crime unless it is an address used to identify the place of the crime or it is an address or telephone number in a transcript of a court proceeding and disclosure of the information was ordered by the court.

COMES NOW the State of Alaska, by and through Assistant Attorney General Andrew Peterson, and hereby files this opposition to the Applicant's 1-5-11 motion for hearing and rulings before deciding state's motion to dismiss. The state's opposition is supported by the attached memorandum of law and proposed order.

DATED at Anchorage, Alaska, this 23rd day of August, 2011.

JOHN J. BURNS
ATTORNEY GENERAL

By: _____
A. Andrew Peterson
Assistant Attorney General
Alaska Bar No. 0601002

CERTIFICATION

I certify that on this date, a correct copy of the foregoing, Memorandum and Order were mailed to:

David Haeg

Tina Osgood — Dated 8/24/11

STATE OF ALASKA
DEPARTMENT OF LAW
OFFICE OF SPECIAL PROSECUTIONS AND APPEALS
310 K STREET, SUITE 308
ANCHORAGE, ALASKA 99501
PHONE: (907) 269-6250

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT KENAI

DAVID HAEG)
)
Applicant)
)
v.)
)
STATE OF ALASKA)
)
Respondent)
)

POST-CONVICTION RELIEF
CASE NO. 3KN-10-01295 CI

Trial Case No. 4MC-04-00024 CR

MEMORANDUM OF LAW IN OPPOSITION TO THE APPLICANT'S 1-5-11 MOTION FOR HEARING AND RULINGS BEFORE DECIDING STATE'S MOTION TO DISMISS

VRA CERTIFICATION. I certify that this document and its attachments do not contain (1) the name of a victim of a sexual offense listed in AS 12.61.140 or (2) a residence or business address or telephone number of a victim or witness to any crime unless it is an address used to identify the place of the crime or it is an address or telephone number in a transcript of a court proceeding and disclosure of the information was ordered by the court.

COMES NOW the State of Alaska, by and through Assistant Attorney General Andrew Peterson, and hereby opposes the applicant's motion.

This Court ordered the state to respond to two aspects of the Applicant's motion: (1) asking for a hearing on the state's motion to dismiss; and (2) a ruling on the motion regarding the seizure of the plane and disposition thereof. The state will address each of these in order.

///

///

STATE OF ALASKA
DEPARTMENT OF LAW
OFFICE OF SPECIAL PROSECUTIONS AND APPEALS
310 K STREET, SUITE 308
ANCHORAGE, ALASKA 99501
PHONE: (907) 269-6250

1. Hearing on the State's Motion to Dismiss

This court should deny Haeg's request for a hearing on the state's motion to dismiss at this time. Criminal Rule 35.1 governs applications for post conviction relief. See Parker v. State, 779 P.2d 1245, 1246 (Alaska App. 1989). There are three distinct phases in a PCR application: (1) the filing of the application and assessment of its sufficiency; (2) discovery and review of general issues; and (3) evidentiary hearing and formal resolution. See id. In the first phase, the state may in lieu of responding to the merits of the application, file a motion to dismiss, which is the equivalent to a Civil Rule 12(c) motion for judgment on the pleadings. See id. In this case, the court must determine the adequacy of the application on its face. See id.

The filing of a response by the state on the merits begins the second phase of the PCR application proceedings. This stage is designed to provide "an orderly procedure for the expeditious disposition of non-meritorious applications ... without holding a full evidentiary hearing." See id., citing Fajeriak v. State, 520 P.2d 795, 798 (Alaska 1974). This objective is achieved through the full range of discovery mechanisms available to the parties under the civil rules. See id. Either party may at any time file a motion for summary judgment and disposition may be granted when there

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DEPARTMENT OF LAW
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PHONE: (907) 269-6250

is no genuine issue of material fact in dispute and the party is entitled to judgment as a matter of law. See id.

The final phase of the PCR application proceeding consists of the evidentiary hearing and disposition. See id. A hearing is required when upon the completion of the discovery phase there are still genuine issues of material fact remaining to be resolved by the court. See id. The court enters a final judgment at the end of the hearing process. See id.

The parties in this case are currently waiting for this Court to rule on the state's motion to dismiss and are beginning the discovery phase. The ruling in Parker makes it clear that the evidentiary hearing comes after the discovery phase in the PCR application process. Haeg is entitled to an evidentiary hearing once the discovery in this case is completed. Haeg's request for an evidentiary hearing at this time is premature and should therefore be denied by this Court. The state sent out discovery requests and is diligently working through this process at this time.

2. Ruling on Motion Regarding the Seizure of the Plane and Disposition Thereof

Haeg's motion further seeks a ruling from this Court regarding the state's request to modify the judgment in order to allow for disposition of the airplane forfeited in this case. In the underlying criminal case, Haeg's airplane was seized pursuant to a search warrant. On July 5, 2005, Haeg

STATE OF ALASKA
DEPARTMENT OF LAW
OFFICE OF SPECIAL PROSECUTIONS AND APPEALS
310 K STREET, SUITE 308
ANCHORAGE, ALASKA 99501
PHONE: (907) 269-6250

moved the trial court for an order allowing him to post a bond for the seized airplane. See Exh. 1. In conjunction with that order, Haeg filed a signed and notarized affidavit with the court stating that he was the owner of one Piper PA-12 airplane with FAA Registration no. N4011M. See id. Following Haeg's conviction, the trial court forfeited the airplane to the State of Alaska. The forfeiture was upheld by the court of appeals and the Alaska Supreme Court.

On June 9, 2010, the state filed a motion for modification of Haeg's judgment. See Exh. 2. The state filed a reply to Haeg's opposition on July 2, 2010. See Exh. 3. No order was ever issued on this matter. The state filed a renewed motion for modification of judgment on April 4, 2010. See Exh. 4. The state's motion was granted and then this court imposed a stay on any action by the state with respect to the airplane in question.

Alaska law provides that an aircraft used in aid of a violation of Title 8 or 16 or a regulation adopted under Title 8 or 16 may be forfeited to the state upon conviction of the offender in a criminal proceeding. See AS 16.05.195. This statutory provision does not provide that the offender must actually own the airplane being forfeited. See id., see also State v. Rice, 626 P.2d 104 (Alaska 1981). Haeg appealed the constitutionality of this statutory forfeiture provision and the court of appeals denied his claim.

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DEPARTMENT OF LAW
OFFICE OF SPECIAL PROSECUTIONS AND APPEALS
310 K STREET, SUITE 308
ANCHORAGE, ALASKA 99501
PHONE: (907) 269-6250

The airplane in question was forfeited by the trial court to the State of Alaska, irrespective of its owners. Haeg's corporation, however, is not without recourse to seek remission of the airplane seized and forfeited. Alaska law provides that an innocent non-negligent owner of an airplane that has been forfeited to the state may seek remission of the item forfeited. See State v. Rice, 626 P.2d 104 (Alaska 1981). Thus Haeg's corporation, Bush Pilot's Inc., was entitled to seek remission of the forfeited plane if the corporation could show that it had no reason to know that it would be used to violate the law. Essentially, it must show that it was a non-negligent third party.

The state served both Haeg and Bush Pilot, Inc. a copy of the renewed motion for modification of judgment. The state requested that Bush Pilot, Inc. file a request for a remission hearing in order to give the corporation the opportunity to seek remission. No opposition or request for remission hearing was filed by the corporation. The state is not seeking to limit any of Haeg's rights under his PCR application, but rather to simply title the airplane legally forfeited to the state in order to allow the state to utilize the asset in the manner most appropriate. In this case, it will most likely result in the sale of the asset. Absent a modified judgment, the state will be unable to dispose of the airplane in any manner and the asset will simply sit in storage indefinitely.

STATE OF ALASKA
DEPARTMENT OF LAW
OFFICE OF SPECIAL PROSECUTIONS AND APPEALS
310 K STREET, SUITE 308
ANCHORAGE, ALASKA 99501
PHONE: (907) 269-6250

Conclusion

Based on the above arguments, this Court should first deny Haeg's motion for an evidentiary hearing at this time. Haeg will presumably be entitled to an evidentiary hearing at the conclusion of the discovery phase of the PCR application process. Second, this Court should not seek to modify the amended judgments in this case which are necessary to title the airplane to the State of Alaska. The airplane in question was forfeited to the state irrespective of corporate ownership. The demands placed on the state by the FAA do not change the valid forfeiture ruling upheld by the court of appeals and the Alaska Supreme Courts. If anything, this Court should order that the airplane not be disposed of until the conclusion of the PCR application process.

DATED: August 24, 2011.

JOHN J. BURNS
ATTORNEY GENERAL

By: _____
Andrew Peterson
Assistant Attorney General
Alaska Bar No. 0601002

STATE OF ALASKA
DEPARTMENT OF LAW
OFFICE OF SPECIAL PROSECUTIONS AND APPEALS
310 K STREET, SUITE 308
ANCHORAGE, ALASKA 99501
PHONE: (907) 269-6250

IN THE DISTRICT COURT FOR THE STATE OF ALASKA

FOURTH JUDICIAL DISTRICT AT MCGRATH

STATE OF ALASKA,

Plaintiff,

vs.

DAVID S HAEG,
DOB: 1/19/1966
APSIN ID: 5743491
SSN: 471-72-5023

Defendant.

No. 4MC-S04-24 CR.

RENEWED MOTION FOR MODIFICATION OF JUDGMENT

I certify this document and its attachments do not contain the (1) name of a victim of a sexual offense listed in AS 12.61.140 or (2) residence or business address or telephone number of a victim of or witness to any offense unless it is an address identifying the place of a crime or an address or telephone number in a transcript of a court proceeding and disclosure of the information was ordered by the court.

COMES NOW the State of Alaska, by and through Assistant Attorney General Andrew Peterson, and renews the state's request that this court modify the judgment entered in the above case.

The judgments in the above case provide that the "Piper PA-12 plane tail number N4011M" is forfeited to the State of Alaska. See Exh. 1. The State of Alaska is in the process of selling the Piper PA-12 airplane, but the FAA will not re-register the plane to the State of Alaska without a modified judgment. First, the Piper PA-12 plane in question was registered to Haeg's corporation The Bush Pilot, Inc. See Exhs. 2 & 3. Consequently, the FAA requires that the judgment reflect this fact. Second, The FAA has also requested that the plane's serial number (#12-2888) be listed on the judgment in addition to the identification Piper PA-12 and tail number N4011M.

STATE OF ALASKA
DEPARTMENT OF LAW
OFFICE OF SPECIAL PROSECUTIONS AND APPEALS
310 K STREET, SUITE 308
ANCHORAGE, ALASKA 99501
PHONE: (907) 269-6250

Alaska law provides that an aircraft used in or in aid of a violation of Title 8.54, Title 16 or a regulation adopted under Title 8.54 or Title 16 may be forfeited to the state upon conviction of the offender in a criminal proceeding. See AS 16.05.195. This statutory provision does not provide that the offender must actually own the airplane forfeited. Haeg's appeal challenged the constitutionality of this statutory provision and the court of appeals denied his claim.

Haeg's corporation is, however, not without recourse to seek remission of the airplane seized. Alaska law provides that an innocent non-negligent owner of an airplane that has been forfeited to the state may seek remission of the item forfeited. See State v. Rice, 626 P.2d 104 (Alaska 1981). Thus Bush Pilot, Inc., may seek remission of the forfeited airplane and this court may order its return to the corporation if the corporation can show that prior to allowing Mr. Haeg to fly the plane the corporation did not have reason to know that the airplane would be used to violate the law.

The state is serving The Bush Pilot, Inc., with a copy of this motion. The state further asks this court to set a briefing deadline for The Bush Pilot, Inc. If the corporation does not file a motion seeking remission of the forfeited airplane by the court's deadline, the state would then ask for this court to issue a modified judgment so that the state may properly dispose of the forfeited airplane.

STATE OF ALASKA
DEPARTMENT OF LAW
OFFICE OF SPECIAL PROSECUTIONS AND APPEALS
310 K STREET, SUITE 308
ANCHORAGE, ALASKA 99501
PHONE: (907) 269-6250

The State's request to modify the judgments in this case will not limit Haeg's remedies in the pending PCR application, but will allow the State to register the plane as being owned by the State of Alaska in accordance with the original judgments. Moreover, this court should address the remission issue as there is no basis for raising a remission claim as part of a post conviction relief application.

DATED: April 4, 2011 at Anchorage, Alaska.

JOHN J. BURNS
ATTORNEY GENERAL

By: _____
A. Andrew Peterson
Assistant Attorney General
Alaska Bar No. 0601002

CERTIFICATE OF SERVICE

This is to certify that a copy of the forgoing was [x] mailed [ ] hand delivered [ ] faxed [ ] on April 4, 2011 to David Haeg and The Bush Pilot, Inc to the following address: PO Box 123 Soldotna, Alaska 99669.

_____
Tina Osgood
Law Office Assistant I

STATE OF ALASKA
DEPARTMENT OF LAW
OFFICE OF SPECIAL PROSECUTIONS AND APPEALS
310 K STREET, SUITE 308
ANCHORAGE, ALASKA 99501
PHONE: (907) 269-6250

IN THE DISTRICT COURT FOR THE STATE OF ALASKA

FOURTH JUDICIAL DISTRICT AT MCGRATH

STATE OF ALASKA,

Plaintiff,

vs.

DAVID S HAEG,
DOB: 1/19/1966
APSIN ID: 5743491
SSN: 471-72-5023

Defendant.

No. 4MC-S04-24 CR.

ORDER

Having considered the state's renewed motion for modification of judgment in the above case and being fully advised in the premises,

IT IS HEREBY ORDERED that The Bush Pilot, Inc., will file a motion for remission in the above identified case on or before _____, 2011. If The Bush Pilot, Inc., does not file a motion for remission of the airplane forfeited in the above identified case, this Court will grant the state's motion and modify the judgment accordingly.

Date this ____ day of _____, 2011, McGrath, Alaska.

_____
District Court Judge

EXHIBIT 4
PAGE 4 OF 5
01643

IN THE DISTRICT COURT FOR THE STATE OF ALASKA AT MCGRATH, ALASKA

Screen for VRA

'ate of Alaska

CASE NO. 4MC-04-024CR Count No. V

vs. DAVID HAEG

ATN: 107137278 CTN

DOB: 1/19/1966 DL/ID 5743491 ST: APSIN:

JUDGMENT - FISH and GAME

Date of Offense: March 23, 2004 Statute/Ord/Reg: AS 08.54.720

Offense Charged: Unlawful Acts

PLEA: ☐ Not Guilty ☒ Guilty ☐ No Contest TRIAL: ☐ Court ☐ Jury

☐ Rule 11 Plea Agreement

The defendant was found and adjudged:

☐ NOT GUILTY. IT IS ORDERED that the defendant is acquitted and discharged.

☒ GUILTY of the crime named above.

☐ GUILTY OF _____ Statute/Ord./Reg

☒ Any appearance or performance bond in this case is exonerated. ☐ Bail applied to fine _____

* Amended * SENTENCE * Amended *

☐ Impostion of sentence is suspended and the defendant is placed on probation as set forth below. Any restitution ordered below will continue to be civilly enforceable after probation expires.

☒ Sentence is imposed as follows:

Police training surcharge due in 10 days: ☐ $75 (DUI/Refusal) ☒ $50 (Misd) ☐ $10 (Infrac) ☐ 0 (fine under $30

☒ Defendant is fined $2,500.00 with $1,500.00 suspended. The unsuspended $1,000.00 is to be paid by September 30, 2007.

☒ Jail surcharge (state offenses only): ☒ $150with $100 suspended (if probation ordered)
☐ $50 (if no probation). Due now to Atty. General's Office, 1031 W. 4th. Ave., Suite 200, Anchorage, AK 99501

☒ Defendant is committed to the custody of the Commissioner of Corrections to serve 60 days wit 55 days suspended. The unsuspended 5 days are to be served beginning no later than March 02, 2009. Defendant to be credited for time already served in this case.

☒ The following items are forfeited to the State:

☐ Fish taken in the amount of _____ pounds. ☐ Fair market value of fish taken: _____
Fish ticket number _____

☒ The seized fish or game or any parts thereof: Wolf hides

☒ Equipment used in or in aid of the violation: Piper PA-12 tail # N4011M, guns and ammunition

☐

☒ Defendant's Guiding license is Suspended for 5 years

☐ Defendant is ordered to pay restitution as stated in the Restitution Judgment and to apply for an Alaska Permanent Fund Dividend, if eligible, each year until restitution is paid in full.

☐ The amount of restitution will be determined as provided in Criminal Rule 32.6(c)(2).

IN THE DISTRICT COURT FOR THE STATE OF ALASKA AT MCGRATH

☒ STATE OF ALASKA ☐ CASE NO. 4MC-04-02[illegible]CR

RECEIVED
OCT 11 20[illegible]
ROBINSON & ASSOCIA
LAWYERS

vs.
DAVID HAEG ATN Tracking No. Count I

DOB 1-19-66 ID# 5743491 ATN: 107117278

JUDGMENT – FISH AND GAME

Date of Offense: March 5, 2004 Statute/Ord./Reg. AS 8.54.720(a)(15)
Offense Charged: Unlawful Acts by a Guide: Same Day Airborne ☒ Misdemeanor ☐ Violation
PLEA: ☒ Not Guilty ☐ Guilty ☐ No Contest TRIAL: ☐ Court ☒ Jury

The defendant was found and adjudged:

☐ NOT GUILTY. IT IS ORDERED that the defendant is acquitted and discharged.
☒ GUILTY of the offense named above.
☐ GUILTY OF _____
Statute/Ord./Reg.
☐ Any appearance or performance bond in this case is exonerated. ☐ Bail to apply to fine.

SENTENCE

☐ Imposition of sentence is suspended and the defendant is placed on probation. Any restitution ordered below will continue to be civilly enforceable after probation expires.
☒ Sentence is imposed as follows:
Police training surcharge due in 10 days: ☒ $50 (Misdemeanor) ☐ $10 (violation)
☒ Defendant is fined $ 2,500.00 with $ 1,500.00 suspended. The unsuspended $ 1,000.00 is to be paid to the McGrath District Court, P.O. Box 142, McGrath, AK 99627 by 9-30-07.
☐ Jail surcharge ☐ $150 with $100 suspended (if probation ordered) ☐ $50 (if no probation)
Due now to Attorney General's Office, 1031 W. 4th Ave., Suite 200, Anchorage, AK 99501
☒ Defendant is committed to the custody of the Commissioner of Corrections to serve 60 days with 55 ~~(hours)~~ (days) suspended. The unsuspended 5 ~~(hours)~~ (days) are to be served at the direction of the jail. Remand date 11-1-05 at 2:30pm at Kenai Court.
☒ The following items are forfeited to the State:
☐ Fish taken in the amount of _____ pounds. ☐ Fair market value of fish taken $_____
Fish Ticket Number _____
☒ The seized fish or game or any parts thereof: Wolf hides
☒ Equipment used in or in aid of the violation: Piper PA-12 plane tail number N4011M,
☒ Guns and ammunition
☒ Defendant's ☒ ~~sport fishing~~ sport ☐ hunting ☐ trapping license is revoked ~~until~~ for 5 years.
☐ Defendant's commercial fishing privileges and licenses are suspended for _____ months/years.
☒ The defendant is ordered to pay restitution as stated in the Restitution Judgment and to apply for an Alaska Permanent Fund Dividend, if eligible, each year until restitution is paid in full.
☐ The amount of restitution will be determined as provide in Criminal Rule 32.6 (c) (2)

☒ Defendant is placed on probation for 2 year(s), subject to the following conditions:
☒ Comply with all direct court orders listed above by the deadlines stated.
☒ Commit no ~~fish and game~~ violations during the probation period.
☐ Commit no commercial fishing violations during the probation period.
☒ Not participate in any way with any predator control program.

EXHIBIT 4
PAGE 6 OF 15

9-30-05
Effective Date

Margaret L. Murphy
Judge's Signature
Margaret L. Murphy
Type or Print Judge's Name

I certify that on 10-5-05 a copy this Judgment was sent to: DA, AST, DPS, PA Robinson
Clerk: [illegible]

CR-404 (2/05) CAR COPY
Crim. R. 32 AND 32.6

Need draft Serial #

IN THE DISTRICT COURT FOR THE STATE OF ALASKA AT MCGRATH

☒ STATE OF ALASKA ☐ CASE NO: 4MC-04-02 CR

RECEIVED
OCT 11 2005
ROBINSON & ASSOCIATES LAWYERS

vs.
DAVID HAEG ATN Tracking No. (Count) .

DOB 1-19-66 ID# 5743491 ATN 107137278

JUDGMENT – FISH AND GAME

Date of Offense: March 5, 2004 Statute/Ord./Reg. AS 8.54.720(a)(15)
Offense Charged: Unlawful Acts by a Guide: Same Day Airborne ☒ Misdemeanor ☐ Violation
PLEA: ☒ Not Guilty ☐ Guilty ☐ No Contest TRIAL: ☐ Court ☒ Jury

The defendant was found and adjudged:

☐ NOT GUILTY. IT IS ORDERED that the defendant is acquitted and discharged.
☒ GUILTY of the offense named above.
☐ GUILTY OF _____
Statute/Ord./Reg.
☐ Any appearance or performance bond in this case is exonerated. ☐ Bail to apply to fine.

SENTENCE

☐ Imposition of sentence is suspended and the defendant is placed on probation. Any restitution ordered below will continue to be civilly enforceable after probation expires.
☒ Sentence is imposed as follows:
Police training surcharge due in 10 days: ☒ $50 (Misdemeanor) ☐ $10 (violation)
☒ Defendant is fined $ 2,500.00 with $ 1,500.00 suspended. The unsuspended $ 1,000.00 is to be paid to the McGrath District Court, P.O. Box 149, Anak, AK 99557 by 9-30-07.
☐ Jail surcharge ☐ $150 with $100 suspended (if probation ordered) ☐ $50 (if no probation) Due now to Attorney General's Office, 1031 W. 4th Ave., Suite 200, Anchorage, AK 99501
☒ Defendant is committed to the custody of the Commissioner of Corrections to serve 60 days with 55 ~~(hours)~~ (days) suspended. The unsuspended 5 ~~(hours)~~ (days) are to be served at the direction of the jail. Remand date 11-1-05 at 2:30pm at Kenai Court.
☒ The following items are forfeited to the State:
☐ Fish taken in the amount of _____ pounds. ☐ Fair market value of fish taken $_____
Fish Ticket Number_____
☒ The seized fish or game or any parts thereof: Wolf hides
☒ Equipment used in or in aid of the violation: Piper PA-12 plane tail number N4011M,
☒ Guns and ammunition
☒ Defendant's ☒ ~~sport fishing~~ guide-ing ☐ hunting ☐ trapping license is revoked ~~until~~ for 5 years.
☐ Defendant's commercial fishing privileges and licenses are suspended for _____ months/years.
☒ The defendant is ordered to pay restitution as stated in the Restitution Judgment and to apply for an Alaska Permanent Fund Dividend, if eligible, each year until restitution is paid in full.
☐ The amount of restitution will be determined as provide in Criminal Rule 32.6 (c) (2)

☒ Defendant is placed on probation for 7 year(s), subject to the following conditions:
☒ Comply with all direct court orders listed above by the deadlines stated.
☒ Commit no fish and game violations during the probation period.
☐ Commit no commercial fishing violations during the probation period.
☒ Not participate in any way with any predator control program.

9-30-05
Effective Date

Margaret L. Murphy
Judge's Signature
Margaret L. Murphy
Type or Print Judge's Name

I certify that on 10-5-05 a copy this Judgment was sent to: Def, Atty, DPS, PA Robinson
Clerk: [signature]

EXHIBIT 4
PAGE 1 OF 15

CR-464 (2/05) Crim. R. 32 AND 32.6

IN THE DISTRICT COURT FOR THE STATE OF ALASKA AT MCGRATH

☒ STATE OF ALASKA ☐ CASE NO. 4MC-04-024CR

vs.

DAVID HAEG ATN Tracking No. Count II

DOB 1-19-66 ID# 574349 ATN 107137278

JUDGMENT – FISH AND GAME

Date of Offense: March 6, 2004 Statute/Ord./Reg. AS 8.54.720(a)(15)

Offense Charged: Unlawful Acts by a Guide: Same Day Airborne ☒ Misdemeanor ☐ Violation

PLEA: ☒ Not Guilty ☐ Guilty ☐ No Contest TRIAL: ☐ Court ☒ Jury

The defendant was found and adjudged:

☐ NOT GUILTY. IT IS ORDERED that the defendant is acquitted and discharged.
☒ GUILTY of the offense named above.
☐ GUILTY OF _____
Statute/Ord./Reg.

☐ Any appearance or performance bond in this case is exonerated. ☐ Bail to apply to fine.

SENTENCE

☐ Imposition of sentence is suspended and the defendant is placed on probation. Any restitution ordered below will continue to be civilly enforceable after probation expires.

☒ Sentence is imposed as follows:

Police training surcharge due in 10 days: ☒ $50 (Misdemeanor) ☐ $10 (violation)

☒ Defendant is fined $ 3,500.00 with $ 1,500.00 suspended. The unsuspended $ 1,000.00 is to be paid to the McGrath District Court by 9-30-07.

☐ Jail surcharge ☐ $150 with $100 suspended (if probation ordered) ☐ $50 (if no probation)
Due now to Attorney General's Office, 1031 W. 4th Ave., Suite 200, Anchorage, AK 99501

☒ Defendant is committed to the custody of the Commissioner of Corrections to serve 60 days with 55 ~~(hours)~~ (days) suspended. The unsuspended 5 ~~(hours)~~ (days) are to be served at the direction of the jail. Remand date 11-1-05 at 2:30p at Kenai Court.

☒ The following items are forfeited to the State:

☐ Fish taken in the amount of _____ pounds. ☐ Fair market value of fish taken $_____
Fish Ticket Number _____

☒ The seized fish or game or any parts thereof: Wolf Hides

☒ Equipment used in or in aid of the violation: Piper PA-12 plane

☒ Guns and ammunition

☒ Defendant's ☒ ~~sport fishing~~ guiding ☐ hunting ☐ trapping license is revoked ~~until~~ for 5 years

☐ Defendant's commercial fishing privileges and licenses are suspended for _____ months/years.

☒ The defendant is ordered to pay restitution as stated in the Restitution Judgment and to apply for an Alaska Permanent Fund Dividend, if eligible, each year until restitution is paid in full.

☐ The amount of restitution will be determined as provide in Criminal Rule 32.6 (c) (2)

☒ Defendant is placed on probation for 2 year(s), subject to the following conditions:

☒ Comply with all direct court orders listed above by the deadlines stated.
☒ Commit no ~~fish and game~~ violations during the probation period.
☐ Commit no commercial fishing violations during the probation period.
☒ Not participate in any way in the any private control program

EXHIBIT 4
PAGE 8 OF 15

9-30-05
Effective Date

Margaret L. Murphy
Judge's Signature
Margaret L. Murphy
Type or Print Judge's Name

I certify that on 10-5-05 a copy this Judgment was sent to: DA, F&B, ~~ASST~~, DPS

Clerk: _____

CR-404 (2/05) JUDGMENT - DISTRICT COURT - FISH AND GAME Crim. R. 32 AND 32.8

IN THE DISTRICT COURT FOR THE STATE OF ALASKA AT MCGRATH

☒ STATE OF ALASKA ☐ CASE NO. 4MC-04-024CR

vs.

DAVID HAEG ATN Tracking No. Count V

DOB 1-12-66 ID# 5743491 ATN 107137278

JUDGMENT – FISH AND GAME

Date of Offense: March 23, 2004 Statute/Ord./Reg. AS 8.54.720(a)(15)

Offense Charged: Unlawful Acts by a Guide: Same Day Airborne. ☒ Misdemeanor ☐ Violation

PLEA: ☒ Not Guilty ☐ Guilty ☐ No Contest TRIAL: ☐ Court ☒ Jury

The defendant was found and adjudged:

☐ NOT GUILTY. IT IS ORDERED that the defendant is acquitted and discharged.

☒ GUILTY of the offense named above.

☐ GUILTY OF _____
Statute/Ord./Reg.

☐ Any appearance or performance bond in this case is exonerated. ☐ Bail to apply to fine.

SENTENCE

☐ Imposition of sentence is suspended and the defendant is placed on probation. Any restitution ordered below will continue to be civilly enforceable after probation expires.

☒ Sentence is imposed as follows:

Police training surcharge due in 10 days: ☒ $50 (Misdemeanor) ☐ $10 (violation)

☒ Defendant is fined $ 2500.00 with $ 1,500.00 suspended. The unsuspended $ 1,000.00 is to be paid to the McGrath District Court by 9-30-05

☐ Jail surcharge ☐ $150 with $100 suspended (if probation ordered) ☐ $50 (if no probation)
Due now to Attorney General's Office, 1031 W. 4th Ave., Suite 200, Anchorage, AK 99501

☒ Defendant is committed to the custody of the Commissioner of Corrections to serve 60 days with 55 ~~(hours)~~ (days) suspended. The unsuspended 5 ~~(hours)~~ (days) are to be served at the direction of the jail. Remand date: 11-1-05

☒ The following items are forfeited to the State:

☐ Fish taken in the amount of _____ pounds. ☐ Fair market value of fish taken $ _____

Fish Ticket Number _____

☒ The seized fish or game or any parts thereof: Wolf hides

☒ Equipment used in or in aid of the violation: Super PA-12 plane, Guns and ammunition

☐ _____

☒ Defendant's ☒ ~~sport fishing~~ ☐ hunting ☐ trapping license is revoked ~~until~~ for 5 years.

☐ Defendant's commercial fishing privileges and licenses are suspended for _____ months/years.

☒ The defendant is ordered to pay restitution as stated in the Restitution Judgment and to apply for an Alaska Permanent Fund Dividend, if eligible, each year until restitution is paid in full.

☐ The amount of restitution will be determined as provided in Criminal Rule 32.6 (c) (2)

☒ Defendant is placed on probation for 2 year(s), subject to the following conditions:

☒ Comply with all direct court orders listed above by the deadlines stated.

☒ Commit no ~~fish and game~~ violations during the probation period.

☐ Commit no commercial fishing violations during the probation period.

☒ Not participate in any way with any predator control program.

EXHIBIT 4
PAGE 9 OF 15

9-30-05
Effective Date

Margaret L. Murphy
Judge's Signature
Margaret L. Murphy
Type or Print Judge's Name

I certify that on 10-5-05 a copy this Judgment was sent to: Defendant, DA, Robinson, Asst. DPS
Clerk: [signature]

CR-464 (2/05) Crim. R. 32 AND 32.6
JUDGMENT – DISTRICT COURT – FISH AND GAME

01648

Alaska Corporations, Business and Professional Licensing

Search
- By Entity Name
- By AK Entity #
- By Officer Name
- By Registered Agent
- Verify
- Verify Certification
- Biennial Report
- File Online
- Initial Biennial Report
- LLC
- File Online
- Business Corporation
- File Online
- Online Orders
- Register for Online Orders
- Order Good Standing
- Name Registration
- Register a Business Name Online
- Renew a Business Name

Date: 4/4/2011

Filed Documents

(Click above to view filed documents that are available.)

Print Blank Biennial Report

(To view the report, you must have Acrobat Reader installed.)

Entity Name History

Name	Name Type
THE BUSH PILOT, INC.	Legal

Business Corporation Information

AK Entity #:	57078D
Status:	Active - Non Compliant
Entity Effective Date:	11/17/1995
Primary NAICS Code:	
Home State:	AK
Principal Office Address:	PO BOX 123 SOLDOTNA AK 99669
Expiration Date:	Perpetual
Last Biennial Report Filed Date:	10/18/2006
Last Biennial Report Filed:	2007

Registered Agent

Agent Name:	DAVID HAEG
Office Address:	LOT 3 BLK 2 NORTH SHORE RIDGE SUBD SOLDOTNA AK 99669
Mailing Address:	PO BOX 123 SOLDOTNA AK 99669
Principal Office Address:	PO BOX 123 SOLDOTNA AK 99669

Officers, Directors, 5% or more Shareholders, Members or Managers

Name:	**David S Haeg**
Address:	PO Box 123 Soldotna AK 99669
Title:	President
Owner Pct:	100
Name:	David S Haeg

EXHIBIT 4
PAGE 10 OF 15

EXHIBIT 2
PAGE 1 OF 2

01649

Address:	PO Box 123 Soldotna AK 99669
Title:	Director
Owner Pct:	100

Name:	**Jackie a Haeg**
Address:	Same As President
Title:	Secretary
Owner Pct:	

Name:	**Jackie a Haeg**
Address:	Same As President
Title:	Treasurer
Owner Pct:	

Name:	**Jackie a Haeg**
Address:	Same As President
Title:	Director
Owner Pct:	

Officers & Directors

E-mail the Corporations Staff (907) 465-2550

EXHIBIT 4
PAGE 11 OF 15

Page 2 of 2

01650

Aircraft Inquiries

N-Number
Serial Number
Name
Make / Model
Engine Reference
Dealer
Document Index
State and County
Territory and Country
Pending / Expired / Canceled Registration Reports
N-number Availability

Request a Reserved N-Number:
- Online
- In Writing

Reserved N-Number Renewal
- Online

Request for Aircraft Records
- Online

Help
Main Menu
Aircraft Registration
Aircraft Downloadable Database
Definitions
N-Number Format
Registrations at Risk
Contact Aircraft Registration

FAA REGISTRY
Serial Number Inquiry Results

Serial Number Entered: 12-2888
Sorted By: N-Number

N-Number	Manufacturer Name	Model	Name Address
4011M	PIPER	PA-12	BUSH PILOT INC PO BOX 123 SOLDOTNA, AK 99669-0123

Data Updated each Federal Working Day at Midnight

Showing 1 - 1 of 1 (Page 1 of 1)

EXHIBIT 4
PAGE 12 OF 15

EXHIBIT 3
PAGE 1 OF 3

01651

Aircraft Inquiries

N-Number
Serial Number
Name
Make / Model
Engine Reference
Dealer
Document Index
State and County
Territory and Country
Pending / Expired / Canceled Registration Reports
N-number Availability

Request a Reserved N-Number:
- Online
- In Writing

Reserved N-Number Renewal
- Online

Request for Aircraft Records
- Online

Help
Main Menu
Aircraft Registration
Aircraft Downloadable Database

FAA REGISTRY
N-Number Inquiry Results

N4011M is Assigned

Data Updated each Federal Working Day at Midnight

Aircraft Description

Serial Number	12-2888	Type Registration	Corporation
Manufacturer Name	PIPER	Certificate Issue Date	12/18/1996
Model	PA-12	Expiration Date	06/30/2013
Type Aircraft	Fixed Wing Single-Engine	Status	Valid
Pending Number Change	None	Type Engine	Reciprocating
Date Change Authorized	None	Dealer	No
MFR Year	1947	Mode S Code	51131337
		Fractional Owner	NO

Registered Owner

Name	BUSH PILOT INC		
Street	PO BOX 123		
City	SOLDOTNA	State	ALASKA
County	KENAI PENINSULA	Zip Code	99669-0123
Country	UNITED STATES		

Definitions
N-Number Format
Registrations at Risk
Contact Aircraft Registration

Engine Manufacturer	LYCOMING	Classification	Restricted
Engine Model	O-360-A1A	Category	Aerial Advertising
		A/W Date	06/04/2003

This is the most current Airworthiness Certificate data, however, it may not reflect the current aircraft configuration. For that information, see the aircraft record. A copy can be obtained at Http://aircraft.faa.gov/e.gov/ND/airrecordsND.asp

Other Owner Names

None

Temporary Certificate

None

Fuel Modifications

None

Data Updated each Federal Working Day at Midnight

NEW SEARCH BACK TO TOP

EXHIBIT 4
PAGE 14 OF 15 Page 3 of 3

01653

hp LaserJet 4345mfp series

Fax Call Report 1

State of Alaska Dept. of Law
9072697939
Aug-23-2011 03:24 PM

Job	Date/Time	Type	Identification	Duration	Pages	Result
1969	Aug-23-2011 03:20 PM	Send	919078424782	3:45	7	Success

FACSIMILE TRANSMISSION COVER SHEET

OFFICE OF SPECIAL PROSECUTIONS AND APPEALS
Rural Prosecution Unit/Cold Case Unit
310 K Street, Suite 308
Anchorage, Alaska 99501-2064
PHONE: (907) 269-0407 FAX: (907) 269-7939

Date: August 23, 2011

To:

Naknek Court	907 246-7418
Judge Torrisi Chambers	907 842-5747
Dillingham PD	907 842-4782

From: Molly Hawkins / Rural Prosecutions and Cold Case, Assistant to Gregg Olson

Re: SOA v. Kalmakoff, Byron 3NA-03-86 cr

Number of Pages Including this Sheet: 7

Message: Please see attached the Opposition To Motion For Bail Hearing – State's Position As Directed By The Court followed by an Order and Affidavit.

Please note our updated fax number as of June 20th 2011.

Thank you.

Please inform us immediately if you do not receive this transmission in full.
(907) 269-0407 Ask for: Molly.

EXHIBIT 4
PAGE 15 OF 15
01654

IN THE DISTRICT COURT FOR THE STATE OF ALASKA

FOURTH JUDICIAL DISTRICT AT MCGRATH

STATE OF ALASKA,

Plaintiff,

vs.

DAVID S HAEG,
DOB: 1/19/1966
APSIN ID: 5743491
SSN: 471-72-5023

Defendant.

No. 4MC-S04-24 CR.

REPLY TO HAEG'S OPPOSITION TO THE STATE'S MOTION FOR MODIFICATION OF JUDGMENT

I certify this document and its attachments do not contain the (1) name of a victim of a sexual offense listed in AS 12.61.140 or (2) residence or business address or telephone number of a victim of or witness to any offense unless it is an address identifying the place of a crime or an address or telephone number in a transcript of a court proceeding and disclosure of the information was ordered by the court.

COMES NOW the State of Alaska, by and through Assistant Attorney General Andrew Peterson, and hereby files this reply to Haeg's Opposition to the State's Motion for Modification of Judgment, Request for Protective Order and Motion for Consolidation.

Haeg filed an opposition to the State's motion claiming that there is no authority to modify the judgment, that Criminal Rule 35 prohibits modification after 180 days and that the State falsified the FAA's requirements for registering an airplane. Haeg is mistaken in is claims alleged in his opposition. This Court should modify the judgments issued in this case as it is the only way to affect the court's judgment and to provide meaning to the forfeiture statutes utilized in this case.

STATE OF ALASKA
DEPARTMENT OF LAW
OFFICE OF SPECIAL PROSECUTIONS AND APPEALS
310 K STREET, SUITE 308
ANCHORAGE, ALASKA 99501
(907) 269-6250

The judgment entered on September 30, 2005 provided that "Piper PA-12 plane tail number N4011M" is forfeited to the State of Alaska. See Exh. 1. This judgment gives title of the airplane to the State of Alaska as against all owners. If there was an innocent third party owner, that owner is entitled to a remission hearing in which the innocent third party owner can establish that they did not know or have reason to believe that the property would be used to violate the law. See State v. Rice, 626 P.2d 104 (Alaska 1981).

In Rice, the defendant was convicted of committing a number of fish and game violations while using an airplane. In addition to other sanctions, the trial court ordered the forfeiture of the Cessna airplane used in committing the offenses. See id at 105. The defendant appealed and Cessna Finance Corp. sought and were granted leave to intervene in the case. Cessna did not challenge the constitutionality of the State's forfeiture laws, but rather its application as to an innocent holder of a security interest. See id at 111. The Court in Rice found that Cessna was able to assert that it was an innocent holder of a security interest and thus remanded the case for a remission hearing. The purpose of the remission hearing was to allow Cessna the opportunity to show that it was entitled to reimbursement from the state for its share in the forfeited airplane at the time of seizure. Cessna was **not** entitled to the return of the property in question.

In the present case, Haeg will be unable to show the existence of an innocent third party owner. The corporation "The Bush Pilot, Inc." is an entity that is 100% owned by David Haeg. See Exh. 2. Haeg's spouse was listed as a secretary, treasurer and director, but in filings with the State of Alaska, Corporations, Business and Professional Licensing Department, Mrs. Haeg does not have any ownership in "The Bush Pilot, Inc.".

The Bush Pilot, Inc. is nothing more than an alter ego for David Haeg. The doctrine of piercing the corporate veil refers to instances in which courts disregard the fundamental principle of limited liability of a corporate entity and instead impose

STATE OF ALASKA
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OFFICE OF SPECIAL PROSECUTIONS AND APPEALS
310 K STREET, SUITE 308
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(907) 269-6250

liability upon its shareholders. The test involves a two prong analysis by the court first determining who controls the corporation and second whether there was misconduct by the corporation or its shareholders. See Eagle Air, Inc. v. Corroon & Black/Dawson & Co., 648 P.2d 1000 (Alaska 1982). In this case, David Haeg controlled the corporation and he committed the criminal offenses for which he was convicted. Consequently, there is no basis for allowing him to now claim that his plane was actually owned by an innocent third party corporation.

In his opposition, Haeg first claims that there is no legal authority for modifying the judgment and that Criminal Rule 35 prohibits modification of a judgment after 180 days. Criminal Rule 35, however, applies to a "reduction, correction or suspension of sentence" not a modification of the judgment which is necessary to affect the clear intent of the trial court. In this case, the clear intent of the court was to forfeit David Haeg's interest in his airplane. The airplane was registered to a corporation that David Haeg was the president and 100% shareholder. The airplane in question has already been forfeited to the State of Alaska. The State is now simply seeking a modified judgment that will allow the State to sell the airplane.

If this Court were to determine that Criminal Rule 35 applies in this case, Criminal Rule 53 provides this Court with the authority to relax Criminal Rule Criminal Rule 35. Criminal Rule 53 authorizes courts to relax the criminal rules when a strict adherence to the rules will result in an injustice. One of the purposes for allowing forfeiture in Alaska is "to prevent possible use of the property in further illicit acts." See State v. Rice, 626 P.2d 104, 114 (Alaska 1981). "This purpose is well served when the seized property is not returned to the offender." See id. The purpose is not well served when the "interests of innocent non-negligent third parties are left unprotected or uncompensated." See id.

The airplane used by Haeg to commit his criminal offenses was forfeited to the State of Alaska. Alaska Statute AS 16.05.195(f) provides that an item forfeited under this section shall be disposed of at the discretion of the department. In this case,

STATE OF ALASKA
DEPARTMENT OF LAW
OFFICE OF SPECIAL PROSECUTIONS AND APPEALS
310 K STREET, SUITE 308
ANCHORAGE, ALASKA 99501
(907) 269-6250

the Department of Fish and Game has determined the best course of action is to sell the airplane. In order to sell the airplane, the Civil Air Registry of the FAA has specific administrative requirements that must be met.[1] See Exh. 3. The judgment must reflect the registered owner's name and a complete description of the aircraft, including the make, model, and serial number. See id.

Haeg, in his opposition, filed a motion for a protective order and motion for the modified judgment to be decided by the PCR court. The State opposes both of Haeg's requests as there is no basis for his request. Haeg's underlying criminal case was appealed to the Alaska Court of Appeals, the Alaska Supreme Court and ultimately his case was rejected by the U.S. Supreme Court. The State's conviction of Haeg was upheld, including the forfeiture of his aircraft. Given the extensive litigation in this case, there is no basis for Haeg to now seek a protective order or to seek to add new claims to his pending PCR claim.

The State is not seeking to limit the rights of any innocent third party or to reduce, correct or suspend a sentence. Rather, the State is seeking to simply modify the judgments imposed in this present case in order to affect the judgment already imposed. This court forfeited Haeg's Piper PA-12 to the State of Alaska. The State is merely seeking to have the judgment reflect the information necessary in order to allow the State to register the plane that was actually forfeited. This process will not result in a change in the actual judgment, but rather simply allow the State to fulfill its statutory obligation of disposing of this airplane. If there is an innocent third party owner that can establish the factors set forth in Rice, that person or entity is entitled to a remission hearing. If not, there is no basis for this Court refusing to modify the judgment, which

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OFFICE OF SPECIAL PROSECUTIONS AND APPEALS
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ANCHORAGE, ALASKA 99501
(907) 269-6250

[1] Haeg claims that the State falsified the requirements of the FAA. This claim is without merit. The State attached Exh. 3 to its reply which expressly states that registry "requires that the Amended Judgment cites the name of the registered owner of the aircraft."

will result in nothing more than simply allowing the State to dispose of the airplane as was intended by the original forfeiture order.

DATED: July 2, 2010 at Anchorage, Alaska.

DANIEL S. SULLIVAN
ATTORNEY GENERAL

By: _____
Andrew Peterson
Assistant Attorney General
Alaska Bar No. 0601002

CERTIFICATE OF SERVICE

This is to certify that a copy of the forgoing was [x] mailed [ ] hand delivered [ ] faxed [ ] on July 2, 2010 to the following attorney/parties of record: David Haeg PO Box 123 Soldotna, Alaska 99669.

_____
Tina Osgood
Law Office Assistant I

STATE OF ALASKA
DEPARTMENT OF LAW
OFFICE OF SPECIAL PROSECUTIONS AND APPEALS
310 K STREET, SUITE 308
ANCHORAGE, ALASKA 99501
(907) 269-6250

IN THE DISTRICT COURT FOR THE STATE OF ALASKA AT MCGRATH

☒ STATE OF ALASKA ☐ CASE NO. 4MC-04-024CR

vs.
DAVID HAEG ATN Tracking No. Count I

DOB 1-19-66 ID# 5743491 ATN. 107137278

JUDGMENT – FISH AND GAME

Date of Offense: March 5, 2004 Statute/Ord./Reg. AS 8.54.720(a)(15).
Offense Charged: Unlawful Acts by a Guide: Same Day Airborne ☒ Misdemeanor ☐ Violation

PLEA: ☒ Not Guilty ☐ Guilty ☐ No Contest TRIAL: ☐ Court ☒ Jury

The defendant was found and adjudged:

☐ NOT GUILTY. IT IS ORDERED that the defendant is acquitted and discharged.
☒ GUILTY of the offense named above.
☐ GUILTY OF _____
Statute/Ord./Reg.
☐ Any appearance or performance bond in this case is exonerated. ☐ Bail to apply to fine.

SENTENCE

☐ Imposition of sentence is suspended and the defendant is placed on probation. Any restitution ordered below will continue to be civilly enforceable after probation expires.
☒ Sentence is imposed as follows:
Police training surcharge due in 10 days: ☒ $50 (Misdemeanor) ☐ $10 (violation)
☒ Defendant is fined $ 2,500.00 with $ 1,500.00 suspended. The unsuspended $ 1,000.00 is to be paid to the McGrath District Court, P.O. Box 149, Anvik, AK 99557 by 9-30-07.
☐ Jail surcharge ☐ $150 with $100 suspended (if probation ordered) ☐ $50 (if no probation)
Due now to Attorney General's Office, 1031 W. 4th Ave., Suite 200, Anchorage, AK 99501
☒ Defendant is committed to the custody of the Commissioner of Corrections to serve 60 days with 55 ~~(hours)~~ (days) suspended. The unsuspended 5 ~~(hours)~~ (days) are to be served at the direction of the jail. Remand date 11-1-05 at 2:30pm at Kina. Court.
☒ The following items are forfeited to the State:
☐ Fish taken in the amount of _____ pounds. ☐ Fair market value of fish taken $_____
Fish Ticket Number_____
☒ The seized fish or game or any parts thereof: Wolf hides
☒ Equipment used in or in aid of the violation: Piper PA-12 plane tail number N4011M,
☒ Guns and ammunition
☒ Defendant's ☒ ~~sport fishing~~ guiding ☐ hunting ☐ trapping license is revoked ~~until~~ for 5 years.
☐ Defendant's commercial fishing privileges and licenses are suspended for _____ months/years.
☒ The defendant is ordered to pay restitution as stated in the Restitution Judgment and to apply for an Alaska Permanent Fund Dividend, if eligible, each year until restitution is paid in full.
☐ The amount of restitution will be determined as provide in Criminal Rule 32.6 (c) (2)

☒ Defendant is placed on probation for 7 year(s), subject to the following conditions:
☒ Comply with all direct court orders listed above by the deadlines stated.
☒ Commit no ~~fish and game~~ violations during the probation period.
☐ Commit no commercial fishing violations during the probation period.
☒ Not participate in any way with any predator control program.

EXHIBIT 3
PAGE 6 OF 15

9-30-05
Effective Date

Margaret L. Murphy
Judge's Signature
Margaret L. Murphy
Type or Print Judge's Name

I certify that on 10-5-05 a copy this Judgment was sent to: Def ASA DPS DA Kubitsky
Clerk: [illegible]

CR-464 (2/05)
JUDGMENT – DISTRICT COURT- FISH AND GAME

Crim. R. 32 AND 32.6
AS12.55.041

01660

Exh. 1
Pg. 1 of 3

IN THE DISTRICT COURT FOR THE STATE OF ALASKA AT MCGRATH, ALASKA

Screen for VRA

State of Alaska CASE NO. 4MC-04-024CR Count No. V

vs. DAVID HAEG ATN: 107137278 CTN ____

DOB: 1/19/1966 DL/ID 5743491 ST: _____ APSIN: _____

JUDGMENT - FISH and GAME

Date of Offense: March 23, 2004 Statute/Ord/Reg: AS 08.54.720

Offense Charged: Unlawful Acts

PLEA: ☐ Not Guilty ☒ Guilty ☐ No Contest TRIAL: ☐ Court ☐ Jury

The defendant was found and adjudged: ☐ Rule 11 Plea Agreement

☐ NOT GUILTY. IT IS ORDERED that the defendant is acquitted and discharged.

☒ GUILTY of the crime named above.

☐ GUILTY OF _____ Statute/Ord./Reg

☒ Any appearance or performance bond in this case is exonerated. ☐ Bail applied to fine _____

* Amended * SENTENCE * Amended *

☐ Impostion of sentence is suspended and the defendant is placed on probation as set forth below. Any restitution ordered below will continue to be civilly enforceable after probation expires.

☒ Sentence is imposed as follows:

Police training surcharge due in 10 days: ☐ $75 (DUI/Refusal) ☒ $50 (Misd) ☐ $10 (Infrac) ☐ 0 (fine under $30)

☒ Defendant is fined $2,500.00 with $1,500.00 suspended. The unsuspended $1,000.00 is to be paid by September 30, 2007.

☒ Jail surcharge (state offenses only): ☒ $150 with $100 suspended (if probation ordered)
☐ $50 (if no probation). Due now to Atty. General's Office, 1031 W. 4th. Ave., Suite 200, Anchorage, AK 99501

☒ Defendant is committed to the custody of the Commissioner of Corrections to serve 60 days wit 55 days suspended. The unsuspended 5 days are to be served beginning no later than March 02, 2009. Defendant to be credited for time already served in this case.

☒ The following items are forfeited to the State:
☐ Fish taken in the amount of _____ pounds. ☐ Fair market value of fish taken: _____
Fish ticket number _____
☒ The seized fish or game or any parts thereof: Wolf hides
☒ Equipment used in or in aid of the violation: Piper PA-12 tail # N4011M, guns and ammunition
☐

☒ Defendant's Guiding license is Suspended for 5 years

☐ Defendant is ordered to pay restitution as stated in the Restitution Judgment and to apply for an Alaska Permanent Fund Dividend, if eligible, each year until restitution is paid in full.
☐ The amount of restitution will be determined as provided in Criminal Rule 32.6(c)(2).

EXHIBIT 3
PAGE 1 OF 15

CAR CERT

Exh. 1

[X] Defendant is ordered to:
> forfeit wolf hides, equipment used in aid of the violation: Piper PA 12 plane, guns, ammunition.

[X] Defendant is placed on probation until September 10, 2015 subject to the following conditions:
> Comply with all direct court orders listed above by the deadlines stated.
> Commit no hunting, trapping, or Big Game Guiding violations. Not participate in any way with any predator control program.
> Pay restitution as ordered in Restitution Judgement. Apply for PFD, if eligible, until paid in full.

September 30, 2005
Effective Date:

Judge's Signature

I certify that on 9/27/09
a copy of this judgment was sent to:
✓ Deft ___ Public Defender/Atty ___ DA ✓ Jail ✓ DPS
___ Police ___ AG's Office ___ ASAP ___ DMV ___ Other
Clerk: DW Magistrate

State of Alaska vs. DAVID HAEG CASE NO. Count No. V

CR-464 (11/06)(st.5)
JUDGMENT - DISTRICT COURT - FISH and GAME

Crim. R. 3, 32 and 32.6
AS 12.55.041

EXHIBIT 3
PAGE 8 OF 15

Exh. 1
pg 373

Alaska Corporations, Business and Professional Licensing

Search
- By Entity Name
- By AK Entity #
- By Officer Name
- By Registered Agent
- Verify
- Verify Certification
- Biennial Report
- File Online
- Initial Biennial Report
- LLC
- File Online
- Business Corporation
- File Online
- Online Orders
- Register for Online Orders
- Order Good Standing
- Name Registration
- Register a Business Name Online
- Renew a Business Name

Date: 6/21/2010

Filed Documents

(Click above to view filed documents that are available.)

Print Blank Biennial Report

(To view the report, you must have Acrobat Reader installed.)

Entity Name History

Name	Name Type
THE BUSH PILOT, INC.	Legal

Business Corporation Information

AK Entity #:	57078D
Status:	Active - Non Compliant
Entity Effective Date:	11/17/1995
Primary NAICS Code:	
Home State:	AK
Principal Office Address:	PO BOX 123 SOLDOTNA AK 99669
Expiration Date:	Perpetual
Last Biennial Report Filed Date:	10/18/2006
Last Biennial Report Filed:	2007

Registered Agent

Agent Name:	DAVID HAEG
Office Address:	LOT 3 BLK 2 NORTH SHORE RIDGE SUBD SOLDOTNA AK 99669
Mailing Address:	PO BOX 123 SOLDOTNA AK 99669
Principal Office Address:	PO BOX 123 SOLDOTNA AK 99669

Officers, Directors, 5% or more Shareholders, Members or Managers

Name:	**David S Haeg**
Address:	PO Box 123 Soldotna AK 99669
Title:	President
Owner Pct:	100

EXHIBIT 3
PAGE 9 OF 15

Name:	**David S Haeg**

Exh. 2
Pg. 144

Address:	PO Box 123 Soldotna AK 99669
Title:	Director
Owner Pct:	100
Name:	**Jackie a Haeg**
Address:	Same As President
Title:	Secretary
Owner Pct:	
Name:	**Jackie a Haeg**
Address:	Same As President
Title:	Treasurer
Owner Pct:	
Name:	**Jackie a Haeg**
Address:	Same As President
Title:	Director
Owner Pct:	

Officers & Directors

E-mail the Corporations Staff (907) 465-2550

EXHIBIT 3
PAGE 10 OF 15

Exh. 2
Pg 2 of 4

01664

State of Alaska
Department of Commerce, Community, and Economic Development
Division of Corporations, Business and Professional Licensing
Corporations Section
PO Box 110808
Juneau, AK 99811-0808

AK Entity #: 57078D
Date Filed: 10/18/2006 02:05 PM
State of Alaska
Department of Commerce

Business Corporation
Online 2007 Biennial Report

For the period ending December 31, 2006

Alaska Entity # 57078D	Entity Mailing Address
THE BUSH PILOT, INC.	PO Box 123 Soldotna, AK 99669

Name and Address of Registered Agent	Physical Address of Agent if mailing Address is a PO Box or Mail Stop
David Haeg PO Box 123 Soldotna, AK 99669	Lot 3 Blk 2 North Shore Ridge Subd Soldotna, AK 99669

☑ **Check this box if there are no changes to the entity information listed below:**

Title	Name	Mailing Address	City, State, Zip	☑ if Director	% Shares Held	☑ if alien affiliate
President	David S Haeg	PO Box 123	Soldotna AK 99669	☑	100	☐
Vice President				☐		☐
Secretary	Jackie a Haeg	Same As President		☑		☐
Treasurer	Jackie a Haeg	Same As President		☑		☐
Director				☐		☐

Please note that this report may not be filed for the record if the required information is not provided. All corporations must have a president, secretary, treasurer and at least one director. The secretary and the president cannot be the same person unless the president is 100% shareholder. The entity must also list any alien affiliates and those shareholders that hold 5% or more of the issues shares.

Enter any changes to the officer/director information listed above:

Title	Name	Mailing Address	City, State, Zip	☑ if Director	% Shares Held	☑ if alien affiliate
President				☐		☐
Vice President				☐		☐
Secretary				☐		☐
Treasurer				☐		☐
Director				☐		☐

If necessary, attach a list of additional officers, directors, shareholders, and alien affiliates on a separate 8 1/2-X 11 sheet of paper.

This report is public information. Please do not list confidential information such as date of birth or Social Security Numbers.

Note: The registered agent information, name of the entity and the information in the boxes below cannot be changed using this form. You can request the necessary form to change the information by calling (907) 465-2530 or visit our website at http://www.corporations.alaska.gov

State of Domicile	Alaska				
Total Number of Authorized Shares		Class:		Series:	
Description of Business Activities in Alaska	ANY LAWFUL		NAICS Code		

We have converted from SIC codes to NAICS codes. If the NAICS does not appear in the field above, it indicates that the SIC code did not have an exact match at the time of conversion. We will be updating the database as the new NAICS codes are identified.

10/18/2006	Jackie A Haeg	Secretary
Date	Signature	Title

This report is due on January 2nd and must be received with the applicable fees in U.S. dollars.

Domestic Entity - $100.00 If postmarked after February 1, 2007 - $137.50	Foreign Entity (State of Domicile not Alaska) - $200.00 If postmarked after February 1, 2007 - $247.50

08-590 Revised 08/04 ulh

EXHIBIT 3 Exh. 2
PAGE 11 OF 15 pg. 3 of 4

SEE ENCLOSED SHEET FOR INSTRUCTIONS

BIENNIAL REPORT

(As required by AS 10.06.805)

Report and tax are due on or before January 2

State of Alaska
Corporations Section
P.O. Box 110808
Juneau, Alaska 99811-0808
Telephone: (907) 465-2530

For Official Use Only

Filed for Record
State of Alaska
DEC 05 2002
Department of Commerce
and Economic Development

FILE NO. 57078 — D

For period ending December 31, 2002

1. Name and Mailing Address of Entity	CORPORATION TAX DUE BIENNIALLY ON JANUARY 2
THE BUSH PILOT, INC. PO BOX 123 SOLDOTNA AK 99669	DOMESTIC (Formed in Alaska) $ 100 penalty amount $ 37.50 FOREIGN (Not formed in Alaska) $ 200 penalty amount $ 47.50 ADD PENALTY WHEN POSTMARKED AFTER FEBRUARY 1st

2. **Registered Agent:** To change this data, see instructions.
DAVID HAEG PO BOX 123 SOLDOTNA AK 99669

3. Corporation organized under the laws of state/country of ALASKA

4. Write a description of the business activities of the corporation in Alaska. To change this data, see instructions.
ANY LAWFUL

Current SIC code(s). Indicate changes on the right.

Primary	Secondary	Other
7999		

SIC code changes:

Primary	Secondary	Other

5. Total number of authorized shares corporation may issue, as indicated in articles of incorporation. To change this data, see instructions.

No. of Shares	Class	Series	Par Value Per Share
10000			0

No. of Shares	Class	Series	Par Value Per Share

6. All corporations must have a president, secretary, treasurer and directors. See instructions
The secretary and president cannot be the same, unless the president is 100% shareholder.

Title	Name	Address	City State Zip OR City State Country Post Code	√ If Director	% Shares Held	√ If Alien Affiliate
President	David S. Haeg	POBox 123	Soldotna AK 99669	✓	100.00%	
Vice President					0.00%	
Secretary	Jackie A. Haeg	POBox 123	Soldotna AK 99669	✓	0.00%	
Treasurer	Jackie A. Haeg	POBox 123	Soldotna AK 99669	✓	0.00%	

☞ Attach list of additional officers, directors, shareholders, and alien affiliates on a separate 8-1/2" x 11" sheet of paper, if necessary, or use this web form.

Before signing, you must respond to items numbered 1 through 6 or the report will not be filed. Any person providing information which is false in any material respect is subject to criminal prosecution under the provisions of AS 10.06.825.

11-30-02 — Date

D J Haeg — Signature

President — Title

☒ **MAIL SIGNED REPORT WITH CORRECT AMOUNT.**
INCLUDE PENALTY AMOUNT WHEN POSTMARKED AFTER FEBRUARY 1.

REPORT AND TAX/FEE(S) MUST BE RECEIVED AT THE SAME TIME.

03

08-590 (Rev. 11/02) pc

12/5/02

EXHIBIT 3
Exh. 2. PAGE 12 OF 15
pg. 434

U.S. Department
of Transportation
**Federal Aviation
Administration**

Flight Standards Service
Aircraft Registration Branch, AFS-750

P.O. Box 25504
Oklahoma City, Oklahoma 73125-0504
(405) 954-3116
Toll Free: 1-866-762-9434
WEB Address: http://registry.faa.gov

December 29, 2009

STATE OF ALASKA
DEPARTMENT OF PUBLIC SAFETY
4827 AIRCRAFT DR
ANCHORAGE AK 99502

Dear Sirs:

The Amended Judgment received November 17, 2009, pertaining to aircraft N4011M, Piper PA-12, serial 12-2888, has been returned for correction.

The Civil Aviation Registry requires that the Amended Judgment cites the name of the registered owner of the aircraft. State cases must reference the registered owner's name. Our records show the aircraft is registered to The Bush Pilot Inc. Our records also show that David S. Haeg to be the president of the company. Additionally, the Amended Judgment must show the complete description of the aircraft to include the make, model, and serial number, as shown above.

If you require further assistance, please contact the Aircraft Registration Branch at (405) 954-3116 or toll free 1-866-762-9434.

Sincerely,

Corey F. Woodley

COREY WOODLEY
Legal Instruments Examiner
Aircraft Registration Branch

Enclosure: Amended Judgment

AFS-700-LTR-1 (7/04)

EXHIBIT 3
PAGE 13 OF 15

Exh. 3
Pg. 1 of 2

FAA REGISTRY
N-Number Inquiry Results

N401LM is Assigned

Aircraft Description

Serial Number	12-2888	Type Registration	Corporation
Manufacturer Name	PIPER	Certificate Issue Date	12/18/1996
Model	PA-12	Status	Valid
Type Aircraft	Fixed Wing Single-Engine	Type Engine	Reciprocating
Pending Number Change	None	Dealer	No
Date Change Authorized	None	Mode S Code	51131337
MFR Year	1947	Fractional Owner	NO

Registered Owner

Name	BUSH PILOT INC		
Street	PO BOX 123		
City	SOLDOTNA	State	ALASKA
County	KENAI PENINSULA	Zip Code	99669-0123
Country	UNITED STATES		

Airworthiness

Engine Manufacturer	LYCOMING	Classification	Restricted
Engine Model	O-360-A1A	Category	Aerial Advertising
		A/W Date	06/04/2003

This is the most current Airworthiness Certificate data, however, it may not reflect the current aircraft configuration. For that information, see the aircraft record. A copy can be obtained at Http://162.58.35.241/e.gov/ND/airrecordsND.asp

Other Owner Names

EXHIBIT 3
PAGE 14 OF 15

Exh 3.
PS 2 of 2

FACSIMILE TRANSMISSION COVER SHEET

OFFICE OF SPECIAL PROSECUTIONS AND APPEALS

310 K Street, Suite 308
Anchorage, Alaska 99501-2064

OUR FAX: (907) 269-7939

FAX TRANSMITTAL SHEET

July 2, 2010

To: **Clerk of the McGrath Court** *Fax Number:* **(907) 675-4278**

From: Tina Osgood for A. Andrew Peterson, AAG

Re: SOA v. David Haeg; 4MC-04-24 CR

Number of Pages Including this Sheet: 20

DOCUMENT TO BE FILED: Motion to Accept Late Filed Reply, Affidavit, Order, and the Reply to Haeg's Opposition to the State's Motion for Modification of Judgment

*A copy of the original pleading **WILL** follow in the mail, unless requested by the court.*

Tina Osgood
Law Office Assistant I
Office of Special Prosecutions and Appeals.

Please inform us immediately if you do not receive this transmission in full
(907) 269-6262 Ask for: Tina Osgood

EXHIBIT 3
PAGE 15 OF 15

IN THE DISTRICT COURT FOR THE STATE OF ALASKA

FOURTH JUDICIAL DISTRICT AT MCGRATH

STATE OF ALASKA,

Plaintiff,

vs.

DAVID S HAEG,
DOB: 1/19/1966
APSIN ID: 5743491
SSN: 471-72-5023

Defendant.

No. 4MC-S04-24 CR.

MOTION FOR MODIFICATION OF JUDGMENT

I certify this document and its attachments do not contain the (1) name of a victim of a sexual offense listed in AS 12.61.140 or (2) residence or business address or telephone number of a victim of or witness to any offense unless it is an address identifying the place of a crime or an address or telephone number in a transcript of a court proceeding and disclosure of the information was ordered by the court.

COMES NOW the State of Alaska, by and through Assistant Attorney General Andrew Peterson, requesting this court modify the judgment entered in the above case. The judgments in the above case provide that the "Piper PA-12 plane tail number N4011M" is forfeited to the State of Alaska.

The State of Alaska is in the process of selling the Piper PA-12 airplane, but the FAA will not re-register the plane to the State of Alaska without a modified judgment. First, the Piper PA-12 plane in question was registered to Haeg's corporation Bush Pilot, Inc. Consequently, the FAA requires that the judgment reflect this fact. Second, The FAA has also requested that the plane's serial number (#12-2888) be listed on the judgment in addition to the identification Piper PA-12 and tail number N4011M.

The State's request to modify the judgments in this case will not limit Haeg's remedies in the pending PCR application, but will allow the State to register

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DEPARTMENT OF LAW
OFFICE OF SPECIAL PROSECUTIONS AND APPEALS
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(907) 269-6250

EXHIBIT 2

the plane as being owned by the State of Alaska in accordance with the original judgments.

DATED: June 9, 2010 at Anchorage, Alaska.

DANIEL S. SULLIVAN
ATTORNEY GENERAL

By: _____
A. Andrew Peterson
Assistant Attorney General
Alaska Bar No. 0601002

CERTIFICATE OF SERVICE

This is to certify that a copy of the forgoing was [x] mailed [ ] hand delivered [ ] faxed [ ] on June 9, 2010 to the following attorney/parties of record: David Haeg PO Box 123 Soldotna, Alaska 99669.

_____
Tina Osgood
Law Office Assistant I

STATE OF ALASKA
DEPARTMENT OF LAW
OFFICE OF SPECIAL PROSECUTIONS AND APPEALS
310 K STREET, SUITE 308
ANCHORAGE, ALASKA 99501
(907) 269-6250

IN THE DISTRICT COURT FOR THE STATE OF ALASKA

FOURTH JUDICIAL DISTRICT AT MCGRATH

STATE OF ALASKA,

Plaintiff,

vs.

DAVID S HAEG,
DOB: 1/19/1966
APSIN ID: 5743491
SSN: 471-72-5023

Defendant.

No. 4MC-S04-24 CR.

AFFIDAVIT

STATE OF ALASKA,) SS
THIRD JUDICIAL DISTRICT)

I, A. Andrew Peterson, being first duly sworn upon oath, state and depose as follows:

1. I am an assistant attorney general in the Office of Special Prosecutions and Appeals – Fish and Game Unit.

2. I spoke with Sherry Hassell of the Department of Public Safety and Howard Martin, Chief Legal Officer for the FAA in the State of Alaska and determined that the State of Alaska will be unable to register the Piper PA-12 that was forfeited to

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(907) 269-6250

the State of Alaska as part of the judgment in this case to the State. Without being able to register the plane in the State's name in accordance with Federal Regulations, the State will be unable to do anything withy the plane.

3. The facts set out in this memorandum are true to the best of my knowledge and belief.

4. This motion is being re-filed to reflect the correct date on the certificate of service which was erroneously not changed.

FURTHER YOUR AFFIANT SAYETH NOT.

DATED: June 9, 2010 at Anchorage, Alaska.

DANIEL S. SULLIVAN
ATTORNEY GENERAL

By: _____
A. Andrew Peterson
Assistant Attorney General
Alaska Bar No. 0601002

SUBSCRIBED AND SWORN to before me this 9th day of June, 2010.

STATE OF ALASKA
OFFICIAL SEAL
Christine Osgood
NOTARY PUBLIC
My Commission Expires W10/12

_____
Notary Public in and for Alaska
My commission expires: W10/12

STATE OF ALASKA
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(907) 269-6250

EXHIBIT 2
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IN THE DISTRICT COURT FOR THE STATE OF ALASKA

FOURTH JUDICIAL DISTRICT AT MCGRATH

STATE OF ALASKA,

Plaintiff,

vs.

DAVID S HAEG,
DOB: 1/19/1966
APSIN ID: 5743491
SSN: 471-72-5023

Defendant.

No. 4MC-S04-24 CR.

ORDER

Having considered the State of Alaska's motion for modification of the judgments in the above case and having otherwise become fully advised in the premises,

IT IS HEREBY ORDERED that the ownership interest in one PIPER PA-12 registered to Bush Pilot, Inc., N-number N4011Mm, serial number 12-2888, was forfeited to the State of Alaska on September 30, 2005.

Date this ____ day of _____, 2010, McGrath, Alaska.

_____
District Court Judge

EXHIBIT 2
PAGE 5 OF 5

IN THE DISTRICT COURT OF THE STATE OF ALASKA

FOURTH JUDICIAL DISTRICT AT MCGRATH

STATE OF ALASKA,

Plaintiff,

vs.

DAVID HAEG,

Defendant.

Case No. 4MC-04-024 Cr.

VRA CERTIFICATION

I certify that this document and its attachments do not contain (1) the name of a victim of a sexual offense listed in AS 12.61.140 or (2) a residence or business address or telephone number of a victim of or witness to any offense unless it is an address used to identify the place of the crime or it is an address or telephone number in a transcript of a court proceeding and disclosure of the information was ordered by the court.

APPLICATION TO POST BOND FOR SEIZED PROPERTY

COMES NOW the defendant, DAVID HAEG, by and through counsel, Arthur S. Robinson, and makes application to post a bond in the amount of $11,290 as security for the airplane that is currently held and seized by the State of Alaska in the above mentioned case, and for an order from this court releasing the airplane to defendant in exchange for the bond. The defendant needs use of the airplane for his sightseeing business.

This application is supported by the attached affidavit and exhibit.

DATED this 8 day of July, 2005.

ROBINSON & ASSOCIATES

By: Arthur S. Robinson
Arthur S. Robinson

I HEREBY CERTIFY that a copy of the foregoing was served on the DA on 7/8/05 by courier.
By: Katherine Burton

Robin & Associates
35401 Kenai Spur Hwy
Soldotna, Alaska 99669
(907) 262-9164 Telefax (907) 262-7034

EXHIBIT 1

IN THE DISTRICT COURT OF THE STATE OF ALASKA

FOURTH JUDICIAL DISTRICT AT MCGRATH

STATE OF ALASKA, Plaintiff, vs. DAVID HAEG, Defendant.	Case No. 4MC-04-024 Cr.

AFFIDAVIT OF DAVID HAEG

STATE OF ALASKA)
) SS.
THIRD JUDICIAL DISTRICT)

DAVID HAEG, being first duly sworn, deposes and states the following:

1. I am the defendant in the above referenced case.

2. I am the owner of one Piper PA-12 airplane with FAA Registration no. N4011M.

3. On April 1, 2004, my airplane was seized by the Alaska State Troopers in connection with my case for possible forfeiture.

4. I am the owner of The Bush Pilot, Inc. dba Dave Haeg's Alaskan Hunts and Adventure Lake Lodge which I and my wife have operated since 1990. The business operates during the months of April through October (hunting, sightseeing, bear viewing and banner towing) primarily in the Kenai Peninsula and West Cook Inlet. This business is my entire family's yearly income. I do flightseeing, bear viewing and banner towing in June, July and August which accounts for approximately 15% of my family's yearly income.

Robins & Associates
35401 Kenai Spur Hwy
Soldotna, Alaska 99669
(907) 262-9164 Telefax (907) 262-7034

5. The above described airplane is the only plane we have modified to provide the sightseeing, bear viewing, and banner towing.

6. I have had the airplane appraised to determine its fair market value. The fair market value is $11,290. Attached hereto as Exhibit A is the appraisal of the value of the airplane.

7. I understand that should I get convicted of certain game violations I am currently charged with in this case that the court may forfeit my airplane.

8. I am ready, willing and able to place in the court registry the fair market value of the airplane in the sum of $11,290 as a cash bond for security of the airplane and in lieu of the forfeiture of the airplane in the event I am convicted of the game violations and the court in its discretion orders that the airplane be forfeited.

9. In the event the court orders forfeiture of the airplane, the bond amount can be used to satisfy the forfeiture of the airplane by the State of Alaska and said amount of the bond shall be the property of the State.

FURTHER AFFIANT SAYETH NAUGHT.

DAVID HAEG

SUBSCRIBED and SWORN TO before me this 8th day of July, 2005.

Notary Public in and for Alaska

"OFFICIAL SEAL"
BONNIE H. BURGER
NOTARY PUBLIC, STATE OF ALASKA
MY COMMISSION EXPIRES 4-27-09

Robinson & Associates
35401 Kenai Spur Hwy
Soldotna, Alaska 99669
(907) 262-9164 Telefax (907) 262-7034

EXHIBIT 1
PAGE 3 OF 7

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT KENAI

DAVID HAEG,	)
	)
Applicant,	)
	)
v.	) POST-CONVICTION RELIEF
	) Case No. 3KN-10-01295CI
STATE OF ALASKA,	) (formerly 3HO-10-00064CI)
	)
Respondent.	)
	)

(Trial Case No. 4MC-04-00024CR)

8-22-11 REPLY TO STATE AND GREENSTEIN'S OPPOSITION TO HAEG'S 7-27-11 MOTION FOR EVIDENTIARY HEARING TO ADDRESS CLAIMS OF CONFIDENTIALITY AND/OR PRIVILEGE

VRA CERTIFICATION: I certify this document and its attachments do not contain the (1) name of victim of a sexual offense listed in AS 12.61.140 or (2) residence or business address or telephone number of a victim of or witness to any offense unless it is an address identifying the place of a crime or an address or telephone number in a transcript of a court proceeding and disclosure of the information was ordered by the court.

COMES NOW Applicant, DAVID HAEG, and hereby files this reply to state and Greenstein's opposition to Haeg's 7-27-11 motion for evidentiary hearing to address claims of confidentiality and/or privilege.

Discussion of State's Opposition

1. In their opposition the state claims, "For reasons known only to Mr. Haeg, he chose not to proceed with deposing any of the witnesses." Yet Haeg, in his 7-12-11 motion to quash the depositions (which was copied to the state) was perfectly clear about why he did not want to proceed with depositions after he was required to provide most of the witnesses with the questions in advance:

"Haeg found that written depositions are generally used to obtain general information and are avoided if a witness's credibility will be an issue at trial. As the Wisconsin Bar Association states,

'The detailed written discovery telegraphs the blow. You are literally compelling the opposition to prepare in the most ideal circumstances.'

Other authorities also caution the use of written questions if the witness is to be impeached later – stating that the advantage of a deposition may be less than the disadvantage of having to provide the witness and his or her attorney with all the questions long before they can be asked, not being able to ask follow-up questions in response to answers, and to have the questions asked without a judge or jury determining credibility as they are being asked.

To Haeg the advantage of depositions is negated by having to provide his questions to the witnesses (and the imposing array of attorneys now working against non-attorney Haeg) in advance of them being asked. And since Trooper Gibbens will likely be asked many of the same questions as Judge Murphy and/or Greenstein, the effect is nearly the same as if Trooper Gibbens was also being deposed by written questions.

Finally and most importantly, Haeg has realized it is not new information that is most important at this point but to establish the lack of credibility of the witnesses. And, as Superior Court Judge Joannides previously ruled, this is best done during an evidentiary hearing before the judge deciding Haeg's PCR case."

In exact opposition to the state's claim, it is indisputable Haeg made it perfectly clear why he did not want to proceed with deposing the witnesses.

2. The state claims Haeg is now attempting to conduct "in person" depositions through the requested evidentiary hearing addressing claims of confidentiality and/or privilege. Yet Haeg did not ask for in person depositions, he asked for an evidentiary hearing to address the claims of confidentiality and/or privilege that have already harmed his ability to make his case. If this is not addressed Haeg may not even be able to effectively question the witnesses during the PCR case he has the right to make directly to the court.

It is also indisputable that the court has the right and authority to limit the hearing in any way that is just and the state is free to ask the court to do so.

3. The state fails to address the overwhelming evidence Haeg provided that the witnesses deprived Haeg of a fair trial, conspired afterward to cover this up, and are now claiming confidentiality and/or privilege to thwart Haeg's basic constitutional right to compel witnesses in his favor.

4. The state fails to address the overwhelming caselaw Haeg provided, from the U.S. Supreme Court on down, that it is unacceptable for claims of confidentiality/privilege to be used to shield crimes or other evil enterprises – which is exactly what the witnesses are doing to escape both liability and Haeg's constitutional right to compel witnesses in his favor.

Discussion of Greenstein's Opposition

1. In her opposition Greenstein claims Haeg "has not provided any justification for such an expensive and inconvenient procedure."

Haeg has produced overwhelming evidence and law that holds claims of confidentiality and/or privilege must not be allowed to shield crime or other evil enterprise. In this case the claims are not only shielding crime and evil enterprise they are also depriving Haeg of his basic constitutional right to compel witnesses in his favor. It seems unlikely there could be a greater justification than rooting out crime and evil enterprise while protecting constitutional rights.

The Alaska Bar Association confirmed how serous the issues are and how important it is for Haeg's court to address them: after reviewing the evidence the

ABA opened an investigation into Greenstein but stayed it pending the completion of Haeg's PCR:

> "[I]t appears that the issues you [Haeg] raised in your bar complaint will be addressed in your PCR proceedings. The Bar Association generally defers its investigation so that the courts and the Bar do not reach inconsistent results about the facts or the law."

As for Greenstein's claim it is an expensive and inconvenient procedure Judge Joannides granted Haeg a 2-day evidentiary hearing to examine 12 witnesses just to make his case Judge Murphy must be disqualified from presiding over his PCR proceeding. An evidentiary hearing to address witness claims of confidentiality and/or privilege is every bit as important.

2. Greenstein claims it is very unlikely that she has information that is at all relevant to Haeg's application for post-conviction relief. The evidence Haeg has admitted makes an irrefutable case that Greenstein is involved in an ongoing conspiracy with Haeg's trial judge to cover up that Haeg was deprived of a fair trial and sentencing. It is hard to imagine what information could be more relevant to Haeg's post-conviction relief application – in which he is trying to prove he did not receive a fair trial or sentencing.

3. Greenstein fails to address the overwhelming evidence Haeg provided that Haeg's trial judge deprived Haeg of a fair trial, conspired with Greenstein afterward to cover this up, and that both are now claiming confidentiality and/or privilege to thwart Haeg's constitutional right to compel witnesses in his favor.

4. Greenstein fails to address the overwhelming caselaw Haeg provided, from the U.S. Supreme Court on down, that it is unacceptable for claims of confidentiality/privilege to be used to shield crimes or other evil enterprise – which is exactly what Greenstein is doing to both escape criminal/professional liability and Haeg's constitutional right to compel witnesses in his favor.

Conclusion

In light of the enormity of the issues involved, which include the whole nations right to uncorrupt courts and the basic constitutional right to effectively compel witnesses in your favor, Haeg again asks the court to grant his motion for an evidentiary hearing to address claims of confidentiality and/or privilege.

I declare under penalty of perjury the forgoing is true and correct. Executed on August 22, 2011. A notary public or other official empowered to administer oaths is unavailable and thus I am certifying this document in accordance with AS 09.63.020.

David S. Haeg
PO Box 123
Soldotna, Alaska 99669
(907) 262-9249 and 262-8867 fax
haeg@alaska.net

Certificate of Service: I certify that on August 22, 2011 a copy of the forgoing was served by mail to the following parties: Peterson, Novak, DeYoung, Maassen, Judge Gleason, Judge Joannides, U.S. Department of Justice, FBI, and media. By:

Mark D. Osterman (0211064)
Osterman Law, LLC
P.O. Box 312
Muncie, IN 47308
765-381-0339

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT IN KENAI

DAVID HAEG

Applicant;

vs.

STATE OF ALASKA

CASE NUMBER: 3KN-11-01295 CI

REQUEST FOR TELEPHONIC PARTICIPATION

Notice is given that Mark D. Osterman lives in Muncie, Indiana and is not available for personal appearance but requests that all appearances necessary shall be telephonic. Counsel asks that the court note the four-hour time difference and further provides a toll-free number for contact by the court at 888-675-2372.

8/11/11

Mark D. Osterman (Alaska Bar 0211064)

CERTIFICATE OF SERVICE

I certify that all attorneys/parties of record have been served with the above-entitled document by first class mail/facsimile/personal delivery.

DATE 8/11/11

SIGNED

Peterson, AAG
Haeg

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT IN KENAI

DAVID HAEG

Applicant;

CASE NUMBER: 3KN-10-01295 CI

vs.

STATE OF ALASKA

_____/

MOTION FOR PROTECTIVE ORDER

Comes Mark D. Osterman, and for himself brings this Motion for a Protective Order against a subpoena for Taking Deposition and further, for Notice of Taking Telephonic Records Deposition and in opposition for Documents Requested for Scheduled Telephonic Deposition and asked that the court quash such subpoenas and depositions and provide a Protective Order and states:

1. That any early months of 2006, counsel represented David Haeg in an appeal arising from a criminal conviction.

2. That in May, 2006, counsel was forced to withdraw from that matter because of the conduct of Mr. Haeg.

3. As counsel understands, Mr. Haeg has made a demand for Post Conviction Relief and has made the allegation that the undersigned committed acts or failed to act resulting in Ineffective Assistance of Counsel. no specifics have been reported and no papers have been presented except to prompt this Motion.

4. As the established Memorandum demonstrates, that unless Mr. Haeg provides a written statement of release concerning Attorney/Client privilege,

counsel is unable to provide information in accordance with ethics opinions which is attached to the Memorandum supporting this Motion.

5. As the ethics opinions demonstrate, the Attorney General cannot require disclosure by way of a subpoena in and of itself.

6. As is demonstrated by the facts of this matter and the request being made, that there is no determination of ineffective assistance of counsel that can be made against the undersigned by Mr. Haeg or anyone else in this matter since counsel was not permitted to act on Mr. Haeg's behalf and no completed representation was made since Mr. Haeg dismissed counsel prior to completing the Court of Appeals Brief.

7. A protective order is needed to prevent the Attorney General from further demanding or seeking enforcement of its subpoena or further of the Deposition Notice.

8. Disclosure of privileged matter is in the entire discretion of the lawyer and the client but that the court, opposing parties, and the State of Alaska have no standing to demand documents.

WHEREFORE, Mark D. Osterman herein asks that the Court issue a Protective Order suppressing the Subpoena for Taking Deposition along with other demands made by the Alaska Attorney General or that the court at a minimum follow the guidance of those ethics decisions attached.

RESPECTFULLY SUBMITTED:

8/11/14

Mark D. Osterman (0211064)
Osterman Law, LLC
P.O. Box 312
Muncie, IN 47308
765-381-0339

CERTIFICATE OF SERVICE

I certify that all attorneys/parties of record have been served with the above-entitled document by first class mail/facsimile/personal delivery.

DATE 8/14/14

SIGNED

Mark D. Osterman (0211064)
Osterman Law, LLC
P.O. Box 312
Muncie, IN 47308
765-381-0339

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT IN KENAI

DAVID HAEG

Applicant;

CASE NUMBER: 3KN-10-01295 CI

vs.

STATE OF ALASKA

_____/

MEMORANDUM SUPPORTING MOTION FOR PROTECTIVE ORDER

STATEMENT OF FACTS

In late 2005, early 2006, Mark D. Osterman Law Office, P.C. was hired by David Haeg to pursue an appeal. Mr. Haeg had believed that he had been wrongly represented by 2 prior attorneys, one of which had been the trial attorney. Mr. Haeg knew that there would be substantial hours of reviewing each and every transcript of the trial, reviewing all of the documents, clerks entries, and available evidence, and then drafting and preparing issues upon which the appeal would proceed. Transcripts were purchased and recorded proceedings were read and heard.

Mr. Haeg had specific appellate issues that he demanded to be briefed. Among them, his perception of malpractice by his 2 prior attorneys in failing to secure or later limit evidence received during plea negotiations with an Assistant Attorney General. Mr. Haeg also believed that the judges hearing the case had strong prejudices against him and he wished for a brief in the Court of Appeals

that would reflect these issues. However, the first Draft of the Brief only incorporated substantive issues that I felt would assist Mr. Haeg and a disagreement about the goals of representation occurred.

Mark D. Osterman Law Office P.C. spent several weeks reviewing all of the available recordings of testimony, pretrial proceedings and other matters. A brief was then drafted in 3 parts--3 issues on appeal. Each draft portion was provided to Mr. Haeg.

Mr. Haeg also wished to be a part of the drafting/composing of the brief and after submitting the 3rd part of the first draft for Mr. Haeg's review, his input was expected, but was not forthcoming. The drafts did not incorporate Mr. Haeg's theories as substantive issues. As a result, Mr. Haeg fired Mark D. Osterman Law Office P.C. and subsequently the office withdrew from his appeal. The Affidavit submitted to the Court of Appeal speaks for itself.

After some dispute, Mr. Haeg was provided with his paperwork, C.D.'s of testimony, and other such matters as had been prepared for him. Very little was retained by the Mark D. Osterman Law Office P.C. Mr. Haeg appeared in person and signed and acknowledged a release and he accepted his file.

Attached as exhibit A, B and C are the documents received from Assistant Attorney General Andrew Peterson, who issued a subpoena for documents from the client file. Counsel seeks a Protective Order for the documents sought.

No claim is made that the documents are possessed by Counsel--only that if they exist they cannot be surrendered under attorney client privilege. .

STANDARD OF REVIEW FOR PROTECTIVE ORDERS

It is well-established that the Superior Court has broad discretion to determine the scope and extent of discovery and to craft necessary protective orders. *Dinardo v. Bax*, 147 P.3d 672 (Alaska 2006). The trial court does not abuse its discretion in declining to allow depositions where the purpose offered for the deposition was about an issue that was moot to the case, *Prentzle v. State*, 169 P.3d 573. Irrelevant matters are a part of this case and those moot issues will be discussed below as the evidence sought by the State has no merit to the claims made.

Issue 1: The State is Fishing:

As the facts of the case demonstrate, the Osterman Law Office was retained for a specific purpose. It never got the opportunity to complete that specific purpose. To claim that there is ineffective assistance of counsel in drafting a brief but never publishing it goes against the entire thought of ineffective assistance of counsel. Osterman Law Office and its lawyers did not appear at any hearing. Osterman Law Office made no oral argument at any time in any case for David Haeg. With respect to Mr. Haeg, the Osterman Law Office never left its office for any work of Mr. Haeg.

Ineffective Assistance of Counsel means that the conduct of a TRIAL attorney falls short of the conduct of an ordinary attorney. While an appellate attorney can be negligent, miss deadlines and even be in malpractice, there is no case where an appellate attorney's draft brief and timely appearance and work

constituted "ineffective assistance of counsel." All work for Mr. Haeg was timely and within the standards of an ordinary attorney.

A. There is No Claim By Haeg Showing Prima Facia Ineffective Assistance

Any claim against Mark D. Osterman or the law office, must be dismissed since there is no allegation that his actions resulted in the conviction for which relief is sought.

The lead case for ineffective assistance of counsel in Alaska is *Risher v. State*, 523 P.2d 421 (Alaska 1974), adopting a 2 pronged standard for evaluating ineffective assistance of counsel claims. To establish ineffective assistance of counsel, the accused must prove that the performance of appellate counsel fell below an objective standard. But the prongs focus not on appellate matters, but on trial matters. Mark Osterman and Osterman Law NEVER represented Haeg on the criminal trial. Substitution occurred at the Appellate level.

Mr. Haeg cannot establish what the appellate standard for ineffective assistance of counsel would be. Mr. Haeg reviewed the 1st draft of a briefing that would require 5 or 6 revisions before final publication. He was aware that the Osterman Law Office had been a second-hand participant by reviewing the CDs of proceedings while he had been a firsthand participant. Osterman Law Office looked-forward to Mr. Haeg's assistance that he failed to provide. No further draft was reviewed or corrected because Mr. Haeg declined to cooperate.

In *Tucker v. State*, 892 P.2d 832 (Alaska App. 1995), the Court of Appeals held that an appellate attorney is not obliged to raise every arguable (i.e., non-frivolous) issue that might be raised in a direct appeal of a criminal conviction.

Instead, the attorney has the authority to select the most meritorious issues and to abandon other claims which, although arguable, stand a lesser chance of success. Id. at 836 & n. 7. See also *Coffman v. State*, 172 P.3d 804 (Alaska App. 2007)

The disagreement over appellate issues can best be viewed in light of *Burton v. State*, 180 P.3d 964 (Alaska App. 2008) While this case had not been decided while working on Mr. Haeg's matter, the issue of the incompetence of trial counsel was not, at the time of Mr. Haeg's appeal, a topic worthy of consideration in the appeal since ineffective assistance is a matter best left for PCR. See *Barry v. State*, 675 P.2d 1292 (Alaska App. 1984) upon which *Burton* is based.

This prong also requires that appellate counsel must perform at least as good as any lawyer with ordinary training and skill and must conscientiously protect his client's interest, even where there are conflicting considerations. There is no allegation by the State or by Mr. Haeg that there was anything less than the necessary training and skill to prepare a draft of a Brief on Appeal.

B. The State Does Not Want Ineffective Assistance Evidence:

The documentation sought by the State relates to the listing provided in document/exhibit C which focuses on the Retainer and fee agreement, correspondence regarding all fee and retainer issues, and documents regarding the basis for termination of the attorney client relationship. The State does not seek any documents relating to the capacity of representation as will be established.

Here is where the rubber meets the road: The State is not interested in the necessary skill of the brief writing. The State only wishes to pursue embarrassing and humiliating facts that it can use against Mr. Haeg. Therefore, the purpose of the Discovery is not to defend against an ineffective assistance of counsel claim since Mr. Haeg cannot make it past the 1st prong. This is a fishing expedition: to glean facts that the State can use to embarrass and humiliate Mr. Haeg. The financial documents are of no consequence to the State. The duties to be performed are of no consequence to the State. The reasons for termination and any correspondence has no bearing on the effective assistance of counsel under the cases discussed above. These documents contain "dirty laundry" between the lawyer and the client and have no relevance to effective or ineffective assistance of counsel

The 2nd prong[1], while unnecessary to this discussion should nevertheless be brought to the attention of the court. There has to be a showing that the lack of competency contributed to the conviction of Mr. Haeg or caused the failure of the Court of Appeals briefing. Somehow incompetence has to create a reasonable doubt that the specific legal skills demonstrated somehow contributed to the outcome of the conviction or sustaining the conviction. Once again, this would require a showing that a draft of an appellate brief fell below the standard

[1] The 2nd prong has been adopted by the United States Supreme Court in *Strickland v. Washington*, 466 U.S. 668, 687 (1984) which shows that it is still something the Court should consider here.

of other drafts of appellate briefs. No argument is made by Mr. Haeg or by the State on this issue of which counsel is aware. See *Burton,* id.

Not only can this court conclude that drafting an appellate brief is not ineffective assistance of counsel were such a brief has never been published nor provided to any Court, but the Court can also conclude that the State is fishing for embarrassing facts and trying to violate the attorney-client privilege to gain such knowledge.

Thus, the 1st prong of the two-pronged standard fails and Mr. Haeg cannot make a claim of ineffective assistance of counsel against Mark D. Osterman or the Mark D. Osterman Law office, P.C. If his claim were to survive, the second prong would make the claim dead-on-arrival. Under the circumstances, a reasonable person would conclude that there is no ineffective assistance of counsel and no need for the State to defend against that which does not exist.

The documents sought are not relevant to the real defense of the case, if a real claim exists.

ISSUE 2: ATTORNEY/CLIENT PRIVILEGE

The Rules of Professional Conduct make it very clear that an attorney cannot reveal a confidence or secret of the client. It seems that any matter which could be embarrassing or humiliating or out of the ordinary could be deemed a violation of any confidence concerning any client.

Rule 1.6 of Professional Conduct begins with the statement "(a) a lawyer shall not reveal a confidence or secret relating to representation of a client unless

the client consents after consultation. . ." (Emphasis mine). While there may be options available, the major premise is that a lawyer cannot and is forbidden to reveal a confidence or secret.

Subpart (b) allows for the exceptions. But it is interesting to note that this portion of the rule leaves the decision about revealing information in the hands of the lawyer, and not in the hands of a court or an Assistant Attorney General. It begins with "a lawyer may reveal a confidence or secret to the extent the lawyer reasonably believes necessary:" So ANY confidence is expected to be revealed is entirely in the hands of the lawyer once again and is not in the hands of the Court or an Assistant Attorney General.

The exceptions include "(1) to prevent the client from committing a criminal or fraudulent act that the lawyer believes is likely to result in death or substantial bodily harm. . . " This standard is not what the Court thinks and not what the Attorney General thinks but in the discretion of the lawyer.

"(2) to establish a claim or defense on behalf of the lawyer in a controversy between the lawyer and the client, . . . "

Once again, the power to raise the defense rests entirely in the hands of the lawyer and not in the hands of the Court or an Assistant Attorney General. The Attorney General is not here to defend Mark D. Osterman or his law firm. Since they are not here "on behalf of" them, this exception ends. Since I have not been given any knowledge of claims of wrong-doing, then I cannot defend against Mr. Haeg. It is not unknown that Mr. Haeg despises all lawyers and believes in deep conspiracies to deprive him of his right to illegally kill animals,

such a belief is not a basis for any attorney to abrogate the attorney/client privilege.

As has been established above, there is no claim for ineffective assistance of counsel which could apply to the Mark D. Osterman Law Office or to Mark D. Osterman. The law firm was hired for a specific purpose, fired before it could publish any briefing. Unless filing a substitution of counsel in an appeal in the Court of Appeals and filing a motion to withdraw is deemed ineffective assistance of counsel, then these are the only public documents by which the court can measure the conduct of counsel to decide whether it is ineffective or not.

Apparently, Mr. Haeg has not made any specific allegation by which Mark D. Osterman Law Office or Mark D. Osterman is required to respond. I am absolutely unaware of any statements by Mr. Haeg in an attempt to establish ineffective assistance of counsel. If the State wants Mr. Haeg's cooperation in gaining a file I may have on his behalf, however small it may be, then they should compel Mr. Haeg to complete a release to get that file. See Alaska Rules of Civil Procedure 34.[2]

ISSUE 3: ABA FORMAL OP. 10-456

The American Bar Association's Standing Committee on Ethics and Professional Responsibility believes that while the lawyer may have the right to defend himself in an ineffective assistance of counsel claim, there is a great deal more to the ethics of the matter. If the lawyer wishes to release the documents contained within his file (and I do not), the court must conduct certain hearings to

[2] One again, a warning is given. Counsel has moved his law office 4 times and his family 2 times since this case. The where-abouts of any file that may exist is unknown. Electronic records are available and limited.

determine the application of the particular documents so as not to interfere with the attorney/client relationship. While a lawyer may not reveal information relating to a representation of a client but where the lawyer reasonably believes necessary to establish a claim or defense on behalf of the lawyer in a controversy, the claim against the lawyer must be based on conduct with a client or to respond to allegations in a proceeding concerning the lawyer's representation of the client.

In the present case, I do not feel compelled to defend myself against allegations by Mr. Haeg. Mr. Haeg must establish that I was ineffective assistance with respect to his appeal. The mere allegation alone is not enough to sustain a post-conviction release status. There must be a prima facie showing.[3] Such showing is normally made to the submission of an affidavit by counsel. Counsel declines to provide the affidavit.[4]

This formal opinion establishes there must be **closed** court proceedings to determine the relevant client information and determine whether it is subject to judicial supervision. No application has been made to satisfy the requirements of this ethic opinion which the State of Alaska has adopted. The Court must issue a protective Order denying the access of the State.

---

[3] State v. Jones, 759 P.2d 558, 570 " While "a mistake made out of ignorance rather than from strategy cannot later be validated as being tactically defensible[,] . . . when a tactical choice has in fact been made, even if it was made by an attorney who was not fully informed as to available options, the choice will be subject to challenge only if the tactic itself is shown to be unreasonable - that is, a tactic that no reasonably competent attorney would have adopted under the circumstances." Id. at 570

[4] No party or the court should presume that Mark D. Osterman is taking a position concerning Mr. Haeg's PCR Petition. On the contrary, Mr. Haeg has been difficult, threatening to staff and employees, disagreeable, disrespectful and obnoxious. Despite his bizarre and frequently threatening behavior, these are no reasons for me to abandon my ethical position concerning attorney/client relations.

CONCLUSION

This court can only conclude that former counsel for Mr. Haeg is not obligated to provide any documents out of his file where the "lawyer" in the rule does not feel threatened There is no prima facie showing of ineffective assistance of counsel by Mark D. Osterman or the Mark D. Osterman Law Office P.C. There has been no affidavit by any attorney presented to the undersigned that the work was ineffective, improper, and not up to standards expected in appellate matters.

The purpose of seeking the documents has no function under the 2 prongs of ineffective assistance of counsel discussed above. A protective order is necessary to prevent the fishing expedition that the Assistant Attorney General is trying to establish.

Mr. Haeg has his file. Order Mr. Haeg to release that file. But pursuing former counsel would seem to be an admission by the State that ineffective assistance of counsel occurred, when it did not. Obviously, the entire goal of the State is to find embarrassing and humiliating facts through counsel to use against Mr. Haeg.

The ethics opinions state that counsel cannot just simply give-up these documents because the Attorney General has issued a subpoena. The ethics opinion state this court has to go through a long process of hearings to decide if the documents could be used effectively and establish ineffective assistance of counsel. But that is in a scenario where the attorney is willing to give up the documents and seek protection from the Court.

I am not willing to give up the documents. I have an ethical obligation to my client. I have not been presented with any evidence of any claim by him for ineffective assistance of counsel, nor can I believe that any action of my office would arise to ineffective assistance of counsel. I received a demand that I provide documents without any allegation as to whether or not my conduct was ineffective. If Mr. Haeg wishes my documents released, let Mr. Haeg sign a release or give the State copies of the file he has.

Otherwise, and in spite of any court order, I will refuse to provide documents.

I am unaware of any specific incident where ineffective assistance of counsel by me would aid Mr. Haeg in his own misconduct and its conviction.

RESPECTFULLY SUBMITTED:

8/11/14

Mark D. Osterman (0211064)

CERTIFICATE OF SERVICE

I certify that all attorneys/parties of record have been served with the above-entitled document by first class mail/facsimile/personal delivery.

DATE 8/14/14

SIGNED

IN THE ~~DISTRICT~~/SUPERIOR COURT FOR THE STATE OF ALASKA
AT Kenai

David Haeg,
Plaintiff(s),
vs.
State of Alaska,
Defendant(s).

CASE NO. 3KN-10-1295 CR

SUBPOENA FOR TAKING DEPOSITION

To: Mark Osterman
Address: 516 W. Jackson Street, Muncie, IN 47035

You are commanded to appear and testify under oath in the above case at:
Date and Time: September 9, 2011, at 2:00 p.m.
Offices of: OSPA - Suite 308
Address: 310 K Street, Anchorage, AK 99501

Notice, as required by Civil Rule 45(d), has been served upon _____ on _____. You are ordered to bring with you See attached

(SEAL)

8/3/11
Date

Deputy Clerk

Subpoena issued at request of
A. Andrew Peterson, AAG
Attorney for State of Alaska
Address: 310 K Street, Suite 308
Telephone: 269-7948
If you have any questions, contact the person named above.

Before this subpoena may be issued, the above information must be filled in and proof must be presented to the clerk that a notice to take deposition has been served upon opposing counsel.

RETURN

I certify that on the date stated below, I served this subpoena on the person to whom it is addressed, _____, in _____, Alaska. I left a copy of the subpoena with the person named and also tendered mileage and witness fees for one day's court attendance.

Date and Time of Service

Signature

Service Fees:
Service $_____
Mileage $_____
TOTAL $_____

Print or Type Name

Title

If served by other than a peace officer, this return must be notarized.

Subscribed and sworn to or affirmed before me at _____, Alaska on _____.

(SEAL)

Exhibit A
Page 1 of 1

Clerk of Court, Notary Public or other person authorized to administer oaths.
My commission expires _____

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT KENAI

DAVID HAEG Applicant v. STATE OF ALASKA	)	POST-CONVICTION RELIEF CASE NO. 3KN-10-01295 CI

Trial Case No. 4MC-04-00024 CR

NOTICE OF TAKING TELEPHONIC RECORDS DEPOSITION

VRA CERTIFICATION. I certify that this document and its attachments do not contain (1) the name of a victim of a sexual offense listed in AS 12.61.140 or (2) a residence or business address or telephone number of a victim or witness to any crime unless it is an address used to identify the place of the crime or it is an address or telephone number in a transcript of a court proceeding and disclosure of the information was ordered by the court.

COMES NOW the State of Alaska, by and through Assistant Attorney General Andrew Peterson, and hereby gives notice of taking the records deposition of Mark Osterman telephonically on September 9, 2011, at 2:00 p.m., at the Office of Special Prosecutions and Appeals, 310 K Street, Suite 308, Anchorage, AK 99501. A court-reporter will not be used to record the deposition.

Dated on this 2nd day of August, 2011, at Anchorage, Alaska.

JOHN J. BURNS
ATTORNEY GENERAL

By: _____
Andrew Peterson
Assistant Attorney General
Alaska Bar No. 0601002

STATE OF ALASKA
DEPARTMENT OF LAW
OFFICE OF SPECIAL PROSECUTIONS AND APPEALS
310 K STREET, SUITE 308
ANCHORAGE, ALASKA 99501
PHONE: (907) 269-6250

Exhibit B
Page 1 of 1

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT KENAI

DAVID HAEG Applicant v. STATE OF ALASKA	)	POST-CONVICTION RELIEF CASE NO. 3KN-10-01295 CI

Trial Case No. 4MC-04-00024 CR

DOCUMENTS REQUESTED FOR SCHEDULED TELEPHONIC DEPOSITION

VRA CERTIFICATION. I certify that this document and its attachments do not contain (1) the name of a victim of a sexual offense listed in AS 12.61.140 or (2) a residence or business address or telephone number of a victim or witness to any crime unless it is an address used to identify the place of the crime or it is an address or telephone number in a transcript of a court proceeding and disclosure of the information was ordered by the court.

COMES NOW the State of Alaska, by and through Assistant Attorney General Andrew Peterson, and hereby requests Mark Osterman provide the following documents for the telephonic records deposition scheduled for September 9, 2011, at 2:00 p.m.

- Retainer and fee agreement
- Correspondence regarding all fee and retainer issues
- Documents regarding basis for termination of attorney client relationship

Dated on this 2nd day of August, 2011, at Anchorage, Alaska.

JOHN J. BURNS
ATTORNEY GENERAL

By: _____
Andrew Peterson
Assistant Attorney General
Alaska Bar No. 0601002

STATE OF ALASKA
DEPARTMENT OF LAW
OFFICE OF SPECIAL PROSECUTIONS AND APPEALS
310 K STREET, SUITE 308
ANCHORAGE, ALASKA 99501
PHONE: (907) 269-6250

Exhibit C
Page 1 of 1

Mark D. Osterman (0211064)
Osterman Law, LLC
P.O. Box 312
Muncie, IN 47308
765-381-0339

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT IN KENAI

DAVID HAEG

Applicant;

CASE NUMBER: 3KN-10-01295 CI

vs.

STATE OF ALASKA

_____/

NOTICE OF LIMITED APPEARANCE FOR NON-PARTY

Comes now Mark D. Osterman (0211064) and brings this notice of Limited Appearance for a Non-Party. Said appearance is limited to a Motion for Protective Order and for any hearings or other matters related to that Motion and its related papers.

Mark D. Osterman is a nonparty, representing himself and a former entity known as Mark D. Osterman Law Office, P.C.. Further notice is given that Mark D. Osterman lives in Muncie, Indiana and is not available for personal appearance but requests that all appearances necessary shall be telephonic.

8/11/11

Mark D. Osterman (Alaska Bar 0211064)

CERTIFICATE OF SERVICE

I certify that all attorneys/parties of record **have been** served with the above-entitled **document** by first class **mail/facsimile/personal** delivery.

Return AAC Haeg

DATE 8/11/11

SIGNED

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT KENAI

DAVID HAEG,

Applicant,

v.

STATE OF ALASKA,

Respondent.

(Trial Case No. 4MC-04-00024CR)

POST-CONVICTION RELIEF
Case No. 3KN-10-01295CI

OPPOSITION TO APPLICANT'S MOTION FOR EVIDENTIARY HEARING
(Marla Greenstein)

Marla Greenstein, the Executive Director of the Alaska Judicial Conduct Commission, joins the State's opposition to applicant David Haeg's motion for an evidentiary hearing to address claims of confidentiality or privilege. The reason is that Mr. Haeg has not provided any justification for such an expensive and inconvenient procedure.

Ms. Greenstein is opposed to discovery or to testifying in any manner about her work evaluating and investigating a complaint that Mr. Haeg filed with the commission, and she earlier sought a protective order against Mr. Haeg because her work for the commission is so highly confidential. AS 22.30.060. In addition, it is very unlikely that Ms. Greenstein has information that is at all relevant to Mr. Haeg's application for post-conviction relief. Nevertheless, the court authorized Mr. Haeg to depose Ms. Greenstein upon written questions, thereby providing him with an

DEPARTMENT OF LAW
OFFICE OF THE ATTORNEY GENERAL
ANCHORAGE BRANCH
1031 W. FOURTH AVENUE, SUITE 200
ANCHORAGE, ALASKA 99501
PHONE: (907) 269-5100

opportunity to obtain information if there are any appropriate areas of inquiry. Proceeding under written questions would have allowed a review of confidentiality and relevance objections in their specific factual context. But Mr. Haeg chose not to proceed in this manner. Instead, he wants to substitute an evidentiary hearing, in which, presumably, he will attempt to conduct discovery in the presence of the court. Such a hearing would not only be expensive for the parties and the witnesses and administratively inconvenient for the court, it is completely unnecessary in light of the orderly procedure that the court did authorize.

For these reasons, the motion for an evidentiary hearing to address claims of confidentiality or privilege should be denied.

DATED: August 8th, 2011.

JOHN J. BURNS
ATTORNEY GENERAL

By: Jan H. DeYoung
Jan H. DeYoung
Assistant Attorney General
Alaska Bar No. 7907059

DEPARTMENT OF LAW
OFFICE OF THE ATTORNEY GENERAL
ANCHORAGE BRANCH
1031 W. FOURTH AVENUE, SUITE 200
ANCHORAGE, ALASKA 99501
PHONE: (907) 269-5100

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT KENAI

DAVID HAEG,

Applicant,

v.

STATE OF ALASKA,

Respondent.

POST-CONVICTION RELIEF
Case No. 3KN-10-01295CI

(Trial Case No. 4MC-04-00024CR)

CERTIFICATE OF SERVICE

This is to certify that on this date, true and correct copies of the **Opposition to Applicant's Motion for Evidentiary Hearing (Marla Greenstein), [*Proposed*] Order On Applicant's Motion for Evidentiary Hearing** and this **Certificate of Service** in this proceeding were served via electronic mail, facsimile, and first class U.S. mail on:

David Haeg
Haeg@alaska.net
Facsimile: 907-262-8867
P.O. Box 123
Soldotna, Alaska 99669

And via electronic mail on the following:

Andrew Peterson
Andrew.peterson@alaska.gov

Peter Maasen, Esq.
peter@impc-law.com

And a courtesy copy was sent via electronic mail to:

Marla Greenstein
Marla Greenstein@acjc.state.ak.us

Cloe Mead-Wright 8/8/11
Date

DEPARTMENT OF LAW
OFFICE OF THE ATTORNEY GENERAL
ANCHORAGE BRANCH
1031 W. FOURTH AVENUE, SUITE 200
ANCHORAGE, ALASKA 99501
PHONE: (907) 269-5100

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT KENAI

DAVID HAEG,

Applicant,

v.

STATE OF ALASKA,

Respondent.

) POST-CONVICTION RELIEF
) Case No. 3KN-10-01295CI
) (formerly 3HO-10-00064CI)

(Trial Case No. 4MC-04-00024CR)

8-3-11 MOTION TO RECONSTRUCT PCR RECORD

VRA CERTIFICATION: I certify this document and its attachments do not contain the (1) name of victim of a sexual offense listed in AS 12.61.140 or (2) residence or business address or telephone number of a victim of or witness to any offense unless it is an address identifying the place of a crime or an address or telephone number in a transcript of a court proceeding and disclosure of the information was ordered by the court.

COMES NOW Applicant, DAVID Haeg, and hereby files this motion to reconstruct the record of his PCR.

Information

On March 26, 2010 Haeg filed an opposition to the state's motion to dismiss Haeg's PCR application. See court record and attached opposition copy.

On April 7, 2010 the state filed a reply to Haeg's opposition. See court record.

On December 1, 2010 Judge Schally claimed:

"The State's motion to dismiss Haeg's PCR application, filed March 5, 2010, also remains pending and will be decided by the new assigned judge. It appears that Haeg has yet to respond to that motion." See court record.

On December 28, 2010 Haeg filed a motion to reconstruct the record with his proven to be filed opposition to the state's motion to dismiss; and included proof the state, on April 7, 2010, filed a reply to Haeg's opposition. See attached court record and motion copy.

On February 4, 2011 Judge Bauman ruled that Haeg's motion (to reconstruct the record with the opposition to the state's motion to dismiss) was "denied because the PCR court file contains the opposition to motion to dismiss." See court record and attached denial copy.

On August 3, 2011 Judge Bauman, among other things, ruled that "Haeg has not filed an opposition" to the state's motion to dismiss and then requested that Haeg file an opposition within 20 days.

Discussion

It is chilling that Haeg could file an opposition that Judge Schally later claimed was missing; then file a motion to reconstruct the record with the missing opposition; have Judge Bauman deny Haeg's motion to reconstruct the record because the opposition was already in Haeg's PCR court file; and afterward have Judge Bauman claim Haeg's opposition is again missing from the file.

Conclusion

Because of the incomprehensible events above Haeg again respectfully asks the court to allow reconstruction of the court record with the attached opposition to the state's motion to dismiss.

Haeg is not copying the state with a third copy of his original opposition because they irrefutably already have it, Haeg's copy machine is acting up, and Haeg is trying to pack up his family so he can drive to Anchorage to fly out to Oregon at 12:30 am the night August 3rd/morning of August 4 to visit family until August 18, 2011.

I declare under penalty of perjury the forgoing is true and correct. Executed on August 3, 2011. A notary public or other official empowered to administer oaths is unavailable and thus I am certifying this document in accordance with AS 09.63.020.

David S. Haeg
PO Box 123
Soldotna, Alaska 99669
(907) 262-9249 and 262-8867 fax
haeg@alaska.net

Certificate of Service: I certify that on August 3, 2011 a copy of the forgoing was served by mail to the following parties: Peterson, Judge Gleason, Judge Joannides, U.S. Department of Justice, FBI, and media.
By: _____

Sent return receipt

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT KENAI

DAVID HAEG,	)
	)
Applicant,	)
	)
v.	) POST-CONVICTION RELIEF
	) Case No. 3HO-10-00064CI
STATE OF ALASKA,	)
	)
Respondent.	)
	)

(Trial Case No. 4MC-04-00024CR)

12-28-10 MOTION TO RECONSTRUCT RECORD

VRA CERTIFICATION: I certify this document and its attachments do not contain the (1) name of victim of a sexual offense listed in AS 12.61.140 or (2) residence or business address or telephone number of a victim of or witness to any offense unless it is an address identifying the place of a crime or an address or telephone number in a transcript of a court proceeding and disclosure of the information was ordered by the court.

COMES NOW Applicant, DAVID HAEG, in the above case and hereby files this motion to reconstruct the official record of Haeg's Post Conviction Relief (PCR) proceeding.

I

On December 1, 2010 Judge Daniel Schally issued an order stating:

"The State's motion to dismiss Haeg's PCR application, filed March 5, 2010, also remains pending and will be decided by the new assigned judge. It appears that Haeg has yet to respond to that motion."

See page 2 of Judge Schally's December 1, 2010 order.

Yet on March 26, 2010 Haeg had filed an opposition to the State's motion to dismiss Haeg's PCR application, in direct contradiction with Judge Schally's finding. See attached copy of Haeg's opposition to the State's motion to dismiss.

This opposition was sent to the court by certified, return receipt United State's Postal Service mail. The Homer Court, which has jurisdiction of Haeg's PCR, signed for the opposition on March 30, 2010. See attached copy of the signed return receipt green card.

Proof that Haeg served the State with a copy of his opposition (and proof the State received it), is that the State filed a reply to Haeg's opposition on April 7, 2010. See attached copy of the State's reply.

Conclusion

The evidence that Haeg was prosecuted illegally and unconstitutionally - and that this has led to an obvious and rapidly expanding cover up, now including a conspiracy between judges, Troopers, and attorneys - is overwhelming. The disappearance of Haeg's opposition is almost certainly because it was so devastating to the State – proven by their waiving the right to reply to it. See attached copy of December 22, 2010 Alaska Bar Association grievance complaint, Haeg's PCR application/memorandum/exhibits, State motion to dismiss, Haeg's opposition, State reply, and other court filings located at:

www.alaskastateofcorruption.com

This disappearance of Haeg's opposition to the State's motion to dismiss is not the first time the evidence in the official record of Haeg's case was tampered

with to cover up what happened to Haeg. The other instances of this are carefully documented in the above court documents and website.

This new evidence will be forwarded to the U.S. Department of Justice to supplement the mountain of criminal evidence already in their possession.

Haeg begs this court to reconstruct the record of Haeg's Post Conviction Relief proceeding with his March 26, 2010 opposition and to sanction those responsible for tampering with evidence.

I declare under penalty of perjury the forgoing is true and correct. Executed on December 28, 2010. A notary public or other official empowered to administer oaths is unavailable and thus I am certifying this document in accordance with AS 09.63.020.

David S. Haeg
PO Box 123
Soldotna, Alaska 99669
(907) 262-9249 and 262-8867 fax
haeg@alaska.net

March 26, 2010, + April 7, 2010.

Certificate of Service: I certify that on December 28, 2010, a copy of the forgoing was served by mail to the following parties: AAG Peterson, Judge Gleason, Judge Joannides, Van Goor, U.S. Department of Justice, FBI, and media.

By:

Person Filing Proposed Order:

Name: _____ Daytime Telephone No: _____

Mailing Address: _____

IN THE DISTRICT/SUPERIOR COURT FOR THE STATE OF ALASKA AT _____

David Haeg
_____ Plaintiff(s),

vs.

State of Alaska
_____ Defendant(s).

CASE NO. 3KN-10-1295 CI

ORDER ON MOTION FOR
Reconstruct Record

It is ordered that:

☐ The motion is granted.

☒ The motion is denied.

☐ A hearing on the motion will be held at _____ Courtroom _____
(Time and Date)

Further Orders:

→ because the PCR court file contains the opposition to motion to dismiss. This denial is without prejudice to plaintiff identifying any other "missing" pleadings.

2-4-2011
Date

Carl Bauman
Judge's Signature

CARL BAUMAN
Type or Print Judge's Name

I certify that on 2-7-11 a copy of this order was mailed to (list names): Haeg, Peterson

Clerk: Roberts

CIV-820 (5/02) (cs)
ORDER ON MOTION

Civil Rules 7(b) & 77

01712

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Homer Court House
3676 Lake St. Bldg A
Homer AK 99603

COMPLETE THIS SECTION ON DELIVERY

A. Signature
X Beth Bowe ☐ Agent ☐ Addr

B. Received by (Printed Name) BETH BOWE C. Date of D 3-30-

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type
☒ Certified Mail ☐ Express Mail
☒ Registered ☐ Return Receipt for Merchar
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article Number (Transfer from service label) 7009 3410 0002 1298 3072

Form 3811, February 2004 Domestic Return Receipt 102595-02-M

01713

IN THE DISTRICT/SUPERIOR COURT OF THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT IN HOMER

DAVID HAEG,

Applicant,

vs.

STATE OF ALASKA,

Respondent.

Trial Case No. 4MC-04-00024CR

) POST-CONVICTION RELIEF
) CASE NO. 4MC-09-00005 CI
) and 3HO-10-00064CI

3-19-10 OPPOSITION TO MOTION TO DISMISS APPLICATION FOR POST-CONVICTION RELIEF

VRA CERTIFICATION. I certify this document and its attachments do not contain the (1) name of victim of a sexual offense listed in AS 12.61.140 or (2) residence or business address or telephone number of a victim of or witness to any offense unless it is an address identifying the place of a crime or an address or telephone number in a transcript of a court proceeding and disclosure of the information was ordered by the court.

COMES NOW Applicant, DAVID HAEG, in the above referenced case and hereby files this Opposition to Motion to Dismiss. Haeg again formally protests Judge Murphy ruling on this case, who, as Haeg's Motion to Disqualify for Cause proves, is a named defendant, is a material witness, and has a direct conflict of interest. This opposition is supported by the attached 9-19-08 Petition for Rehearing.

I. Haeg's Application Is Not Deficient

The State's first claim is since Haeg failed to provide affidavits of counsel his application is deficient and must be dismissed. The State quotes the exact standards:

"We have repeatedly held that a defendant asserting ineffective assistance of counsel must provide the court with an affidavit from the former attorney, addressing the various claims of ineffective representation, **or must explain why such an affidavit can not be obtained.**" Peterson v. State, 988 P.2d 109 AK (1999)

"[A]n affidavit from the attorney in the underlying criminal case is an essential component of a prima facie case for post-conviction relief that alleges ineffective assistance of counsel. Without the required affidavit **(or an explanation of why an affidavit cannot be obtained)**, the superior court may dismiss the application for failing to plead a prima facie case." Puisis v. State, 2003 WL 22800620 (AK App. 2003)

Yet, incredibly, the State's motion to dismiss then states:

"Haeg's affidavit merely states that he has no affidavits as the attorneys refused to provide them when asked." [See also Haeg's PCR application affidavit]

This means Haeg irrefutably satisfied the very law the State cites that Haeg must meet to plead a "prima facie" case of ineffective assistance of counsel.

After stating under oath that the attorneys refused to provide an affidavit when asked, Haeg asked in the same affidavit:

"I, David S. Haeg, request a hearing so that I may subpoena attorneys and other witnesses, who have refused to provide affidavits, to prove facts in A through EEE. Nichols v. State, 425 P.2d 247 (AK 1967); Steffensen v. State, 837 P.2d 1123 (AK 1992)"

See also State v. Jones, 759 P.2d 558 (AK App. 1988):

"Jones' most notable omission in the present case was his failure to include an affidavit from his trial counsel. It will seldom be possible to decide whether an attorney made a sound tactical choice without knowing what motivated counsel's actions. Thus, in order to establish a *prima facie* case of ineffective assistance of counsel, it will ordinarily be necessary for the accused to submit an affidavit of trial counsel addressing this issue. **This requirement should not be enforced inflexibly.** In some cases, the accused may personally be aware of specific facts ruling out the possibility of sound tactical choice, or there may be other evidence available to rule out that possibility. In other cases, trial counsel may be uncooperative; the accused should then be allowed to allege on information

and belief the absence of sound tactical choice, explaining why an affidavit of counsel cannot be filed and requesting an opportunity to compel counsel's testimony at a formal deposition."

Haeg alleged on information and belief the absence of sound tactical choice by his attorneys and again asks he be provided his right to compel his attorneys and uncooperative witness testimony at a formal deposition so he may cross-examine them to prove (1) the absence of sound tactical choice, (2) conflicts of interest, and/or (3) erroneous advice about rights and clear points of law after specific inquiry. Haeg wasn't entitled to error free assistance – he was entitled to counsel free of a conflict of interest and/or that provided correct advice about rights and law after specific inquiry.

II. Haeg Cited To The Record In Support Of His Allegations Of Ineffective Assistance Of Counsel

The State's second claim is that since Haeg failed to cite to the specific instances which he believes resulted in ineffective assistance his application is deficient and must be dismissed. Haeg's 43-page PCR memorandum, which supports the 57 paragraphs of facts, specifically, and in great detail, cites to the specific instances that support his allegations of ineffective counsel. There is absolutely no mistaking what paragraphs of facts apply to Haeg's ineffective counsel claim. [See Haeg's PCR memorandum]

Most telling is section III of the State's motion to dismiss:

"Haeg appears to take issue with Cole's decisions and trial strategy as set forth in paragraphs G, H, M, T, and V. Haeg next appears to argue that Robinson's was ineffective in paragraphs W, Y, CC, EE, FF, GG, HH, II, KK, LL, MM, NN, and QQ.

In other words the State first makes the claim in section II they cannot tell which paragraphs of fact support Haeg's ineffective assistance of counsel claim but then in section III claim they know exactly which paragraphs of fact support the ineffective assistance claim and know the exact attorney Haeg claims gave the ineffective assistance.

III. Haeg's Allegations Of Ineffective Assistance Of Counsel Are NOT Tactical Decisions By Counsel And ARE Subject To Claims Of Ineffective Assistance.

The State's third claim is that all of Haeg's claims of ineffective assistance of counsel were "tactical" decisions by counsel. Haeg's claims are that his counsel had conflicts of interest and/or erroneously informed Haeg about rights and/or law after Haeg specifically inquired. Overwhelming caselaw proves that either a conflict of interest or erroneous advice after specific inquiry prevents claiming the decisions were "tactical".

> **"[P]rejudice is presumed when counsel is burdened by an actual conflict of interest.** In those circumstances, counsel breaches the duty of loyalty, perhaps the most basic of counsel's duties. Moreover, it is difficult to measure the precise effect on the defense of representation corrupted by conflicting interests." Strickland v. Washington, 466 U.S. 668 (U.S. Supreme Court 1984)
>
> **"[T]he conflict itself demonstrated a denial of the right to have the effective assistance of counsel.** Thus, a defendant who shows that a conflict of interest actually affected the adequacy of his representation need not demonstrate prejudice in order to obtain relief. Because it is in the simultaneous representation of conflicting interests against which the Sixth Amendment protects a defendant, he need go no further than to show the existence of an actual conflict. An actual conflict of interest negates the unimpaired loyalty a defendant is constitutionally entitled to expect and receive from his attorney." Cuyler v. Sullivan, 446 U.S. 335 (U.S. Supreme Court 1980)
>
> "[I]n a case of joint representation of conflicting interests the evil – it bears repeating – is in what the advocate finds himself compelled to refrain from doing. It may be possible in some cases to identify from the record the prejudice resulting from an attorney's failure to undertake certain trial tasks, but **even with a record of the sentencing hearing available it would be difficult to judge intelligently the impact of a conflict on the**

attorney's representation of a client. And to assess the impact of a conflict of interests on the attorney's options, tactics, and decisions in plea negotiations would be virtually impossible." Holloway v. Arkansas, 435 U.S. 475 (U.S. Supreme Court 1978)

"Defense counsel must perform at least as well as a lawyer with ordinary training and skill in the criminal law and **must conscientiously protect his client's interest, undeflected by conflicting considerations."** Risher v. State, 523 P.2d 421 (AK 1974)

"A mistake made out of ignorance rather then from strategy cannot be later validated as being tactically defensible." Kimmelman v. Morrison, 477 U.S. 365 (U.S. Supreme Court 1986)

"We believe it self-evident that an indispensable component of the guarantee of effective assistance of counsel is the accused's right to be advised of basic procedural rights, particularly when the accused seeks such advice by specific inquiry. Without knowing what rights are provided under law, the accused may well be unable to understand available legal options and may consequently be incapable of making informed decisions." Smith v. State, 717 P.2d 402 (AK 1986)

"It is a denial of the right to effective assistance of counsel for an attorney to advise a client erroneously on a clear point of law." Beasley v. U.S., 491 F2d 687 (6th Cir. 1971)

"The record ...underscores the unreasonableness of counsel's conduct by suggesting that their failure to investigate thoroughly **stemmed from inattention, not strategic judgment."** Wiggins v. Smith, 539 U.S. 510 (U.S. Supreme Court 2003)

"In order to render 'effective assistance'... counsel must be familiar with the facts of the case and the applicable law so that he can fully advise the defendant of the options available to him." Arnold v. State, 685 P.2d 1261 (AK 1984)

Haeg's application cannot be dismissed without evidentiary hearings to compel the attorneys' testimony to decide Haeg's claims of conflicts of interest and erroneous counsel after specific inquiry. The State, citing Steffensen v. State, proves this:

"[W]hen the superior court decides whether the defendant's [PCR] petition states a prima facie case for relief, **the superior court is obliged to view the factual allegations of the defendants' petition in the light most favorable to the defendant."** See also Lott v. State, 836 P.2d 371 (AK App. 1992)

More disturbing is that the State cites to the following quote from Valcarcel v. State, 2003 WL 22351613 (AK App. 2003) to support their argument

> "[T]he decisions on what witnesses to call, whether and how to conduct cross-examination, what jurors to accept or strike, what trial motions should be made, and all other strategic and tactical decisions are the exclusive province of the lawyer **after consultation with the client.**"

Haeg's claim is when his attorneys "consulted" with him they gave erroneous advice after specific inquiry and/or had conflicts of interest – advising that the State telling and inducing Haeg to do exactly what he was later charged with was "not a legal defense" (when it is); that nothing could be done about perjury on all warrants and at trial to falsify evidence to Haeg's guide area to support guide charges (when something could be done); that Haeg had no right to a hearing after the State seized the property Haeg used to provide a livelihood (when Haeg had a right to a hearing and one was even required "within days if not hours"); that the State could provide Haeg with immunity to compel a statement and then prosecute Haeg (when they can't); that the State could use the compelled statement against Haeg (when they can't); that nothing could be done when the State broke a plea agreement after Haeg had already given up a whole years income in reliance upon it (when something could have been done); that Haeg had to testify at trial because the State was going to present only the detrimental parts of Haeg's compelled statement (when the State could not use the statement but did); and that there was no way to enforce witness subpoenas (when there is). The forgoing directly destroyed the business Haeg and wife had put everything in life into. An evidentiary hearing including cross-examining the attorneys under oath will prove the forgoing.

Exactly what court or defendant would agree they were getting effective assistance of counsel if their own attorney were giving them false counsel? No one.

Exactly what court or defendant would agree they were getting effective assistance of counsel if their own attorney had an interest in direct conflict with theirs? No one.

The State is actually claiming it was a valid "tactic" for Haeg's own attorneys to have conflicts of interest, erroneously advise Haeg after specific inquiry, and/or to sabotage Haeg's case to help the State obtain a conviction and severe sentence. This is an incredibly dangerous and effective conspiracy because the only one who knows enough of law and rule to recognize the "sell out" are the attorneys who are in on the conspiracy.

IV. Osterman Provided Ineffective Assistance and Harmed Haeg's Appeal

The State argues that attorney Osterman refusing to allow Haeg to participate in writing his brief and Osterman's fee structure changing did not impact Haeg's appeal as Haeg was allowed to conduct his appeal on his own. The State fails to discuss the main claims against Osterman: his conflict of interest and erroneous counsel after specific inquiry - and that this forced Haeg to conduct his appeal without an attorney.

Osterman first told Haeg that the "sellout" of Haeg by his first two attorneys (Cole and Robinson) "was the worst I have ever seen", "when the Court of Appeals sees the sellout they will immediately reverse your conviction", and that **"you didn't know your own attorneys were goanna load the dang dice so the State would always win."**

Then, just before Haeg's brief is due, **"I can't put anything of the sellout in your brief because I can't do anything that will affect the livelihoods of your first attorneys."**

Haeg's inability to overturn his conviction on his own is irrefutable proof that his appeal was harmed by Osterman's conflict of interest in not conducting Haeg's appeal.

After spending $100,000 on three different attorneys who all sold them out who would have the trust and money to hire or accept a fourth? Osterman's actions irrefutably destroyed the last of Haeg's trust in attorneys and forced Haeg to conduct his appeal without one. Who would agree that, needing a heart operation, a patient received an effective operation if he operated on himself because he could not trust his doctors?

V. Haeg Specifically Alleged how his Conviction and Sentence Resulted in Numerous Violations of U.S. and State Constitutions

The State claims Haeg failed to allege "specifically" how his conviction and sentence violated constitutional rights. Yet Haeg's application specifically states:

"EEE. A summary of the basic rights that Haeg's attorneys deprived him of when Haeg specifically asked to be advised of these basic rights and his attorneys affirmatively misinformed him:

(1) **The right to due process,** when Haeg's attorneys told him could be prosecuted for crimes referred to in his compelled statement; when Haeg's attorneys told him it was not a legal defense that the SOA told and induced him to do exactly what he was charged with; there was nothing he could do about the SOA testifying under oath evidence was found where Haeg guided when it was not – when this specific evidence location was their justification for the charges against Haeg; there was no right to a prompt hearing to contest the seizure and deprivation of property he used as the primary means to provide a livelihood; there was no right to bond out the property, that he used as his primary means to provide a livelihood, before being charged, prosecuted, or convicted; that there was nothing that prevented hunting/guiding charges; there was nothing that could be done when the SOA broke the PA after Haeg had given a year of guiding for it; there was nothing Haeg could do about the SOA using his immunized statement to prosecute him; there was nothing Haeg could do about his attorneys not obeying subpoenas; and that Haeg could not appeal his sentence.

(2) **The right against unreasonable searches and seizures,** when Haeg's attorneys said nothing could be done about the SOA materially falsifying search and seizure warrants/affidavits and then using the false warrants to search Haeg's home and seize Haeg's property.

(3) **The right that no warrants shall issue, but on probable cause, supported by oath or affirmation,** when Haeg's attorneys told him the SOA could use false oaths to obtain warrants.

(4) **The right against self–incrimination,** when Haeg's attorneys told him that he could be prosecuted after being given immunity to compel a statement, when they told him the compelled and immunized statement could be used to prosecute him, and when Haeg's compelled and immunized statement was used to prosecute Haeg.

(5) **The right to compel witnesses in your favor,** when Haeg's attorneys told him nothing could be done when Cole failed to appear when subpoenaed.

(6) **The right against double jeopardy,** when Haeg's attorneys told him the SOA did not have to give him credit for the year of livelihood given up after they had promised to give Haeg credit for it.

(7) **The right to be informed of the nature and cause of the accusation,** when Haeg's attorneys failed to tell Haeg the SOA, in order forfeit property, had to include the intent to forfeit property in the charging information - which was never done.

(8) **The right to the equal protection of the laws,** when Haeg's attorneys failed to tell Haeg that AS 12.50.101 and State of Alaska v. Gonzalez, 853 P2d 526 (1993) prohibited Haeg from being prosecuted for crimes referred to in his compelled statement and when Haeg's attorneys told Haeg WCP law did not protect Haeg from hunting/guiding violations.

(9) **The right that no state shall deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws,** when Haeg's attorneys told him the SOA could do all of the above."

The above proves Haeg alleged "specifically" how his conviction and sentence violated constitutional rights. He also specifically alleged how the conflict of interest and erroneous advice after specific inquiry violated the right to counsel. [See PCR application]

The State claims Haeg offered nothing to support his claims. Haeg offered 310 pages of exhibits and eight affidavits to support his claims. [See PCR application] Also, to support his claims, Haeg must be given the opportunity to compel his attorneys' testimony at a formal deposition. See State v. Jones, 759 P.2d 558 (AK App. 1988)

The State claims the Court of Appeals rejected Haeg's claims of constitutional violations. Yet the Court of Appeals specifically stated:

> "Haeg claims that his attorneys provided ineffective assistance of counsel. We have consistently held that we will not consider claims of ineffective assistance for the first time on appeal because, in most instances, the appellate record is inadequate to allow us to meaningfully assess the competence of the attorney's efforts. **Haeg's case is typical - that is, the appellate record is inadequate to allow us to meaningfully assess the competence of Haeg's attorneys' efforts. Haeg's claim of ineffective assistance must be raised in the trial court in an application for post-conviction relief under Alaska Criminal Rule 35.1."**

Ineffective assistance of counsel is a constitutional violation. McMann v. Richardson, 397 U.S. 759 (U.S. Supreme Court 1970) Thus the Court of Appeals has not rejected Haeg's claims of constitutional violations. Finding ineffective assistance almost always proves other constitutional violations. U.S. v. Cronic, (U.S. Supreme Court 1984) See list of rights above that Haeg claims were violated because of ineffective assistance.

The State claims the Court of Appeals rejected Haeg's claim the amended information was only possible due to Haeg's immunized statement - as there was sufficient probable cause charges without Haeg's statement because the State could use Zellers and Gibbens statements to provide the probable cause needed. But Haeg claims the ineffective assistance resulted in the forbidden use of Zellers and Gibbens' statements – that they were irrefutably tainted by, and/or obtained with, Haeg's statement. Zellers and his attorney Fitzgerald testified that the State, by using Haeg's immunized statement against Zellers, obtained Zellers statements and testimony. Gibbens was the officer who took Haeg's immunized statement – forever tainting him. In other words, if Haeg's statement was removed so must Zellers and Gibben's – leaving no probable cause for the

charges and proving ineffective assistance. In addition, prosecutor Leaders was impermissibly both the prosecutor who took Haeg's immunized statement and who later prosecuted Haeg – also proving ineffective assistance. See the following caselaw:

State of Alaska v. Gonzalez, 853 P2d 526 (AK Supreme Court 1993)

"Procedures and safeguards can be implemented, **such as isolating the prosecution team or certifying the state's evidence before trial**, but the accused often will not adequately be able to probe and test the state's adherence to such safeguards.

One of the more notorious recent immunity cases, United States v. North, 910 F.2d 843 (D.C.Cir.) modified, 920 F.2d 940 (D.C.Cir.1990) illustrates another proof problem posed by use and derivative use [statement] immunity.

First, the prosecution could use the compelled testimony to refresh the recollection of a witness testifying at North's criminal trial. The second problem, however, is more troublesome. In a case such as North, **where the compelled testimony receives significant publicity, witnesses receive casual exposure to the substance of the compelled testimony through the media or otherwise.** Id. at 863. In such cases, a court would face the insurmountable task of determining the extent and degree to which "the witnesses' testimony may have been shaped, altered, or affected by the immunized testimony." Id.

The second basis for our decision is that the state cannot meaningfully safeguard against nonevidentiary use of compelled testimony. **Nonevidentiary use "include assistance in focusing the investigation, deciding to initiate prosecution, refusing to plea-bargain, interpreting evidence, planning cross-examination, and otherwise generally planning trial strategy."** United States v. McDaniel, 482 F.2d 305, 311 (8th Cir.1973). Innumerable people could come into contact with the compelled testimony, either through official duties or, in a particularly notorious case, through the media. **Once persons come into contact with the compelled testimony they are incurably tainted for nonevidentiary purposes.**

When compelled testimony is incriminating, the prosecution can "focus its investigation on the witness to the exclusion of other suspects, thereby working an advantageous reallocation of the government's financial resources and personnel." With knowledge of how the crime occurred, the prosecution may refine its trial strategy to "probe certain topics more extensively and fruitfully than otherwise." Id. These are only some of the possible nonevidentiary advantages the prosecution could reap by virtue of its knowledge of compelled testimony.

Even the state's utmost good faith is not an adequate assurance against nonevidentiary uses because there may be "non-evidentiary uses of which even the prosecutor might not be consciously aware." State v. Soriano, 68 Or.App. 642, 684 P.2d 1220, 1234 (1984) (only transactional immunity can protect state constitutional guarantee against nonevidentiary use of compelled testimony). We sympathize with the Eighth Circuit's lament in McDaniel that "we

cannot escape the conclusion that the testimony could not be wholly obliterated from the prosecutor's mind in his preparation and trial of the case." McDaniel, 482 F.2d at 312. This incurable inability to adequately prevent or detect nonevidentiary use, standing alone, presents a fatal constitutional flaw in use and derivative use immunity.

Because of the manifold practical problems in enforcing use and derivative use immunity we cannot conclude that [former] AS 12.50.101 is constitutional. Mindful of Edward Coke's caution that 'it is the worst oppression, that is done by colour of justice,' we conclude that use and derivative use immunity is constitutionally infirm."

United States v. North, 910 F.2d 843 (D.C.Cir. 1990)

"[N]one of the testimony or exhibits…became known to the prosecuting attorneys…either from the immunized testimony itself or from leads derived from the testimony, directly or indirectly. . we conclude that the use of immunized testimony by witnesses to refresh their memories, or otherwise to focus their thoughts, organize their testimony, or alter their prior or contemporaneous statements, constitutes evidentiary use rather than nonevidentiary use. This observation also applies to witnesses who studied, reviewed, or were exposed to the immunized testimony in order to prepare themselves or others as witnesses.

From a prosecutor's standpoint, an unhappy byproduct of the Fifth Amendment is that Kastigar may very well require a trial within a trial (or a trial before, during, **or after the trial**) if such a proceeding is necessary for the court to determine whether or not the government has in any fashion used compelled testimony to indict or convict a defendant. If the government chooses immunization, then it must understand that the Fifth Amendment and Kastigar mean that it is taking a great chance that the witness cannot constitutionally be indicted or prosecuted.

This burden may be met by establishing that the witness was never exposed to North's immunized testimony, or that the allegedly tainted testimony contains no evidence not "canned" by the prosecution before such exposure occurred."

Current AS 12.50.101 and State of Alaska v. Gonzalez prove Haeg's attorneys were wrong – once Haeg's statement was compelled with immunity he could never be prosecuted. [See AS 12.50.101 and State of Alaska v. Gonzalez] Additionally, even if Alaska law did allow prosecution, use of Haeg's immunized statement was not allowed no matter how much other evidence or testimony there was.

"[A] defendant in a criminal case is deprived of due process of law if his conviction is founded, in whole or in part, upon an involuntary confession, without regard for the truth or falsity. . . even though there is ample evidence aside from the confession to support the conviction." Jackson v. Denno, 378 U.S. 368 (U.S. Supreme Court 1964).

"Where immunized testimony is used . . . the prohibited act is simultaneous and coterminous with the presentation; indeed, they are one and the same. **There is no independent violation that can be remedied by a device such as the exclusionary rule; the . . process itself is violated and corrupted, and the [information or trial] becomes indistinguishable from the constitutional and statutory transgression. If the government has in fact introduced trial evidence that fails the Kastigar analysis, then the defendant is entitled to a new trial. If the same is true as to grand jury evidence, then the indictment must be dismissed."** United States v. North

VI. Haeg's Newly Discovered Evidence Requires Vacating his Conviction and Sentence in the Interest of Justice

The State claims "Haeg advances nothing that begins to suggest he is entitled to relief under this [newly acquired evidence] standard" and that they have "no idea" what new evidence Haeg is referring to. Yet in his application Haeg stated under oath:

> **"O.** On November 8, 2004, over Cole's objection, Haeg submitted to the Court and SOA a written statement of what his PA testimony would be the next day in McGrath. This statement explained what the SOA had told Haeg just before Haeg's participation: that the WCP was in jeopardy of termination if more wolves were not taken, that Haeg had to take more wolves so this did not happen, that if Haeg took wolves outside the area to claim they were taken inside the area, that they could not believe people were not poisoning wolves, what kind of poison worked best, and where to obtain it. The statement also evidenced Haeg had done all required for the PA. [Exhibit 10]
>
> **U.** **Sometime after November 8, 2004 Haeg's statement, documenting the SOA had told and induced him to do what they then prosecuted him for, was removed from the Court record while proof documenting it was submitted remained in the record.** [Exhibit 13] **Years after, when discovered, Haeg asked the Court of Appeals to reconstruct the record with the statement before his appeal brief was due. Although the SOA did not oppose, the Court of Appeals, for reasons never explained, failed to do so.**

EVIDENCE TAMPERING AND PREJUDICE

A. Facts

In spite of his attorneys' counsel that it was not a legal defense and over his attorneys objections that he do so, **Haeg wrote a 16-page pretrial letter to the court detailing how, when, where, and why the SOA told and induced him to do exactly what he was charged with doing.** [Exhibit 10]

Long after trial, sentencing, and after it could be considered on appeal, Haeg's wife Jackie found that while evidence remained in the record proving it had been submitted, Haeg's letter evidencing the legal and "complete" defense that his attorneys told him was not a legal defense, was removed out of the court record. [Exhibit 13, TR, and AR]

B. Prejudice

Because of his attorneys' false advice and corresponding refusal to use it as a defense, Haeg's letter was the only evidence left to prove he had the defense the SOA had suggested and induced his actions and that he had brought the defense up in a timely manner so as not to "waive" it. **But since it was removed out of the official record and this was not discovered to reconstruct it in time, this undeniably material evidence was never seen by the trial court and was not allowed to be considered on appeal (along with all the other misconduct by Haeg's attorneys and the SOA) – meeting the AS 12.72.010 (4) requirement that there exists evidence of material facts, not previously presented and heard by the court, that requires vacation of the conviction or sentence in the interest of justice. This is proven prejudice and, when considered with his attorneys' false advice they could not bring this defense up, devastating cumulatively.**

CUMULATIVE INEFFECTIVENESS AND PREJUDICE

B. Cumulative Error and Prejudice

Haeg's counsel not litigating that Haeg was told and induced by the SOA to take wolves outside the WCP area and then to mark them as being taken inside is prejudicial error. But this failure in conjunction with their failure to litigate the fact that the SOA falsified the evidence locations to Haeg's guide area, in order to manufacture the claim Haeg's intent was to benefit his hunting guide business, and the cumulative error and prejudice to Haeg is devastating. Not only did Haeg's counsel not prove his intent was, at the SOA suggestion, to help the SOA conduct the WCP, they allowed the SOA, unchallenged, to manufacture an entirely different intent – **perverting the entire case from the SOA fraudulently running the WCP to Haeg was a rogue hunting guide out to feather his own nest.** A conviction of a WCP violation would have been

inconsequential to Haeg's life – as by law it could not affect his business – the conviction of hunting guide crimes destroyed Haeg's life.

All the above "errors" by Haeg's counsel also combined to preclude appellate review of these injustices. [Exhibit 31] This prejudiced Haeg by costing him years on appeal with a record that was inadequate and deficient to address these errors – and requires this PCR proceeding to prove these were "errors" instead of "reasonable tactics" by counsel.

The most compelling evidence of conspiracy in Haeg's prosecution – other than Robinson and Cole working together to avoid Cole's subpoena, **everyone working together to falsify evidence locations and removing evidence out of the court record**. "Truth is best discovered by powerful statements on both sides of the question." U.S. Supreme Court, United States v. Cronic. (1) Haeg's attorneys allowed the SOA, unchallenged, to make the powerful and false statement that Haeg took wolves where he guides so he must be charged and convicted of guiding violations. **(2) Haeg's attorneys falsely told Haeg he could not make the powerful and truthful statement that the SOA told and induced him to take wolves outside the area but claim they had been taken inside the area…**

Haeg's own attorneys and the SOA worked hand in hand to destroy and conceal true evidence; to manufacture and publish false evidence; to systematically strip Haeg of numerous basic constitutional defenses and weapons…"

As the above shows Haeg advanced a great deal that he is entitled relief under the newly discovered evidence standard and that it is perfectly clear what the "new evidence" is – new evidence that a "complete" defense to the charges Haeg faced had been irrefutably removed out the official record, upon which Haeg's case was decided and appealed. See PCR exhibits 10, 13, and caselaw below:

U.S. Supreme Court SORRELLS v. U.S., 287 U.S. 435 (1932)

"When the criminal design originates, not with the accused, but is conceived in the mind of the government officers, and the accused is by persuasion, deceitful representation, or inducement lured into the commission of a criminal act, the government is estopped by sound public policy from prosecution therefor.

"The protection of its own functions and the preservation of the purity of its own temple belongs only to the court. It is the province of the court and of the court alone to protect itself and the government from such prostitution of the criminal law. **The violation of the principles of justice by the entrapment of the unwary into crime should be dealt with by the court no matter by whom or at what stage of the proceedings the facts are brought to its attention.**

Proof of entrapment, at any stage of the case, requires the court to stop the prosecution, direct that the indictment be quashed, and the defendant set at liberty."

U.S. Supreme Court JACOBSON v. UNITED STATES, 503 U.S. 540 (1992)

"The prosecution failed, as a matter of law, to adduce evidence to support the jury verdict that Jacobson was predisposed, independent of the Government's acts and beyond a reasonable doubt, to violate the law by receiving child pornography through the mails. In their zeal to enforce the law, **Government agents may not originate a criminal design, implant in an innocent person's mind the disposition to commit a criminal act, and then induce commission of the crime so that the Government may prosecute.**

Because the Government overstepped the line between setting a trap for the "unwary innocent" and the "unwary criminal," Sherman v. United States, 356 U.S. 369, 372 (1958), and, as a matter of law, failed to establish that petitioner was independently predisposed to commit the crime for which he was arrested, we reverse the Court of Appeals' judgment affirming his conviction.

JUSTICE O'CONNOR, with whom THE CHIEF JUSTICE and JUSTICE KENNEDY join, and with whom JUSTICE SCALIA joins except as to Part II, dissenting.
[Keith Jacobson] needed no Government agent to coax, threaten, or persuade him; no one played on his sympathies, friendship, or suggested that his committing the crime would further a greater good. In fact, no Government agent even contacted him face to face."

U.S. Supreme Court. Mathews v. United States, 485 U.S. 58 (1988)

"Even if the defendant in a federal criminal case denies one or more elements of the crime, **he is entitled to an entrapment instruction whenever there is sufficient evidence from which a reasonable jury could find entrapment -- a defense that has the two related elements of Government inducement of the crime, and a lack of predisposition on the defendant's part to engage in the criminal conduct.**

As a general proposition, a defendant is entitled to an instruction as to any recognized defense for which there exists evidence sufficient for a reasonable jury to find in his favor. *Stevenson v. United States,* 162 U. S. 313 (1896)

This right is so important that the failure to allow a defendant to present a theory of defense which is supported by sufficient evidence is reversible error. United States v. Felsen, 648 F.2d 681, 685-86 (10th Cir.). Reversed and remanded."

Supreme Court of Alaska. Grossman v. State 457 P.2d 226 Alaska 1969

"It is plain enough that the underlying basis of entrapment is found in public policy, as discerned and announced by the courts. As Judge Learned Hand perceptively observed in United States v. Becker, 62 F.2d 1007, 1009 (2d Cir. 1933), **'The whole doctrine derives from a spontaneous**

moral revulsion against using the powers of government to beguile innocent, though ductile, persons into lapses which they might otherwise resist.'

In Sorrells v United States, 287 U.S. 435, 53 S.Ct. 210, 77 L.Ed. 413 (1932), the majority opinion viewed entrapment as an implied statutory condition that one who has been entrapped shall not be convicted of violating the statute.

It held that the determination in each case should focus on whether the particular defendant was predisposed to commit the crime or was an otherwise innocent person who would not have erred except for the persuasion of the government's agents. This permits a searching inquiry into the conduct and motivations of both the officers and the defendant, including the past conduct of the defendant in committing similar crimes, and the general activities and character of the defendant.

Reversed and remanded."

Supreme Court of Alaska. Batson v. State 568 P.2d 973 Alaska 1977.

"In Alaska we have recognized entrapment as a defense in criminal prosecutions.

Under the Federal 'implied exception' theory, an entrapped defendant cannot be convicted and punished because what he did was not a crime; that is, he did not violate any statute because he comes within an implied exception to that statute. **From a procedural standpoint, once the defense of entrapment is raised, the prosecution must prove non-entrapment because it is only by so doing that the prosecution can prove that the defendant did not come within the implied exception and hence that he has committed a crime. Since application of the statute to the defendant is an essential element which must be proven to establish guilt, it follows in both logic and law that the standard of proof which must be satisfied on the issue of non-entrapment is the same as for any other essential element of the offense; proof beyond a reasonable doubt. Therefore, the 'Federal rule' provides that once the issue of entrapment has been raised, either by the defendant or in any other way, the defendant has met his burden and thereafter the burden is on the prosecution to disprove entrapment beyond a reasonable doubt."**

The removed court record specifically evidenced that Haeg, who had no criminal history whatsoever, was personally told by government officials just before he participated: (1) the first experimental Wolf Control Program was likely going to be shut down because it was so far it was ineffective; (2) that if this happened no other Wolf Control Programs would be started and that Alaska's moose resource, upon which many

Alaskans depended for food, would be jeopardized, (3) that Haeg, whom they told was one of the very best pilots and hunters, had to take more wolves so this didn't happen; and (4) that if Haeg had to take wolves outside the Wolf Control Program area to do this he should just mark them as being taken inside the Wolf Control Program area (exactly as Haeg was charged with doing). In other words the government told Haeg he was the "knight in shining armor" who had to single-handedly save the moose resource upon which so many Alaskans depended – "to further a greater good". See PCR exhibit 10.

On his own Haeg met the exact requirements for raising an entrapment defense according to the caselaw above. If the evidence had not been removed the State could not have prosecuted Haeg without first proving, beyond a reasonable doubt, they did not tell and induce Haeg to do what he was charged with doing - or that Haeg was predisposed with prior convictions. The State could not do either of these – but never had to because the evidence was removed - after Haeg, over his attorneys "counsel" it was not a legal defense and couldn't be used, placed it in the record anyway.

This is not "classical" newly discovered evidence that was never part of the record – this is newly finding that the official record was corruptly altered to remove a defense after it has been entered into evidence by a defendant who trusts it will remain there to protect him – who has no choice but to trust that the record will not be tampered with. In other words Haeg did all he was required to make this impregnable defense to the court – thereafter it was the courts duty to protect this defense upon which Haeg relied. If this defense was not protected Haeg's conviction must be overturned, primarily to punish the court for allowing Haeg's defense and the court record to be corrupted.

This is such shocking evidence of corruption there is no caselaw addressing the proper remedy when the official court record itself is altered to completely eliminate all trace of a mighty defense. The closest available:

Brady v. Maryland, 373 U.S. 83 (U.S. Supreme Court 1963)

"Suppression by the prosecution of evidence favorable to an accused who has requested it violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution.

In Pyle v. Kansas, we phrased the rule in broader terms:
'Petitioner's papers are inexpertly drawn, but they do set forth allegations **that his imprisonment resulted from perjured testimony, knowingly used by the State authorities to obtain his conviction, and from the deliberate suppression by those same authorities of evidence favorable to him.** These allegations sufficiently charge a deprivation of rights guaranteed by the Federal Constitution, and, if proven, would entitle petitioner to release from his present custody.'

We now hold that the suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution. **The principle of Mooney v. Holohan is not punishment of society for misdeeds of a prosecutor but avoidance of an unfair trial to the accused.** Society wins not only when the guilty are convicted but when criminal trials are fair; our system of the administration of justice suffers when any accused is treated unfairly. An inscription on the walls of the Department of Justice states the proposition candidly for the federal domain: "The United States wins its point whenever justice is done its citizens in the courts." **A prosecution that withholds evidence on demand of an accused which, if made available, would tend to exculpate him or reduce the penalty helps shape a trial that bears heavily on the defendant.** That casts the prosecutor in the role of an architect of a proceeding that does not comport with standards of justice, even though, as in the present case, his action is not "the result of guile," to use the words of the Court of Appeals."

Fajeriak v. State, 520 P.2d 795 (AK Supreme Court 1974)

"The intimidation of defense witnesses so infects a subsequently procured conviction with unreliability that the practice has long been condemned as a transgression of constitutional proportions remediable by post-conviction relief. The facts as alleged require an evidentiary hearing in order to ascertain whether such intimidation occurred.

Pyle v. Kansas, 317 U.S. 213 S.Ct. (1942); Wagner v. United States, 418 F.2d 618 (9th Cir. 1969). Indeed, **the mere failure to disclose exculpatory witnesses' statements**

deprives a criminal defendant of due process, and entitles him to post-conviction relief; Jackson v. Wainwright, 390 F.2d 288 (5th Cir. 1968); Guerrero v. Beto, 384 F.2d 886 (5th Cir. 1967); See generally Brady v. Maryland, 373 U.S. 83 S.Ct. (1963) **(holding that the deliberate suppression of material evidence favorable to the defense denies due process)**

[C]ourts have agreed that **proof of deliberate eavesdropping upon attorney-client communications automatically invalidates a conviction.** The United States Supreme Court implicitly adopted this rule in Black v. United States, where, upon learning that the defendant's conviction may have been procured in part by the use of information obtained during electronic eavesdropping upon the defendant's conversations with his attorney, the Court vacated the conviction, declining the government's invitation to remand to the District Court to determine whether the defendant had been prejudiced by these activities.

In light of this imposing array of authority, ordinarily a new trial will be a matter of right once the eavesdropping is proved.

There will also have to be a new trial if the facts adduced at the evidentiary hearing confirm that the state intimidated potential material defense witnesses and prevented them from testifying. Any verdict so procured would be irremediably suspect, and could not therefore be allowed to stand. There can be no argument here that appellant must demonstrate prejudice, for there would be no possible way to gauge how the jury might have reacted to the testimony of the excluded witnesses."

Evidence that should have prevented Haeg's prosecution, and even if prosecution were allowed, would have prevented devastating guide charges, **WAS REMOVED OUT OF THE OFFICIAL RECORD AFTER IT HAD BEEN PROPERLY ADMITTED.**

It is more then possible Judge Murphy herself removed the evidence – intentionally and maliciously. This is a far greater injustice then mere prosecutors just intimidating **potential** witnesses or eavesdropping on attorney/client conversations. And what are the odds of Haeg's attorneys erroneously advising it wasn't a legal defense, and in the one instance Haeg overcame their false counsel and went ahead anyway with formally presenting the defense, it mysteriously disappears from the court record anyway? Anyone

reasonable would agree there must be a conspiracy involving Haeg's attorneys, prosecution, and/or court.

The State claims Haeg's application is barred by AS 12.72.020(1), which states that a PCR claim may not be brought if it is based upon the admission or exclusion of evidence. However, Haeg is not claiming evidence was admitted or excluded unjustly after a court considered arguments from both parties. Haeg's claims are ineffective assistance of counsel and that long after trial he "newly discovered" that his entrapment evidence, that had already been properly admitted and that was critical to his defense, had been corruptly removed out of the court record without his knowledge –preventing the court from considered it when deciding his trial, sentence, and/or appeal - when he had an absolute right to the irrefutable protection the evidence would have provided.

The State claims Haeg's application is barred by AS 12.72.020(2), which states a PCR claim may not be brought if the claim was, or could have been but was not, raised in a direct appeal from the proceeding that resulted in the conviction. Yet the Court of Appeals specifically held Haeg's claim of ineffective assistance of counsel could not be brought on direct appeal and must be brought up during PCR. And Haeg "newly discovered" the official record had been altered long after this could have been presented to the Court of Appeals – meaning neither claim was ever raised, and could not be raised, during direct appeal. These are Haeg's only PCR claims (other then his conviction and sentence violates the constitution – which is proven if he proves either of the other two claims), thus Haeg's application cannot be barred by AS 12.72.020(2)

The State claims Haeg's application is barred by AS 12.72.020(5), which states a PCR claim may not be brought if the claim was decided on its merits or on procedural grounds in any previous proceeding. As shown Haeg's claims were not, and/or could not, be decided on their merits or procedurally in a previous proceeding.

VII. The Specific Facts Alleged in Support of Haeg's Claim for Relief Were Not Previously Addressed by the Court of Appeals in regard to Haeg's PCR Claims

The State claims that Haeg's PCR application contains 57 paragraphs of facts and that "[m]ost of these issues were previously raised during Haeg's appeal and rejected by the Court of Appeals which again makes it impossible to figure out what specific factual allegations support Haeg's claim for post-conviction relief." The State goes on to cite factual paragraphs they claim are similar to facts Haeg presented to the Court of Appeals – making the fantastic claim Haeg can no longer use these facts to prove other claims. Yet the exact same facts may be used to prove entirely different claims, as Haeg is now doing – or they that may prove something after the required testimony and cross-examination of counsel – which Haeg is seeking.

1. The State claims the Court of Appeals "dealt" with the falsified wolf kill locations.

What the Court actually stated is that:

> "Haeg claims that Gibbens lied when he said in his affidavit that he found evidence in unit 19C that Haeg had taken wolves. **But Haeg [actually Haeg's attorneys] did not challenge the search warrant affidavit prior to trial. Because of this, his claim is forfeited."**

Yet if Haeg claims that he asked his attorneys before trial what could be done about the false affidavits and Haeg's attorneys erroneous told him "nothing" and did nothing, as Haeg's PCR application claims, the never addressed falsified evidence locations are now incredibly potent evidence of ineffective assistance of counsel.

In addition, Haeg's main claim about the falsified evidence locations, that Trooper Gibbens knowingly falsified the evidence locations during his testimony to Haeg's judge and jury, and that this alone required Haeg's conviction to be overturned, was disturbingly never "dealt" with by the Court of Appeals – even after Haeg filed a Petition for Rehearing. See Court of Appeals decision and Haeg's attached 9-19-08 Petition for Rehearing. In other words the Court of Appeal never "dealt" with the fact the State knowingly falsified evidence locations and, in any event, this cannot prevent Haeg from using the same facts to prove ineffective assistance of counsel.

2. The State claims the Court of Appeals "addressed" the fact the State did not give Haeg a hearing "within days if not hours" of airplane seizure.

The Court of Appeals disturbingly failed to apply the primary caselaw Haeg claimed supported this claim of error, Waiste v. State, 10 P.3d 1141 (AK Supreme Court 2000) – even after Haeg again asked they do so in a Petition for Rehearing. See Court of Appeals decision and Haeg's attached 9-19-08 Petition for Rehearing.

Thus the Court of Appeal never "addressed" the fact the State did not provide a hearing after plane seizure and, in any event, this cannot prevent Haeg from using the same facts to prove ineffective assistance. Haeg claims he asked if he could get a postseizure hearing to protest the false warrants and being put out of business before

being charged and his counsel advised the law did not allow one – when one was not only allowed but was required "within days if not hours". Waiste v. State The fact Haeg never received a hearing is now incredibly compelling proof of ineffective assistance.

3. The State claims the Court of Appeals "dealt" with the fact that even if Haeg's immunized statement were not used Zellers and Gibbens' statements could still have been used to convict Haeg.

As shown above in section V., if Haeg's compelled statement could not be used neither could Zellers or Gibbens' - making Haeg's attorneys' advice nothing could be done, after specific inquiry, ineffective counsel. The Court of Appeals also ruled "Haeg did not raise this issue at trial" and later that, when Haeg's attorneys, in a reply brief, protested the use of Haeg's statement this was not allowed, holding:

> **"A trial court can properly disregard an issue first raised in a reply to an opposition. If Haeg wanted a ruling on this issue, he was obligated to file a new motion asking for one. Because he did not ask for a ruling, he [Haeg's attorneys] has waived his claim."**

The Court of Appeals clearly indicates that when Haeg's attorneys protested his immunized statement use in a "not allowed" reply brief, Haeg's attorneys gave him ineffective assistance. In addition, as shown above in section V., the law does not allow Haeg to be prosecuted after being compelled to give a statement and, even if it did, his statement could not be used no matter how much other evidence or testimony there was.

In other words the Court of Appeal never correctly "addressed" the fact the State prosecuted Haeg after he was compelled to give a statement – and then irrefutably used his statement to do so. And, even if they did, this cannot prevent Haeg from using the same facts to prove ineffective assistance of counsel, as Haeg claimed he asked if his

compelled statement could be used against him and his counsel told him it could – when Haeg couldn't even be prosecuted let alone have his statement, or those tainted by his statement, used to do so. The fact that Haeg's, Zellers, and Gibbens' statements were all used against Haeg is now incredibly compelling proof of ineffective assistance.

4. The State claims the Court of Appeals "ruled" against Haeg's claim that he could not be prosecuted for guiding violations.

As explained above, Haeg's discovery of the sabotage to the court recorded "complete" defense to all charges, especially to guide violations, only occurred after it was far to late for the Court of Appeals to consider or rule on it. So how could the Court of Appeals have "ruled" against Haeg when Haeg's claim had yet to be discovered?

5. The State claims the Court of Appeals "found" that Haeg was killing wolves with an "intent" to eliminate them within his guide use area.

As already explained above, Haeg's discovery of the sabotage to his defense to all charges, which specifically evidenced Haeg's "intent" in killing the wolves was, at the governments suggestion and inducement, to make the Wolf Control Program effective so it would not be shut down permanently, only occurred after it was far to late for the Court of Appeals to rule on it. So how could the Court of Appeals have correctly "found" that Haeg was killing wolves with "intent" to eliminate them within his guide area when they were corruptly deprived of incredibly powerful and pertinent evidence? Especially when this corruption is combined with the corruption that the State admitted their trial testimony to prove Haeg's "intent", that Haeg took wolves in his guide use area to benefit his guide business, was false? After this corruption no one could have "found" the truth.

If the Court of Appeal never properly "found" that Haeg took wolves with intent to eliminate them within his guide area how can this prevent Haeg from using the same facts to prove ineffective assistance of counsel? Haeg (with no criminal history) asked if he could use the fact government officials told and induced him to take wolves outside the Wolf Control Program area but claim they had been taken inside, exactly as he was later charged with doing - and his counsel told him this was not a legal defense – when it irrefutably was. The fact the Court of Appeals specifically "found" that Haeg's "intent" was to kill wolves in his guide area is now incredibly compelling evidence Haeg's case needs to be overturned because of the newly found evidence and because of the ineffective assistance of Haeg's attorneys erroneously advising him that the government telling and inducing him was not a legal defense.

Haeg's Testimony at Trial

The State claims Haeg's testimony that he killed wolves outside the Wolf Control Program area "is sufficient to uphold Haeg's conviction and deny this application."

Haeg, under the "newly discovered evidence" rule, claims that a defense, which prevented him from being convicted even if he took wolves outside the Wolf Control Area, was corruptly removed out of the record after it had been admitted and before it could be considered by either trial or appellate court, now making Haeg's subsequent trial testimony incredibly compelling evidence Haeg's conviction should be overturned.

Haeg claims that, after specific inquiry, his attorneys told him only the detrimental parts of his immunized statement would be used against him at trial and Haeg had to testify at trial to bring in the good parts. This false advice after specific inquiry makes

Haeg's subsequent trial testimony, incredibly compelling evidence of ineffective assistance of counsel - instead of evidence negating it.

After Haeg was given immunity to compel a statement AS 12.50.101 and State of Alaska v. Gonzalez prevented him from being prosecuted, when his attorneys told him he could be – proving ineffective assistance of counsel and proving the State's claim false.

The argument for devastating guide charges was Haeg's taking wolves where he guided proved "intent" to benefit his guide business. Yet afterward the State admitted falsifying all wolf kills to Haeg's guide area to support guide charges instead of entrapment or Wolf Control Program violations. Haeg's actions were no crime because of what the State told him and, even had they not, could only have been a Wolf Control Program violation without the State's false testimony. Haeg never testified he was guilty of guide charges. It's not first-degree murder just because a State Trooper admits killing someone– "intent" may prove justification, self-defense, accident, entrapment, etc.

CONCLUSION

Every single reason the State has given for dismissing Haeg's application has been proven to be completely false. Haeg's PCR application cannot be dismissed at this point in the proceedings because he has proved a prima facie case – his claims of conflict of interest and/or erroneous advice of counsel after specific inquiry, if true, are by all ruling courts automatic ineffective assistance of counsel. [See Strickland, Cuyler, Holloway, Risher, Kimmelman, Smith, Beasley, Wiggins, and Arnold above] Although Haeg has not provided affidavits of counsel he provided the required alternative, he explained why he could not get affidavits of counsel – counsel refused to provide affidavits when asked.

Haeg then asked for the required opportunity to compel counsels' testimony at a formal deposition. Haeg's claims of ineffective assistance and newly discovered evidence were never addressed by the Court of Appeals; the State's motion itself proves they know which facts support Haeg's claims; and the new evidence requires a new trial.

Unlike the State's claim, Haeg's application is not required to prove or demonstrate at this stage in the proceedings that his counsel was ineffective [see Lott and Jones]. Haeg only need make claims that, if true, would prove his counsel was ineffective, as he has. It is during the next stage in the proceedings, the evidentiary hearings, that Haeg is required to prove his claims and the State can refute. [See AK Rule of Crim. Proc. 35.1(g)] Haeg specifically cited to the record to support his claims.

See also Alaska Rule of Criminal Procedure 35.1(f)(1):

> **"In considering a pro se application the court shall consider substance and disregard defects of form..."**

All courts have held that without hearing from the attorneys it is virtually impossible to prove if their decisions and actions were "tactical" or ineffective. If Haeg is denied his constitutional right to compel the witnesses in his favor (the attorneys) it is likely it will be ruled he didn't prove his case. In other words the State is capitalizing on the refusal by Haeg's attorneys to provide affidavits to perversely claim Haeg's case should be dismissed before Haeg can present the attorney evidence and testimony most needed to make his case – after the State successfully argued on Haeg's direct appeal the current record was too "limited" to decide and the Court of Appeals agreed:

> "[T]he appellate record is inadequate to allow us to meaningfully assess the competence of Haeg's attorneys' efforts."

The State now unbelievably argues the exact opposite of their prior successful argument – that the record, which remains unchanged since the Court of Appeals decided is was not developed enough to do so, is now developed enough to dismiss Haeg's ineffective assistance claim - so the record will not be developed with further testimony. The State is giving conflicting testimony to impermissibly end Haeg's case before Haeg can require the attorneys to develop, with their testimony, adequate proof of an incredible and hard-to-prove injustice. That Haeg's attorneys gave him erroneous advice after specific inquiry to "waive" or deprive Haeg of nearly every constitutional right and/or their interests were in conflict with Haeg's. The State is covering up this fundamental breakdown in justice by baldly claiming, without any proof, it was all legitimate "tactics" by Haeg's counsel – to prevent any inquiry into why Haeg's counsel acted as they did.

Alaska Supreme Court in Lanier v. State, 486 P.2d 981 (AK 1971):

"The United States Supreme Court has been chary in finding waivers of fundamental constitutional rights. On the issue of whether counsel could effectively waive the right, the Court said:

The classic definition of waiver enunciated in Johnson v. Zerbst -**'an intentional relinquishment or abandonment of a known right or privilege'-furnishes the controlling standard.** If a habeas applicant, **after consultation with competent counsel** or otherwise, **understandingly and knowingly (waived his rights), then it is open to the federal courts on habeas to deny him all relief.**

The implication is quite strong that, as between the attorney and the client, the client must understandingly and knowingly waive the right involved."

Did Haeg knowingly "waive" the following fundamental constitutional rights?

(1) **The right to due process,** when Haeg's attorneys told him could be prosecuted for crimes referred to in his compelled statement, when Haeg's attorneys told him it was not

a legal defense that the SOA told and induced him to do exactly what he was charged with, there was nothing he could do about the SOA testifying under oath evidence was found where Haeg guided when it was not – when this specific evidence location was their justification for the charges against Haeg, there was no right to a prompt hearing to contest the seizure and deprivation of property he used as the primary means to provide a livelihood, there was no right to bond out the property, that he used as his primary means to provide a livelihood, before being charged, prosecuted, or convicted, that there was nothing that prevented hunting/guiding charges, there was nothing that could be done when the SOA broke the PA after Haeg had given a year of guiding for it, there was nothing Haeg could do about the SOA using his immunized statement to prosecute him, there was nothing Haeg could do about his attorneys not obeying subpoenas, and that Haeg could not appeal his sentence.

(2) **The right against unreasonable searches and seizures,** when Haeg's attorneys said nothing could be done about the SOA materially falsifying search and seizure warrants/affidavits and then using the false warrants to search Haeg's home and seize Haeg's property.

(3) **The right that no warrants shall issue, but on probable cause, supported by oath or affirmation,** when Haeg's attorneys told him the SOA could use false oaths to obtain warrants.

(4) **The right against self –incrimination,** when Haeg's attorneys told him that he could be prosecuted after being given immunity to compel a statement, when they told him the compelled and immunized statement could be used to prosecute him, and when Haeg's compelled and immunized statement was used to prosecute Haeg.

(5) **The right to compel witnesses in your favor,** when Haeg's attorneys told him nothing could be done when Cole failed to appear when subpoenaed.

(6) **The right against double jeopardy,** when Haeg's attorneys told him the SOA did not have to give him credit for the year of livelihood given up after they had promised to give Haeg credit for it.

(7) **The right to be informed of the nature and cause of the accusation,** when Haeg's attorneys failed to tell Haeg the SOA, in order forfeit property, had to include the intent to forfeit property in the charging information - which was never done.

(8) **The right to the equal protection of the laws,** when Haeg's attorneys failed to tell Haeg that AS 12.50.101 and State of Alaska v. Gonzalez, 853 P2d 526 (1993) prohibited Haeg from being prosecuted for crimes referred to in his compelled statement and when Haeg's attorneys told Haeg WCP law did not protect Haeg from hunting/guiding violations.

(9) **The right that no state shall deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal**

protection of the laws, when Haeg's attorneys told him the SOA could do all of the above.

(10) The right to assistance of counsel, when Haeg's attorneys gave him erroneous advice after specific inquiry to deprive Haeg of the fundamental constitutional rights above.

It is obvious that when the false counsel Haeg received is considered he did not understandingly, knowingly, and/or intelligently "waive" the above rights and thus did not receive a constitutional trial. Removing evidence that the State asked and induced Haeg and replacing it with false evidence that Haeg took wolves where he guides **completely** changed the evidentiary picture from the State was fraudulently falsifying data needed to justify the Wolf Control Program to Haeg was a rogue guide out to feather his own nest.

Haeg's third attorney Osterman put it best, before he said he could not do anything that would affect the livelihoods of Haeg's first two attorneys: **"You didn't know your attorneys were goanna load the dang dice so the State would always win."**

One time Haeg overcame his "sell out" and, over his attorneys' objections it wasn't legal and couldn't be done, placed in the record evidence he had been told and induced by the State to do what he was then charged with doing – to make the Wolf Control Program seem effective and continued. Yet even though he prevailed over his attorneys false counsel the court record was then altered, in effect doing the same exact thing as the false counsel unsuccessfully attempted – hiding that the State was intentionally and actively falsifying the Wolf Control Program data to justify its existence. This was exactly what the animal rights activists were trying, in vain, to prove

in court. The same evidence that Haeg's attorneys said could not be put in the record, and that was later removed out of the official court record anyway, was the "smoking gun" animal rights activist needed to stop the Wolf Control Program. It is clear Haeg's prosecution was "rigged" because of, and to protect, the Wolf Control Program.

> McCracken v. State, 518 P.2d 85 (AK Supreme Court 1974): "When accused of a crime, or, as here, when seeking relief from a conviction resulting in imprisonment, the opportunity to determine whether to present one's own case or to be represented by appointed counsel is of paramount importance to the individual. **Under some circumstances, he may indeed be the only person who will forcefully advance arguments in an unpopular cause. Alaska has been and is endowed with courageous attorneys who have zealously represented those accused of crime, but such dauntless representation may not always be available to one who is the object of opprobrium."**

Government agents testified they received numerous death threats from animal rights extremists because they ran the Wolf Control Program. Haeg's case itself generated numerous other death threats from extremists. "Opprobrium" isn't even a strong enough term to describe the feelings toward Haeg at the time. Haeg's attorneys testified, "The State brought enormous pressure to bear in Haeg's case to make an example of him." Attorneys then testified that the State was going take it out on Haeg's attorneys if they advocated for Haeg. It is clear all these threats and pressure placed a great conflict of interest upon Haeg's attorneys. Yet this is exactly when Haeg needed a zealous attorney and his constitutional rights the most.

What has occurred in Haeg's case is no less then a direct attack on the United States and Alaska Constitutions by a conspiracy of elements within the Alaska Department of Law, State Troopers, and Haeg's three different law firms. This attack

against which literally millions have sworn an oath to defend, will continue to be met with ever increasing force, determination, bravery, and numbers until justice prevails.

"The recovery of freedom is so splendid a thing that we must not shun even death when seeking to recover it."-- Marcus Tullius Cicero

I declare under penalty of perjury the forgoing is true and correct. Executed on March 26, 2010. A notary public or other official empowered to administer oaths is unavailable and thus I am certifying this document in accordance with AS 09.63.020.

David S. Haeg
PO Box 123
Soldotna, Alaska 99669
(907) 262-9249 and 262-8867 fax
haeg@alaska.net

Certificate of Service: I certify that on March 26, 2010 a copy of the forgoing was served by mail to the following parties: Andrew Peterson, O.S.P.A and the United States Department of Justice.

By:

David F. Haeg
PO Box 128
Soldotna, AK 99669
(907) 262-9249 & 262-8867 fax

IN THE COURT OF APPEALS FOR THE STATE OF ALASKA

DAVID HAEG)
)
Appellant,)
)
vs.)
)
STATE OF ALASKA,) Case No.: A-09455/A-10015
)
Appellee.)
)
Trial Court Case #4MC-S04-024 Cr.

9/19/08 PETITION FOR REHEARING

VRA CERTIFICATION: I certify this document and its attachments do not contain the (1) name of victim of a sexual offense listed in AS 12.61.140 or (2) residence or business address or telephone number of a victim of or witness to any offense unless it is an address identifying the place of a crime or an address or telephone number in a transcript of a court proceeding and disclosure of the information was ordered by the court.

COMES NOW DAVID HAEG, in the above case & in accordance with Rule 506 hereby asks the Court of Appeals for a rehearing.

1. The Court overlooked the directly controlling Alaska Supreme Court case *Waiste v. State* 10 P.3d 1141 (Ak 2000) in denying Haeg's due process claim he was entitled to the return of property & then to suppress it as evidence.

The Court claims Haeg, "relies *primarily* on the decisions in F/V American Eagle v. State and State v. F/V Baranof" – with not a single mention of Waiste when Haeg first, primarily, & repeatedly cited Waiste. [At. Br. 4; Motion for Return of Property 8-9].

How could due process have been given when the State seized property Haeg *was using at the very time as his primary means to provide a livelihood*, without a prompt

postseizure hearing (within days if not hours) or even notice such a hearing was available? What about Haeg asking when he could get his property back & the very Trooper seizing the property telling Haeg *"never"*? To Haeg this meant there was *no* prompt opportunity to contest – he was out of business with no judge to hear his side.

Multiplying the harm was the fact every affidavit used to seize his property falsified the location of the evidence against Haeg & this false location was specifically used to charge & convict Haeg of crimes harsher then what may have been otherwise warranted. Because a judge never addressed the false evidence location at a prompt postseizure hearing it never was addressed - & thus adversely affected Haeg's entire case. *The reason for a mandatory hearing after taking someone's livelihood unopposed is clear – it may not be warranted.*

Haeg respectfully asks this Court apply the controlling caselaw in Waiste to the facts of Haeg's case & return Haeg's property.

2. The Court overlooked the material question that since Haeg was not given the due process of intent to forfeit, items to be forfeited, and/or the statutes authorizing forfeiture in any charging information he is entitled to the return of property. [Motion For Return of Prop 4-6, 32-35, & 52-60; Pet. For Rev. 2-3]

Haeg claimed due process required the State to place the intent to forfeit, items to be forfeited, & the statutes authorizing forfeiture in the charging informations. *See* Rules 7 & 32.2 of the Federal Rules of Criminal Procedure.

Since States must grant as much due process as the Federal Government, Haeg asks the Court apply the Federal standard to his case & return his property.

3. The Court overlooked the question the State's entire argument to Haeg's judge & jury was the evidence showed Haeg killed wolves *were he guided* to

benefit his business when they knew this was false when presenting the arguments & testimony. Also, the Court overlooked the directly controlling cases *Mooney v. Holohan*, 295 U.S. 732 & *Napue v. People*, 360 U.S. 264 [A.I. Br. 5-6, 13-16]

The State argued Haeg should be convicted because he took wolves where he guides to benefit his business. Gibbens then testified the evidence showed Haeg took the wolves where he guides – as he had put on all search & seizure affidavits. Yet Gibbens, when trapped on cross-examination, admitted this was false testimony & argument – proving he knew it was false when he testified – making it irrefutable perjury. Money & Napue hold it is a denial of due process to convict a person on false testimony known to the State. The false testimony in Haeg's case wasn't just known to the State, it was the State itself who knowingly gave the false testimony. Haeg respectfully asks this Court apply the controlling caselaw in Mooney & Napue to the facts of Haeg's case.

4. The Court overlooked the material question Haeg wished to stay his appeal to conduct a post-conviction relief procedure claiming ineffective assistance of counsel to prove his attorneys maliciously deprived him of constitutional rights & conspired to do so. [At. Br. 1-20]

For nearly 2 years Haeg has filed many motions with this Court to stay his appeal so he could conduct PCR, a critically important issue for Haeg. This Court held in *State v. Jones* 759 P.2d 558 that this was the proper procedure for someone on appeal wishing to claim IAOC - American Bar Association Standard 22-2.2 agrees. Yet this Court refused to stay Haeg's appeal, with *no justification* other then the law allows both to be conducted at the same time. Haeg filed many motions for reconsideration – asking for a justification to deny him, a non-attorney who cannot possibly conduct both at the same

time, the same procedure given to everyone else. This Court remained unmoved & now, with its decision in Haeg's appeal *after nearly 3 years*, the harm to Haeg is clear.

The decision claims "Haeg" waived innumerable fundamental constitutional rights that guarantee a fair prosecution. 1. The right against unreasonable searches & seizures; 2. The right to due process; 3. The right to equal protection of law; 4. The right against self-incrimination; 5. The right against double jeopardy; 6. The right to compulsory process for witnesses in his favor; 7. The right to have assistance of counsel; & 8. The right to have no State deprive any person the equal protection of the law or of due process.

Yet "Haeg" never waived a single right – his attorneys did over his taped demands something be done. Since, with this decision, this Court has kept him on an appeal treadmill for 2 years for nothing. Haeg's wants a *legitimate reason*, other then " the law allows it", that this court will not let him stay his appeal so he can prove his attorneys maliciously waived Haeg's rights over Haeg's demands. If there is no legitimate reason this is another violation of Haeg's right to the equal protection of the laws.

5. A smoking gun?

The day before his PA was to be finalized Haeg sent the court & the State a letter documenting what he was going to testify to under oath the next day - that a sitting Board of Game member told him if more wolves were not taken the WCP would most likely be shut down as ineffective; that Haeg had to kill more wolves so this did not happen; & that if Haeg took wolves outside the area to just mark them on GPS as being taken on the inside of the area. Just hours after they received this letter the State filed an amended

information violating the PA by greatly increasing the severity of the charges. As a result the PA never happened & Haeg never testified under oath in open court what the Board of Game member told him.

Animal rights activists were (and still are) trying to shut the WCP down by claiming the State & Board of Game were not using sound science & were manipulating facts to justify the program. Haeg's testimony in open court during his PA would have been the smoking gun proving this as fact.

Also interesting? Haeg's written statement vanished from the official court record of his case – *but the cover letter documenting its submission remained in the file.*

This motion is supported by the accompanying affidavit.

RESPECTFULLY SUBMITTED this 19th day of September 2008.

David S. Haeg, Pro Se Appellant

CERTIFICATE OF SERVICE
I certify that on the 19th day of Sept. 2008, a copy of the forgoing document by X mail, ___ fax, or ___ hand-delivered, to the following party(s):

Andrew Peterson, Attorney, O.S.P.A.

U.S. Department of Justice

By:

Walste v. State **10 P.3d 1141 (Ak. 2000):** *Walste & the State agree that the Due Process Clause of the Ak Constitution requires a prompt postseizure hearing upon the seizure of a fishing boat potentially subject to forfeiture. This court's dicta, however, & the persuasive weight of federal law, both suggest that the Due Process Clause of the Ak Constitution should require no more than a prompt postseizure hearing. Given the conceded requirement of a prompt postseizure hearing on the same issues, in the same form, "within days, if not hours," the only burden that the State avoids by proceeding ex parte is the burden of having to show its justification for a seizure a few days or hours earlier...*

[L]ost a few days' lost fishing during a three-week salmon run is serious, and due process mandates heightened solicitude when someone is deprived of her or his primary source of income. The State similarly does not dispute that a preseizure hearing will significantly reduce the risk of an erroneous seizure. As *Good* noted, *"[t]he practice of ex parte seizure ... creates an unacceptable risk of error." Indeed, for the State to argue otherwise in this case would be to risk looking foolish, given AAG Nelson's significant error in thinking Big Creek a salmon-spawning stream. It is not surprising that the magistrate who issued the seizure warrant did not, in an ex parte hearing, happen to notice and correct that error sua sponte.* As the *Good* Court noted, moreover, **the protection of *an adversary hearing "is of particular importance [in forfeiture cases], because the Government has a direct pecuniary interest in the outcome."***

Federal Rules of Criminal Procedure

Federal Rules of Criminal Procedure: Rule 7(c)(2): **No judgment of forfeiture may be entered in a criminal proceeding unless the indictment or the information provides notice that a defendant has an interest in property that is subject to forfeiture in accordance with the applicable statute.**

***Rule 7*: These provisions reestablished a limited common law criminal practice, necessitating the addition of subdivision (c)(2) and corresponding changes in Rules 31 and 32, for at common law the defendant in a criminal forfeiture proceeding was entitled to notice, trial, and a special jury finding on the factual issues surrounding the question of forfeiture which followed his criminal conviction.**

***Rule 32.2. Criminal Forfeiture*: (a) Notice to the Defendant. A court must not enter a judgment of forfeiture in a criminal proceeding unless the indictment or information provides notice to the defendant that the government will seek the forfeiture of property as part of any sentence in accordance with the applicable statute.**

Mooney v. Holohan, 294 U.S. 103: "Requirement of due process is not satisfied by mere notice and hearing if state, through prosecuting officers acting on state's behalf, has contrived conviction through pretense of trial which in truth is used as means of depriving defendant of liberty through deliberate deception of court and jury by presentation of testimony known to be perjured, and in such case state's failure to afford corrective judicial process to remedy the wrong when discovered by reasonable diligence would constitute deprivation of liberty without due process."

Napue v. People, 360 U.S. 264

Napue v. Illinois, 360 U.S. 264 (1959): "Conviction obtained through use of false evidence, known to be such by representatives of the State, is a denial of due process, and there is also a denial of due process, when the State, though not soliciting false evidence, allows it to go through uncorrected when it appears. Principle that a State may not knowingly use false evidence, including false testimony, to obtain a tainted conviction, implicit in any concept of ordered liberty, does not cease to apply merely because the false testimony goes only to the credibility of the witness."

David S. Haeg
P.O. Box 123
Soldotna, AK 99669
(907) 262-9249 & 262-8867 fax

IN THE COURT OF APPEALS FOR THE STATE OF ALASKA

DAVID HAEG	)	
	)	
Appellant,	)	
vs.	)	
	)	
STATE OF ALASKA,	)	Case No.: A-09455
	)	
Appellee.	)	
	)	

Trial Court Case #4MC-S04-024 Cr.

AFFIDAVIT OF APPELLANT

VRA CERTIFICATION. I certify that this document and its attachments do not contain (1) the name of a victim of a sexual offense listed in AS 12.61.140 or (2) a residence or business address or telephone number of a victim of or witness to any crime unless it is an address used to identify the place of the crime or it is an address or telephone number in a transcript of a court proceeding and disclosure of the information was ordered by the court.

I, DAVID HAEG, being first duly sworn deposes & states as follows:

1. I am the Pro Se Appellant in the above case & have personal knowledge of the statements made herein.

2. All factual assertions in the 9/19/08 Petition for Rehearing & Motion for Expedited Consideration & Ruling are true & correct to the best of my knowledge.

I, DAVID S. HAEG, certify under penalty of perjury that the foregoing is true to the best of my knowledge.

FURTHER AFFIANT SAYETH NAUGHT.

David S. Haeg, Pro Se Appellant

SUBSCRIBED & SWORN on this 17 day of February, 2008 in Brown's Lake, Alaska. A notary public or other official empowered to administer oaths is unavailable & thus I am certifying this document in accordance with AS 09.63.020 which authorizes that a matter required or authorized to be supported or proven by the sworn statement, oath, or affidavit in writing of the person making it may be supported or proven by the person certifying in writing "under penalty of perjury" that the matter is true.

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT KENAI

DAVID HAEG, Applicant, vs. STATE OF ALASKA, Respondent.	)	CASE NO. 3KN-10-1295 CI

ORDER ON STAY AND BRIEFING SCHEDULE

On 5/27/2011, undersigned stayed these proceedings due to the appointment of counsel for Mr. Haeg and in consideration of the requirements of Criminal Rule 35.1(e)(2). Mr. Haeg chose to represent himself on 6/15/2011. Accordingly, the stay is lifted.

The court has reviewed the State's 3/5/2010 motion to dismiss, but briefing is incomplete. Mr. Haeg has not filed an opposition to the motion. Instead, Mr. Haeg filed a 1/10/2011 motion FOR HEARING BEFORE DECIDING THE STATE'S MOTION TO DISMISS. In his motion, Mr. Haeg requests:

1) a hearing on the State's motion to dismiss;

2) a ruling on his motion for court-appointed counsel (already decided); and

3) a ruling on the motion regarding the seizure of the plane and disposition thereof;

The State has not filed an opposition to Mr. Haeg's motion.

Accordingly, with the stay lifted, the court requests briefing from the State on Mr. Haeg's motion and an opposition from Mr. Haeg on the State's motion to dismiss. Briefing is due within 20 days from the date of distribution on this order.

Dated at Kenai, Alaska this 3rd day of August, 2011.

Carl Bauman
Superior Court Judge

CERTIFICATION OF DISTRIBUTION

I certify that a copy of the foregoing was mailed to the following at their addresses of record:

Haeg, Peterson

8-3-11 Date

Roberts Clerk

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT KENAI

DAVID HAEG,	)
	)
Applicant,	)
	)
v.	) POST-CONVICTION RELIEF
	) Case No. 3KN-10-01295CI
STATE OF ALASKA,	) (formerly 3HO-10-00064CI)
	)
Respondent.	)
	)

(Trial Case No. 4MC-04-00024CR)

8-1-11 MOTION FOR AN ORDER INVALIDATING THE SOUTHERN BOUNDARY CHANGE TO GUIDE USE AREA 19-07; THAT NO HEARINGS BE SET FROM AUGUST 3, 2011 TO AUGUST 19, 2011; AND THAT HAEG BE EXEMPTED FROM FILING DOCUMENTS BETWEEN THESE DATES

VRA CERTIFICATION: I certify this document and its attachments do not contain the (1) name of victim of a sexual offense listed in AS 12.61.140 or (2) residence or business address or telephone number of a victim of or witness to any offense unless it is an address identifying the place of a crime or an address or telephone number in a transcript of a court proceeding and disclosure of the information was ordered by the court.

COMES NOW Applicant, DAVID Haeg, and hereby files this motion for an order invalidating the southern boundary change to guide use area (GUA) 19-07; that the court schedule no hearings from August 3, 2011 to August 19, 2011; and that Haeg be exempted from filing documents between these dates.

Information

In the winter of 2010/2011 arrangements were made for Haeg, Haeg's wife, and their 2 children to visit the children's grandparents in Oregon from August 4, 2011 to August 18, 2011.

On July 5, 2011 the court ordered the state to return Haeg's master guide license.

On or about July 14, 2011 Haeg received his master guide license, a GUA registration application, and a guide "statute and regulation booklet."

Because AS 08.54.750 requires guide use areas be registered "at least 30 days before conducting big game hunting services within a guide use area" Haeg immediately started registering the GUA's in which he had always registered and in which he had always provided big game hunting services. This included GUA 19-07, in which Haeg's guide lodge was located. Upon examining the statute and regulation booklet Haeg noticed the GUA's had been amended. Haeg then realized the state had changed the southern boundary of GUA 19-07, greatly decreasing the area of GUA 19-07 by greatly increasing the area of GUA 19-04. The direct effect of the state's change was that Haeg's traditional guide area in GUA 19-07 was cut in half. See attached GUA map with the former southern boundary of GUA 19-07 marked in blue. Half of Haeg's permanent spike hunting camps, for which Haeg pays the state thousands of dollars every year, is in the area the state removed from GUA 19-07. See attached brochure.

Upon further review of the statute and regulation booklet Haeg noticed that according to 12 AAC 75.265 the state was required to mail notice of any proposed GUA amendment to the guides who would be affected.

On or about July 26, 2011 Haeg contacted the state with his concern that half of his guide area in GUA 19-07 had been transferred to GUA 19-04 without

the notice required by 12 AAC 75.265. The state told Haeg they did not need to comply with the notice required by 12 AAC 75.265.

Law

12.AAC.75.265. GUIDE USE AREA BOUNDARY CHANGES.

(a) The board may propose to amend guide use area boundaries
(1) on its own motion;
(2) upon the recommendation of the Department of Fish and Game; or
(3) in response to a petition from another person.
(b) At least 90 days before the date of a board meeting at which guide use area boundaries changes are proposed, the department will publish, in a newspaper of general circulation, a notice soliciting petitions to propose amendments to guide use area boundaries. To be considered for proposal by the board at the board's next meeting, a petition must be received by the department no later than 60 days after the notice is published.
(c) If the board proposes to amend guide use area boundaries, the board will mail notice of the proposed amendment to
(1) each registered guide-outfitter with a valid license who is registered for a guide use area the boundaries of which are proposed for amendment;
(2) the Department of Natural Resources;
(3) the Department of Fish and Game; and
(4) the Department of Public Safety.
(d) The board may amend guide use area boundaries after considering whether
(1) the Department of Fish and Game objects to the proposed amendment; and
(2) amendment of existing guide use area boundaries is necessary in order to respond to
(A) big game conservation and management concerns; including
(i) abundance and diversity of big game;
(ii) the historical harvest of big game in an area; and
(iii) existing administrative boundaries established for wildlife management purposes;
(B) law enforcement concerns;
(C) land ownership in an area;
(D) administrative restrictions;
(E) the existence of boundaries that can be readily identified in the field;
(F) the accessibility of an area and other transportation considerations;
(G) the existence of complementary and noncomplementary land uses within an area;
(H) recommendations of the Department of Natural Resources;
(I) the existing facilities within the area;

(J) any public comment received; and
(K) other considerations relevant to the drawing of guide use area boundaries.
Authority: AS 08.54.600 AS 08.54.750

Fourteenth Amendment to the United States Constitution:

"nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Alaska Constitution

Section 1.1 - Inherent Rights.
This constitution is dedicated to the principles that all persons have a natural right to life, liberty, the pursuit of happiness, and the enjoyment of the rewards of their own industry; that all persons are equal and entitled to equal rights, opportunities, and protection under the law; and that all persons have corresponding obligations to the people and to the State.

Section 1.7 - Due Process.
No person shall be deprived of life, liberty, or property, without due process of law.

Discussion

The single most important basis of our nation is that it is a nation of law - and that the government must obey the law. And fundamental to this is that everyone must receive the right to notice and opportunity to contest before the government harms him or her. Without notice someone may be harmed because they never knew to protest while the issue was being decided.

Had Haeg known the state was taking half of his guiding area, in which he had spent his life savings building a lodge and permanent hunting camps, he most assuredly would have protested. Haeg would have provided evidence that the southern border of the original GUA 19-07 was created to conform to the guide

area established by Eberhard Brunner in the early 1970's, from whom Haeg bought the guide business in 1996. This area, first established by Brunner 40 years ago, was bounded by the Babel River to the north, by Rock Creek to the south, by the Revelation Mountains to the east, and by the Lyman Hills to the west.

To cut Haeg's established guide area in half without notice to Haeg and opportunity for him to contest is a violation of basic constitutional rights:

> "An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." Mullane v. Central Hanover Trust Co., 339 U.S. 306 (U.S. Supreme Court 1950)
>
> The notice must be sufficient to enable the recipient to determine what is being proposed and what he must do to prevent the deprivation of his interest. Goldberg v. Kelly, 397 U.S. 254 (U.S. Supreme Court 1970)
>
> Ordinarily, service of the notice must be reasonably structured to assure that the person to whom it is directed receives it. Armstrong v. Manzo, 380 U.S. (U.S. Supreme Court 1965); Robinson v. Hanrahan, 409 U.S. 38 (U.S. Supreme Court 1974); Greene v. Lindsey, 456 U.S. 444 (U.S. Supreme Court 1982)

The state claiming it does not have to provide the notice that is required by 12 ACC 75.265 is a direct violation of Haeg's right to equal protection of the law. The state did this before by amending Haeg's judgment in violation of the law.

Another complicating issue is that the state is moving forward with "exclusive use" guide areas and, unless the southern boundary to GUA 19-07 is put back to original, Haeg will not be able to support his guide lodge.

Conclusion

Because Haeg, wife, and children made arrangements long ago to visit family in Oregon from August 4, 2011 to August 18, 2011, Haeg respectfully asks that no hearings concerning his case be scheduled, and that any document Haeg may wish to file be exempted from being required to be filed, during this time.

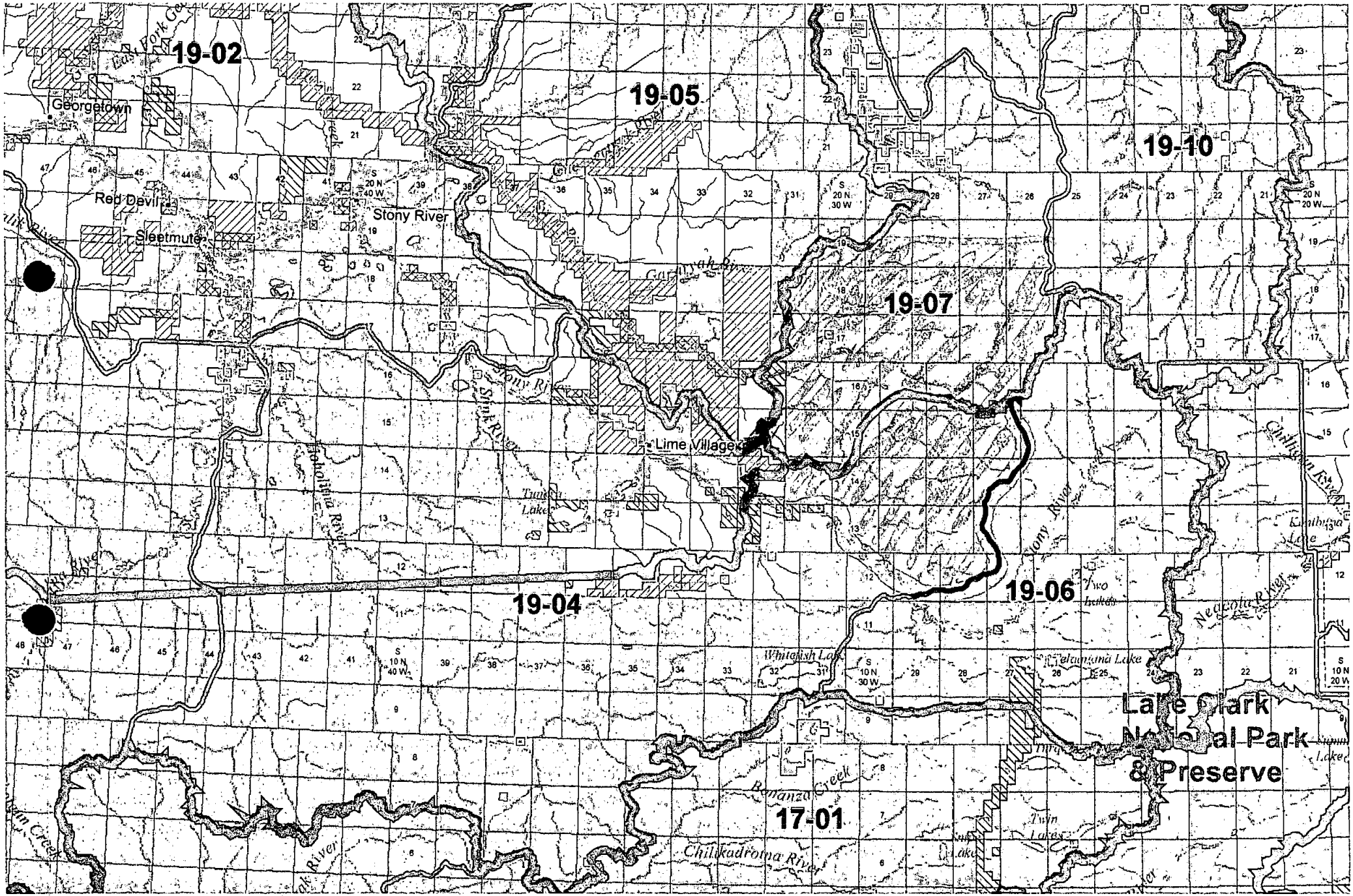
Because Haeg was not given effective notice to protest the cutting in half of his traditional guide use area in GUA 19-07 and/or because the state claims they do not have to obey the law requiring this notice, Haeg respectfully requests an order that the state's change to the southern boundary of 19-07 is invalid.

I declare under penalty of perjury the forgoing is true and correct. Executed on August 1, 2011. A notary public or other official empowered to administer oaths is unavailable and thus I am certifying this document in accordance with AS 09.63.020. In addition I would like to certify that copies of many of the documents and recordings referenced above are located at:

www.alaskastateofcorruption.com

David S. Haeg
PO Box 123
Soldotna, Alaska 99669
(907) 262-9249 and 262-8867 fax
haeg@alaska.net

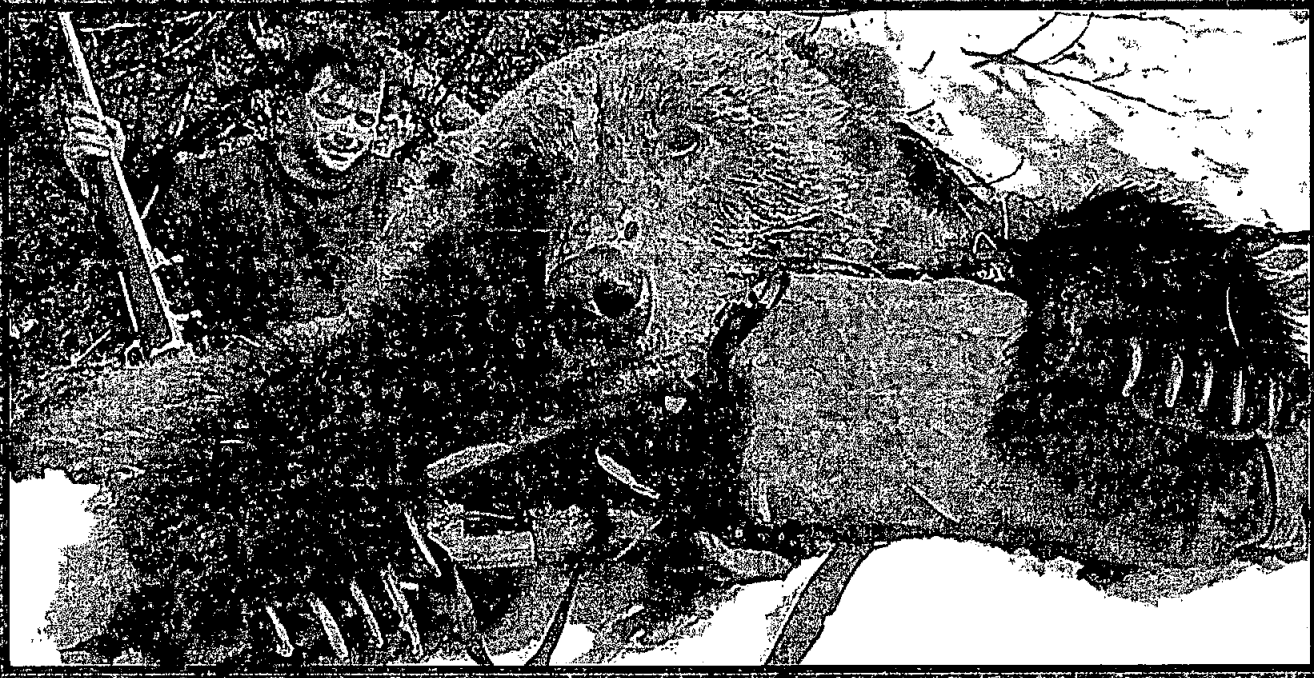
Certificate of Service: I certify that on August 1, 2011 a copy of the forgoing was served by mail to the following parties: Peterson, Maassen, DeYoung, Novak, Judge Gleason, Judge Joannides, U.S. Department of Justice, FBI, and media. By:


19-02
19-05
19-10
19-07
19-04
19-06
17-01
Georgetown
Red Devil
Sleetmute
Stony River
Lime Village
Lake Clark
National Park
& Preserve
Former southern boundary of GUA 19-07
Guide area used by Haeg that was established in early 1970's by Eberhard Brunner

01764

Dave Hagg's

ALASKAN HUNTS



COASTAL BROWN BEAR

9'10" Brown - "I have to tell you I still can't wipe the smile off my face. I am so proud of that bear I tell everyone about it. I also tell them you are the only outfitter to use in Alaska. I still can't believe how hard you guys work for your hunters with all the flying & moving but I guess that's what makes it work. I will call you soon to talk about the best time to come up for moose." Steve Boniface, NY 845-583-7226 sboniface@pbeinc.com

9' Brown shot at 10 yards with his bow. "Scuba" Jim Brawdy, NY 716-438-0589 Jpbrawdy@pcom.net

9'8" Brown Bear "Dave's business is an enrichment for Alaska" Taken on day 1 after spooking off the "big one" an hour before. Dr. Reinhard Klaessen, Germany Klaessen-Uedem@t-online.de

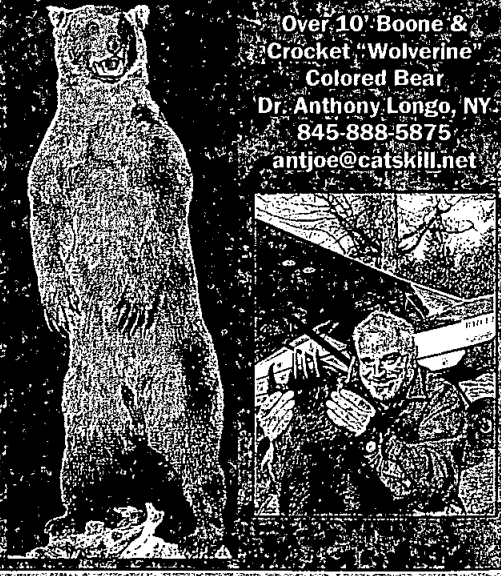
"I feel I'm qualified to recognize character when I see it & Dave Haeg fits the ticket." Jim Novak, PA jnovak@arrowunited.com 570-274-7723 (h) & 570-746-1888 (w)

10'4" Boone & Crockett Brown Dr. Ron Neider, WI 262-637-7276

9' Brown & 6'11" Black "After my caribou & black bear hunt with Dave I immediately booked my second hunt because I knew I had found the man I wanted to hunt Alaskan Brown Bear with. As President of the Western & the Central NY Safari Club Chapters I get many offers –some cheaper & many with more promises but after seeing Dave's setup & working with the man & crew I would go with no other." Mike Shevlin, NY 716-652-3534 (h)

10' Brown - "I consider Dave a very conscientious individual with high ethical standards - always concerned about Alaska's wildlife resources, safety, & care of his clients & most of all the enjoyment of nature & the hunting experience." - Sandro Crivelli, Switzerland 310-519-3969 huntsmen1@earthlink.net

9'2" Brown Bear - "By noon on my first day hunting with you I had seen twice as many bears as in the entire 28 days I had hunted brown bear with other guides in Alaska" When asked if he wanted to shoot an average bear on day 1 or try for a bigger one Michael replied, "to me this is day 29 of my Alaskan hunt" - Dr. Michael Seare, England +441903240770 mike@endospecialist.co.uk



Over 10' Boone & Crocket "Wolverine" Colored Bear Dr. Anthony Longo, NY 845-888-5875 antjoe@catskill.net

Why hunt with us? Jackie (the real boss) & I asked as many of our past clients as possible to answer this one question. The answer was professionalism, honesty, success on exceptional animals (95% success on brown bears averaging 9'2" & moose averaging 62"), ethics, hard working, experience, knowledge of hunt areas, flying skills, & conscientious. Many more descriptive words & phrases were used but the ones above were repeated time & time again. If you asked me this same question I would answer that I am driven to provide our guests with the absolute best hunt we can. When a guest is unhappy I am unhappy. When I am unhappy things change rapidly. It is as simple as that. When a weakness is found in our operation we change tactics immediately. This has led to many exclusive use hunting areas bordering National Parks, the best guides in Alaska, highly modified, hand built custom airplanes, the best equipment money can buy, and the best game management possible.

COASTAL BROWN BEAR

9' 4" Brown Bear – "What was reality in Alaska is now a hunter's cherished memory. Dave & Jackie earn a five star rating, providing the best in accommodations, transport & hunting. Thanks for a great experience. To the one who turned out to be my most valued companion on this 2002 Bear Hunt, Tony, my guide, a sincere thank you, for your skill & sharing the art of the hunt. You made this a trip that I am not likely to forget!"
Sal Cucorullo, NY 845-496-5151
cucastle@frontiernet.net

9' 4" Brown Bear – Dr. John Pavlakis, NY
845-266-3974 drpavy@aol.com

"Great state, great hunt and a great big bear."
10' Cinnamon Brown
Danny Phypers, FL 863-465-3280 (h) & 863-441-1298 (c) dplace@htn.net

10' 6" Brown Bear taken on first day of hunt. "As you know, although this was my first hunt for brown bear with you, it was my 4th attempt in AK. So, although I only spent 1 day with your team it was my 26th day of chasing after brown bears. You told me there were big ones in your territory & you delivered with a magnificent bear. As happy as I am with this bear, I am even happier with the outstanding operation you run & the even better guide you teamed me up with. Tony went well above & beyond helping me get this bear." Walt Maximuck, NJ
609-397-0567 wmaximuck@aol.com

Black Bear day one, 9'9"
Cinnamon Brown day 2.
Benjamin Suarez, Mexico
8717-13-83-24

"My fall 2001 bear hunt was booked at the end of a very successful 67 1/2" spread moose hunt with David in 1998. My 11-day hunt started on October 1 and ended 2 hours later after I took a 10' 4" bear. By the evening of the second day we had seen 7 other bears, 3 of which I could have shot from our wall tent, and 2 of which were well over 9'. My 2 guides were exceptional, the 4 bunk permanent wall tent was warm and comfortable, and the non-freeze dried food included steak, vegetables, and fresh fruit. In talking to the other 3 guests present I found out the only bear under 10' was a dark 9-1/2 footer. Even more impressive is the fact that 3 out of the 4 of us in camp at that time shot their bears on the first day!" Rusty Brines, CA 530-895-0110 & 530-520-5000

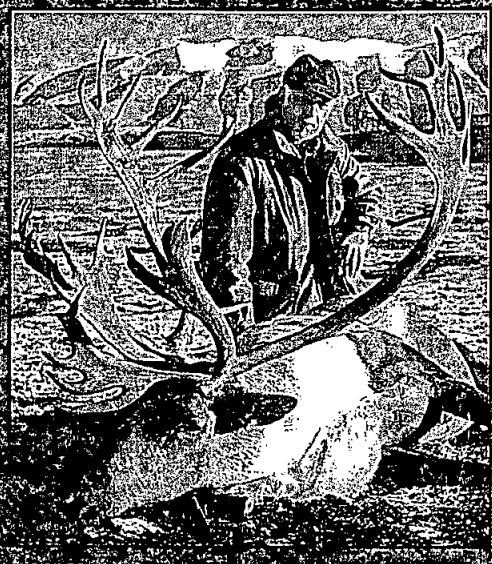
9' 10" Cinnamon Brown
Volker Manke, Germany 41 93901181

9' 7" Brown Bear on day 2 – "I have hunted and known several Alaskan guides over the past 30 years and would rate David at the top of the list. David, as well as his assistant guides, all exhibited the highest level of honesty and integrity, and I would recommend them to anyone interested in top-of-the-line Alaskan hunts." Jack White, CA
925-838-3163 juanblancojw@yahoo.com

9' Brown Bear
Paul Stuart, NY 845-782-8270

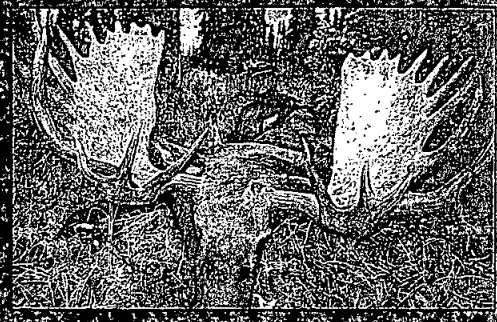
COMBINATION HUNTS

"The hunt was one of the most gratifying experiences I have ever had in the field. The accommodations, food & attentiveness to my needs exceeded any guided hunt I have been on before or since." - Virgil Hannig, IL 618-529-1562 vhannig2003@yahoo.net



64" Moose - Kurt Gabler, Austria 43-1-7995098

10' 2" Brown Bear & 64" Moose
Jochen Gartz, Germany –00492804-237



The Devenport Family Hunt
Jim, Roger and 13 year old Lloyd, WI 262-306-8866

Roger's Beautiful 65" Moose & Caribou

Lloyd with his nice Moose and Black Bear

Jim's Monster Palmed Moose

COMBINATION HUNTS


Day one 70" Moose, day four 9' 9" Brown Bear - Bob Pontius, MI 248-363-5744

68" Moose –Pat Arlinghaus, KY 859-689-5708

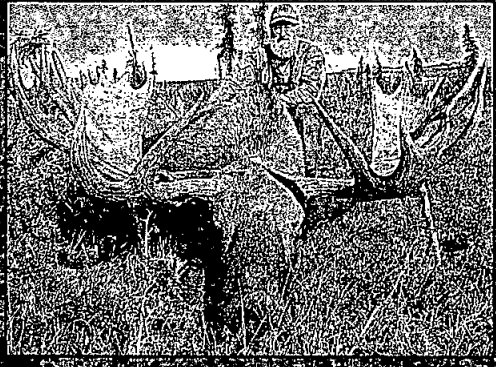

8' Wolf & 9' Brown Bear
"Dave exceeded all expectations."
Charlie Squillante, NY- 845-778-7092

9'6" Brown & 63" Moose
I consider Dave the best because he offered his hunting in a serious way combined with his perfect knowledge of the hunting areas & his flying experience. After completing my Brown Bear hunting with him I decided to do the moose hunting with him because the experience was excellent.
Eduardo Villalobos, Mexico
eavch@jotav.com.mx
52 871 7177474 (w) & 52 871 7948954 (c)


"I appreciate Dave's perfect knowledge of the hunting laws, the wildlife resource, & the rules of being a hunting guide. The hunting area & the hunt itself were both carefully organized."
Manfred Bockenheimer, Germany
011-49-6101-42825 M.Bockenheimer@gmx.de


8' 4" Grizzly & 64" Moose - "I have hunted in Africa, Russia, Newfoundland, British Columbia, Ontario, & all over the U.S. That said Dave Haeg is the most professional, ethical, guide/outfitter that I have ever hunted with, – bar none!" Royce James, TX
281-370-9333 rwjtcj@msn.com

10 # 2 all time SCI Record Book
Grizzly & 65" Moose
Jack Van Loon, MI 616-842-1343
Jvlvanloon@aol.com



"You made it possible that Liesel was able to shoot a big moose, a bear, & a caribou. I have hunted in Germany & round the world since I was a child & I can tell you, you are an excellent guide. We both thank you again."
Rigobert (Rio) Schwarze, Germany
01149 221-8900818


Website: www.davehaeg.com Email: info@davehaeg.com Phone: (907) 262-9249 Cell: (907) 398-6403 Fax: (907) 262-8867

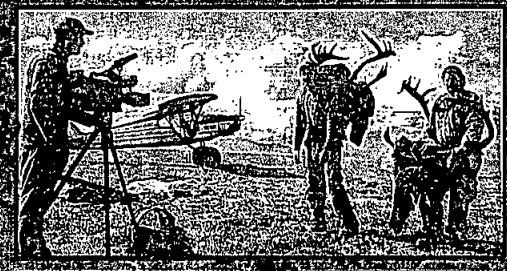
A FEW MORE HAPPY HUNTERS

9 + Brown Bear, 55" Moose & Nice Caribou
Nick Bullock, CA 650-222-4417

"One major factor for my choosing to trust Dave was his professionalism and kindness. He never tried to "hard sell" a hunting package. He just quietly and professionally explained what I would expect, what the risks and what the limitations were. And everything happened just the way he said."
Dominique Blieck, Belgium 32 475 276767
dblieck@skynet.be

Monster Moose - John Tini, MI 810-781-6435

The hunt we donated to 16 year old Tony Kinney through Catch A Dream (the hunting & fishing version of Make A Wish Foundation). The entire hunt was filmed & shown on television by Mossy Oaks Hunting the Country. Tony Kinney & Calvin Shifflet, PA
814-443-9574 debrakinney@aol.com



"I found Mr. Haeg to be reliable, honest, & courteous in my dealings with him. He did not over-embellish to sell his hunts, & offered excellent references (successful & unsuccessful), to verify his statements. He is the type of person one enjoys doing business with & because of his integrity, I plan to hunt with him again in the future."
Paul Paré, FL 772-286-9522

66" Moose
Dr. Wolfgang Zronek, Austria
00431-4165164 dr.zronek@vienna.at

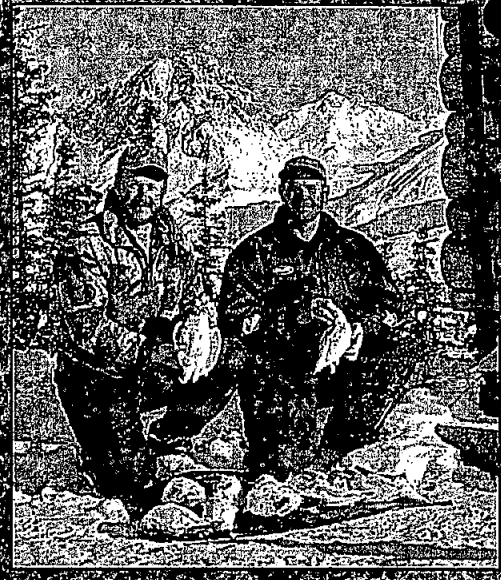
First Day Moose "Because of my job I am often hunting in other countries & professional hunters are not uncommon to me. I must access David Haeg one of the most serious persons in this context."
Hartmut Syskowski, Germany Editor, "die Pirsch" (German hunting magazine)
hartmut.syskowski@dlv.de (089)12705315

"Old White Claws", an ancient battle scarred 9'4" Brown Bear & Beautiful 70" Moose. Doug Jayo, ID 208-322-3663
doug@jayoconstruction.com

Website: www.davehaeg.com Email: info@davehaeg.com Phone: (907) 262-9249 Cell: (907) 398-6403 Fax: (907) 262-8867

FISHING & PTARMIGAN

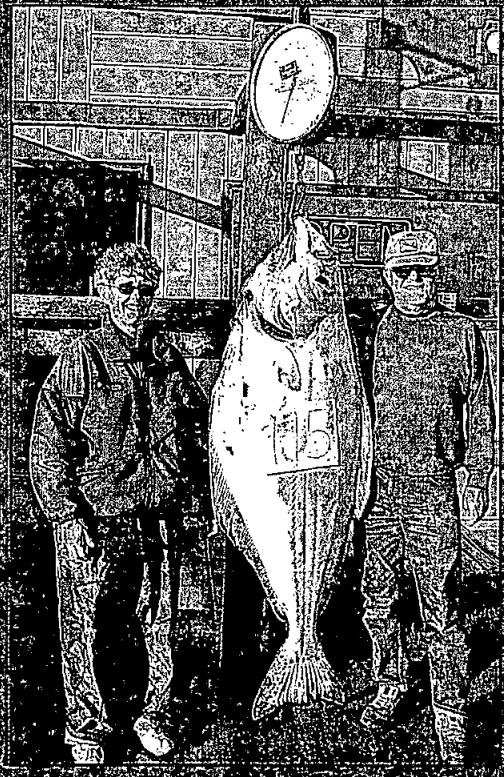
Our secret grayling and silver salmon hole where you don't even need to cast. Just dip anything orange in the water!



"There's nothing better than a winter ptarmigan hunt out of a wilderness lodge!"
(Our winter ptarmigan hunts by skis, snowshoes, snow machine & airplane have been a great hit)

Tom & Randy Geile, ID
"Great Memories"

"The Silver was almost as nice as the weather."



Karen & Dave Savoie, ID
115 lb. Halibut
(Many of our guides when they are not hunting provide fishing trips)

"Is this Rainbow big enough?" (16.4 lbs.)

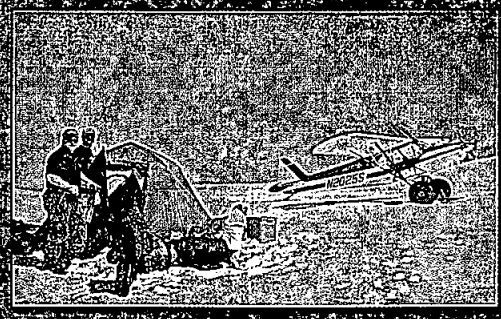
Mother & Daughter's "Silvers on the Fly"

Eduardo Villalobos, Mexico

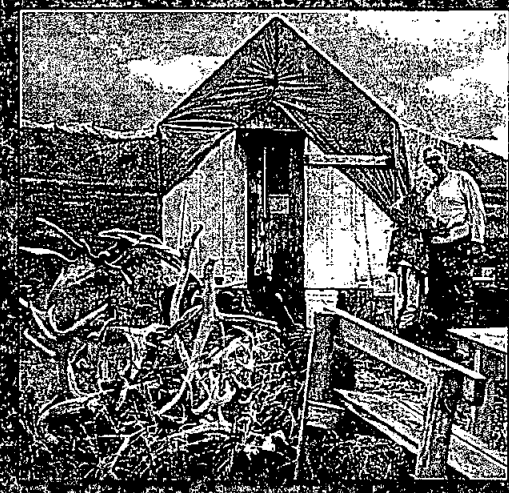
Website: www.davehaeg.com Email: info@davehaeg.com Phone: (907) 262-9249 Cell: (907) 398-6403 Fax: (907) 262-8867

CAMPS & FOOD

"The Lodge"



The famous "bomb shelter" used mostly when we are hunting spring bears in extremely deep snow. Hard to believe the most important item on these hunts is sunglasses & sun block. (85 degrees F. out)



"Roger's Strip" Camp

The "Monster" Camp

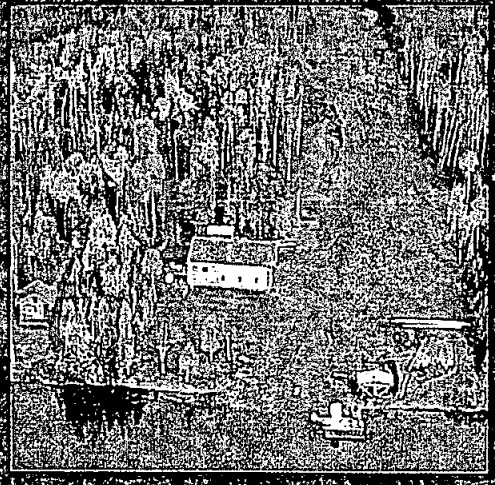
Relaxing after hunt in the "Cave"

"Lower Babel" Camp

"Ye Olde Frosty Sphincter"
The coolest outhouse in Alaska!

Comfortable "Rock Creek" Camp

Finishing the "little cabin" that got big! Base camp for many of our bear hunters & fishermen. We now rent this out to a lot of you guys that want to explore the Kenai Peninsula during the summer with your family. (Built by us guides when fishing was slow)



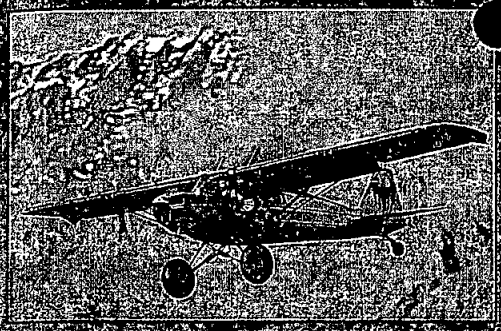
Our home, lake, runway & hanger in Soldotna.

A quiet moment by "Kayla's Kabin"

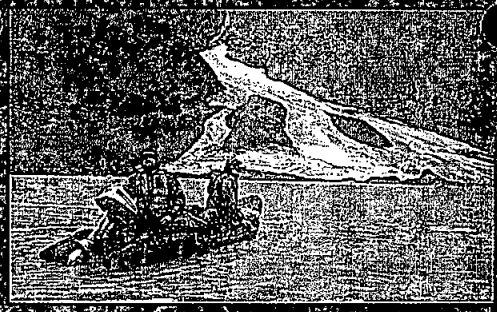
Food is almost always non freeze-dried (except for spring brown bear deep snow hunts) including steak, fresh fruit & vegetables, eggs, bacon, etc. We do have difficulties with fragile items like bananas, tomatoes, and the like so don't expect items like these. Reasonable amounts of alcohol is welcome but not provided.

We have gone through almost unbelievable lengths to find a way to access areas close to trophy animal country. Rarely do hunters need to venture more than 1 mile from camp to be successful. We have successfully guided many 70+ year old clients with few problems.

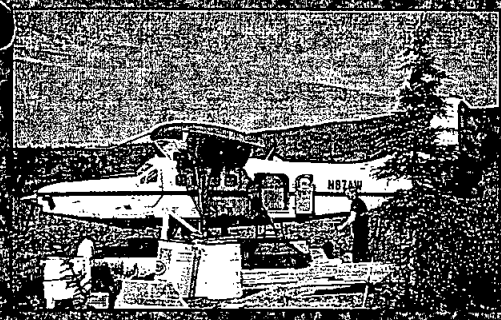
TRANSPORTATION & COMMUNICATION



"Batcub" on patrol

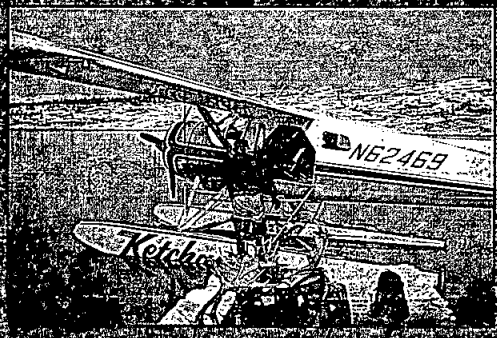


"Bon Voyage" Jake & Tony heading across a Class 6 river to pick up a bear.



Turbine Otter for "The Big Stuff"

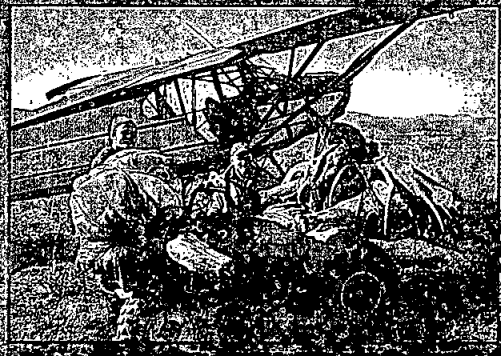
"Where's the snow?"



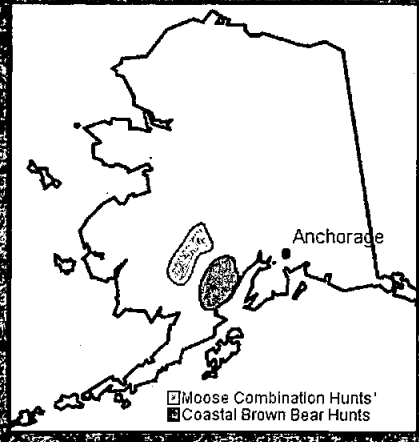
"How are all these antlers going to fit?"

"Firewood patrol"

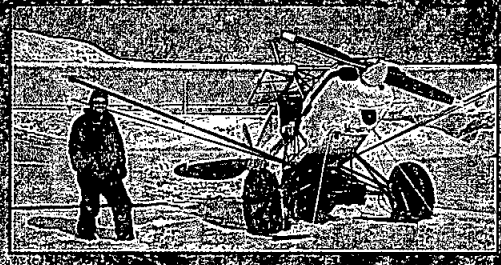
"Snowshoes, big bears in dens, & sun make Frank sweat!"



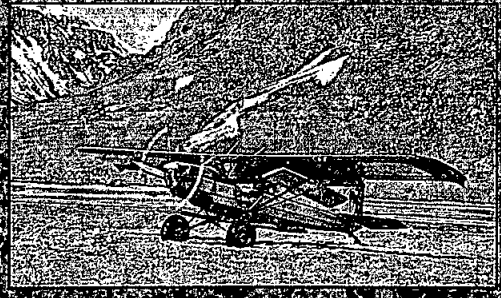
Jake & John "bringing home the bacon" (or an entire bull moose as the case may be)



Our Coastal Brown Bear area is located on the upper end of the Alaska Peninsula. Much of the land we hunt is private land on which we have exclusive hunting rights & which borders the south edge of Lake Clark National Park. Our Moose, Grizzly, Black Bear & Caribou area is located on the western slope of the Alaska Range.

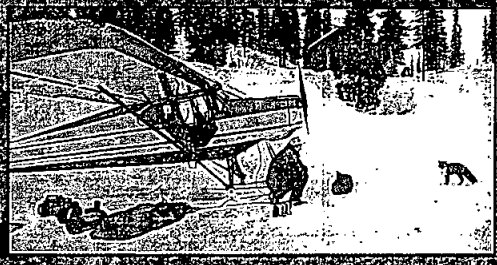


"That's not a snow machine trailer!" (Note snow machine mounted under plane)



Hauling in another camp.

"Looks like a good spot to hunt caribou!"



Maxx and a new friend

"Let it snow, let it snow, let it snow."

Clients hunting moose, grizzly, caribou & black bear fly into our Unit 19 lodge on DeHaviland Beaver's and Otter's on floats from Anchorage. Coastal Brown Bear hunters fly directly from Anchorage either into Kenai on a commuter flight or down to Chinitna Bay in Cessna 206's equipped with tundra tires for landing on the beach. Once clients reach our base lodge they transfer to our lightweight high performance PA-12's and Super Cubs for their final flight to their hunting camps. We now equip all of our guides with Iridium Satellite Phones and Very High Frequency Radios so we have communications with all our hunters at all times. This has done wonders both safety wise and logistically by reducing flights needed before just to check on camps. Now, before I ever take to the air, I know what supplies to bring you and if I need to haul out a helper to pack out that monster bear or moose.

Website: www.davehaeg.com Email: info@davehaeg.com Phone: (907) 262-9249 Cell: (907) 398-6403 Fax: (907) 262-8867

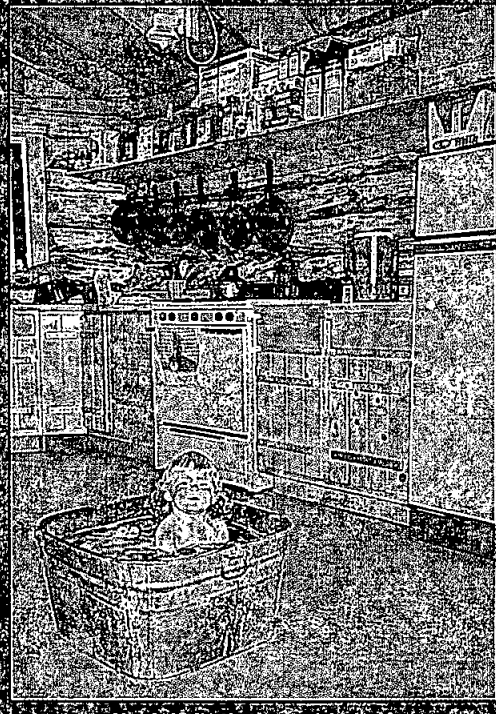
THE HAEG HOUSEHOLD

Hunting Friends and "Schiss" Binoculars (toilet paper roll & duct tape)

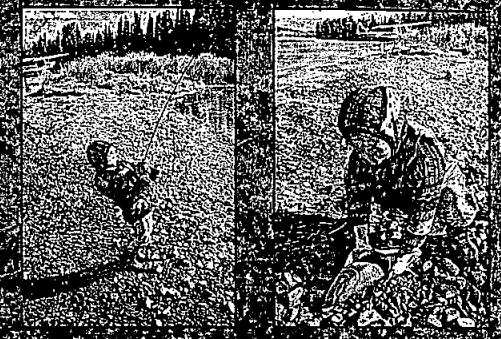
Duct Tape use #1001 (Homemade Diapers)

Dave with another "0 dark thirty" bear!

Dave's 1st Boone & Crockett Moose

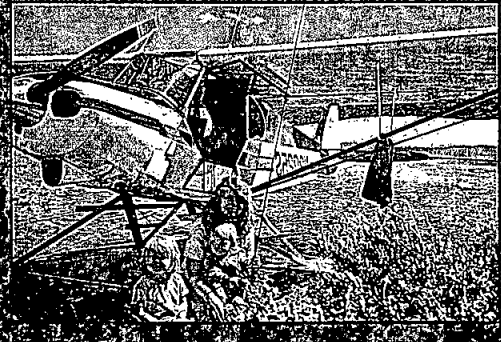


Kayla's bath-time at lodge!

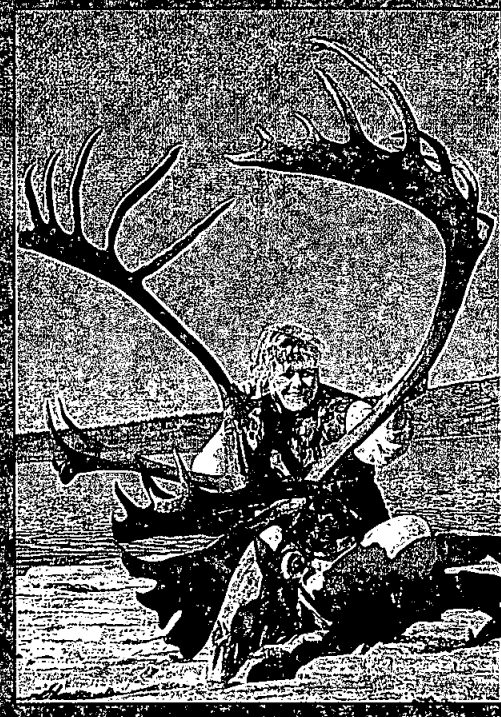


Cassie (age 3) & her first Salmon!

Dave's 2nd Boone & Crockett Moose



Kayla, Cassie & Jackie Grayling Fishing



Jackie with another Boone & Crockett trophy Caribou!

Dave grew up in the Alaskan Wilderness where hunting, fishing and trapping was the only way to survive. The nearest family lived over 30 air miles away, there were no roads or telephones, and it once was 4 months before he or his parents saw another person. Dave started hunting big game alone at 14-taking a 10' brown bear on his own at 16 and his first Boone & Crockett moose soon after. Dave learned to fly at 16, graduated with honors from home school at 17 and declined full scholarships from 3 Ivy League Colleges so he could pursue his love of hunting and flying. At 18 Dave received both his commercial pilot and assistant guide license, at 21 his Flight Instructor license, and became a Master Guide at 38 - one of the youngest to ever do so. Dave now has many thousands of hours flying bush planes he builds himself in support of the hundreds of hunts conducted where he grew up. Jackie was born on Kodiak Island and has grown up hunting and fishing across most of Alaska. She and Dave met in their early 20's and have been together ever since. Jackie handles the office, website, hunter scheduling and transportation, and supply purchasing along with being "Super Mom". Kayla arrived to bless the Haeg clan in 1998 and Cassie did the same in 2001. They are a big handful and have already turned into enthusiastic hunters and fishermen.

THE CREW!

"Happy guides"

"Tell me again - why did we hike so far from camp?" - Mark with 10' Cinnamon Brown

"I wish the 10' bears would stop killing the 70" moose" - Drew

"Tony (on right) - We got Big Foot!"

"I think there's something out in them thar woods" - Mike

10' Record Book Grizzly that charged. Everyone started shooting when it got within 20'!" - Arthur

Boone & Crockett Bull for Little German Lady - "We got Big Willy" - John

Frank with 9'10" bear he took with his bow. "Almost as exciting as that special spring hunt"

"The fun's over after the shooting stops" - Jake

"This is how you call in the big ones" - Dave

"Wilderness Jam Session"

"Manage this" - Tom, Camp Manager

Website: www.davehaeg.com Email: info@davehaeg.com Phone: (907) 262-9249 Cell: (907) 398-6403 Fax: (907) 262-8867

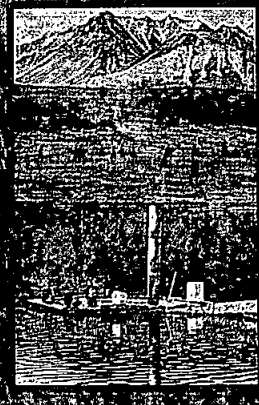
Dave Hagg's Alaskan Hunts

P.O. Box 123 Soldotna, AK 99669

"Le Chef"

Bon Appetite!

Close up of lodge



The Hot tub

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT KENAI

DAVID HAEG

Applicant.

v.

STATE OF ALASKA

Respondent.

POST-CONVICTION RELIEF
CASE NO. 3KN-10-01295 CI

Trial Case No. 4MC-04-00024 CR

STATE'S OPPOSITION TO APPLICANT'S 7-27-11 MOTION FOR EVIDENTIARY HEARING TO ADDRESS CLAIMS OF CONFIDENTIALITY AND/OR PRIVILEGE

VRA CERTIFICATION. I certify that this document and its attachments do not contain (1) the name of a victim of a sexual offense listed in AS 12.61.140 or (2) a residence or business address or telephone number of a victim or witness to any crime unless it is an address used to identify the place of the crime or it is an address or telephone number in a transcript of a court proceeding and disclosure of the information was ordered by the court.

COMES NOW the State of Alaska, by and through Assistant Attorney General Andrew Peterson and hereby files this opposition to the Applicant's motion for evidentiary hearing to address claims of confidentiality and/or privilege.

This court authorized Mr. Haeg to depose Judge Murphy and Marla Greenstein via written deposition. The deposition of Trooper Gibbens was not limited in any way. For reasons known only to Mr. Haeg, he chose to not to proceed with deposing any of the witnesses.

STATE OF ALASKA
DEPARTMENT OF LAW
OFFICE OF SPECIAL PROSECUTIONS AND APPEALS
310 K STREET, SUITE 308
ANCHORAGE, ALASKA 99501
PHONE: (907) 269-6250

Haeg now attempts to achieve the same objective through an evidentiary hearing, which for all practical purposes will be no different that simply an in person deposition of Judge Murphy or Marla Greenstein.

The state is currently waiting for this Court to rule on the state's motion to dismiss, which will in all likelihood limit the PCR issues to be decided by this Court. Additionally, the state is in the process of sending out discovery requests and notices of deposition of Haeg's former counsel with respect to Haeg's ineffective assistance of counsel claim. The state wants this matter to proceed to an evidentiary hearing on the PCR claim as soon as possible, but discovery needs to be completed in advance. The state has no opposition to expediting the discovery process in order to facilitate resolving this matter in a more expedited manner.

DATED: July 29, 2011.

JOHN J. BURNS
ATTORNEY GENERAL

By: _____
Andrew Peterson
Assistant Attorney General
Alaska Bar No. 0601002

STATE OF ALASKA
DEPARTMENT OF LAW
OFFICE OF SPECIAL PROSECUTIONS AND APPEALS
310 K STREET, SUITE 308
ANCHORAGE, ALASKA 99501
PHONE: (907) 269-6250

This is to certify that on this date, a correct copy of the forgoing was mailed to:
David Haeg
7/29/11
Signature Date

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT KENAI

DAVID HAEG,	)
	)
Applicant,	)
	)
v.	) POST-CONVICTION RELIEF
	) Case No. 3KN-10-01295CI
STATE OF ALASKA,	) (formerly 3HO-10-00064CI)
	)
Respondent.	)
	)

(Trial Case No. 4MC-04-00024CR)

7-27-11 MOTION FOR EVIDENTIARY HEARING TO ADDRESS CLAIMS OF CONFIDENTIALITY AND/OR PRIVILEGE

VRA CERTIFICATION: I certify this document and its attachments do not contain the (1) name of victim of a sexual offense listed in AS 12.61.140 or (2) residence or business address or telephone number of a victim of or witness to any offense unless it is an address identifying the place of a crime or an address or telephone number in a transcript of a court proceeding and disclosure of the information was ordered by the court.

COMES NOW Applicant, DAVID HAEG, in the above case and hereby files this motion for an evidentiary hearing to address claims of confidentiality and/or privilege.

Information

On November 21, 2009 Haeg filed a PCR application and subsequent amendments that alleged in part: (1) that Judge Margaret Murphy (Haeg's trial and sentencing judge) was chauffeured by the main witness against Haeg (Trooper Brett Gibbens) while Judge Murphy presided over Haeg's case; (2) that Trooper Gibbens knowingly testified falsely to Judge Murphy on all the warrants seizing

Haeg's business property and that Trooper Gibbens continued to knowingly testify falsely to Judge Murphy during Haeg's trial; (3) that Judge Murphy was made aware of this false testimony during Haeg's trial, did nothing about it, and then specifically cited the false testimony to justify Haeg's severe sentence; (4) that during the official investigation into the chauffeuring Judge Murphy and Trooper Gibbens testified falsely about the chauffeuring; (5) that Marla Greenstein (the Judicial Conduct investigator of the chauffeuring) falsified her investigation so it supported Judge Murphy's and Trooper Gibbens' false testimony; and (6) that, during the official investigation into Greenstein's investigation of Judge Murphy and Trooper Gibbens, Greenstein falsified a "verified" written document to cover up that she falsified her investigation of Judge Murphy and Trooper Gibbens.

On August 27, 2010 and March 25, 2011 Superior Court Judge Stephanie Joannides certified evidence supporting Haeg's claims, disqualified Judge Murphy from presiding further over Haeg's case, and referred the certified evidence to the Alaska Commission on Judicial Conduct for its consideration. Judge Joannides ruled that Judge Murphy must be disqualified from Haeg case "because I found that, **at a minimum**, there was the appearance of impropriety."

On March 1, 2011 the Alaska Bar Association, after considering Haeg's complaint against attorney Greenstein and Greenstein's response, accepted Haeg's complaint for investigation but deferred the investigation "until Mr. Haeg's post-conviction relief proceedings are concluded since the issues he raised in his complaint will be addressed in the PCR proceedings. The courts have better access

to facts; are more familiar with the parties, their circumstances, and local issues. The Bar Association generally defers its investigation so that the courts and the Bar do not reach inconsistent results about the facts or the law."

On June 28, 2011 Haeg issued subpoenas for taking depositions to Greenstein, Trooper Gibbens, and Judge Murphy.

On July 5, 2011 state attorney Jan DeYoung sent Haeg a letter stating that Greenstein would not appear at the deposition because of confidentiality and that she was returning Haeg's check for Greenstein's witness and travel fees.

On July 6, 2011 private criminal defense attorney Peter Maassen filed an entry of appearance for Judge Murphy and, claiming Judge Murphy's judicial privilege, filed a motion to quash Judge Murphy's subpoena or alternately to allow her to testify telephonically.

On July 6, 2011 state attorney DeYoung filed an entry of appearance for Greenstein and, claiming confidentiality, filed a motion to prevent Greenstein from having to testify.

On July 6, 2011 Judge Bauman ordered Greenstein's deposition be conducted by written questions.

On July 8, 2011 Judge Bauman ordered Judge Murphy's deposition be conducted by written questions.

On July 12, 2011 Haeg moved to quash the depositions because of the harm caused by having to provide written questions in advance.

Law

Clark v. United States, 289 US 1 (U.S. Supreme Court 1933)

The petitioner, Genevieve A. Clark, has been adjudged guilty of a criminal contempt in that with intent to obstruct justice she gave answers knowingly misleading and others knowingly false in response to questions affecting her qualifications as a juror.

The judge who examines on the *voir dire* is engaged in the process of organizing the court. If the answers to the questions are wilfully evasive or knowingly untrue, the talesman, when accepted, is a juror in name only. His relation to the court and to the parties is tainted in its origin; it is a mere pretense and sham. What was sought to be attained was the choice of an impartial arbiter. What happened was the intrusion of a partisan defender. If a kinsman of one of the litigants had gone into the jury room disguised as the complaint juror, the effect would have been no different. The doom of mere sterility was on the trial from the beginning.

She has trifled with the court of which she was a part, and made its processes a mockery. This is contempt, whatever it may be besides.

Freedom of debate might be stifled and independence of thought checked if jurors were made to feel that their arguments and ballots were to be freely published to the world. But the recognition of a privilege does not mean that it is without conditions or exceptions. The social policy that will prevail in many situations may run foul in others of a different social policy, competing for supremacy. It is then the function of a court to mediate between them, assigning, so far as possible, a proper value to each, and summoning to its aid all the distinctions and analogies that are the tools of the judicial process.

Assuming that there is a privilege which protects from impertinent exposure the arguments and ballots of a juror while considering his verdict, we think the privilege does not apply where the relation giving birth to it has been fraudulently begun or fraudulently continued. The privilege takes as its postulate a genuine relation, honestly created and honestly maintained. If that condition is not satisfied, if the relation is merely a sham and a pretense, the juror may not invoke a relation dishonestly assumed as a cover and cloak for the concealment of the truth. In saying this we do not mean that a mere charge of wrongdoing will avail without more to put the privilege to flight. There must be a showing of a *prima facie* case sufficient to satisfy the judge that the light should be let in. Upon that showing being made, the debates and ballots in the jury room are admissible as corroborative evidence, supplementing and confirming the case that would exist

without them. Let us assume for illustration a prosecution for bribery. Let us assume that there is evidence, direct or circumstantial, that money has been paid to a juror in consideration of his vote. The argument for the petitioner, if accepted, would bring us to a holding that the case for the People must go to the triers of the facts without proof that the vote has been responsive to the bribe. This is paying too high a price for the assurance to a juror of serenity of mind.

We turn to the precedents in the search for an analogy, and the search is not in vain. There is a privilege protecting communications between attorney and client. The privilege takes flight if the relation is abused. A client who consults an attorney for advice that will serve him in the commission of a fraud will have no help from the law. He must let the truth be told. There are early cases apparently to the effect that a mere charge of illegality, not supported by any evidence, will set the confidences free. But this conception of the privilege is without support in later rulings. "It is obvious that it would be absurd to say that the privilege could be got rid of merely by making a charge of fraud." To drive the privilege away, there must be "something to give colour to the charge;" there must be *"prima facie* evidence that it has some foundation in fact." When that evidence is supplied, the seal of secrecy is broken. Nor does the loss of the privilege depend upon the showing of a conspiracy, upon proof that client and attorney are involved in equal guilt. The attorney may be innocent, and still the guilty client must let the truth come out.

With the aid of this analogy, we recur to the social policies competing for supremacy. A privilege surviving until the relation is abused and vanishing when abuse is shown to the satisfaction of the judge has been found to be a workable technique for the protection of the confidences of client and attorney. Is there sufficient reason to believe that it will be found to be inadequate for the protection of a juror? No doubt the need is weighty that conduct in the jury room shall be untrammeled by the fear of embarrassing publicity. The need is no less weighty that it shall be pure and undefiled. A juror of integrity and reasonable firmness will not fear to speak his mind if the confidences of debate are barred to the ears of mere impertinence or malice. He will not expect to be shielded against the disclosure of his conduct in the event that there is evidence reflecting upon his honor. The chance that now and then there may be found some timid soul who will take counsel of his fears and give way to their repressive power is too remote and shadowy to shape the course of justice. It must yield to the overmastering need, so vital in our polity, of preserving trial by jury in its purity against the inroads of corruption.

United States v. Zolin, 491 U.S. 554 (9th Cir. 1989)

We have recognized the attorney-client privilege under federal law, as "the oldest of the privileges for confidential communications known to the common law." *Upjohn Co.* v. *United States,* 449 U.S. 383, 389 (1981).

The attorney-client privilege is not without its costs. Cf. *Trammel* v. *United States,* 445 U.S. 40, 50 (1980). "[S]ince the privilege has the effect of withholding relevant information from the factfinder, it applies only where necessary to achieve its purpose." *Fisher,* 425 U.S., at 403. The attorney-client privilege must necessarily protect the confidences of wrongdoers, but the reason for that protection the centrality of open client and attorney communication to the proper functioning of our adversary system of justice "ceas[es] to operate at a certain point, namely, where the desired advice refers *not to prior wrongdoing,* but to *future wrongdoing.*" 8 Wigmore, □ 2298, p. 573 (emphasis in original); see also *Clark* v. *United States,* 289 U.S. 1, 15 (1933). It is the purpose of the crime-fraud exception to the attorney-client privilege to assure that the "seal of secrecy," *ibid.,* between lawyer and client does not extend to communications "made for the purpose of getting advice for the commission of a fraud" or crime. *O'Rourke* v. *Darbishire,* [1920] A. C. 581, 604 (P. C.).

United States Auto Ass. V. Werley, 526 P2d 28 (AK Supreme Court 1974)

One of the widely recognized exceptions to utilization of the attorney-client privilege is that the privilege cannot be used to protect a client in the perpetration of a crime or other evil enterprise in concert with the attorney. Wigmore notes that this exception is for the logically sufficient reason that no such enterprise falls within the just scope of the relation between legal advisor and client. The mere allegation of a crime or civil fraud will generally not suffice to defeat the attorney client privilege. The general rule is that there must be a prima facie showing of fraud before the attorney-client privilege is deemed defeated. Once a litigant had presented prima facie evidence of the perpetration of a fraud or crime in the attorney-client relationship, the other party may not claim the privilege as a bar to the discovery of relevant communications and documents. A prima facie case is one in which the evidence in one's favor is sufficiently strong for this opponent to be called to answer it. This definition can be rephrased as requiring that the evidence in favor of a proposition be sufficient to support a finding in its favor, if all the evidence to the contrary be disregarded.

Discussion

There is shocking evidence (1) that Judge Murphy was chauffeured by the main witness against Haeg (Trooper Gibbens) during Haeg's trial and before Judge Murphy sentenced Haeg; (2) that Judge Murphy and Trooper Gibbens later testified, during an official investigation into the chauffeuring, that Trooper Gibbens did not chauffeur Judge Murphy until after Haeg was sentenced; (3) that investigator Marla Greenstein falsified her investigation of Judge Murphy and Trooper Gibbens so the evidence agreed with the false testimony of Judge Murphy and Trooper Gibbens; (4) that Marla Greenstein, during the Bar investigation into her falsifying the investigation of the chauffeuring, falsified a "verified" response to cover up her actions; and (5) **that now the claim of "confidentiality" is being used to prevent the production of additional proof to the forgoing crimes.** The evidence consists of:

(1) Tape recordings and transcriptions, authenticated by Superior Court Judge Stephanie Joannides, of phone calls between Greenstein, Haeg, and his wife Jackie, during which Greenstein never stated anything was confidential but did state (a) that both Judge Murphy and Trooper Gibbens testified that no chauffeuring of Judge Murphy took place until after Haeg was sentenced; (b) that Judge Murphy's statement was in writing; (c) that she (Greenstein) had contacted all the witnesses to the chauffeuring that Haeg had provided; (d) that Jackie Haeg did not need to testify over the phone to the fact that she had personally witnessed Trooper Gibbens chauffeuring Judge Murphy every day of Haeg's week long trial,

because Greenstein already had Jackie's statement in writing; (e) that no witness Greenstein had contacted, other than Haeg, had testified they had seen Trooper Gibbens chauffeur Judge Murphy; and (f) that Judge Murphy was exonerated.

(2) A written list of witnesses and their phone numbers that Haeg provided for Greenstein's Judicial Conduct investigation at her request, date stamped as received by the Judicial Conduct Commission.

(3) Affidavits from every single witness on the written list Haeg provided Greenstein at her request – each stating under penalty of perjury that Greenstein had never contacted them and that, had Greenstein actually contacted them, they would have testified they had each personally witnessed Trooper Gibbens chauffeuring Judge Murphy before Haeg was sentenced. In other words, if Greenstein documented contacting any of these witnesses, or documented that they testified that they had not seen Trooper Gibbens chauffeuring Judge Murphy before Haeg was sentenced, **they would be guilty of felony perjury.**

(4) A letter from the Judicial Conduct Commission that in the record of Greenstein's investigation there was now no record of the Commission or Greenstein ever receiving a written statement from Jackie Haeg. In other words, even written documentation that Greenstein confirmed receiving, evidencing that Judge Murphy was being chauffeured by Trooper Gibbens during Haeg's prosecution, was removed out of the official record of Greenstein's investigation.

(5) The official court tape recording of Haeg's case, examined only **after** Greenstein's investigation was concluded, which captured both Judge

Murphy and Trooper Gibbens themselves admitting Trooper Gibbens was chauffeuring Judge Murphy before Haeg was sentenced. Before this was discovered it was Judge Murphy and Trooper Gibbens' word against Haeg and the witnesses. After this there was no doubt the chauffeuring took place before Haeg was sentenced, as Haeg and the witnesses claimed - proving Judge Murphy's testimony was false.

(6) Greenstein's "verified" written response to Haeg's complaint that she falsified contacting every witness provided for her official investigation into the chauffeuring and that she had completely falsified what the witnesses would have testified had they been contacted. In this response Greenstein claimed that in addition to the witnesses Haeg provided (all of whom provided affidavits disputing this) she had also contacted Haeg's attorney Arthur Robinson during her investigation of the chauffeuring.

(7) The tape recording of Arthur Robinson made **after** Greenstein's "verified" response. **In this recording Robinson also emphatically and repeated denies ever being contacted by anyone investigating the chauffeuring of Judge Murphy by Trooper Gibbens and that he also had personally observed the chauffeuring of Judge Murphy by Trooper Gibbens during Haeg's trial.** This means every single witness Haeg provided to Greenstein, and one he did not provide (Robinson - who Greenstein claims to have contacted anyway), have all testified they were never contacted by Greenstein and, had they been contacted, would have testified they had personally witnessed Trooper Gibbens chauffeuring

Judge Murphy before Haeg was sentenced. This is in exact opposition to Greenstein's testimony that she contacted all the witnesses Haeg had provided and **none** of them testified they had witnessed Trooper Gibbens chauffeuring Judge Murphy before Haeg was sentenced. And her claim that she contacted Robinson, in addition to the witnesses Haeg provided, is in a "verified" written statement.

The evidence is irrefutable that Trooper Gibbens chauffeured Judge Murphy before Haeg was sentenced; that Judge Murphy and Trooper Gibbens lied about this during the investigation of the chauffeuring; that Greenstein falsified her investigation so the evidence did not conflict with the testimony of Judge Murphy and Trooper Gibbens; that there was a conspiracy involving at least Greenstein, Judge Murphy, and Trooper Gibbens during Greenstein's investigation; and that Greenstein falsified her "verified" written Bar response to further cover up the conspiracy and the falsification of her investigation.

Federal authorities state an obvious reason for Judge Murphy, Trooper Gibbens, and Greenstein's lies, conspiracy, and cover up – **it is simply not allowed for the judge presiding over a prosecution to be chauffeured by the prosecution's main witness.** In other words, if this happened Haeg's prosecution is null and void – a potent motive for the lies and conspiracy to cover up the chauffeuring while Judge Murphy was presiding over Haeg's prosecution.

It is clear the "confidentiality" afforded judicial investigations is to protect the judge's reputation from being tainted by baseless complaints. It is clear, as the U.S. Supreme Court ruled above, that Judge Murphy, Trooper Gibbens, and

Greenstein should not expect to be shielded against disclosure when there is such shocking evidence of their "evil enterprise". Undeniably, the claim of privilege must yield to the "overmastering need" of preserving the purity of our justice system "against the inroads of corruption" - that if confidentiality is being used to cover up a crime or evil enterprise, as is evidenced here, the confidentiality is eliminated. It is clear that Judge Murphy and Greenstein's right to confidentiality is also butting up against Haeg's right to prove he did not have a fair/impartial judge and to compel witnesses in his favor (Judge Murphy and Greenstein) to prove the massive injustice of his life rending conviction and sentence. It is clear that Judge Murphy and Greenstein's right to confidentiality is butting up against our entire nation's right to ensure corrupt judges do not preside over trials that may completely destroy someone's life – as Haeg's was. Greenstein's over 20-year history as the **only** investigator of judges in the entire state of Alaska underscores the seriousness and truth of this concern.

It is clear that Judge Murphy and Greenstein's exploitation of the claim of confidentiality/privilege has already adversely affected Haeg's ability to prove his case was presided over by a corrupt judge and there is little doubt the issue, unless addressed, will continue to adversely affect Haeg.

Conclusion

Investigator Greenstein stated on tape that Judge Margaret Murphy, in written testimony to the complaint against her, testified Trooper Gibbens never chauffeured her until **after** Haeg was sentenced – which, if true, would have

meant the chauffeuring took place after Judge Murphy was through presiding over Haeg's case. Yet the tape recordings of the official record of Haeg's case proves Judge Murphy herself admitted she was being chauffeured by Trooper Gibbens **before** Haeg was sentenced. In other words, Judge Murphy's written testimony is irrefutable proof that Judge Murphy lied during the official investigation into her actions – to cover up that the prosecution's main witness against Haeg was chauffeuring her while she presided over Haeg's case. Because of this crime and evil enterprise Haeg has an absolute right to compel testimony from Judge Murphy and Greenstein that is free of confidentiality or privilege claims. In addition, Haeg has an absolute right to a copy of Judge Murphy's written testimony.

In light of the immense issues above Haeg respectfully ask this court to order an evidentiary hearing, complete with sworn witness testimony, to confirm that Judge Murphy and Greenstein are not entitled to confidentiality or privilege.

Our entire judicial system and nation itself is founded upon the guarantee of a fair hearing in front of an impartial judge. Haeg's trial was anything but. Evidence, proving that the state had told Haeg he must do exactly what they afterward prosecuted him for doing (which would have prevented Haeg from ever being prosecuted), was removed out of the official court record while the cover letter proving the evidence had been admitted remained in the record. Trooper Gibbens, the state's main witness against Haeg, falsified all evidence locations to Haeg's guide area (proven by Gibbens' own GPS coordinates) and then the state specifically cited this false location as justification for filing guide charges that

destroyed Haeg's lifelong business. Judge Murphy, who was chauffeured by Trooper Gibbens (because she had no transportation after flying into McGrath, population 283, to preside over Haeg's trial), did nothing when Trooper Gibbens, upon confrontation, was forced to admit his prior sworn testimony was false – admitting no evidence was found in Haeg's guide area. Topping it off was Judge Murphy's use of Trooper Gibbens false testimony (after he had admitted it was false in open court before Judge Murphy), as the specific justification for Haeg's severe sentence.

After all this incriminating evidence how could anyone believe that Judge Murphy being chauffeured by Trooper Gibbens did not adversely affect the outcome of Haeg's trial and sentence? And if Judge Murphy specifically used Trooper Gibbens' false testimony to justify Haeg's sentence what did Haeg's jury use to justify convicting him?

Exactly who would believe it was a fair trial if the main witness against them got to chauffeur the judge that was presiding over their case? Who would believe there was no discussion/corruption of Haeg's case, otherwise known as "ex parte communication", by Judge Murphy and Trooper Gibbens (the main witness against Haeg), while Trooper Gibbens was chauffeuring Judge Murphy? Who would believe Haeg got a fair trial after both Judge Murphy and Trooper Gibbens lied about the chauffeuring during the investigation into it? In other words, if Judge Murphy and Trooper Gibbens did **not** do something incredibly damaging to Haeg's case while Judge Murphy presided over it, **why did they lie**

about it afterward? Who would believe Haeg got a fair trial before an impartial judge after the only investigator of judges in an entire state falsified her investigation to help the judge and trooper cover up what happened at Haeg's trial? Who would believe Haeg got a fair trial before an impartial judge when the only investigator of judges in Alaska falsified a "verified" response to cover up that she falsified her investigation so it corruptly collaborated Judge Murphy's and Trooper Gibbens' false testimony?

Haeg has thought long and hard to decide what he should do and how far he should go to address this nearly inconceivable breakdown in Alaska's justice system. The only gage he has found is to imagine what the founding fathers of our nation would ask him to do about a presiding judge being chauffeured by the prosecutions main witness, both lying during the investigation into it, and then having the only investigator of judges in a whole state falsify the investigation of the judge to corruptly exonerate the judge.

It is without any doubt that our founding fathers would (1) **require** Haeg to relentlessly pursue, by any and all means available, Judge Murphy, Trooper Gibbens, and Greenstein to the gates of hell and far beyond if necessary; (2) **require** Haeg to carefully and exhaustively present the actions of Judge Murphy, Trooper Gibbens, and Greenstein to those with a duty to address them; (3) **require** Haeg to carefully and exhaustively document and publish the actions of those who have failed to address the corruption of Judge Murphy, Trooper Gibbens, and Greenstein; and (4) **require** Haeg to do this because it was only by chance that

Haeg was lucky enough to be able to record the conversations that can prove this evil enterprise by those wearing and using the color of law – and if it is not stopped now it will go on to harm many others in the future.

Haeg will steadfastly and bravely continue as long as it takes, knowing that by then a great many will have realized how serious this really is and joined those who have already pledged to see this through to its logical conclusion of criminal prosecution for those involved. For, until this is addressed, there is no certainty of the purity of a single Alaskan judge against whom a complaint was filed in the last 20 plus years or of any future judge against whom a complaint is filed.

I declare under penalty of perjury the forgoing is true and correct. Executed on July 27, 2011. A notary public or other official empowered to administer oaths is unavailable and thus I am certifying this document in accordance with AS 09.63.020. In addition I would like to certify that copies of many of the documents and recordings referenced above are located at:

www.alaskastateofcorruption.com

David S. Haeg
PO Box 123
Soldotna, Alaska 99669
(907) 262-9249 and 262-8867 fax
haeg@alaska.net

Certificate of Service: I certify that on July 27, 2011 a copy of the forgoing was served by mail to the following parties: Peterson, Maassen, DeYoung, Novak, Judge Gleason, Judge Joannides, U.S. Department of Justice, FBI, and media. By:

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT KENAI

DAVID HAEG,

Petitioner,

vs.

STATE OF ALASKA,

Respondent.

Case no3KN-10-1295 CI

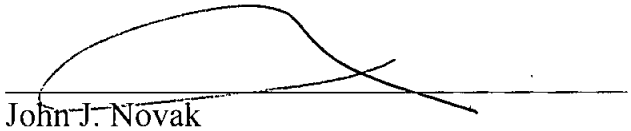
NON-OPPOSITION TO JULY 12, 2011
MOTION TO QUASH DEPOSITIONS

I certify this document and its attachments do not contain the (1) name of a victim of a sexual offense listed in AS 12.61.140 or (2) residence or business address or telephone number of a victim of or witness to any offense unless it is an address identifying the place of a crime or an address or telephone number in a transcript of a court proceeding and disclosure of the information was ordered by the court.

COMES NOW, counsel for Alaska State Trooper Brett Gibbons, by and through Assistant Attorney General John J. Novak, and hereby files this non-opposition to petitioner's July 12, 2011, motion to quash depositions.

DATED this 14th day of July, 2011 at Anchorage, Alaska.

JOHN J. BURNS
ATTORNEY GENERAL

By: 

John J. Novak
Assistant Attorney General
Alaska Bar No. 8511184

I hereby certify that a copy of the foregoing was mailed to David Haeg and hand delivered AAGs DeYoung and Peterson

Sherry Gowan 7-14-11
Sherry Gowan Date

STATE OF ALASKA
DEPARTMENT OF LAW
CRIMINAL DIVISION CENTRAL OFFICE - ANCHORAGE
310 K STREET, SUITE 403
ANCHORAGE, ALASKA 99501
PHONE: (907) 269-6379

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT KENAI

DAVID HAEG

Applicant,

vs.

STATE OF ALASKA,

Respondent.

Case No. 3KN-10-01295 CI

FILED in the Trial Courts
State of Alaska Third District
at Kenai, Alaska

JUL 13 2011

Clerk of the Trial Courts

By _____ Deputy

NON-OPPOSITION TO
7-12-11 MOTION TO QUASH DEPOSITIONS

Judge Margaret L. Murphy does not oppose the relief requested in Applicant David Haeg's 7-12-11 Motion to Quash Depositions.

DATED: July 12, 2011.

INGALDSON, MAASSEN &
FITZGERALD, P.C.
Counsel for Judge Murphy

By: _____
Peter J. Maassen
ABA No. 8106032

INGALDSON, MAASSEN & FITZGERALD, P.C.
Lawyers
813 W. 3rd Avenue
Anchorage, Alaska
99501-2001
(907) 258-8750
FAX: (907) 258-8751

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on 12th day of July, 2011, a copy of the foregoing was sent to the following via:

- [x] U.S. mail
- [ ] Hand-delivery
- [ ] Fax
- [ ] Federal Express

FILED in the Trial Courts
State of Alaska Third District
at Kenai, Alaska

JUL 13 2011

Clerk of the Trial Courts

By _____ Deputy

David Haeg
Pro Se
Box 123
Soldotna, AK 99669

A. Andrew Peterson
Assistant A.G.
Dept of Law - Criminal Division
310 K Street, Suite 308
Anchorage, AK 99501

F:\W\2116.006\Pleadings 3KN-10--01295 CI\Word Documents\Non-Opposition.doc

INGALDSON, MAASSEN & FITZGERALD, P.C.
Lawyers
813 W. 3rd Avenue
Anchorage, Alaska
99501-2001
(907) 258-8750
FAX: (907) 258-8751

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT KENAI

DAVID HAEG,	)	
	)	
Applicant,	)	
	)	
v.	)	POST-CONVICTION RELIEF
	)	Case No. 3KN-10-01295CI
STATE OF ALASKA,	)	(formerly 3HO-10-00064CI)
	)	
Respondent.	)	
	)	

(Trial Case No. 4MC-04-00024CR)

7-12-11 MOTION TO QUASH DEPOSITIONS

VRA CERTIFICATION: I certify this document and its attachments do not contain the (1) name of victim of a sexual offense listed in AS 12.61.140 or (2) residence or business address or telephone number of a victim of or witness to any offense unless it is an address identifying the place of a crime or an address or telephone number in a transcript of a court proceeding and disclosure of the information was ordered by the court.

COMES NOW Applicant, DAVID HAEG, in the above case and hereby files this motion to quash the depositions he scheduled. This includes depositions of Marla Greenstein, Trooper Brett Gibbens, and Judge Margaret Murphy.

Information

On April 20, 2011 the court declared Haeg indigent for the purposes of appointing counsel at public expense and appointed the public defender (PD) agency to represent Haeg.

On May 21, 2011 the court ordered PD agency to respond within 20 days to Haeg previously filed January 21, 2011 motion that he may immediately return to guiding and that the state must return his master guide license.

On June 3, 2011 Haeg filed a motion for immediate hearing to resolve how and when the PD's office would assist Haeg. In the motion Haeg testified the PD's office told him it that it did not have enough attorneys to comply with the requirement PCR cases be evaluated within 60 days, that it would be at least 18 months before evaluation of Haeg's case, and that it may be closer to 6 years.

On June 13, 2011 a hearing on Haeg's motion was held. The PD's office had not replied in the time given by the court for their input on Haeg's motion he be allowed to return to guiding and the state must return his guide license. Whitney Glover, the PD assigned to Haeg, confirmed on the court record that Haeg's case would not be evaluated for at least 18 months, that she was currently handling 54 cases, that she was resigning, and that all her cases would be assigned to PD David Seid (who was also attending the hearing). State attorney Peterson stated he was handling about 5 or 6 cases and could not imagine handling 54 cases. The court asked how it was that the PDs office "was not meeting its statutory obligations" - which required PDs evaluate PCR cases within 60 days. Glover could not respond. The court observed the PDs had a heavy caseload and what did Haeg want to do. Haeg stated that if Glover's 50 cases were given to PD Seid, who must already have 50, it would mean Seid would now have over 100 cases, and it was apparent Haeg must again represent himself. Seid did not dispute Haeg's math or rational, the court again allowed Haeg to represent himself, and cautioned it would not allow Haeg to go back and forth between being represented and representing himself.

On June 28, 2011 Haeg issued subpoenas for taking depositions to Greenstein, Trooper Gibbens, and Judge Murphy.

On July 1, 2011 state attorney Peterson filed a motion to delay and move the deposition of Trooper Gibbens.

On July 5, 2011 state attorney Jan DeYoung sent Haeg a letter stating that Greenstein would not appear at the deposition and that she was returning Haeg's check for Greenstein's witness and travel fees.

On July 6, 2011 private criminal defense attorney Peter Maassen filed an entry of appearance for Judge Murphy and filed a motion to quash Judge Murphy's subpoena or alternately to allow her to testify telephonically.

On July 6, 2011 state attorney DeYoung filed an entry of appearance for Greenstein and filed a motion to prevent Greenstein from having to testify.

On July 6, 2011 Judge Bauman ordered Greenstein's deposition be conducted by written questions. In addition Judge Bauman ordered Haeg to file any opposition to Judge Murphy's motion no later than July 7, 2011.

On July 7, 2011 Haeg filed an opposition to Judge Murphy's motion to quash subpoena or alternately to allow telephonic testimony.

On July 7, 2011 state attorney John Novak entered an appearance for Trooper Gibbens and filed a motion to delay Trooper Gibbens deposition.

On July 8, 2011 Judge Bauman ordered Haeg to conduct the deposition of Judge Murphy by written questions.

On July 9, 2011 Haeg started researching depositions by written questions instead of orally and found the rules require all written questions be served to all parties in advance of the deposition; that within 30 days of these first questions being served a party may serve cross questions; that within 10 days of being served cross questions a party may serve redirect questions; and within 10 days of being served redirect questions a party may serve recross questions. Only after the conclusion of all this (up to 50 days) are the questions actually asked of the witness (whose transportation costs are still the same as if it were an oral examination) by a court reporter who is still paid the same as an oral examination. See Civil Rule 31.

Further, Haeg found that written depositions are generally used to obtain general information and are avoided if a witness's credibility will be an issue at trial. As the Wisconsin Bar Association states,

"The detailed written discovery telegraphs the blow. You are literally compelling the opposition to prepare in the most ideal circumstances."

Other authorities also caution the use of written questions if the witness is to be impeached later – stating that the advantage of a deposition may be less than the disadvantage of having to provide the witness and his or her attorney with all the questions long before they can be asked, not being able to ask follow-up questions in response to answers, and to have the questions asked without a judge or jury determining credibility as they are being asked.

Discussion

To Haeg the advantage of depositions is negated by having to provide his questions to the witnesses (and the imposing array of attorneys now working against non-attorney Haeg) in advance of them being asked. And since Trooper Gibbens will likely be asked many of the same questions as Judge Murphy and/or Greenstein, the effect is nearly the same as if Trooper Gibbens was also being deposed by written questions.

Finally and most importantly, Haeg has realized it is not new information that is most important at this point but to establish the lack of credibility of the witnesses. And, as Superior Court Judge Joannides previously ruled, this is best done during an evidentiary hearing before the judge deciding Haeg's PCR case.

Conclusion

In light of the forgoing Haeg asks this court to quash the depositions of Greenstein, Trooper Gibbens and Judge Murphy.

And, as promised, Haeg will continue to carefully document the growing corruption and cover up in his case; will continue carefully exhausting all State remedies; and will, along with a growing number of those seriously concerned, eventually demand federal prosecution of everyone involved for corruption, conspiracy, and pattern/practice to cover up for attorneys, judges, and law enforcement who, using the color of law, are violating rights to unjustly strip defendants of everything.

The disparity of counsel between that provided Haeg and what is provided the state employees against Haeg will be of interest. The attorney first provided Haeg (Glover) was forced to handle 54 cases at once, with the next (Seid) likely 108 cases. These attorneys could not even meet the court ordered 20-day deadline to file a **comment** on a previously filed motion and could not evaluate Haeg's case within 18 months when the law required this be done within 60 days.

Each of the numerous attorneys (Peterson, Maassen, DeYoung, Novak, and Greenstein, who is also an attorney) now opposing Haeg are likely carrying 5 or 6 cases each – one tenth to one twentieth of that which Haeg's PD was required to carry. Exactly how fair would it have been to have the PD opposing them to be carrying 10 to 20 times the load? How fair is it for non-attorney Haeg to be pitted against so many professionals? In less than a week of appearing these attorneys filed 8 new motions against Haeg - when Haeg's PD could not even comment on an already filed motion within the 20 days given by the court.

Additional proof this disparity overwhelmed the PDs into ineffectiveness was their admission on the court record that they could not meet their statutory obligations. Who would agree a PD was effective when they cannot comply with the **law?** This not only brings up Haeg's constitutional right to effective assistance of counsel but also his right to the equal protection of the law.

One master guide who is following Haeg's case put it this way:

To: Haeg
Sent: Wednesday, June 15, 2011 11:16 PM
Subject: Re: Important Update

Why did not the judge hold the Pub. Defenders office in contempt? From the Top Down. They are violating the law. Every law. Every sense of justice and jurisprudence.

This is proof positive that a public defender is neither capable, logistically or otherwise to handle any one individuals case prudently as required by their own cannons. Failure of the judge, prosecutor and defense attorney to acknowledge this, rectify it or solve it brings into question their own sworn oaths.

In fact the judges decision to allow you to council yourself after it was ruled that you should/could have council and then you were required to make that decision with inept, unco-operative, overwork un prepared council was a violation of the first order that everyone in the courtroom had to notice.

Call the bar association. Seid can not have it both ways. It is you first and formost he is required to serve and not himself. And since he fought you from the begining he has violated his duty. Did so on purpose. Another violation. The judge and prosecutor allowing it another set of violations. I hope you are recording everything yourself.

They see a train wreck coming and no -one wants any part of it.

Call the prosecutor and tell him that if he agrees to all of your terms you will let things drop away and file no charges with the Feds, the Bar, against the State, you will not seek punitive damages or personal damages against any or all above or previously involved. Tell him if he refuses that you will never withdraw. This is the only chance. No plea deals after this.
My opinion but your ass
Good luck

It is clear Haeg was put in the same position as the prisoner whose prison is on fire – should he stay to be burnt by an overworked PD who cannot comply with the **law** or should he break prison and risk hanging by representing himself when he has no schooling to do so? Haeg was literally forced to give up his right to counsel because his case must be addressed before he and his family go broke, crazy, or both. It will be interesting what will happen if Haeg loses his PCR and

then claims he lost because his attorneys could not even comply with the law. Not to put too fine a point on it but exactly who, in what is revered as a nation of law, would agree to representation by attorney who could not follow the law? It seems apparent that an attorney who cannot follow the law is by definition ineffective.

Haeg contacted Peterson, DeYoung, and Novak about this motion and all stated they did not oppose. Haeg left a message for Maassen at 10 am on July 11, 2011 to see if he opposed and by 6:40 pm Haeg still had not heard from Maassen.

I declare under penalty of perjury the forgoing is true and correct. Executed on July 12, 2011. A notary public or other official empowered to administer oaths is unavailable and thus I am certifying this document in accordance with AS 09.63.020.

David S. Haeg
PO Box 123
Soldotna, Alaska 99669
(907) 262-9249 and 262-8867 fax
haeg@alaska.net

Certificate of Service: I certify that on July 12, 2011 a copy of the forgoing was served by email and mail to the following parties: Peterson, Maassen, DeYoung, Novak, Judge Gleason, Judge Joannides, U.S. Department of Justice, FBI, and media. By:

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT KENAI

DAVID HAEG,	)
	)
Applicant,	)
	)
v.	) POST-CONVICTION RELIEF
	) Case No. 3KN-10-01295CI
STATE OF ALASKA,	) (formerly 3HO-10-00064CI)
	)
Respondent.	)
	)

(Trial Case No. 4MC-04-00024CR)

The applicant's 7-12-11 motion to quash his depositions of Marla Greenstein, Trooper Brett Gibbens, and Judge Margaret Murphy is hereby GRANTED / ~~DENIED~~.

JUL 12 2011

Done at Kenai, Alaska, this 15 day of July, 2011.

Anna M Moran for

Superior Court Judge Carl Bauman

CERTIFICATION OF DISTRIBUTION
I certify that a copy of the foregoing was ~~mailed~~ faxed to the following at their addresses of record:
Haeg, Peterson, Maassen, DeYoung, Novak
7-15-11 Date
Roberts Clerk

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT KENAI

DAVID HAEG,
Applicant,
v.
STATE OF ALASKA,
Respondent.

POST-CONVICTION RELIEF
Case No. 3KN-10-01295CI

(Trial Case No. 4MC-04-00024CR)

ORDER GRANTING EXPEDITED CONSIDERATION

I certify this document and its attachments do not contain the (1) name of a victim of a sexual offense listed in AS 12.61.140 or (2) residence or business address or telephone number of a victim of or witness to any offense unless it is an address identifying the place of a crime or an address or telephone number in a transcript of a court proceeding and disclosure of the information was ordered by the court.

This matter having come before this court on the motion of Alaska State Trooper Brett Gibbons for expedited consideration of its motion to reset the date for his deposition, and otherwise being duly advised;

It hereby is ordered that the request for expedited consideration is granted. All parties shall file any response they may have by ____ a.m. / p.m. on _____, 2011. Any reply shall be filed by _____ a.m. /p.m. on _____, 2011.

DATED this _____ day of _____, 2011.

MOOT

Carl Bauman
Superior Court Judge

JUL 08 2011

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT KENAI

DAVID HAEG,
Applicant,
v.
STATE OF ALASKA,
Respondent.

POST-CONVICTION RELIEF
Case No. 3KN-10-01295CI

(Trial Case No. 4MC-04-00024CR)

ORDER RESETTING DATE FOR DEPOSITION OF TPR. GIBBONS

I certify this document and its attachments do not contain the (1) name of a victim of a sexual offense listed in AS 12.61.140 or (2) residence or business address or telephone number of a victim of or witness to any offense unless it is an address identifying the place of a crime or an address or telephone number in a transcript of a court proceeding and disclosure of the information was ordered by the court.

This matter having come before this court on the motion of Alaska State Trooper Brett Gibbons, and otherwise being duly advised,

It hereby is ordered that the motion is granted. The deposition is reset to occur on _____, 2011 beginning at _____ a.m. / p.m. and shall be concluded at or before _____ a.m. / p.m.

DATED this _____ day of _____, 2011.

MOOT

Carl Bauman
Superior Court Judge

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT KENAI

DAVID HAEG,

Applicant,

v.

STATE OF ALASKA,

Respondent.

POST-CONVICTION RELIEF
Case No. 3KN-10-01295CI

(Trial Case No. 4MC-04-00024CR)

MOTION FOR ORDER RESETTING DATE OF ALASKA STATE TROOPER BRETT GIBBONS DEPOSITION

I certify this document and its attachments do not contain the (1) name of a victim of a sexual offense listed in AS 12.61.140 or (2) residence or business address or telephone number of a victim of or witness to any offense unless it is an address identifying the place of a crime or an address or telephone number in a transcript of a court proceeding and disclosure of the information was ordered by the court.

COMES NOW, Alaska State Trooper Brett Gibbons and hereby files this motion for an order resetting the date for his deposition that currently is scheduled to occur on July 19, 2011. This motion is supported by the attached affidavit of counsel. Undersigned counsel will serve Mr. Haeg via fax or email attachment with copies of this motion for expedited consideration as well as the underlying motion to reset the date for the deposition.

STATE OF ALASKA
DEPARTMENT OF LAW
CRIMINAL DIVISION CENTRAL OFFICE - ANCHORAGE
310 K STREET, SUITE 403
ANCHORAGE, ALASKA 99501
PHONE: (907) 269-5373

DATED this 7th day of July, 2011 at Anchorage, Alaska.

JOHN J. BURNS
ATTORNEY GENERAL

By: _____
John J. Novak
Assistant Attorney General
Counsel for Alaska State Trooper Brett Gibbons
Alaska Bar No. 8511184

X e-mailed a copy to be mailed
___hand delivered ___caused to be hand delivered
___faxed
to the following attorney/parties of record:
David Haeg & Andrew Peterson
Shawn Cowan 7-8-11
Signature Date

STATE OF ALASKA
DEPARTMENT OF LAW
CRIMINAL DIVISION CENTRAL OFFICE - ANCHORAGE
310 K STREET, SUITE 403
ANCHORAGE, ALASKA 99501
PHONE: (907) 269-6379

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT KENAI

DAVID HAEG,)
)
Applicant,)
)
v.)
)
STATE OF ALASKA,)
) POST-CONVICTION RELIEF
Respondent.) Case No. 3KN-10-01295CI
)
(Trial Case No. 4MC-04-00024CR)

AFFIDAVIT IN SUPPORT OF MOTION FOR ORDER RESETTING DATE OF ALASKA STATE TROOPER BRETT GIBBONS DEPOSITION

I certify this document and its attachments do not contain the (1) name of a victim of a sexual offense listed in AS 12.61.140 or (2) residence or business address or telephone number of a victim of or witness to any offense unless it is an address identifying the place of a crime or an address or telephone number in a transcript of a court proceeding and disclosure of the information was ordered by the court.

STATE OF ALASKA)
) ss
THIRD JUDICIAL DISTRICT)

I, John J. Novak, after being first duly sworn upon oath, state and depose as follows:

1. I am licensed and admitted to practice law in the State of Alaska.

2. I currently am an Assistant Attorney General in the Central Office of the Criminal Division Attorney General's Office.

3. My primary responsibilities are to act as counsel for the Department of Public Safety.

STATE OF ALASKA
DEPARTMENT OF LAW
CRIMINAL DIVISION CENTRAL OFFICE - ANCHORAGE
310 K STREET, SUITE 403
ANCHORAGE, ALASKA 99501
PHONE: (907) 269-5379

4. The Alaska State Troopers is one of the divisions within the Department of Public Safety

3. It is my belief, based upon my understanding of prior proceedings in this and related case that legal representation of Tpr. Gibbons at his deposition is appropriate and necessary.

4. It is my understanding that the deposition currently is scheduled to take place in Kenai on July 19, 2011.

3. I am not available to attend the deposition on that date since I will be in the State of Washington to represent the State of Alaska at the quarterly meeting of the Western States Information Network over the period of July 18 – 20, 2011.

5. I hereby request that the deposition be reset to on occur on July 22, 25, 26, 27, or 28, 2011.

DATED at Anchorage, Alaska this 7th day of July, 2011.

By: _____
John J. Novak
Assistant Attorney General
8511184

SUBSCRIBED AND SWORN to before me this 8th day of July, 2011 at Anchorage, Alaska.

_____
Notary Public in and for Alaska
My commission expires with office

SHERRY M. GOWAN NOTARY PUBLIC STATE OF ALASKA

STATE OF ALASKA
DEPARTMENT OF LAW
CRIMINAL DIVISION CENTRAL OFFICE - ANCHORAGE
310 K STREET, SUITE 403
ANCHORAGE, ALASKA 99501
PHONE: (907) 269-6379

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT KENAI

DAVID HAEG,

Applicant,

v.

STATE OF ALASKA,

Respondent.

(Trial Case No. 4MC-04-00024CR)

FILED in Trial Courts
State of Alaska, Third District
at KENAI, ALASKA
JUL 08 2011
Clerk of the Trial Courts
By _____ Deputy

POST-CONVICTION RELIEF
Case No. 3KN-10-01295CI

MOTION FOR EXPEDITED CONSIDERATION

I certify this document and its attachments do not contain the (1) name of a victim of a sexual offense listed in AS 12.61.140 or (2) residence or business address or telephone number of a victim of or witness to any offense unless it is an address identifying the place of a crime or an address or telephone number in a transcript of a court proceeding and disclosure of the information was ordered by the court.

COMES NOW, Alaska State Trooper Brett Gibbons and hereby files this motion seeking expedited consideration of its underlying motion for an order resetting the date currently set for him to be deposed. The deposition currently is scheduled to occur on July 19, 2011.

Expedited consideration is necessary in light of the deposition being scheduled to occur twelve days from today. Undersigned counsel will attempt to consult with Mr. Haeg regarding expedited consideration as well as the underlying motion. Undersigned counsel will serve Mr. Haeg via fax or email attachment with copies of this motion for expedited consideration as well as the underlying motion to reset the date for the deposition.

STATE OF ALASKA
DEPARTMENT OF LAW
CRIMINAL DIVISION CENTRAL OFFICE - ANCHORAGE
310 K STREET, SUITE 403
ANCHORAGE, ALASKA 99501
PHONE: (907) 269-6379

DATED this 7th day of July, 2011 at Anchorage, Alaska.

JOHN J. BURNS
ATTORNEY GENERAL

By: _____
John J. Novak
Assistant Attorney General
Counsel for Alaska State Trooper Brett Gibbons
Alaska Bar No. 8511184

I certify that a copy of the foregoing is being
X e-mailed ____caused to be mailed
____hand delivered ____caused to be hand delivered
____faxed
to the following attorney/parties of record:
David Haeg & Andrew Petersen

Signature _____ Date 7-8-11

STATE OF ALASKA
DEPARTMENT OF LAW
CRIMINAL DIVISION CENTRAL OFFICE - ANCHORAGE
310 K STREET, SUITE 403
ANCHORAGE, ALASKA 99501
PHONE: (907) 269-6379

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT KENAI

DAVID HAEG,

Applicant,

v.

STATE OF ALASKA,

Respondent.

(Trial Case No. 4MC-04-00024CR)

FILED in Trial Courts
State of Alaska, Third District
at KENAI, ALASKA
JUL 08 2011
Clerk of the Trial Courts
By _____ Deputy

POST-CONVICTION RELIEF
Case No. 3KN-10-01295CI

LIMITED ENTRY OF APPEARANCE

Please take notice that John J. Novak, Assistant Attorney General for the State of Alaska, Department of Law, 310 K Street, Suite 403, Anchorage, Alaska 99501; telephone: 907-269-6330, fax: 907-2696305; hereby enters his appearance as counsel of record in the above-captioned matter for the limited purpose of representing Alaska State Trooper Brett Gibbons, who has been subpoenaed for taking a deposition in this matter.

Copies of notices, motions, and pleadings should be sent to the address referenced above.

DATED this 7th day of July, 2011.

JOHN J. BURNS
ATTORNEY GENERAL

By: _____
John J. Novak
Assistant Attorney General
Alaska Bar No. 8511184

STATE OF ALASKA
DEPARTMENT OF LAW
CRIMINAL DIVISION CENTRAL OFFICE - ANCHORAGE
310 K STREET, SUITE 403
ANCHORAGE, ALASKA 99501
PHONE: (907) 269-6379

I certify that on the [illegible] a copy of the foregoing was
X emailed ____ caused to be mailed
____ hand delivered ____ caused to be hand delivered
____ faxed
to the following attorney/parties of record:
David Haeg

Stacy Gordon 7-8-11
Signature Date

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT KENAI

DAVID HAEG,

Applicant,

v.

STATE OF ALASKA,

Respondent.

(Trial Case No. 4MC-04-00024CR)

FILED in the Trial Courts
State of Alaska Third District
at Kenai, Alaska

JUL - 8 2011

Clerk of the Trial Courts

By _____ Deputy

POST-CONVICTION RELIEF
Case No. 3KN-10-01295CI

AFFIDAVIT IN SUPPORT OF MOTION TO EXPEDITE

State of Alaska)
) ss.
Third Judicial District)

Jan H. DeYoung, being first duly sworn, deposes and says:

1. I am the assistant attorney general assigned to represent Marla Greenstein in this matter.

2. Expediting action on the motion for a protective order for Ms. Greenstein is needed because the order is to protect her from participation in discovery in this application for post-conviction relief and the applicant has scheduled her deposition for July 13, 2011. A copy of the subpoena is attached as exhibit A to this affidavit.

DEPARTMENT OF LAW
OFFICE OF THE ATTORNEY GENERAL
ANCHORAGE BRANCH
1031 W. FOURTH AVENUE, SUITE 200
ANCHORAGE, ALASKA 99501
PHONE: (907) 269-5100

3. I contacted Mr. Haeg by telephone on July 6, 2011, and made a good faith effort to resolve the issues raised in the motion for a protective order. In that conversation I asked him to withdraw his subpoena, and he declined.

FURTHER YOUR AFFIANT SAYETH NAUGHT

Jan H. DeYoung

SUBSCRIBED AND SWORN TO before me this 6th day of July, 2011, at Anchorage, Alaska.

KERI GRATRIX HILE NOTARY PUBLIC STATE OF ALASKA

Notary Public in and for Alaska
My Commission Expires: 5/18/2015

DEPARTMENT OF LAW
OFFICE OF THE ATTORNEY GENERAL
ANCHORAGE BRANCH
1031 W. FOURTH AVENUE, SUITE 200
ANCHORAGE, ALASKA 99501
PHONE: (907) 269-5100

IN THE DISTRICT/SUPERIOR COURT FOR THE STATE OF ALASKA
AT Kenai

RECEIVED
JUN 30 2011
Alaska Commission on Judicial Conduct

David Haag
~~Plaintiff(s)~~ Applicant
vs.
State of Alaska
~~Defendant(s)~~ Respondent

CASE NO. 3KN-10-01295 CI

SUBPOENA FOR TAKING DEPOSITION

To: Marla Greenstein
Address: 1029 W. 3rd Ave, Suite 550 Anchorage AK 99501

You are commanded to appear and testify under oath in the above case at:
Date and Time: July 13, 2011 at 9 am.
Offices of: Bridges Community Resource Network
Address: 44758 Sterling Hwy, Unit B Soldotna AK 99669

Notice, as required by Civil Rule 45(d), has been served upon the State of Alaska on June 28, 2011. You are ordered to bring with you nothing.

June 28, 2011
Date

(SEAL)
Deputy Clerk

Subpoena issued at request of
David Haag
Attorney for self
Address: PO Box 123 Soldotna AK 99669
Telephone: 907-262-9249
If you have any questions, contact the person named above.

Before this subpoena may be issued, the above information must be filled in and proof must be presented to the clerk that a notice to take deposition has been served upon opposing counsel.

RETURN

I certify that on the date stated below, I served this subpoena on the person to whom it is addressed, _____, in _____, Alaska. I left a copy of the subpoena with the person named and also tendered mileage and witness fees for one day's court attendance.

Date and Time of Service

Signature

Service Fees:
Service $_____
Mileage $_____
TOTAL $_____

Print or Type Name

Title

If served by other than a peace officer, this return must be notarized.

Subscribed and sworn to or affirmed before me at _____, Alaska on _____.

(SEAL)

Clerk of Court, Notary Public or other person authorized to administer oaths.
My commission expires _____

CIV-115 (8/96)(st.3)
SUBPOENA FOR TAKING DEPOSITION
Civil Rule 45(d)

EXHIBIT A

01817

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT KENAI

DAVID HAEG, Applicant, vs. STATE OF ALASKA, Respondent.	)	CASE NO. 3KN-10-1295 CI

DECISION ON HAEG MOTION TO DISQUALIFY ATTORNEY MAASSEN AND ON JUDGE MURPHY MOTION TO QUASH HER DEPOSITION

Post-conviction relief ("PCR") applicant David Haeg ("Haeg") moved in August 2010 to disqualify attorney Maassen from representing Judge Margaret Murphy or anyone else in this case. The basis asserted is that Maassen has a conflict because his law partner Kevin Fitzgerald represented Tony Zellers, a codefendant of Haeg, in the underlying criminal charges. The court takes judicial notice that the public on-line CourtView records do not show any PCR case was filed by Zellers. The motion to disqualify Maassen is denied.

The motion to quash the deposition of Judge Murphy is granted in part and denied in part. The court has considered the Haeg opposition to the motion to quash as well as the reply today on behalf of Judge Murphy. The court is not convinced that Haeg has shown good cause for an in-person deposition of Judge Murphy at this time. The court is also not convinced by the argument on behalf of Judge Murphy that obtaining information from Trooper Gibbons is sufficient.

The current in-person deposition of Judge Murphy is quashed, without prejudice. Haeg is permitted, similar to the court ruling on the Greenstein deposition, to first pursue a deposition of Judge Murphy pursuant to Civil Rule 31 – deposition on written questions. Judge Murphy will have the standard time in which to respond to those questions by answer or appropriate objection. Haeg may then respond to any objections. After a court ruling on any such objections, Haeg may renew his request for an in-person deposition by a showing of good cause which may turn on the answers or lack thereof.

Dated at Kenai, Alaska, this 8th day of July, 2011.

Carl Bauman
SUPERIOR COURT JUDGE

CERTIFICATION OF DISTRIBUTION
I certify that a copy of the foregoing was ~~mailed~~ faxed to the following at their addresses of record:
Haeg, Peterson, Maassen
7-8-11 Date
Roberts Clerk

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT KENAI

DAVID HAEG

Applicant,

vs.

STATE OF ALASKA,

Respondent.

Case No. 3KN-10-01295 CI

ORDER RE MOTION TO QUASH

Judge Margaret L. Murphy having moved to quash the subpoena requiring her appearance at a deposition on July 15, 2011, and the court having considered the motion and any opposition to it,

IT IS ORDERED that the motion be and hereby is GRANTED [in part.] The subpoena is quashed. [The witness may appear telephonically pursuant to Civil Rule 99.]

DATED: _____

NOT USED

CARL J.D. BAUMAN
Superior Court Judge

JUL 06 2011

INGALDSON, MAASSEN & FITZGERALD, P.C.
Lawyers
813 W. 3rd Avenue
Anchorage, Alaska
99501-2001
(907) 258-8750
FAX: (907) 258-8751

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on 6th day of July, 2011, a copy of the foregoing was sent to the following via:

☑ U.S. mail and email
☐ Hand-delivery
☐ Fax
☐ Federal Express

David Haeg
Pro Se
Box 123
Soldotna, AK 99669

A. Andrew Peterson
Assistant A.G.
Dept of Law - Criminal Division
310 K Street, Suite 308
Anchorage, AK 99501

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INGALDSON, MAASSEN & FITZGERALD, P.C.
Lawyers
813 W. 3rd Avenue
Anchorage, Alaska
99501-2001
(907) 258-8750
FAX: (907) 258-8751

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT KENAI

DAVID HAEG

Applicant,

vs.

STATE OF ALASKA,

Respondent.

FILED in Trial Courts
State of Alaska, Third District
at KENAI, ALASKA

JUL 08 2011

Clerk of the Trial Courts

By _____ Deputy

Case No. 3KN-10-01295 CI

REPLY TO OPPOSITION TO MOTION TO QUASH DEPOSITION SUBPOENA

Judge Margaret L. Murphy has moved to quash a subpoena requiring her attendance at a deposition next week. Judge Murphy's counsel has not been served with the signed opposition, but Mr. Haeg did e-mail a Word document, presumably the same opposition in draft, to counsel at about 8:45 this morning in response to counsel's request.

Judge Murphy's Motion to Quash anticipated that the basic subject-matter of the testimony Haeg seeks from her would be her contacts with Trooper Gibbens during the 2005 trial. This information, as Haeg apparently concedes, would be obtainable from Trooper Gibbens as well, and therefore he cannot meet the "unobtainable from other sources" step in the "heightened scrutiny" that is required to compel judicial testimony, at least at this juncture.

INGALDSON, MAASSEN & FITZGERALD, P.C.
Lawyers
813 W. 3rd Avenue
Anchorage, Alaska
99501-2001
(907) 258-8750
FAX: (907) 258-8751

Haeg also alleges a conspiracy among Judge Murphy and others regarding her testimony before the Judicial Conduct Commission. But even if his allegations were credible, Judge Murphy's actions *after* the 2005 trial have no relevance to this proceeding for post-conviction relief.

Finally, Haeg incorporates a pleading he filed last year asking that Judge Murphy's counsel, Peter Maassen, be disqualified from representing her, and he asks this court to decide the motion now. The basis for his complaint is that another attorney from Maassen's firm represented Haeg's co-defendant, Tony Zellers, in the underlying criminal case.

Neither Maassen nor any member of his firm has ever represented Haeg. It is Maassen's understanding that Zellers entered a plea, and neither Zellers nor Fitzgerald participated in the trial that is the subject of Haeg's application. Haeg does not allege that he ever considered Fitzgerald to be his attorney; indeed, he asserts that his interests are adverse to Fitzgerald's, who allegedly represented Zellers "in the same deficient way" and is or will be the subject of "[t]he same exact case, as it is being made against Haeg's attorneys," whatever that is. *See* 8-22-10 Opp. at 4-5.

As for the exact nature of the conflict, Haeg says only that "Attorney Maassen will have a compelling interest to protect his law firm at the expense of anyone else he represents in this proceeding or case." *Id.* If Judge Murphy believes that Maassen may not represent her adequately because of his desire to "protect his law firm," that is her concern to raise, not Haeg's.

INGALDSON, MAASSEN & FITZGERALD, P.C.
Lawyers
813 W. 3rd Avenue
Anchorage, Alaska
99501-2001
(907) 258-8750
FAX: (907) 258-8751

Haeg has not shown any reason why Judge Murphy should be compelled to testify. Her deposition subpoena should be quashed.

DATED: July 8, 2011.

INGALDSON, MAASSEN & FITZGERALD, P.C.
Counsel for Judge Murphy

By: _____
Peter J. Maassen
ABA No. 8106032

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on 8th day of July, 2011, a copy of the foregoing was sent to the following via:

- [X] U.S. mail and email
- [ ] Hand-delivery
- [ ] Fax
- [ ] Federal Express

David Haeg
Pro Se
Box 123
Soldotna, AK 99669

A. Andrew Peterson
Assistant A.G.
Dept of Law - Criminal Division
310 K Street, Suite 308
Anchorage, AK 99501

_____

INGALDSON, MAASSEN & FITZGERALD, P.C.
Lawyers
813 W. 3rd Avenue
Anchorage, Alaska
99501-2001
(907) 258-8750
FAX: (907) 258-8751

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IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT KENAI

DAVID HAEG,

Applicant,

v.

STATE OF ALASKA,

Respondent.

(Trial Case No. 4MC-04-00024CR)

POST-CONVICTION RELIEF
Case No. 3KN-10-01295CI
(formerly 3HO-10-00064CI)

7-7-11 OPPOSITION TO JUDGE MURPHY'S MOTION TO QUASH SUBPOENA OR ALTERNATELY TO ALLOW TELEPHONIC TESTIMONY AND MOTION THIS COURT CONSIDER AND DECIDE HAEG'S 8-22-10 OPPOSITION TO PETER MAASSEN REPRESENTING ANYONE IN THIS PROCEEDING OR CASE AND 8-22-10 OPPOSITION TO MAASSEN'S 8-18-10 MOTION TO QUASH SUBPOENAS OR ALTERNATELY TO ALLOW TELEPHONIC TESTIMONY

VRA CERTIFICATION: I certify this document and its attachments do not contain the (1) name of victim of a sexual offense listed in AS 12.61.140 or (2) residence or business address or telephone number of a victim of or witness to any offense unless it is an address identifying the place of a crime or an address or telephone number in a transcript of a court proceeding and disclosure of the information was ordered by the court.

COMES NOW Applicant, DAVID HAEG, in the above case and hereby files this opposition to Judge Margaret Murphy's motion to quash subpoena or alternately to allow telephonic testimony. In addition, since Haeg was not given time to prepare a proper opposition/ motion, Haeg asks this court to consider his previous opposition to Maassen representing anyone in this case and to consider Haeg's previous opposition to quashing Judge Murphy's subpoena. This previous opposition/motion, which was never ruled on, is attached. See attachment #1.

D

Information

On November 21, 2009 Haeg filed an application for Post Conviction Relief (PCR) claiming that Judge Murphy, while she presided over Haeg's trial and sentencing, was chauffeured by Trooper Gibbens, who was the main witness against Haeg.

On July 9, 2010 Superior Court Judge Stephanie Joannides held a scheduling conference to set a date for an evidentiary hearing on whether Judge Murphy could preside over Haeg's PCR proceedings or if Judge Murphy must be disqualified for cause. See court record. At this conference Judge Joannides asked how many witnesses Haeg wished to testify, Haeg replied approximately 15, and Judge Joannides stated she would schedule the evidentiary hearing for both August 25 and 26, 2010. Haeg asked Judge Joannides how to subpoena adverse witnesses including Judge Murphy, AAG Peterson claimed Haeg could not subpoena a sitting judge, and Judge Joannides stated that it was well established PCR applicants could subpoena and question the judge who presided over the case being contested - and suggested Haeg talk to the court clerks on how to subpoena. In addition Judge Joannides ordered that Haeg be allowed to supplement his claim Judge Murphy must be disqualified. During this conference AAG Peterson stated, "this may be a career ender for Judge Murphy." See court record.

On July 25, 2010 Haeg filed a MOTION TO SUPPLEMENT THE CASE TO DISQUALIFY JUDGE MURPHY FOR CAUSE. This supplement provided shocking evidence that Judge Murphy, Trooper Gibbens, and Judicial Conduct

investigator Greenstein had conspired to cover up the fact Judge Murphy was chauffeured by Trooper Gibbens while Judge Murphy was presiding over Haeg's case. See court record.

On July 28, 2010 the Anchorage Superior Court issued 7 subpoenas, including one to Judge Murphy. See court record. (Judge Joannides had ordered the State to produce Trooper Gibbens so he was not in the 7 subpoenas.)

On August 16, 2010 Peter Maassen entered an appearance on behalf of Judge Murphy and Magistrate David Woodmancy, whom Haeg had also subpoenaed. See court record.

On August 17, 2010 AAG Peterson filed a motion to quash the subpoena of Scot Leaders, who conducted the State prosecution of Haeg. See court record.

On August 18, 2010 Haeg opposed the quashing of Leaders subpoena. See court record.

On August 18, 2010 Maassen filed a motion to quash the subpoenas of Judge Murphy and Magistrate Woodmancy or to alternately to allow telephonic testimony. See court record.

On August 22, 2010 Haeg filed an 8-22-10 OPPOSITION TO PETER MAASSEN REPRESENTING ANYONE IN THIS PROCEEDING OR CASE AND 8-22-10 OPPOSITION TO MAASSEN'S 8-18-MOTION TO QUASH SUBPOENAS OR ALTERNATELY TO ALLOW TELEPHONIC TESTIMONY. See court record.

On August 25, 2010 Brent Cole (Haeg's first attorney during Haeg's prosecution) filed a motion to quash his subpoena. See court record.

On August 25, 2010 Judge Joannides granted Haeg's motion to disqualify Judge Murphy from presiding over his PCR proceeding. Judge Joannides ruled all motions to quash subpoenas were moot and witnesses did not have to appear in light of her granting Haeg's motion to disqualify Judge Murphy. In addition Judge Joannides ruled: "At this juncture, this court does not seek to resolve whether (1) Judge Murphy's contacts with Trooper Gibbens were inappropriate and/or occurred during the trial as well as the sentencing and (2) any of Haeg's concerns about what occurred at the Judicial Conduct Commission. These issues are best left for review within the PCR proceedings when claimed legal errors and alleged improprieties before the trial court are addressed." See court record.

On August 25, 2010 a representation hearing was held for Haeg in place of the evidentiary hearing. Witnesses, including Haeg's longtime business attorney Dale Dolifka, testified under oath of the overwhelming evidence of corruption they had personally seen in Haeg's case. See court record.

On August 27, 2010 Judge Joannides referred to the Judicial Conduct Commission 43 pages of evidence Haeg had provided that Judge Murphy, Trooper Gibbens, and Judicial Conduct investigator Greenstein had conspired to cover up that Judge Murphy was being chauffeured by Trooper Gibbens (the main witness against Haeg) while Judge Murphy was presiding over Haeg's case. Judge Joannides specifically stated: "This court was only tasked with resolving David

Haeg's disqualification request. It is not privy to the Commission investigation and statements made by the witnesses, Judge Murphy, or Trooper Gibbens. Therefore, it takes no position on the materials submitted herein. In addition, this order does not resolve any allegations of impropriety. Therefore, the attached materials are being submitted to the Judicial Conduct Commission for its consideration." Judge Joannides went on to detail how her own staff had certified the accuracy of the transcriptions (of tape recordings of Greenstein) and independently obtained the records from Haeg's trial that provided the basis for Haeg's allegations that Judge Murphy and Trooper Gibbens, to cover up the chauffeuring that took place during Haeg's prosecution, testified falsely during Greenstein's investigation of it – and that Greenstein falsified her own investigation to corruptly alter witness testimony so it conformed with the false testimony from Judge Murphy and Trooper Gibbens. In closing Judge Joannides specifically states: "Finally, in addition to his concerns regarding the alleged impropriety of Judge Murphy receiving rides from Trooper Gibbens, Mr. Haeg also explains that based upon his understanding of Judge Murphy's and Trooper Gibbens' representations to the Commission, he feels that they were not truthful about their contacts during the trial." See court record.

For nearly a year the Commission on Judicial Conduct refused to consider Judge Joannides referral, with Commission Chairman Judge Ben Esch claiming he did not think the referral was "genuine".

On December 8, 2010 Haeg's PCR case was assigned to Judge Bauman. See court record.

On March 25, 2011 Judge Joannides referred 68 pages of certified evidence to the Commission on Judicial Conduct for its review. In addition to the evidence she tried to get the Commission to consider in her August 27, 2010 referral, Judge Joannides referenced the compelling new evidence of corruption, conspiracy, and cover up generated by Greenstein's "verified" response to Haeg's Alaska Bar Association complaint and the tape recording of Arthur Robinson – Haeg's attorney during his trial and sentencing. In her "verified" response Greenstein claims to have also contacted Robinson in addition to all the other witnesses Haeg had provided her. Robinson emphatically denied Greenstein contacted him and stated he also remembered Judge Murphy being chauffeured by Trooper Gibbens during Haeg's trial and sentencing – in direct opposition to Greenstein's claim no witness she contacted observed this. Now every single witness Greenstein claims to have contacted has testified that not only did Greenstein never contact him or her, she completely falsified what he or she would have testified to. Judge Joannides certified that she copied this new referral to: "David Haeg, Judge Bauman, Members of the Alaska Commission on Judicial Conduct, Assistant Bar Counsel Louise Driscoll, Assistant Ombudsman Kate Higgins, Marla Greenstein, Peter Maassen, Andrew Peterson, and original order sent to Kenai Court to be placed in filed." Judge Joannides stated she reviewed Greenstein's Bar response and requested to know if the CD of Robinson's conversation was made part of the

record of Haeg's PCR case. Finally Judge Joannides stated, ""These errors [in getting the Commission to review her referral] have further frustrated a long and fairly complicated case that required careful review. As the August 27, 2010 order states, my task was limited in scope. At the conclusion of my review, I granted Mr. Haeg's request to disqualify Judge Murphy from the Post Conviction Relief case because I found that, **at a minimum**, there was an appearance of impropriety." See court record.

On April 8, 2011 Judge Joannides issued an errata to her order of March 25, 2011 – correcting her erroneous statement that Robinson claimed Greenstein had contacted him – in fact Robinson had claimed Greenstein had not contacted him. See court record.

On June 28, 2011 Haeg subpoenaed Judge Murphy to a deposition concerning his PCR case. See court record.

On July 6, 2011 Maassen again filed an entry of appearance on Judge Murphy's behalf and filed an expedited motion to quash Judge Murphy's subpoena or alternately to allow telephonic testimony. See court record.

On July 6, 2011 Judge Bauman ordered Haeg to file any opposition by 4:30 p.m. on July 7, 2011. See court record.

Discussion

The evidence of a massive injustice to Haeg by Judge Murphy and Trooper Gibbens during Haeg's trial and sentencing – and that this has subsequently led to a conspiracy and cover up involving Judicial Conduct investigator Marla

Greenstein – is shocking, overwhelming, and irrefutable. Not only did the main witness against Haeg chauffeur the judge presiding over Haeg's trial and sentencing – they both lied to cover this up during the investigation of this Haeg requested. And then, Greenstein falsified every single witness's testimony so it conformed to the testimony from the judge and witness against Haeg. And what is most disturbing of all is that the official court tape recording of Judge Murphy and Trooper Gibbens, at the very time in question during Haeg's prosecution, proves beyond any doubt Judge Murphy and Trooper Gibbens are now lying when they claim no chauffeuring took place until after Haeg was sentenced.

It is apparent Judge Murphy is an absolutely critical PCR witness and that Haeg must be able to examine her in person while she is under oath. Judge Joannides' rulings make it clear she also thought Judge Murphy was a critical PCR witness for Haeg and that Haeg must be allowed to compel her testimony.

Other arguments specifically refuting Judge Murphy's claims are found in Haeg's prior opposition (attachment #1) to quashing Judge Murphy's subpoena.

As Haeg had done before he issued his previous subpoena, he called Judge Murphy June 27, 2011 to inquire about a date that would work for Judge Murphy. Haeg was told to decide the date and Judge Murphy would work around it. This precludes Judge Murphy from now claiming the date chosen will interfere with her duties.

Most important than anything above is the fact Judge Murphy is using her position as judge to assert a privilege against testifying at all or so she may testify

telephonically. In United States Auto Ass. V. Werley, 526 P2d 28 (AK 1974) it is clear a privilege cannot be used to protect someone in the perpetration of a crime or other evil enterprise.

"One of the widely recognized exceptions to utilization of the attorney-client privilege is that the privilege cannot be used to protect a client in the perpetration of a crime or other evil enterprise in concert with the attorney. Wigmore notes that this exception is for the logically sufficient reason that no such enterprise falls within the just scope of the relation between legal advisor and client. The mere allegation of a crime or civil fraud will generally not suffice to defeat the attorney client privilege. The general rule is that there must be a prima facie showing of fraud before the attorney-client privilege is deemed defeated. Once a litigant had presented prima facie evidence of the perpetration of a fraud or crime in the attorney-client relationship, the other party may not claim the privilege as a bar to the discovery of relevant communications and documents. A prima facie case is one in which the evidence in one's favor is sufficiently strong for this opponent to be called to answer it. This definition can be rephrased as requiring that the evidence in favor of a proposition be sufficient to support a finding in its favor, if all the evidence to the contrary be disregarded."

The prima facie evidence that Judge Murphy has committed a crime and is involved in an evil enterprise is overwhelming. This evidence is found in Judge Joannides certified referral to the Commission on Judicial Conduct, in Greenstein's verified Bar response, and in the CD recording of attorney Robinson – all of which have been submitted to this court. See court record.

Because of this Judge Murphy cannot be allowed to use her privilege of being a judge to defeat Haeg's constitutional right to question her in person.

Conclusion

In light of the forgoing Haeg asks this court to deny Judge Murphy's request that her subpoena be quashed or alternately to allow telephonic testimony. And, as promised, Haeg will continue to carefully document the growing

corruption and cover up in his case; will continue carefully exhausting all State remedies; and will, along with a growing number of those seriously concerned, eventually demand federal prosecution of everyone involved for corruption, conspiracy, and pattern/practice to cover up for attorneys, judges, and law enforcement who, using the color of law, are violating rights to unjustly strip defendants of everything.

I declare under penalty of perjury the forgoing is true and correct. Executed on July 7, 2011. A notary public or other official empowered to administer oaths is unavailable and thus I am certifying this document in accordance with AS 09.63.020.

David S. Haeg
PO Box 123
Soldotna, Alaska 99669
(907) 262-9249 and 262-8867 fax
haeg@alaska.net

Certificate of Service: I certify that on July 7, 2011 a copy of the forgoing was served by mail to the following parties: AAG Peterson, Maassen, DeYoung, Judge Gleason, Judge Joannides, U.S. Department of Justice, FBI, and media. By:

Faxed to Judge Joannides per chamber instruction

IN THE SUPERIOR COURT OF THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT IN ANCHORAGE

Attention Superior Court Judge Stephanie Joannides

Fax sent on 8-23-10 @ 9:20 AM to 907-264-0518

DAVID HAEG,

Applicant,

v.

STATE OF ALASKA,

Respondent.

POST-CONVICTION RELIEF
CASE NO. 3HO-10-00064CI

Trial Case No. 4MC-04-00024CR

8-22-10 OPPOSITION TO PETER MAASSEN REPRESENTING ANYONE IN THIS PROCEEDING OR CASE AND 8-22-10 OPPOSITION TO MAASSEN'S 8-18-10 MOTION TO QUASH SUBPOENAS OR ALTERNATELY TO ALLOW TELEPHONIC TESTIMONY

VRA CERTIFICATION: I certify this document and its attachments do not contain the (1) name of victim of a sexual offense listed in AS 12.61.140 or (2) residence or business address or telephone number of a victim of or witness to any offense unless it is an address identifying the place of a crime or an address or telephone number in a transcript of a court proceeding and disclosure of the information was ordered by the court.

COMES NOW Applicant, DAVID HAEG; in the above case and hereby files this opposition to Peter Maassen representing anyone in this proceeding or case and to the motion to quash Judge Murphy's and Magistrate Woodmancy's subpoenas or alternately to allow them to testify telephonically.

Prior Proceedings

In 2004 and 2005 David Haeg and Tony Zellers were prosecuted as codefendants with Margaret Murphy presiding first as Magistrate and later as

Attachment #1

District Judge. Haeg's attorneys and Zellers attorney, Kevin Fitzgerald, worked closely together to defend Haeg and Zellers, using the same tactics.

After conviction and appeal Haeg filed for Post-Conviction Relief, claiming the attorneys and Judge Murphy had denied him a fair proceedings, trial, and sentencing. Judge Murphy herself was assigned to hear Haeg's PCR case.

On 3-9-10 Haeg filed a motion to disqualify Judge Murphy for cause.

On 4-23-10 Judge Murphy denied Haeg's motion to disqualify herself.

On 4-30-10 Judge Joannides was assigned to review Judge Murphy's refusal to disqualify herself.

On 5-2-10 Haeg filed for an evidentiary hearing, specifically requesting Judge Murphy's testimony, on Judge Murphy's refusal to disqualify herself.

On 6-25-10 Judge Joannides set a Scheduling Conference for 7-9-10, when, after discussing any conflicts of the parties and witnesses, the date of the evidentiary hearing specifically concerning Judge Murphy would be set.

On 6-29-10 and 7-1-10, just prior to the 7-9-10 Scheduling Conference, Haeg contacted both Judge Murphy and Magistrate Woodmancy to see what dates would be acceptable for them to testify in person at the evidentiary hearing. Judge Murphy and Magistrate Woodmancy responded that Haeg should set the date he wished for the evidentiary hearing, subpoena them to testify, and they would adjust their schedules around the date their testimony was required.

On 7-9-10 Judge Joannides, after hearing and discussing these facts, ruled Judge Murphy could be subpoenaed and set the evidentiary hearing for 8-25-10 and 8-26-10.

On 7-28-10 Haeg subpoenaed Judge Murphy and Magistrate Woodmancy to the 8-25-10 hearing.

On 8-21-10 @ 9:22 AM Haeg, on vacation in Idaho, received the following email from Peter Maassen (see attached complete copy), to which Haeg immediately replied:

Mr. Maassen,

I do object to the quashing of the subpoenas or to telephonic testimony. I also object to your law firm representing anyone related to this proceeding or case. One of the named partners of your firm, Kevin Fitzgerald, represented my co-defendant, Tony Zellers, in the same case and in the same manner my attorneys represented me. As I prove my sellout by Judge Murphy and my attorneys so will proof be developed of Zellers sellout by Judge Murphy and Fitzgerald. Because of this your law firm will have a compelling reason to protect itself at the expense of anyone it represents in this proceeding or case. This precludes anyone, such as yourself, from representing anyone in this proceeding or case.

As I am on vacation and unable to put this into a proper opposition to the court I respectfully ask you include this objection in your motion to the court.

Sincerely,

David Haeg

Mr. Haeg,
>
>
>
> I'm sorry to have to interrupt your vacation. I'm an
> attorney in Anchorage and I've been asked to respond to the subpoenas
> you have had served on Judge Murphy and Magistrate Woodmancy for next
> week's hearing. I'll be filing a motion later today to quash the
> subpoenas or, at least, to allow the judge and the magistrate to testify
> telephonically. I'll also ask that my motion be heard on an expedited
> basis.
>

> Given your response to Andrew Peterson with regard to
> the Leader subpoena, I assume that you object to expedited consideration
> and to telephonic testimony -- is that right? I would like to inform
> Judge Joannides of your position.
>
>
>
> Thank you.
>
>
>
> Peter Maassen
>
> Ingaldson, Maassen & Fitzgerald

On 8-21-10 @ 11 PM Haeg arrived home from Idaho and found, in his mail, a motion signed on 8-18-10 from attorney Peter Maassen, of the firm Ingaldson, Maassen, and Fitzgerald, to quash the subpoenas for Judge Murphy and Magistrate Woodmancy, giving Haeg until 9 AM August 20, 2010 in which to respond. In other words attorney Maassen wrote a motion and then asks to give Haeg less then 2 days to receive the motion, write an opposition, and to then get the opposition into Judge Joannides hands.

Attorney Peter Maassen's Conflict of Interest

As Haeg's email states, attorney Peter Maassen, of the firm Ingaldson, Maassen, and Fitzgerald, has a direct conflict of interest that prevents him from representing anyone during Haeg's upcoming evidentiary hearing or PCR proceeding. Attorney Kevin Fitzgerald, a named partner of attorney Maassen's law firm, represented Haeg's co-defendant Tony Zellers in the same deficient way Haeg's attorneys represented Haeg. The same exact case, as it is being made against Haeg's attorneys, is being made against Fitzgerald. Fitzgerald is also a

named and material witness in Haeg's PCR application/memorandum. See pages 10 and 14 of Haeg's PCR application and pages 8, 14, 15, 21, and 31 of the memorandum.

Attorney Maassen will have a compelling interest to protect his law firm at the expense of anyone else he represents in this proceeding or case.

Haeg's Right to Compel Judge Murphy and Magistrate Woodmancy to Testify in Person

I

Haeg has a specific constitutional right to a compulsory process for obtaining witnesses in his favor.

The primary issue to be decided at this evidentiary hearing is whether Judge Murphy testified falsely to the Alaska Commission on Judicial Conduct in response to Haeg's complaint that Trooper Gibbens chauffeured her during Haeg's case. This is in direct contrast to attorney Maassen's claim that the issue is about whether or not it was permissible for Judge Murphy to ride with Trooper Gibbens during Haeg's case, and that since Haeg's complaint was "dismissed" his concerns are moot. While some apparently think it acceptable for the judge of a trial (but probably not if it were their trial) to be chauffeured by the prosecution's main witness, no one would think it acceptable for the judge to testify falsely during the official investigation into the chauffeuring. As prosecutor Andrew Peterson aptly

put it on the record during the 7-9-10 scheduling hearing, "this may be a career ender for Judge Murphy."

Haeg is not claiming Judge Murphy is a witness to some act by a third party; Haeg is claiming Judge Murphy is the knowing, voluntary, and/or malicious perpetrator of an act so egregious that by itself it would likely overturn Haeg's conviction and destroy her career; proving she has an overwhelming and undeniable interest in preventing a fair hearing of Haeg's PCR. In response to attorney Maassen's additional claims, (1) it is indisputable Judge Murphy possesses factual knowledge, (2) that knowledge is highly pertinent to the fact finders task, and (3) Judge Murphy is the only possible source on whether she knowingly, voluntarily, and/or maliciously committed the act. And, as Haeg's PCR judge will be incredibly critical to the success or failure of Haeg's PCR, he must be allowed to exercise his constitutional right to compel Judge Murphy's testimony about her own acts, unless and until she exercises her right against self-incrimination.

Similarly, Haeg is not just asking Magistrate Woodmancy about what he observed; Haeg is asking what Magistrate Woodmancy did himself.

II

Citing Ciarlone v. City of Reading, Attorney Maassen claims that "[I]t is imperative when [a judge] is called to testify as to action taken in [her] judicial capacity, to carefully scrutinize the grounds set forth for requiring [her] testimony."

None of the actions Haeg wishes to question Judge Murphy or Magistrate Woodmancy about were taken in their judicial capacity – eliminating this scrutiny.

Judge Murphy was not acting a judicial capacity when being chauffeured by Trooper Gibbens nor was she acting in a judicial capacity when she testified falsely to the Alaska Commission on Judicial Conduct.

Magistrate Woodmancy was not a magistrate during most of the time Haeg wishes to question him about and thus could not have been acting in a judicial capacity then. And the actions Magistrate Woodmancy took when he was a magistrate, that Haeg wishes to question him about, were not taken in his judicial capacity (asking Trooper Gibbens to chauffeur him and being turned down because of all the trouble Gibbens got into the last time).

III

Attorney Maassen claims Haeg's questions for Magistrate Woodmancy "apparently focuses on a brief exchange between the magistrate and Trooper Gibbens on August 15, 2006…", that this is "not highly pertinent" and is a "highly collateral subject." This is untrue. Magistrate Woodmancy, before he was a magistrate, was present during Haeg's 2005 prosecution in McGrath and thus is a material and direct witness.

IV

Attorney Maassen claims that Judge Murphy and Magistrate Woodmancy's "judicial duties" and "cost … of travel" preclude either from testifying in person. Just prior to the scheduling conference Haeg contacted both to find dates on which

they could testify in person without conflicting with their "judicial duties". Both replied Judge Joannides should set any date she wished and that they would work around it. It is plainly unfair to now allow Judge Murphy or Magistrate Woodmancy, in order to avoid testifying in person, to claim the date set will interfere with their "judicial duties". They very clearly waived any right to this claim when they refused to provide acceptable dates and stated they would just adjust their schedules around any date set.

As for the cost of travel, Haeg has already provided advance payment to each for actual travel costs.

V

Attorney Maassen claims that since this is a "preliminary hearing" Judge Murphy and Magistrate Woodmancy should be allowed to testify telephonically, even though Maassen admits "[the Supreme Court] has concluded that live testimony may be required where credibility of the licensee or witness is at issue."

For Haeg this is anything but a "preliminary hearing." It is the last hearing at which he may prevent Judge Murphy from presiding over his PCR, by proving Judge Murphy lied during an official investigation into her actions and will sabotage Haeg's PCR proceeding in order to keep this "career ender" covered up.

That Judge Murphy's credibility will be at issue, requiring live testimony, is a forgone conclusion. The hearing is specifically focused on her credibility.

Conclusion

In light of the above Haeg respectfully asks this court to deny Peter Maassen from representing anyone currently involved in this proceeding and to deny the motion to quash Judge Murphy and Magistrate Woodmancy's subpoenas or to allow them to participate telephonically.

I declare under penalty of perjury the forgoing is true and correct. Executed on 8-22-10. A notary public or other official empowered to administer oaths is unavailable and thus I am certifying this document in accordance with AS 09.63.020.

David S. Haeg
PO Box 123
Soldotna, Alaska 99669
(907) 262-9249
haeg@alaska.net

Certificate of Service: I certify that on 8-22-10 a copy of the forgoing was served by mail to the following parties: Peter Maassen, I.M.F; Andrew Peterson, O.S.P.A; Steve VanGoor, ABA; and U.S. Department of Justice

By:

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT KENAI

DAVID HAEG,

Applicant,

v.

STATE OF ALASKA,

Respondent.

POST-CONVICTION RELIEF
Case No. 3KN-10-01295CI

(Trial Case No. 4MC-04-00024CR)

ORDER ON MOTION TO EXPEDITE

Upon consideration of the motion to expedite the motion for a protective order for Marla Greenstein, Executive Director of the Alaska Judicial Conduct Commission, and of the fact that the motion is for a protective order against a deposition that is scheduled on July 13, 2011, and a decision is needed before that date, it is hereby ordered that the motion for a protective order may be heard at the hearing set for today, July 6, 2011, at 4:00 p.m. in this matter.

DATED this 6th day of July, 2011.

Carl Bauman
Superior Court Judge

CERTIFICATION OF DISTRIBUTION
I certify that a copy of the foregoing was ~~mailed~~ faxed to the following at their addresses of record:
Haeg, Peterson, Maassen, DeYoung
7-7-11 J. Roberts
Date Clerk

DEPARTMENT OF LAW
OFFICE OF THE ATTORNEY GENERAL
ANCHORAGE BRANCH
1031 W. FOURTH AVENUE, SUITE 200
ANCHORAGE, ALASKA 99501
PHONE: (907) 269-5100

JUL 06 2011

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT KENAI

DAVID HAEG

Applicant,

vs.

STATE OF ALASKA,

Respondent.

Case No. 3KN-10-01295 CI

ORDER GRANTING EXPEDITED CONSIDERATION

Judge Margaret L. Murphy having moved for expedited consideration of her Motion to Quash Subpoena or Alternatively to Allow Telephonic Testimony, and good cause appearing for the motion,

IT IS ORDERED that the motion be and hereby is GRANTED. Any opposition to the Motion to Quash shall be filed no later than 4:30 p.m. on Thursday, July 7. The court will endeavor to inform the parties of its decision by noon on Friday, July 8.

DATED: 7-6-2011

CARL J.D. BAUMAN
Superior Court Judge

CERTIFICATION OF DISTRIBUTION
I certify that a copy of the foregoing was ~~mailed~~ faxed to the following at their addresses of record:
Haeg, Peterson, Maassen, DeYoung
7-7-11 Roberts
Date Clerk

JUL 06 2011

INGALDSON, MAASSEN & FITZGERALD, P.C.
Lawyers
813 W. 3rd Avenue
Anchorage, Alaska
99501-2001
(907) 258-8750
FAX: (907) 258-8751

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on 6th day of July, 2011, a copy of the foregoing was sent to the following via:

- [X] U.S. mail and email
- [ ] Hand-delivery
- [ ] Fax
- [ ] Federal Express

David Haeg
Pro Se
Box 123
Soldotna, AK 99669

A. Andrew Peterson
Assistant A.G.
Dept of Law - Criminal Division
310 K Street, Suite 308
Anchorage, AK 99501

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INGALDSON, MAASSEN & FITZGERALD, P.C.
Lawyers
813 W. 3rd Avenue
Anchorage, Alaska
99501-2001
(907) 258-8750
FAX: (907) 258-8751

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT KENAI

DAVID HAEG,
Applicant,
v.
STATE OF ALASKA,
Respondent.

POST-CONVICTION RELIEF
Case No. 3KN-10-01295CI

(Trial Case No. 4MC-04-00024CR)

PROTECTIVE ORDER

Upon consideration of the motion for a protective order; Civil Rule 26(c), which authorizes a protective order when discovery may not be had; AS 22.30.060, which provides that the investigative records, files, and reports of the Judicial Conduct Commission are confidential and may not be disclosed except under circumstances not applicable here; and Judicial Conduct Commission Rule 5, which also protects the confidentiality of this information,

IT IS HEREBY ORDERED that the subpoena for taking deposition served on Marla Greenstein and dated June 28, 2011 is quashed, and that discovery may not be had of her work concerning a judicial conduct complaint.

DATED this ____ day of _____, 2011.

NOT USED

Carl Bauman
Superior Court Judge

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT KENAI

DAVID HAEG

Applicant,

vs.

STATE OF ALASKA,

Respondent.

Case No. 3KN-10-01295 CI

MOTION FOR EXPEDITED CONSIDERATION

Judge Margaret L. Murphy moves for expedited consideration of her Motion to Quash Subpoena or Alternatively to Allow Telephonic Testimony, filed this same date. The underlying motion addresses a subpoena to appear at a deposition scheduled in Sterling for July 15, 2011. A requirement that the judge appear would disrupt what is supposed to be her trial week in Homer and would require advance adjustments to next week's schedule. Judge Murphy therefore asks that any opposition to the underlying Motion to Quash be required by 4:30 p.m. on Thursday, July 7, and that a decision be made no later than noon on Friday, July 8.

INGALDSON, MAASSEN & FITZGERALD, P.C.
Lawyers
813 W. 3rd Avenue
Anchorage, Alaska
99501-2001
(907) 258-8750
FAX: (907) 258-8751

DATED: July 6, 2011.

INGALDSON, MAASSEN &
FITZGERALD, P.C.
Counsel for Judge Murphy

By: _____
Peter J. Maassen
ABA No. 8106032

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on 6th day of July, 2011, a copy of the foregoing was sent to the following via:

- [x] U.S. mail and email
- [ ] Hand-delivery
- [ ] Fax
- [ ] Federal Express

David Haeg
Pro Se
Box 123
Soldotna, AK 99669

A. Andrew Peterson
Assistant A.G.
Dept of Law - Criminal Division
310 K Street, Suite 308
Anchorage, AK 99501

_____

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INGALDSON, MAASSEN & FITZGERALD, P.C.
Lawyers
813 W. 3rd Avenue
Anchorage, Alaska
99501-2001
(907) 258-8750
FAX: (907) 258-8751

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT KENAI

DAVID HAEG

Applicant,

vs.

STATE OF ALASKA,

Respondent.

Case No. 3KN-10-01295 CI

MOTION TO QUASH SUBPOENA
OR ALTERNATIVELY TO ALLOW TELEPHONIC TESTIMONY

Alaska District Court Judge Margaret L. Murphy, through counsel, moves to quash the subpoena requiring her appearance at a deposition to be held in Sterling on July 15, 2011, at 9:00 a.m. *See* Ex. A. Applicant David Haeg cannot make the heightened showing of necessity that is required to support the compulsion of judicial testimony. Alternatively, given the witness's judicial duties, her distance from Sterling, and the likely brevity of her testimony, Judge Murphy asks that she be allowed to testify by telephone.[1]

BACKGROUND

Judge Murphy presided over Haeg's criminal trial and sentencing in 2005 in McGrath. When this proceeding for post-conviction relief was assigned to Judge

INGALDSON, MAASSEN & FITZGERALD, P.C.
Lawyers
813 W. 3rd Avenue
Anchorage, Alaska
99501-2001
(907) 258-8750
FAX: (907) 258-8751

[1] Judge Murphy also joins in Trooper Gibbens' request that the depositions, if held, be moved to the courthouse for reasons of security.

Murphy in 2010, Haeg moved to recuse her for cause, alleging that she had had improper contacts with a prosecution witness, Trooper Gibbens, during the trial. That motion to recuse was the subject of proceedings before Judge Joannides in Anchorage, during which Haeg moved to compel Judge Murphy and Magistrate David Woodmancy to testify at an evidentiary hearing scheduled to occur in August 2010.

The evidentiary hearing did not occur, and the judicial officers were not required to testify. However, the subject of Judge Murphy's expected testimony was briefed to Judge Joannides, who limited Haeg's inquiry of her to her contacts with Trooper Gibbens during the 2005 trial in McGrath. Judge Murphy assumes that the noticed deposition is for the purpose of making the same inquiry.

DISCUSSION

A. Under the Circumstances, Judicial Testimony Should Not Be Compelled

Judges "should be called as witnesses with caution." *Hatcher v. McBride,* 650 S.E.2d 104, 113 (W.Va. 2006). "[I]t is imperative when [a judge] is called to testify as to action taken in [her] judicial capacity, to carefully scrutinize the grounds set forth for requiring [her] testimony." *Ciarlone v. City of Reading,* 263 F.R.D. 198, 202 (E.D. Penn. 2009), quoting *United States v. Roebuck,* 271 F.Supp.2d 712, 721 (D.V.I. 2003) and *Standard Packaging Corp. v. Curwood, Inc.*, 365 F.Supp. 134, 135 (N.D.Ill. 1973).

Most courts therefore recognize "a 'heightened scrutiny' involved in the question of whether a judge can be compelled to be a witness" and "require some threshold showing of necessity for the testimony." *State v. Sims,* 725 N.W.2d 175, 189 (Neb.

INGALDSON, MAASSEN & FITZGERALD, P.C.
Lawyers
813 W. 3rd Avenue
Anchorage, Alaska
99501-2001
(907) 258-8750
FAX: (907) 258-8751

2006) (citing many cases). "Necessity is generally shown when the information sought by the proposed testimony both is relevant on a crucial point and is unobtainable from other sources." *Id.* In *Ciarlone,* the federal court applied this test to quash a subpoena requiring the trial judge to testify about in-court statements, where other witnesses had been present as well and could testify about the same matters. 263 F.R.D. at 205. Similarly, in *U.S. v. Roth,* 332 F.Supp.2d 565, 568-70 (S.D.N.Y. 2004), the court quashed the subpoena of a trial judge where the judge's knowledge of the facts surrounding a plea agreement was available from other sources.

Here, Haeg apparently anticipates that he will ask Judge Murphy about her contacts with Trooper Gibbens during the 2005 trial. Even if this information were "relevant on a crucial point," Haeg can cover the same topic with Trooper Gibbens. The information is not "unobtainable from other sources." Haeg therefore fails to meet the heightened "threshold showing of necessity" required to compel judicial testimony, and the subpoena of Judge Murphy should be quashed.

At the very least, Haeg should be required to wait until Trooper Gibbens has been deposed, then make a showing, if he can, that the information that he claims to need from Judge Murphy is not merely cumulative. The court can then decide whether a deposition of Judge Murphy is warranted under the "heightened scrutiny" test.

INGALDSON, MAASSEN & FITZGERALD, P.C.
Lawyers
813 W. 3rd Avenue
Anchorage, Alaska
99501-2001
(907) 258-8750
FAX: (907) 258-8751

B. If Judicial Testimony Is Compelled, It Should Be Telephonic

If the court does require Judge Murphy to appear for a deposition, she asks that she be allowed to testify telephonically pursuant to Civil Rule 99.[2] She has good cause to appear telephonically, as she lives and works in Homer, she has judicial duties to attend to, and her testimony is likely to be brief.

Rule 99 also requires "the absence of substantial prejudice to opposing parties." The Supreme Court has analyzed telephonic testimony as an issue of procedural due process in license revocation hearings, and it has concluded that live testimony may be required where the fact-finder needs to evaluate the credibility of the licensee or of a witness. *Alvarez v. State,* 2010 WL 3190726 (Alaska Supreme Court, August 13, 2010), at *5 (witness); *Whitesides v. State, Dep't of Public Safety,* 20 P.3d 1130, 1136-37 (Alaska 2001) (licensee). But the due process analysis depends in part on the significance of the proceeding, and even then the cost to the government is a factor to be weighed. *Id.* Telephonic testimony is generally allowed at preliminary hearings. *See* Criminal Rule 5.1(e) (witness may participate telephonically if he or she "would be required to travel more than 50 miles to court" or "lives in a place from which people customarily travel by air to the court").

Because a deposition is in the nature of a preliminary proceeding, because Judge Murphy lives and works in Homer, because she has competing judicial duties that are

INGALDSON, MAASSEN & FITZGERALD, P.C.
Lawyers
813 W. 3rd Avenue
Anchorage, Alaska
99501-2001
(907) 258-8750
FAX: (907) 258-8751

[2] Applications for post-conviction relief are subject to the Civil Rules. *See* Criminal Rule 35.1(g).

important to the business of the State, and because her testimony is likely to be brief, Judge Murphy respectfully requests that she be allowed to testify by telephone. Such a proceeding would also take care of any concerns for her personal safety and eliminate the need for security.

CONCLUSION: RELIEF REQUESTED

The Subpoena to Appear at Deposition should be quashed, since Haeg has failed to make the heightened showing necessary to compel judicial testimony, particularly that the information he seeks is "unobtainable from other sources." At the very least, the court should require Haeg to depose Trooper Gibbens first and then demonstrate, if he can, why he needs Judge Murphy's testimony about the same subject-matter.

Alternatively, Judge Murphy should be allowed to testify telephonically pursuant to Civil Rule 99.

DATED: July 6, 2011.

INGALDSON, MAASSEN &
FITZGERALD, P.C.
Counsel for Judge Murphy

By: _____
Peter J. Maassen
ABA No. 8106032

INGALDSON, MAASSEN & FITZGERALD, P.C.
Lawyers
813 W. 3rd Avenue
Anchorage, Alaska
99501-2001
(907) 258-8750
FAX: (907) 258-8751

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on 6th day of July, 2011, a copy of the foregoing was sent to the following via:

- [X] U.S. mail and email
- [ ] Hand-delivery
- [ ] Fax
- [ ] Federal Express

David Haeg
Pro Se
Box 123
Soldotna, AK 99669

A. Andrew Peterson
Assistant A.G.
Dept of Law - Criminal Division
310 K Street, Suite 308
Anchorage, AK 99501

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INGALDSON, MAASSEN & FITZGERALD, P.C.
Lawyers
813 W. 3rd Avenue
Anchorage, Alaska
99501-2001
(907) 258-8750
FAX: (907) 258-8751

IN THE DISTRICT/SUPERIOR COURT FOR THE STATE OF ALASKA
AT Kenai

David Haag
Plaintiff(s),
vs. Applicant
State of Alaska
Defendant(s). Respondent

CASE NO. 3KN-10-01295 CI

SUBPOENA FOR TAKING DEPOSITION

To: Margaret Murphy
Address: 3670 Lake Street Bldg. A Homer AK 99603

You are commanded to appear and testify under oath in the above case at:
Date and Time: July 15, 2011 at 9 am
Offices of: Bridges Community Resource Network
Address: 44758 Sterling Hwy. Unit B Soldotna AK 99669

Notice, as required by Civil Rule 45(d), has been served upon the State of Alaska on June 28, 2011. You are ordered to bring with you no things.

(SEAL)

June 28, 2011
Date

Deputy Clerk

Subpoena issued at request of
David Haag
Attorney for self
Address: Box 123 Soldotna AK 99669
Telephone: 907-262-9249
If you have any questions, contact the person named above.

Before this subpoena may be issued, the above information must be filled in and proof must be presented to the clerk that a notice to take deposition has been served upon opposing counsel.

RETURN

I certify that on the date stated below, I served this subpoena on the person to whom it is addressed, _____, in _____, Alaska. I left a copy of the subpoena with the person named and also tendered mileage and witness fees for one day's court attendance.

Date and Time of Service

Signature

Service Fees:
Service $_____
Mileage $_____
TOTAL $_____

Print or Type Name

Title

If served by other than a peace officer, this return must be notarized.

Subscribed and sworn to or affirmed before me at _____, Alaska on _____.

(SEAL)

Clerk of Court, Notary Public or other person authorized to administer oaths.
My commission expires _____

CIV-115 (8/96)(st.3)
SUBPOENA FOR TAKING DEPOSITION

Civil Rule 45(d)

Exhibit A
Page 1 of 1 Pages

INGALDSON, MAASSEN & FITZGERALD, P.C.
813 WEST THIRD AVENUE
ANCHORAGE, ALASKA 99501-2001
TELEPHONE: (907) 258-8750 FACSIMILE: (907) 258-8751

FACSIMILE COVER PAGE

DATE: July 6, 2011

TO: Kenai Court

FAX NO.: (907) 283-8535

FROM: Peter Maassen

RE: *Haeg v. State of Alaska*, Case No.3KN-10-01295 CI
Our File No. 2116.006

MESSAGE: Limited Entry of Appearance. (Hearing this afternoon)

4 pages, which include this cover sheet, are being sent to you. If for some reason you do not receive all of the pages or the transmission is not clear, please call 907-258-8750.

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IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT KENAI

DAVID HAEG

Applicant,

vs.

STATE OF ALASKA,

Respondent.

Case No. 3KN-10-01295 CI

LIMITED ENTRY OF APPEARANCE

Peter J. Maassen and the firm of Ingaldson, Maassen & Fitzgerald, P.C., enter their appearance as attorneys of record for Alaska District Court Judge Margaret L. Murphy for the limited purpose of responding to the Subpoenas for Taking Deposition, attached as Exhibit A. Pleadings, other documents, and all communications with this person in this matter should be made to counsel as follows:

Peter J. Maassen
Ingaldson, Maassen & Fitzgerald, P.C.
813 West 3rd Avenue
Anchorage, Alaska 99501
(907) 258-8750

INGALDSON, MAASSEN & FITZGERALD, P.C.
Lawyers
813 W. 3rd Avenue
Anchorage, Alaska
99501-2001
(907) 258-8750
FAX: (907) 258-8751

DATED: July 6, 2011.

INGALDSON, MAASSEN &
FITZGERALD, P.C.
Counsel for Judge Murphy

By: _____
Peter J. Maassen
ABA No. 8106032

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on 6th day of July, 2011, a copy of the foregoing was sent to the following via:

☒ U.S. mail e-mail
☐ Hand-delivery
☐ Fax
☐ Federal Express

David Haeg
Pro Se
Box 123
Soldotna, AK 99669

A. Andrew Peterson
Assistant A.G.
Dept of Law - Criminal Division
310 K Street, Suite 308
Anchorage, AK 99501

_____

F:\W\2116.006\Pleadings\Limited EOA 3KN-10-01295CI.doc

INGALDSON, MAASSEN & FITZGERALD, P.C.
Lawyers
813 W. 3rd Avenue
Anchorage, Alaska
99501-2001
(907) 258-8750
FAX: (907) 258-8751

IN THE DISTRICT/SUPERIOR COURT FOR THE STATE OF ALASKA
AT Kenai

David Haeg
Plaintiff(s),
vs. Applicant
State of Alaska
Defendant(s) Respondent

CASE NO. 3KN-10-01295 CI

SUBPOENA FOR TAKING DEPOSITION

To: Margaret Murphy
Address: 3670 Lake Street Bldg. A Homer AK 99603

You are commanded to appear and testify under oath in the above case at:
Date and Time: July 15, 2011 at 9 am
Offices of: Bridger Community Resource Network
Address: 44258 Sterling Hwy Unit B Soldotna AK 99669

Notice, as required by Civil Rule 45(d), has been served upon the State of Alaska on June 28, 2011. You are ordered to bring with you nothing

(SEAL)

June 28, 2011
Date

Deputy Clerk

Subpoena issued at request of
David Haeg
Attorney for self
Address: Box 123 Soldotna AK 99669
Telephone: 907-262-9249
If you have any questions, contact the person named above.

Before this subpoena may be issued, the above information must be filled in and proof must be presented to the clerk that a notice to take deposition has been served upon opposing counsel.

RETURN

I certify that on the date stated below, I served this subpoena on the person to whom it is addressed, _____, in _____, Alaska. I left a copy of the subpoena with the person named and also tendered mileage and witness fees for one day's court attendance.

Date and Time of Service

Signature

Service Fees:
Service $_____
Mileage $_____
TOTAL $_____

Print or Type Name

Title

If served by other than a peace officer, this return must be notarized.

Subscribed and sworn to or affirmed before me at _____, Alaska on _____.

(SEAL)

Clerk of Court, Notary Public or other person authorized to administer oaths.
My commission expires _____

CIV-115 (8/96)(st.3)
SUBPOENA FOR TAKING DEPOSITION

Civil Rule 45(d)

Exhibit A
Page 1 of 1 Pages

INGALDSON, MAASSEN & FITZGERALD, P.C.
813 WEST THIRD AVENUE
ANCHORAGE, ALASKA 99501-2001
TELEPHONE: (907) 258-8750 FACSIMILE: (907) 258-8751

FACSIMILE COVER PAGE

DATE: July 6, 2011

TO: Kenai Court

FAX NO.: (907) 283-8535

FROM: Peter Maassen

RE: *Haeg v. State of Alaska*, Case No.3KN-10-01295 CI
Our File No. 2116.006

MESSAGE: Motion for Expedited Consideration and Motion to Quash Subpoena or Alternatively to Allow Telephonic Testimony

14 pages, which include this cover sheet, are being sent to you. If for some reason you do not receive all of the pages or the transmission is not clear, please call 907-258-8750.

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IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT KENAI

DAVID HAEG,

Applicant,

v.

STATE OF ALASKA,

Respondent.

POST-CONVICTION RELIEF
Case No. 3KN-10-01295CI

(Trial Case No. 4MC-04-00024CR)

MOTION FOR EXPEDITED CONSIDERATION OF THE MOTION FOR PROTECTIVE ORDER

Marla Greenstein hereby moves for expedited consideration of the motion for a protective order regarding the subpoena issued for the taking of her deposition on July 13, 2011, as provided in Civil Rule 77(g). The reason for expediting this motion is that the decision is needed before July 13, the date that the deposition is scheduled. A hearing is set for today at 4:00 p.m., on discovery matters and movant asks that the motion for a protective order be heard at that time.

DATED this 6th day of July, 2011.

JOHN J. BURNS
ATTORNEY GENERAL

By: Jan H. DeYoung
Assistant Attorney General
Alaska Bar No. 7907069

DEPARTMENT OF LAW
OFFICE OF THE ATTORNEY GENERAL
ANCHORAGE BRANCH
1031 W. FOURTH AVENUE, SUITE 200
ANCHORAGE, ALASKA 99501
PHONE: (907) 269-5100

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT KENAI

DAVID HAEG, Applicant, v. STATE OF ALASKA, Respondent.	POST-CONVICTION RELIEF Case No. 3KN-10-01295CI

(Trial Case No. 4MC-04-00024CR)

AFFIDAVIT IN SUPPORT OF MOTION TO EXPEDITE

State of Alaska)
) ss.
Third Judicial District)

Jan H. DeYoung, being first duly sworn, deposes and says:

1. I am the assistant attorney general assigned to represent Marla Greenstein in this matter.

2. Expediting action on the motion for a protective order for Ms. Greenstein is needed because the order is to protect her from participation in discovery in this application for post-conviction relief and the applicant has scheduled her deposition for July 13, 2011. A copy of the subpoena is attached as exhibit A to this affidavit.

DEPARTMENT OF LAW
OFFICE OF THE ATTORNEY GENERAL
ANCHORAGE BRANCH
1031 W. FOURTH AVENUE, SUITE 200
ANCHORAGE, ALASKA 99501
PHONE: (907) 269-5100

3. I contacted Mr. Haeg by telephone on July 6, 2011, and made a good faith effort to resolve the issues raised in the motion for a protective order. In that conversation I asked him to withdraw his subpoena, and he declined.

FURTHER YOUR AFFIANT SAYETH NAUGHT

Jan H. DeYoung

SUBSCRIBED AND SWORN TO before me this 6th day of July, 2011, at Anchorage, Alaska.

Notary Public in and for Alaska
My Commission Expires: 5/13/2015

DEPARTMENT OF LAW
OFFICE OF THE ATTORNEY GENERAL
ANCHORAGE BRANCH
1031 W. FOURTH AVENUE, SUITE 200
ANCHORAGE, ALASKA 99501
PHONE: (907) 269-5100

IN THE DISTRICT/SUPERIOR COURT FOR THE STATE OF ALASKA
AT Kenai

RECEIVED
JUN 30 2011
Alaska Commission on Judicial Conduct

David Hagg
~~Plaintiff(s):~~ Applicant
vs.
State of Alaska
~~Defendant(s):~~ Respondent

CASE NO. 3KN-10-01295CI

SUBPOENA FOR TAKING DEPOSITION

To: Marla Greenstein
Address: 1029 W. 3rd Ave., Suite 550 Anchorage AK 99501

You are commanded to appear and testify under oath in the above case at:
Date and Time: July 13 2011 at 9 am,
Offices of: Bridges Community Resource Network
Address: 44758 Sterling Hwy, Unit B Soldotna AK 99669

Notice, as required by Civil Rule 45(d), has been served upon the State of Alaska on June 28, 2011. You are ordered to bring with you nothing.

June 28, 2011
Date

(SEAL)
Deputy Clerk

Subpoena issued at request of
David Hagg
Attorney for self
Address: PO Box 123 Soldotna AK 99669
Telephone: 907-262-9249
If you have any questions, contact the person named above.

Before this subpoena may be issued, the above information must be filled in and proof must be presented to the clerk that a notice to take deposition has been served upon opposing counsel.

RETURN

I certify that on the date stated below, I served this subpoena on the person to whom it is addressed, _____, in _____, Alaska. I left a copy of the subpoena with the person named and also tendered mileage and witness fees for one day's court attendance.

Date and Time of Service

Signature

Service Fees:
Service $_____
Mileage $_____
TOTAL $_____

Print or Type Name

Title

If served by other than a peace officer, this return must be notarized.

Subscribed and sworn to or affirmed before me at _____, Alaska on _____.

(SEAL)

Clerk of Court, Notary Public or other person authorized to administer oaths.
My commission expires _____

CIV-115 (8/96)(st.3)
SUBPOENA FOR TAKING DEPOSITION
Civil Rule 45(d)

EXHIBIT A

01865

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT KENAI

DAVID HAEG,
Applicant,
v.
STATE OF ALASKA,
Respondent.

POST-CONVICTION RELIEF
Case No. 3KN-10-01295CI

(Trial Case No. 4MC-04-00024CR)

MOTION FOR A PROTECTIVE ORDER
(Marla Greenstein)

This motion for a protective order is made under Civil Rule 26(c) by Marla Greenstein, the Executive Director of the Alaska Judicial Conduct Commission. Ms. Greenstein's work evaluating and investigating a complaint that Mr. Haeg filed with the commission is strictly confidential and may not be disclosed. Because Ms. Greenstein does not have information that is either discoverable or relevant to this matter, she seeks an order to protect her from discovery or disclosure.

DATED this 6th day of July, 2011.

JOHN J. BURNS
ATTORNEY GENERAL

By:
Jan H. DeYoung
Assistant Attorney General
Alaska Bar No. 7907069

DEPARTMENT OF LAW
OFFICE OF THE ATTORNEY GENERAL
ANCHORAGE BRANCH
1031 W. FOURTH AVENUE, SUITE 200
ANCHORAGE, ALASKA 99501
PHONE: (907) 269-5100

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT KENAI

DAVID HAEG,
Applicant,
v.
STATE OF ALASKA,
Respondent.

POST-CONVICTION RELIEF
Case No. 3KN-10-01295CI

(Trial Case No. 4MC-04-00024CR)

MEMORANDUM IN SUPPORT OF MOTION FOR A PROTECTIVE ORDER

The applicant for post-conviction relief in this matter has subpoenaed Marla Greenstein, Executive Director of the Alaska Judicial Conduct Commission, for a deposition on July 13. But Ms. Greenstein does not have information relevant to Mr. Haeg's conviction or to the investigation leading to his conviction. It is believed that Mr. Haeg is seeking discovery concerning the investigation of a complaint that he filed with the Judicial Conduct Commission. But Ms. Greenstein cannot answer questions about the investigation of a complaint against a judicial officer because that work is strictly confidential and may not be disclosed except under very narrow circumstances. AS 22.30.060.

Civil Rule 26(c) authorizes an order protecting a person from whom discovery is sought from "annoyance, embarrassment, oppression, or undue burden or expense" and one is appropriate here to protect Ms. Greenstein from a deposition that cannot yield information that is admissible or reasonably calculated to lead to the

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ANCHORAGE, ALASKA 99501
PHONE: (907) 269-5100

discovery of admissible evidence. See Civil Rule 26(b) (establishing the proper scope of discovery).

Alaska Statute 22.30.060 strictly protects the confidentiality of proceedings on complaints against judicial officers:

> (a) The commission shall adopt rules implementing this chapter and providing for confidentiality of proceedings.
>
> (b) All proceedings, records, files, and reports of the commission are confidential and disclosure may not be made except
>
> (1) upon waiver in writing by the judge at any stage of the proceedings;
>
> (2) if the subject matter or the fact of the filing of charges has become public, in which case the commission may issue a statement in order to confirm the pendency of the investigation, to clarify the procedural aspects of the proceedings, to explain the right of the judge to a fair hearing, or to state that the judge denies the allegations; or
>
> (3) upon filing of formal charges, in which case only the charges, the subsequent formal hearing, and the commission's ultimate decision and minority report, if any, are public; even after formal charges are filed, the deliberations of the commission concerning the case are confidential.

The one exception that may apply here appears in subsection (b)(2), which allows some information to be made public when the subject matter or fact of the filing of a complaint has become public. Mr. Haeg has made both the subject matter and fact of his complaint public. He has embarked on a public campaign concerning the complaint that he filed with the Judicial Conduct Commission, and in it he has attacked Ms. Greenstein's investigation and accused her of misconduct. *See e.g.*, http://alaskastateofcorruption.com/2-4-1%20Grievance%20Reply.pdf. Even if this Court were to permit Mr. Haeg to exploit his violation of the confidentiality requirement

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OFFICE OF THE ATTORNEY GENERAL
ANCHORAGE BRANCH
1031 W. FOURTH AVENUE, SUITE 200
ANCHORAGE, ALASKA 99501
PHONE: (907) 269-5100

in AS 22.30.060 and find that his publicity triggered this exception, it would free the commission to make only very narrow disclosures about the complaint: confirming that an investigation is pending, stating the procedural status, or explaining the right of a judge to a fair hearing or whether the judge denies allegations. Any of the facts and details of the investigation must remain confidential.

Because Mr. Haeg will be unable to obtain information about his complaint in a deposition of Ms. Greenstein, the deposition would serve only to remove Ms. Greenstein from her duties and to provide an opportunity to annoy, oppress, or embarrass her. These circumstances provide good cause under Civil Rule 26(c) to justify issuance of an order quashing the subpoena and protecting Ms. Greenstein from the deposition and discovery in this matter.

CERTIFICATION

The undersigned hereby certifies that she conferred in good faith with Mr. Haeg on the telephone before filing this motion in an effort to resolve this dispute without court action but was unsuccessful.

DATED this 6th day of July, 2011.

JOHN J. BURNS
ATTORNEY GENERAL

By:
Jan H. DeYoung
Assistant Attorney General
Alaska Bar No. 7907069

DEPARTMENT OF LAW
OFFICE OF THE ATTORNEY GENERAL
ANCHORAGE BRANCH
1031 W. FOURTH AVENUE, SUITE 200
ANCHORAGE, ALASKA 99501
PHONE: (907) 269-5100

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT KENAI

DAVID HAEG,

Applicant,

v.

STATE OF ALASKA,

Respondent.

POST-CONVICTION RELIEF
Case No. 3KN-10-01295CI

(Trial Case No. 4MC-04-00024CR)

LIMITED ENTRY OF APPEARANCE

Please take notice that Jan H. DeYoung, Assistant Attorney General for the State of Alaska, Department of Law, 1031 West 4th Avenue, Suite 200, Anchorage, Alaska 99501; telephone: 907-269-6612, fax: 907-258-4978; hereby enters her appearance as counsel of record in the above-captioned matter for the limited purpose of representing Marla Greenstein, Executive Director of the Alaska Judicial Conduct Commission, who has been subpoenaed for taking a deposition in this matter.

Copies of notices, motions, and pleadings should be sent to the address referenced above.

DATED this 6th day of July, 2011.

JOHN J. BURNS
ATTORNEY GENERAL

By: Jan H. DeYoung
Assistant Attorney General
Alaska Bar No. 7907069

DEPARTMENT OF LAW
OFFICE OF THE ATTORNEY GENERAL
ANCHORAGE BRANCH
1031 W. FOURTH AVENUE, SUITE 200
ANCHORAGE, ALASKA 99501
PHONE: (907) 269-5100

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT KENAI

DAVID HAEG,
Applicant,
v.
STATE OF ALASKA,
Respondent.

POST-CONVICTION RELIEF
Case No. 3KN-10-01295CI

(Trial Case No. 4MC-04-00024CR)

CERTIFICATE OF SERVICE

This is to certify that on this date, true and correct copies of the **Limited Entry of Appearance, Motion for Protective Order, Memorandum in Support of Motion for Protective Order, proposed Protective Order, Motion for Expedited Consideration of the Motion for Protective Order, Affidavit of Jan H. DeYoung, Exhibit A, proposed Order,** and this **Certificate of Service** in this proceeding were served via electronic mail, facsimile, and first class U.S. mail on:

David Haeg
Haeg@alaska.net
Facsimile: 907-262-8867
P.O. Box 123
Soldotna, Alaska 99669

And via electronic mail on the following:

Andrew Peterson
Andrew.peterson@alaska.gov

Peter Maasen, Esq.
peter@impc-law.com

And a courtesy copy was sent via electronic mail to:

Marla Greenstein
Marla Greenstein@acjc.state.ak.us

Keri Hile 7/6/2011
Keri Hile Date

DEPARTMENT OF LAW
OFFICE OF THE ATTORNEY GENERAL
ANCHORAGE BRANCH
1031 W. FOURTH AVENUE, SUITE 200
ANCHORAGE, ALASKA 99501
PHONE: (907) 269-5100

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT KENAI

DAVID HAEG, Applicant, vs. STATE OF ALASKA, Respondent.	)	CASE NO. 3KN-10-1295 CI

DECISION ON MOTION TO REINSTATE MASTER GUIDE LICENSE

Background: On September 30, 2005, David Haeg ("Haeg") was sentenced in district court following his conviction by a jury of certain criminal charges. Prior to the criminal charges Haeg held a master guide license issued by the Alaska Big Game Commercial Services Board. His sentence included revocation of his master guide license for five years. Court form CR-64 (2/05), entitled "Judgment – Fish and Game," was used. Separate judgments were entered with the 5-year revocation for each of Counts I – V. On appeal, the Alaska Court of Appeals held in pertinent part:

> [W]e conclude that [Judge Murphy] meant to suspend the license for a specified period of time rather than to revoke it permanently. **We therefore order the district court to modify the judgments in this case to show that Haeg's guide license was suspended for five years.**

Haeg v. State, not reported, 2008 WL 4181532 *1.1 (Alaska App. 2008) (emphasis added).

On remand, on January 26, 2009, the sentencing court entered five amended judgments stating that the defendant's guiding license was suspended for 5 years, effective September 30, 2005.

When the five years expired, Haeg sought reinstatement of his master guide license. The Big Game Commercial Services Board ("Big Game Board") within the Division of Occupational Licensing did not reinstate his license, and instead informed Haeg that he would need to apply anew for a new guide license.

Haeg claimed, without dispute, that he earned a living for himself and his family through his Master Guide license.

APPLICABLE LEGAL STANDARDS

In the Haeg decision the Court of Appeals discussed a suspension and a revocation under AS 08.54.720(f)(3) given the authority in AS 12.55.015(c). AS 08.54.720(f) authorizes the court to order the "board" (meaning the Big Game Board) to "suspend" or "to permanently revoke" a guide license, depending upon the offense.

AS 01.10.040 (a) addresses how language used in statutes should be interpreted, which is according to the common and approved usage unless the Legislature has provided a definition or the terms are technical, in which case the special meaning applies.

> Technical words and phrases and those that have acquired a peculiar and appropriate meaning, whether by legislative definition or otherwise, shall be construed according to the peculiar and appropriate meaning.

AS 01.10.040. Chapter 08.54 does not provide a definition of the words suspend, suspension, revoke, or revocation. The ordinary and customary meaning of the verb "suspend" includes "5. to bring to a stop, usu. for a time: to suspend payment. 6. to cause to cease for a time from operation or effect, as a law, privilege, or service: *to suspend ferry service*. 7. to debar, usu. for a limited time, from office, membership, school attendance, etc., esp. as a punishment." Random House Webster's College Dictionary, 1991. The meaning of the noun "suspension" is similar. The ordinary and customary meaning of the

verb "revoke" includes "1. to take back or withdraw: annul or cancel: *to revoke a license*." The meaning of the noun "revocation" is similar.

Black's Law Dictionary, Eighth Edition, defines "revocation" in pertinent part as follows: "An annulment, cancellation, or reversal, usu. of an act or power." Black's Law Dictionary defines "suspension" as follows:

> 1. The act of temporarily delaying, interrupting, or terminating something <suspension of business> <suspension of a statute>. ... 3. The temporary deprivation of a person's powers or privileges, esp. of office or profession; esp., a fairly stringent level of lawyer discipline that prohibits the lawyer from practicing law for a specified period, usu. from several months to several years <suspension of the bar license>. • Suspension may entail requiring the lawyer to pass a legal-ethics bar examination, or to take one or more ethics courses as continuing legal education, before being readmitted to active practice. ....

Case law in other jurisdictions has distinguished between the meaning and effect of suspension versus revocation. For example, the owner of an adult cabaret in Washington challenged a city decision to revoke the cabaret license based on a determination that it was a public nuisance. The owner argued the license revocation was a prior restraint on protected expression, namely, nude dancing. The owner also argued the statute was overbroad and vague. The appellate court agreed that a law is overbroad if it "sweeps within its prohibitions" activities that are constitutionally protected. However, the court found that the statutory standards of conduct for adult cabarets did not sweep any protected expressions within the prohibitions. The court addressed the distinction between suspension and revocation of a license:

> In issuing the revocation here, the Examiner considered license suspension as an option and considered that there was a moratorium on issuance of new licenses. But the Examiner ultimately decided not to grant a suspension primarily because Heesan did not produce any explanation to warrant suspension. Instead, the Examiner noted, Heesan had acted in a systematic way to permit unlawful conduct.

Heesan Corp. v. City of Lakewood, 75 P.3d 1003, 1007 (Wash.App. Div. 2 2003).

In contrast to the result in the revocation setting in the Heesan case, the Alaska Court of Appeals remanded the Haeg case for the sentencing judge to impose a suspension rather than a revocation of Haeg's master guide license. The Alaska Supreme Court has identified such a license as deserving constitutional due process of law protection. In Herscher v. State, Dept. of Commerce, 568 P.2d 996 (Alaska 1977), the Alaska Supreme Court held:

> We find that Herscher's proprietary interest in the hunting guide license is of sufficient importance to warrant protection under constitutional requirements relating to due process of law. In Frontier Saloon, Inc. v. Alcoholic Beverage Control Board, 524 P.2d 657, 659-660 (Alaska 1974), we held:
>
> > It has long been recognized that an interest in a lawful business is a species of property entitled to the protection of due process. . . . This interest may not be viewed as merely a privilege subject to withdrawal or denial at the whim of the state . . . . Neither may this interest be dismissed as de minimis. A license to engage in a business enterprise is of considerable value to one who holds it. (footnote and citations omitted)
>
> In addition, in Alaska Board of Fish and Game v. Loesche, 537 P.2d 1122 (Alaska 1975), we considered a due process claim by Loesche relating to the suspension of his guide license. While we found it unnecessary to adjudicate the full scope of protections required by due process of law, by implication we found the requirements of adequate notice and opportunity for a hearing were required. 537 P.2d at 1125.

Herscher v. State, Dept. of Commerce, 568 P.2d at 1002.

In another state in another context an appellate court noted that the driver's license statute in that state authorized post-suspension examination prior to terminating suspension of a license. In addressing the nature of the procedural due process for the licensee, the court cited specific statutory authority:

> FN4. Section 13101 provides: "When used in reference to a driver's license, 'revocation' means that the person's privilege to drive a motor vehicle is terminated and a new driver's license may be obtained after the period of revocation."
>
> Section 13102 provides: "When used in reference to a driver's license, 'suspension' means that the person's privilege to drive a motor vehicle upon a

> highway is temporarily withdrawn. The department may, before terminating any suspension based upon a physical or mental condition of the licensee, require such examination of the licensee as deemed appropriate in relation to evidence of any condition which may affect the ability of the licensee to safely operate a motor vehicle."
>
> ....
>
> By its enactment of various provisions of the Vehicle Code, the [California] Legislature has carefully delineated, according to the seriousness of the offenses, the disabilities that are to be suffered by those convicted of drunk driving. As relevant here, these disabilities include suspension or revocation of a driver's license for various periods of time. Under this statutory scheme, neither a prior record of drunk driving nor a past refusal of insurance nor a prior suspension or revocation of a driver's license disqualifies a citizen from owning or driving a vehicle provided the legal disability has been cured and the citizen holds a valid driver's license. (See §§ 13101, 13102[.]) Accordingly, plaintiff implicitly argues that the past legal transgressions of citizens, even though cured in the eyes of the Legislature, should disqualify them from renting cars.
>
> However, we think this detailed statutory scheme reflects a careful balance struck by the Legislature between the dangers of drunk driving and the recognition that driving a car may be "essential in the pursuit of a livelihood." (*Bell v. Burson* (1971) 402 U.S. 535, 539, 91 S.Ct. 1586, 1589, 29 L.Ed.2d 90, 94; *Rios v. Cozens* (1972) 7 Cal.3d 792, 796, 103 Cal.Rptr. 299, 499 P.2d 979.) We see no reason to disturb this carefully considered balance.

Osborn v. Hertz Corp., 205 Cal.App.3d 703, 710-11, 252 Cal.Rptr. 613, 617 (Cal.App. 3 Dist. 1988).

Haeg argues that suspended attorneys are not required to retake the bar examination, and he should therefore not be required to apply anew or take the guide examination again. It is true that suspended attorneys as well as disbarred attorneys normally need not re-take the bar examination. See Alaska Bar Rule 29. Except for interim suspensions based on convictions that are reversed or set aside (Alaska Bar Rule 26(f)), disbarred and suspended lawyers are subject to conditions before their license to practice law is reinstated. Suspended attorneys seeking reinstatement must file a verified petition for reinstatement containing certain information. Alaska Bar Rule 29(b). The first requirement for the petitioner is a verified statement that the suspended/disbarred attorney has met the

terms and conditions of the order imposing suspension or disbarment. Alaska Bar Rule 29(b)(1). The Alaska Supreme Court has acknowledged and approved conditions for reinstatement of suspended attorneys. For example, in one such recent case, the court wrote:

> The Disciplinary Board of the Alaska Bar Association, based on its adoption of an area hearing committee's findings of fact and conclusions of law and a final report of recommended sanctions, recommended that attorney Wevley William Shea be suspended from the practice of law for 25 months and be subject to certain conditions for reinstatement.

In re Shea, 251 P.3d 357 (Alaska 2011) (held; affirmed). Similarly, with regard to another suspended attorney, the court held:

> We also accept the Disciplinary Board's recommendations for conditions of reinstatement. To be reinstated, Brion must complete twelve hours of Bar Association continuing legal education classes relating to law-office management and accounting. During the two years following his reinstatement, Brion also must: (1) retain an office manager (who may not be a relative or a person with a direct financial interest in his practice) with appropriate law-office experience to assist in billing, case management, and trust account management; (2) hire a licensed and insured certified public accountant to oversee all general and trust accounts of the firm and to provide annual written reports to the Bar; and (3) establish a mentor relationship with an attorney approved by the Bar Association and consult with that mentor bi-weekly, for no less than fifteen minutes per meeting, about case management issues.

In re Disciplinary Matter Involving Brion, 212 P.3d 748, 756 (Alaska 2009).

Alaska is not unique in conditioning the reinstatement of suspended or revoked lawyers. A conditional reinstatement was imposed on appeal in a recent proceeding in Wisconsin. The court rejected the referee's rejection of the lawyer's petition for reinstatement following his 1992 petition for voluntary revocation of his license (because of embezzlement) and held:

> ¶ 49 IT IS ORDERED that the petition for reinstatement is granted and the license of David V. Jennings III to practice law in Wisconsin is conditionally reinstated effective the date of this order.

> ¶ 50 IT IS FURTHER ORDERED that the conditions set forth in this order, including compliance with the current Continuing Legal Education requirements, are imposed on the license of David V. Jennings III to practice law in Wisconsin. If he fails to comply with the conditions required by this order and absent a showing to this court of his inability to do so, the license of David V. Jennings III to practice law in Wisconsin shall be suspended until further order of the court.

In re Disciplinary Proceedings Against Jennings, __ N.W.2d __, 2011 WL 2474282, 11 (Wis. 2011). In its review of a referee's recommendation to reinstate a lawyer's license to practice after a suspension, the Supreme Court of Wisconsin held:

> ¶ 13 After review of the record we conclude that Selmer has established by clear, satisfactory, and convincing evidence that he has satisfied all the criteria for reinstatement. Accordingly, we adopt the referee's findings of fact and conclusions of law and we agree with the referee's recommendation that Mr. Selmer's license to practice law in Wisconsin be reinstated. We conclude further that he should be required to pay the costs of this reinstatement proceeding.
>
> ¶ 14 IT IS ORDERED that the petition for reinstatement of the license of Scott E. Selmer to practice law in Wisconsin is granted, effective the date of this order, subject to compliance with current continuing legal education requirements.
>
> ¶ 15 IT IS FURTHER ORDERED that within six months of the date of this order Scott E. Selmer pay to the OLR the costs of this proceeding. If the costs are not paid within the time specified, and absent a showing to this court of his inability to pay the costs within that time, the license of Scott E. Selmer to practice law in Wisconsin shall be suspended until further order of the court.

In re Disciplinary Proceedings Against Selmer, 698 N.W.2d 695, 697 (Wis. 2005). In another case the Supreme Court of Wisconsin imposed an additional two-year suspension of an attorney's license to practice law for failure to comply with court-imposed conditions following his reinstatement of a previous suspension of his license to practice law. See In re Disciplinary Proceedings Against Wright, 428 N.W.2d 549 (Wis. 1988).

Cases involving the suspension or revocation of licenses to practice medicine provide insights by analogy. For example, a doctor in Pennsylvania appealed a Medical Board rejection of his petition for reinstatement of his revoked license to practice medicine.

In its decision the Commonwealth Court of Pennsylvania distinguished between a suspended license to practice and a revoked license. The court held:

> [Doctor] Pittenger's reliance upon *Brown v. State Board of Pharmacy,* ... 566 A.2d 913 (1989) is misplaced. In *Brown* we were presented with a situation in which a holder of a suspended license to practice pharmacy petitioned for reinstatement of his license. In rendering our determination, we interpreted provisions of the Pharmacy Act similar to the relevant provisions of the MPA in this case. We determined that because the license was "susceptible to revival," the applicant possessed a property right which was entitled to due process protection. We further determined that imposition of a waiting period for application for renewal or reissuance of a license imposed a burden which was unconstitutional if applied retroactively to impede an applicant's right to petition the Board for license reinstatement. However, Pittenger fails to grasp the distinction between *Brown* and the matter *sub judice.* In *Brown,* ... 566 A.2d at 915, we distinguished between suspension and revocation of a professional license, stating:
>
> > Undoubtedly, the holder of a valid and existing professional license has a property interest in such license. "[T]he right to practice a profession, once acquired, does constitute a property right in the license." *Brady v. State Board of Chiropractic Examiners,* ... 471 A.2d 572, 575, *appeal dismissed,* ... 483 A.2d 1376 (1984). Once that license has been revoked, however, "through a procedure consistent with the individual's due process guarantees, that individual is stripped of whatever property interest he possessed in the license." *Keeley v. State Real Estate Commission,* ... 501 A.2d 1155, 1158 (1985).
>
> It is undisputed that Pittenger's license was revoked. In *Keeley,* this court previously determined:
>
> > [W]hen a license or privilege is revoked, it is extinguished and the former possessor is returned to the same position he occupied had the license or privilege never been issued. The term "revoke" is defined as "[t]o annul or make void by recalling or taking back; to cancel, rescind, repeal or reverse." Black's Law Dictionary 1188 (5th Ed.1979). Therefore, once the license has been voided or annulled, any property rights or interest stemming from that license are likewise voided or annulled. ... 501 A.2d at 1158.
>
> As such, Pittenger possesses no commensurate property right in a medical license which has been revoked consistent with due process of law.
>
> As to Pittenger's argument of an unconstitutional retroactive application by the Board of Section 43(b), it is a well-settled principle that application of subsequent legislative revision involving procedural rather than substantive change is not improper. *Brown; Long v. County of Delaware,* ... 490 A.2d 20 (1985). Having

> determined that Pittenger possesses no property right in the revoked medical license, no substantive rights are affected. In this case, Section 43(b) of the MPA did not alter Pittenger's substantive rights, it merely fixed a time period when Pittenger may apply for reinstatement of the license.

Pittenger v. Department of State, Bureau of Professional and Occupational Affairs, ... 596 A.2d 1227, 1229-30 (Pa.Cmwlth. 1991) (footnotes omitted). The context in the Brown case, cited in Pittenger, involved whether the Board could lawfully apply against pharmacist Brown a statute enacted shortly after his suspension. The statute imposed a 10-year waiting period before a petition for reinstatement by a pharmacist convicted of certain criminal charges could be considered. The court found retroactive application of the statute to Brown to be unconstitutional.

The North Carolina Court of Appeals reviewed a Medical Board rejection of a physician's quest to have his license reinstated. The court held:

> we disagree with the Board's contention that, under the Medical Practice Act, the Board has complete statutory discretion to deny or limit permission to resume the practice of medicine once a physician's right to practice has been terminated "by any action or for any period of time." N.C.Gen.Stat. Sec. 90-14(a) lists thirteen grounds upon which the Board may "deny, annul, suspend, or revoke" a license to practice medicine.

In re Magee, 362 S.E.2d 564, 567 (N.C.App. 1987). The trial court had directed the Board of Medical Examiners to establish rules and procedures relating to reinstatement of licenses automatically suspended under North Carolina statutory law. The Board balked, but the appellate court found the trial court order was proper.

Haeg cites cases and propositions concerning double jeopardy, common sense, avoiding absurd results, and the rule of lenity with sundry examples in other contexts. The Alaska Court of Appeals has held:

> As we have stated: "If a statute establishing a penalty is susceptible of more than one meaning, it should be construed so as to provide the most lenient penalty."[FN43]

FN43. *State v. Andrews,* 707 P.2d 900, 907 (Alaska App.1985), *opinion adopted by State v. Andrews,* 723 P.2d 85, 86 (Alaska 1986); *see also Wells v. State,* 706 P.2d 711, 713 (Alaska App.1985) ("It is well established that, in accordance with the rule of lenity, ambiguities in penal statutes must be resolved in favor of the accused.").

State v. Stafford, 129 P.3d 927, 933 (Alaska App. 2006).

THE SENTENCE BY JUDGE MURPHY

District Court Judge Murphy considered the Cheney criteria and announced the sentence after hearing testimony from witnesses and sentencing arguments. The court imposed a combination of active and suspended jail time on nine counts, fines, court surcharges, forfeiture of the PA 12 airplane, the guns involved, the ammo, and hides, a 5-year revocation of the guide license, and 7 years of probation. The amended judgments show a suspension of the guiding license for 5 years from September 30, 2005.

ANALYSIS

AS 08.54 authorizes the court to order the Board to suspend or to revoke a hunting guide license. Here the sentencing court initially ordered a revocation of Haeg's license for five years. The Court of Appeals remanded on the suspension versus revocation point, writing:

> We therefore order the district court to modify the judgments in this case to show that Haeg's guide license was suspended for five years.

The Court of Appeals did not direct the sentencing judge to order the Board to change the license status of the defendant from revoked to suspended. Nor, on remand, did the sentencing court remand to the Board or order the Board to change the status accordingly. The change from revoked to suspended status was effected directly by the Amended Judgments. It is clear that the Court of Appeals intended the revocation to be changed to a

suspension ab initio, as of the date of the original sentence in 2005. And it is clear that the sentencing judge did so on remand.

Under the law of Alaska Haeg has constitutionally protected property interests in his suspended master hunting guide license. See Herscher, supra. His rights are not limited by the due process protection at issue in Herscher.

Unlike a revocation setting, the court finds that Haeg as the holder of a suspended guide license cannot be required to go through a new application/examination process to get his license back. Termination of the suspension or reinstatement of a suspended license (whether that be a driver's license, license to practice law, or license to practice medicine) can be subject to reasonable conditions, but only to a limited degree consistent with not treading upon the constitutionally protected property interest Haeg has in his suspended license.

On reflection the State agreed with the argument by Haeg that it would not be proper for the Board to preclude reactivating his license based on his conviction and sentencing in 2005 when he voluntarily surrendered his license in 2004 as a result of the same incident.

The State provided a photocopy of Haeg's Master Guide license. Exhibit 2 to the State's June 10, 2011 Opposition to the pending motion ("Exh. 2"). The license shows that it was issued on November 13, 2003, with an expiration date of December 31, 2005. The license number is # 146.

Haeg filed a license renewal application with the Big Game Board dated October 21, 2010, roughly three weeks after the expiration of his suspension. Exh. 3. Haeg also filed a license renewal application dated October 29, 2010, with the same information. Exh. 5.

The State provided a November 4, 2010, response letter to Haeg from Big Game Board Licensing Examiner Karl Marx which states that "the master guide-outfitter license" which you previously held "lapsed 9/30/2005." Exh. 4. The letter brings to Haeg's attention that AS 08.54.670 applies because Haeg failed to renew his license for four consecutive years, and the Department may therefore not issue a license "unless the person again meets the qualifications for initial issuance of the license." The State also provided a November 4, 2010, letter from Don Habeger, Director Corporations, Business, & Professional Licensing ("Habeger"), informing Haeg that the Department was unable to process his license renewal based on AS 08.54.670. The letter informs Haeg he will need to submit an "initial license application[.]" Exh. 6.

By letter of December 28, 2010, to Haeg, Habeger took the position that AS 08.54.670 is not inconsistent with AS 08.74.710(e). Habeger explains that the Department and the Board are separate entities; each with its own duties under AS 08.01. Habeger concludes that Haeg is "no longer eligible for a Master Guide license renewal per AS 08.54.670, AS 08.01.100(d) and AS 08.54.610(b)."

Haeg's license # 146 did not "lapse" on September 30, 2005, it was suspended by court order. The district court judgment did not impose any conditions on reinstatement of the guide license following expiration of the five years. Bearing in mind the tension between AS 08.54.670 and 08.54.710(e), common sense, the avoidance of double jeopardy and absurd results, and the rule of lenity, the court finds that it would be an impermissible imposition on Haeg's protected property interests in his Master Guide license to permit the Board or the Department to deny reinstatement of Haeg's license # 146 based on the provisions of AS 08.54.670, AS 08.01.100(d), or AS 08.54.610(b). The guide license held by Haeg was

suspended by the sentence in the criminal case, so he could not lawfully renew the license until the period of suspension terminated. The suspension period has run. No conditions for reinstatement were imposed by the sentencing court. Haeg is therefore entitled to reinstatement of his Master Guide license # 146 forthwith.

ORDERS

For the reasons set forth above, the court orders the Big Game Board and the Division of Occupational Licensing, Department of Commerce and Economic Development to reinstate Master Guide license # 146 to David Haeg without further ado, forthwith.

Dated at Kenai, Alaska, this 5th day of July, 2011.

Carl Bauman
SUPERIOR COURT JUDGE

CERTIFICATION OF DISTRIBUTION
I certify that a copy of the foregoing was ~~mailed~~ faxed to the following at their addresses of record:
Haeg, Peterson
7-5-11 Roberts
Date Clerk

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT KENAI

DAVID HAEG Applicant v. STATE OF ALASKA Respondent	POST-CONVICTION RELIEF CASE NO. 3KN-10-01295 CI

Trial Case No. 4MC-04-00024 CR

ORDER

Having considered the Respondent's motion for expedited consideration of motion to continue the deposition of Trooper Gibbens and to move the location of the deposition, the Applicant's opposition, and any response thereto,

IT IS HEREBY ORDERED that any response by the Applicant be filed on or before July 6, 2011, and that a hearing on the motion will be held on July 6, 2011, at 4:00 a.m./p.m. in Kenai to discuss the above issues.

The state and other essential parties may appear telephonically.

DONE at Kenai, Alaska, this 1st day of July, 2011.

Superior Court Judge Carl Bauman

CERTIFICATION OF DISTRIBUTION

I certify that a copy of the foregoing was ~~mailed to~~ faxed to the following at their addresses of record:
Peterson, Haeg
7-1-11 Date
Roberts Clerk

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT KENAI

DAVID HAEG Applicant v. STATE OF ALASKA Respondent	)	POST-CONVICTION RELIEF CASE NO. 3KN-10-01295 CI

Trial Case No. 4MC-04-00024 CR

ORDER

Having considered the Respondent's expedited motion to continue the deposition of Trooper Gibbens and to move the location of the deposition, the Applicants opposition, and any response thereto,

IT IS HEREBY ORDERED that a hearing will be held on this matter on _____, 2011, at _____ a.m./p.m. in Kenai to discuss the above issues. The state and other essential parties may appear telephonically.

DONE at Kenai, Alaska, this _____ day of _____, 2011.

NOT USED

Superior Court Judge Carl Bauman

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT KENAI

DAVID HAEG

Applicant

v.

STATE OF ALASKA

Respondent

POST-CONVICTION RELIEF
CASE NO. 3KN-10-01295 CI

Trial Case No. 4MC-04-00024 CR

STATE'S EXPEDITED MOTION TO CONTINUE DEPOSITION OF TROOPER GIBBENS AND TO MOVE THE DEPOSITION LOCATION

VRA CERTIFICATION. I certify that this document and its attachments do not contain (1) the name of a victim of a sexual offense listed in AS 12.61.140 or (2) a residence or business address or telephone number of a victim or witness to any crime unless it is an address used to identify the place of the crime or it is an address or telephone number in a transcript of a court proceeding and disclosure of the information was ordered by the court.

COMES NOW the State of Alaska, by and through Assistant Attorney General Andrew Peterson and hereby files this expedited motion to continue Trooper Gibbens deposition and to move the location of the deposition from the Bridges Community Resource Center to the Kenai Court. The state's expedited motion is supported by the attached memorandum, affidavit of counsel, and a proposed order. The State further requests a hearing as soon as possible to allow the parties to clarify the process for the depositions.

The state is asking to move Trooper Gibbens' deposition from July 14, 2011, to one day between July 19 - 22, 2011. Trooper Gibbens is currently on assignment out it the Bristol Bay region and will not be back to his post until July 15,

STATE OF ALASKA
DEPARTMENT OF LAW
OFFICE OF SPECIAL PROSECUTIONS AND APPEALS
310 K STREET, SUITE 308
ANCHORAGE, ALASKA 99501
PHONE: (907) 269-6250

2011. Trooper Gibbens will then need time to collect his notes and information pertaining to this case and drive from Delta Junction to the Kenai Peninsula.

The state is also seeking to move the deposition location from the Bridges Community Resource Network to the Kenai Court. Due to the nature of this case, the emotions involved, and the witnesses being deposed, it seem appropriate to move the depositions to the facilities within the Kenai Court. The Court has the authority under the civil rules to move the location of the deposition. *See* AK Civ. R. 45(d)(1).

The state attempted to call Mr. Haeg and left a voice message regarding this matter.

DATED this 1st day of July, 2011, at Anchorage, Alaska

JOHN J. BURNS
ATTORNEY GENERAL

By: _____
Andrew Peterson
Assistant Attorney General
Alaska Bar No. 0601002

This is to certify that on this date, a correct copy of the forgoing was mailed to:
David Haeg emailed

_____ 7/1/11
Signature Date

STATE OF ALASKA
DEPARTMENT OF LAW
OFFICE OF SPECIAL PROSECUTIONS AND APPEALS
310 K STREET, SUITE 308
ANCHORAGE, ALASKA 99501
PHONE: (907) 269-6250

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT KENAI

DAVID HAEG)
)
Applicant)
)
v.)
)
STATE OF ALASKA)
)
Respondent)
)
)

POST-CONVICTION RELIEF
CASE NO. 3KN-10-01295 CI

Trial Case No. 4MC-04-00024 CR

AFFIDAVIT

VRA CERTIFICATION. I certify that this document and its attachments do not contain (1) the name of a victim of a sexual offense listed in AS 12.61.140 or (2) a residence or business address or telephone number of a victim or witness to any crime unless it is an address used to identify the place of the crime or it is an address or telephone number in a transcript of a court proceeding and disclosure of the information was ordered by the court.

STATE OF ALASKA)
) ss.
THIRD JUDICIAL DISTRICT)

I, A. Andrew Peterson, being duly sworn, hereby state and depose as follows:

1. I am an Assistant Attorney General in the Office of Special Prosecutions and Appeals, Fish and Game Unit, and I am assigned to the above-captioned case.

2. All of the statements in the State's motion are true and correct.

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DEPARTMENT OF LAW
OFFICE OF SPECIAL PROSECUTIONS AND APPEALS
310 K STREET, SUITE 308
ANCHORAGE, ALASKA 99501
PHONE: (907) 269-6250

3. This motion is not being filed for the purpose of harassment or delay.

Further your affiant sayeth naught.

DATED at Anchorage, Alaska, this 1st day of July, 2011.

By: _____
Andrew Peterson
Assistant Attorney General
Alaska Bar No. 0601002

SUBSCRIBED AND SWORN to before me this 1ST day of July, 2011.

STATE OF ALASKA
OFFICIAL SEAL
Christine Osgood
NOTARY PUBLIC
My Commission Expires with office

_____
Notary Public in and for Alaska
My commission expires: with office

STATE OF ALASKA
DEPARTMENT OF LAW
OFFICE OF SPECIAL PROSECUTIONS AND APPEALS
310 K STREET, SUITE 308
ANCHORAGE, ALASKA 99501
PHONE: (907) 269-6250

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT KENAI

DAVID HAEG

Applicant

v.

STATE OF ALASKA

Respondent

POST-CONVICTION RELIEF
CASE NO. 3KN-10-01295 CI

Trial Case No. 4MC-04-00024 CR

STATE'S MOTION FOR EXPEDITED CONSIDERATION OF STATE'S MOTION TO CONTINUE DEPOSITION OF TROOPER GIBBENS AND TO MOVE THE DEPOSITION LOCATION

VRA CERTIFICATION. I certify that this document and its attachments do not contain (1) the name of a victim of a sexual offense listed in AS 12.61.140 or (2) a residence or business address or telephone number of a victim or witness to any crime unless it is an address used to identify the place of the crime or it is an address or telephone number in a transcript of a court proceeding and disclosure of the information was ordered by the court.

COMES NOW the State of Alaska, by and through Assistant Attorney General Andrew Peterson, and hereby files this motion for expedited consideration of its motion to continue Trooper Gibbens' deposition and to move the location of the deposition from the Bridges Community Resource Center to the Kenai Court.

The state's motion needs to be considered on an expedited basis due to the fast approaching date of the scheduled depositions. The state left a voice mail message with Mr. Haeg regarding this matter, but as of yet, has not received a return telephone call. A copy of the state's motion and request for expedited consideration will be emailed and mailed to Mr. Haeg. The state asks that any opposition to considering this

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DEPARTMENT OF LAW
OFFICE OF SPECIAL PROSECUTIONS AND APPEALS
310 K STREET, SUITE 308
ANCHORAGE, ALASKA 99501
PHONE: (907) 269-6250

motion on an expedited basis be filed on or before July 6, 2011, and that the hearing regarding the deposition scheduling and location be held on July 7-8, 2011.

DATED: July 1, 2011.

JOHN J. BURNS
ATTORNEY GENERAL

By: _____
Andrew Peterson
Assistant Attorney General
Alaska Bar No. 0601002

This is to certify that on this date, a correct copy of the forgoing was emailed to:
David Haeg

_____ 7/1/11
Signature Date

STATE OF ALASKA
DEPARTMENT OF LAW
OFFICE OF SPECIAL PROSECUTIONS AND APPEALS
310 K STREET, SUITE 308
ANCHORAGE, ALASKA 99501
PHONE: (907) 269-6250

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT KENAI

DAVID HAEG)
)
Applicant)
)
v.)
) POST-CONVICTION RELIEF
STATE OF ALASKA) CASE NO. 3KN-10-01295 CI
)
Respondent)
)
_____)

Trial Case No. 4MC-04-00024 CR

AFFIDAVIT

VRA CERTIFICATION. I certify that this document and its attachments do not contain (1) the name of a victim of a sexual offense listed in AS 12.61.140 or (2) a residence or business address or telephone number of a victim or witness to any crime unless it is an address used to identify the place of the crime or it is an address or telephone number in a transcript of a court proceeding and disclosure of the information was ordered by the court.

STATE OF ALASKA)
) ss.
THIRD JUDICIAL DISTRICT)

I, A. Andrew Peterson, being duly sworn, hereby state and depose as follows:

1. I am an Assistant Attorney General in the Office of Special Prosecutions and Appeals, Fish and Game Unit, and I am assigned to the above-captioned case.

2. All of the statements in the State's motion are true and correct.

STATE OF ALASKA
DEPARTMENT OF LAW
OFFICE OF SPECIAL PROSECUTIONS AND APPEALS
310 K STREET, SUITE 308
ANCHORAGE, ALASKA 99501
PHONE: (907) 269-6250

3. This motion is not being filed for the purpose of harassment or delay.

Further your affiant sayeth naught.

DATED at Anchorage, Alaska, this 1st day of July, 2011.

By: _____
Andrew Peterson
Assistant Attorney General
Alaska Bar No. 0601002

SUBSCRIBED AND SWORN to before me this 1ST day of July, 2011.

STATE OF ALASKA
OFFICIAL SEAL
Christine Osgood
NOTARY PUBLIC
My Commission Expires w/ office

_____
Notary Public in and for Alaska
My commission expires: with office

STATE OF ALASKA
DEPARTMENT OF LAW
OFFICE OF SPECIAL PROSECUTIONS AND APPEALS
310 K STREET, SUITE 308
ANCHORAGE, ALASKA 99501
PHONE: (907) 269-6250

IN THE DISTRICT/SUPERIOR COURT FOR THE STATE OF ALASKA
AT Kenai

David Haeg
~~Plaintiff(s),~~ Applicant
vs.
State of Alaska
~~Defendant(s).~~ Respondent

CASE NO. 3KN-10-01295CI

SUBPOENA FOR TAKING DEPOSITION

To: Marla Greenstein
Address: 1029 W. 3rd Ave., Suite 550 Anchorage AK 99501

You are commanded to appear and testify under oath in the above case at:
Date and Time: July 13, 2011 at 9 a.m.
Offices of: Bridges Community Resource Network
Address: 44758 Sterling Hwy, Unit B, Soldotna AK 99669

Notice, as required by Civil Rule 45(d), has been served upon the State of Alaska on June 28, 2011. You are ordered to bring with you nothing.

June 28, 2011
Date

Michelle Mamyn (SEAL)
Deputy Clerk

Subpoena issued at request of
David Haeg
Attorney for self
Address: PO Box 123 Sold, AK 99669
Telephone: 907-262-9249
If you have any questions, contact the person named above.

Before this subpoena may be issued, the above information must be filled in and proof must be presented to the clerk that a notice to take deposition has been served upon opposing counsel.

RETURN

I certify that on the date stated below, I served this subpoena on the person to whom it is addressed, _____, in _____, Alaska. I left a copy of the subpoena with the person named and also tendered mileage and witness fees for one day's court attendance.

_____
Date and Time of Service

_____
Signature

Service Fees:
Service $_____
Mileage $_____
TOTAL $_____

_____
Print or Type Name

_____
Title

If served by other than a peace officer, this return must be notarized.

Subscribed and sworn to or affirmed before me at _____, Alaska on _____.

(SEAL)

_____
Clerk of Court, Notary Public or other person authorized to administer oaths.
My commission expires _____

CIV-115 (8/96)(st.3)
SUBPOENA FOR TAKING DEPOSITION
Civil Rule 45(d)

01895

20110470 0003 1609 4801

IN THE DISTRICT/SUPERIOR COURT FOR THE STATE OF ALASKA
AT Kenai

David Haeg

vs. ~~Plaintiff(s),~~ Applicant

State of Alaska

~~Defendant(s),~~ Respondent

CASE NO. 3KN-10-01295CI

SUBPOENA FOR TAKING DEPOSITION

To: Brett Gibbens
Address: PO Box 1700 Delta Junction, AK 99737

You are commanded to appear and testify under oath in the above case at:
Date and Time: July 14, 2011 at 9 a.m.
Offices of: Bridges Community Resource Network
Address: 44758 Sterling Hwy, Unit B, Soldotna AK 99669

Notice, as required by Civil Rule 45(d), has been served upon to State of Alaska on June 28, 2011. You are ordered to bring with you nothing

(SEAL)

June 28, 2011
Date

Deputy Clerk

Subpoena issued at request of
David Haeg
Attorney for self
Address: PO Box 123 Sold, AK 99669
Telephone: 907-262-9249
If you have any questions, contact the person named above.

Before this subpoena may be issued, the above information must be filled in and proof must be presented to the clerk that a notice to take deposition has been served upon opposing counsel.

RETURN

I certify that on the date stated below, I served this subpoena on the person to whom it is addressed, _____, in _____, Alaska. I left a copy of the subpoena with the person named and also tendered mileage and witness fees for one day's court attendance.

_____
Date and Time of Service

_____
Signature

Service Fees:
Service $_____
Mileage $_____
TOTAL $_____

_____
Print or Type Name

_____
Title

If served by other than a peace officer, this return must be notarized.

Subscribed and sworn to or affirmed before me at _____, Alaska on _____.

(SEAL)

_____
Clerk of Court, Notary Public or other person authorized to administer oaths.
My commission expires _____

CIV-115 (8/96)(st.3)
SUBPOENA FOR TAKING DEPOSITION

Civil Rule 45(d)

01896

7011 0470 0003 1660 4818

IN THE DISTRICT/SUPERIOR COURT FOR THE STATE OF ALASKA
AT Kenai

David Haeg

vs. ~~Plaintiff(s),~~ Applicant

State of Alaska

~~Defendant(s).~~ Respondent

CASE NO. 3KN-10-01295 CI

SUBPOENA FOR TAKING DEPOSITION

To: Margaret Murphy
Address: 3670 Lake Street, Bldg. A Homer AK 99603

You are commanded to appear and testify under oath in the above case at:
Date and Time: July 15, 2011 at 9 am.
Offices of: Bridges Community Resource Network
Address: 44758 Sterling Hwy, Unit B, Soldotna AK 99669

Notice, as required by Civil Rule 45(d), has been served upon the State of Alaska on June 28, 2011. You are ordered to bring with you nothing.

(SEAL)

June 28, 2011
Date

Deputy Clerk

Subpoena issued at request of
David Haeg
Attorney for self
Address: Box 123 Soldotna AK 99669
Telephone: 907-262-9249
If you have any questions, contact the person named above.

Before this subpoena may be issued, the above information must be filled in and proof must be presented to the clerk that a notice to take deposition has been served upon opposing counsel.

RETURN

I certify that on the date stated below, I served this subpoena on the person to whom it is addressed, _____, in _____, Alaska. I left a copy of the subpoena with the person named and also tendered mileage and witness fees for one day's court attendance.

Date and Time of Service

Signature

Service Fees:
Service $_____
Mileage $_____
TOTAL $_____

Print or Type Name

Title

If served by other than a peace officer, this return must be notarized.

Subscribed and sworn to or affirmed before me at _____, Alaska on _____.

(SEAL)

Clerk of Court, Notary Public or other person authorized to administer oaths.
My commission expires _____

CIV-115 (8/96)(st.3)
SUBPOENA FOR TAKING DEPOSITION

Civil Rule 45(d)

01897

7011 0470 0003 1665 4825

request and the state, when asking for extensions of 380 days on a single item that was to have been filed within 20 days, was granted their requests. These delays have resulted in Haeg's PCR being delayed until 8 years after the state started prosecuting Haeg – requiring Haeg's conviction to be overturned.

(79) Robinson testified that what his investigator found out about the plea agreement was different then what Haeg had told him. Yet Haeg has documents and recordings from Robinson's investigator proving what he found out was the very same as what Haeg told Robinson. See Haeg's PCR exhibits. This proves Robinson's sworn testimony to be irrefutably false, more proven perjury by Robinson, is another attempt to cover up his sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – as Robinson's perjury proves his conflict of interest. *See* Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(80) Robinson testified that Cole never confirmed there was a plea agreement. Yet Cole, in the recording Robinson's investigator made of him, confirmed there was a plea agreement and that the state broke it. See Haeg's PCR exhibits. This proves Robinson's sworn testimony to be irrefutably false, more proven perjury by Robinson, is another attempt to cover up his and Cole's sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – as Haeg was entitled to effective assistance of counsel, had a right to have the plea agreement enforced, and Robinson's perjury proves his conflict of

interest. *See* Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(81) Robinson testified the plea agreement was never enforced because Cole never confirmed that Leaders bowed out of a plea agreement. Yet Cole, in the recording Robinson's investigator made of him, confirmed that Leaders bowed out of a plea agreement. See Haeg's PCR exhibits. This proves Robinson's sworn testimony to be irrefutably false, more proven perjury by Robinson, is another attempt to cover up his and Cole's sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – as Haeg had a a right to enforce the plea agreement and Robinson's perjury proves his conflict of interest. *See* Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(82) Robinson testified that he did not know if it was important that the state had reneged on a plea agreement. Yet all caselaw holds differently, especially since Haeg and wife had given up a whole years income for the plea agreement:

> "Government must adhere strictly to the terms of agreements made with defendants—including plea, cooperation, and immunity agreements..." Santobello v. New York, 404 U.S. 257 (U.S. Supreme Court 1971)
>
> "Where an accused relies on a promise... to perform an action that benefits the state, this individual...will not be able to "rescind" his or her actions. ... In the plea bargaining arena, the United States Supreme Court has held that states should be held to strict compliance with their promises. ...courts consider the defendant's detrimental reliance as the gravamen of whether it would be unfair to allow the prosecution to withdraw from a plea agreement." Closson v. State, 812 P.2d 966 (Ak. 1991)

"When the prosecution makes a 'deal' within its authority and the defendant relies on it in good faith, the court will not let the defendant be prejudiced as a result of that reliance." United States v. Goodrich, 493 F.2d 390, 393 (9th Cir. 1974).

"The indictment upon which Garcia's convictions are based was obtained in violation of the express terms of the agreement and is therefore invalid. The upholding of the Government's integrity allows for no other conclusion." U.S. v. Garcia, 519 F.2d 1343 (9th Circuit 1975)

"[A] court must carefully scrutinize the agreement to determine whether the government has performed; in doing so, court must strictly construe the agreement against the government." Stolt-Nielsen v, U.S., 442 F.3d 177 (3d. Cir. 2006)

"Modern notions of due process have belied the notion that a prosecutor may invoke his discretion to evade promises made to a defendant or potential defendant as part of an agreement or bargain. That being the case, a defendant or witness does have more to rely upon than merely the "grace or favor" of the prosecutor... to allow the defendant some redress for prosecutorial reneging." Surina v. Buckalew, 629 P.2d 969 (Alaska 1981)

This proves Robinson's sworn testimony to be irrefutably false, more proven perjury by Robinson, is another attempt to cover up his and Cole's sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – as Haeg was entitled to effective assistance of counsel and Robinson's perjury proves his conflict of interest. *See* Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(83) Robinson testified that at sentencing he brought up at Haeg's sentencing that Haeg had given up a whole years guiding for a plea agreement that the state broke. Yet the court record of Haeg's case proves this false. *See*

sentencing record. In addition, Cole, who was supposed to testify about this never showed up as subpoenaed and Robinson told Haeg there was nothing that could be done about this. This proves Robinson's sworn testimony to be irrefutably false, more proven perjury by Robinson, is another attempt to cover up his and Cole's sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – as Haeg was entitled to effective assistance of counsel, had right to credit for the guide year already given up in reliance on the state's promise of credit, and Robinson's perjury proves his conflict of interest. *See* Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(84) Robinson testified he never subpoenaed attorney Fitzgerald to testify at Haeg's sentencing because he wasn't "relevant" – even though Haeg had requested Fitzgerald be subpoenaed because he knew all about the state breaking the plea agreement that Haeg had given so much for. See Haeg's PCR exhibits. This proves Robinson's sellout of Haeg and meets both Risher standards of deficient attorney performance and harm to client – as Haeg was entitled to effective assistance of counsel and had right to credit for the guide year already given up in reliance on the state's promise of credit. *See* Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(85) Robinson testified that he didn't know if it would be important to Haeg (who never received credit for the guide year Cole told him to give up) to

have Cole testify that Haeg should get credit for the guide year given up because the state promised he would get credit for it. This proves Robinson's ineffectiveness, conflict of interest and prejudice, proves his and Cole's sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – as Haeg was entitled to effective assistance of counsel, had right to credit for the guide year already given up in reliance on the state's promise of credit, and Robinson's perjury proves his conflict of interest. *See* Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(86) Robinson testified that even though Haeg was adamant that Cole be subpoenaed to testify at Haeg's sentencing so Haeg could get credit for the guide year already given up Robison did not have to do this because he (Robinson) didn't think it relevant. As shown by Brookhart and Jones above this was Haeg's decision to make and as this was incredibly relevant to Haeg getting credit for a whole years income Robinson had no choice but to obey Haeg's request. This proves Robinson's perjury, sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – as Haeg was entitled to effective assistance of counsel, had right to credit for the guide year already given up in reliance on the state's promise of credit, and Robinson's perjury proves his conflict of interest. *See* Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(87) Robinson testified that Haeg told the court that the state promised to give Haeg credit for the guide year. The court record proves this never happened. *See* court record. This proves Robinson's sworn testimony to be irrefutably false, more proven perjury by Robinson, is another attempt to cover up his and Cole's sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – as Haeg was entitled to effective assistance of counsel, had right to credit for the guide year already given up in reliance on the state's promise of credit, and Robinson's perjury proves his conflict of interest. *See* Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(88) Robinson testified that it was not possible at Haeg's sentencing for it to be proved that Haeg's trial was invalid. Yet overwhelming caselaw proves if Haeg had been promised lesser charges in return for him giving up a year of guiding (exactly as happened) and Haeg had given up this year (exactly as happened) it would mean Haeg could not be prosecuted with charges that were more severe (exactly as happened) See Haeg's PCR exhibits.

> "Government must adhere strictly to the terms of agreements made with defendants—including plea, cooperation, and immunity agreements..." Santobello v. New York, 404 U.S. 257 (U.S. Supreme Court 1971)
>
> "Where an accused relies on a promise... to perform an action that benefits the state, this individual...will not be able to "rescind" his or her actions. ... In the plea bargaining arena, the United States Supreme Court has held that states should be held to strict compliance with their promises. ...courts consider the defendant's detrimental reliance as the gravamen of whether it would be unfair to

allow the prosecution to withdraw from a plea agreement." Closson v. State, 812 P.2d 966 (Ak. 1991)

"When the prosecution makes a 'deal' within its authority and the defendant relies on it in good faith, the court will not let the defendant be prejudiced as a result of that reliance." United States v. Goodrich, 493 F.2d 390, 393 (9th Cir. 1974).
"The indictment upon which Garcia's convictions are based was obtained in violation of the express terms of the agreement and is therefore invalid. The upholding of the Government's integrity allows for no other conclusion." U.S. v. Garcia, 519 F.2d 1343 (9th Circuit 1975)

"[A] court must carefully scrutinize the agreement to determine whether the government has performed; in doing so, court must strictly construe the agreement against the government." Stolt-Nielsen v. U.S., 442 F.3d 177 (3d. Cir. 2006)

"Modern notions of due process have belied the notion that a prosecutor may invoke his discretion to evade promises made to a defendant or potential defendant as part of an agreement or bargain. That being the case, a defendant or witness does have more to rely upon than merely the "grace or favor" of the prosecutor... to allow the defendant some redress for prosecutorial reneging." Surina v. Buckalew, 629 P.2d 969 (Alaska 1981)

This proves Robinson's sworn testimony to be irrefutably false, more proven perjury by Robinson, is another attempt to cover up his and Cole's sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – as Haeg was entitled to effective assistance of counsel, had right to credit for the guide year already given up in reliance on the state's promise of credit, and Robinson's perjury proves his conflict of interest. *See* Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(89) Robison testified that his "tactic", that the court did not have subject matter jurisdiction because the information had not been verified by Leaders, was supported by the case Albrecht v. United States, 273 U.S. 1 (1927). Albrecht does not support this:

> The claims mainly urged are that, because of defects in the information and affidavits attached, there was no jurisdiction in the District Court and that rights guaranteed by the Fourth Amendment were violated. The main ground urged in support of the objection was that the information had not been verified by the United States attorney; that it recited he 'gives the court to understand and be informed, on the affidavit of I. A. Miller and D. P. Coggins'; and that these affidavits, which were annexed to the information, had been sworn to before a notary public-a state official not authorized to administer oaths in federal criminal proceedings. As the affidavits on which the warrant issued had not been properly verified, the arrest was in violation of the clause in the Fourth Amendment, which declares that 'no warrants shall issue but upon probable cause, supported by oath or affirmation.' *See* Ex parte Burford, 3 Cranch, 448, 453; United States v. Michalski (D. C.) 265 F. 839. But it does not follow that, because the arrest was illegal, the information was or became void. If before granting the warrant, the defendants had entered a voluntary appearance, the reference and the affidavits could have been treated as surplusage, and would not have vitiated the information. [Footnote 5] The fact that the information and affidavits were used as a basis for the application for a warrant did not affect the validity of the information as such. Here, the court had jurisdiction of the subject-matter; and the persons named as defendants were within its territorial jurisdiction. Albrecht v. United States, 273 U.S. 1 (U.S. Supreme Court 1927)

This proves Robinson's sworn testimony to be irrefutably false, more proven perjury by Robinson, is another attempt to cover up his and Cole's sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – especially as Haeg voluntarily appeared in court. This deprived Haeg of effective assistance of counsel and Robinson's perjury proves his conflict

of interest. *See* Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(90) Robinson testifies that subject matter jurisdiction is obtained by a grand jury indictment and not by statute. Yet this is irrefutably false. An indictment provides jurisdiction over the person who is claimed to have committed a crime and the constitutional and statutes provide subject matter jurisdiction:

> Article 4, Secton 1, Alaska Constitution:
>
> The judiciary power of the state is vested in a supreme court, a superior court, and the courts established by the legislaute.The jurisdiction of courts shall be prescribed by law.
>
> AS 22.15.060 Criminal Jurisdiction (a) The district court has jurisdiction (1) of the following crimes: (A) a misdemeanor

Haeg was charged with misdemeanors in district court – thus it is irrefutable that the district court has subject matter jurisdiction. This proves Robinson's sworn testimony to be irrefutably false, more proven perjury by Robinson, is another attempt to cover up his and Cole's sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – as Haeg was entitled to effective assistance of counsel and Robinson's perjury proves his conflict of interest. *See* Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(91) Robinson testified that after trial he still thought that Haeg's best defense was the lack of subject matter jurisdiction because Leaders had not sworn to the charging information. However, Robinson has testified that before trial the

court had allowed Leaders to correct this defect. Robinson's continued use as Haeg's defense an error that had been cured is overwhelming proof of his ineffectiveness - especially when Haeg had other defenses that were unbeatable such as his being given immunity and the state knowingly presenting false evidence on all the warrants and at trial. This proves Robinson's sworn testimony to be irrefutably false, more proven perjury by Robinson, is another attempt to cover up his and Cole's sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – as Haeg was entitled to effective assistance of counsel and Robinson's perjury proves his conflict of interest. *See* Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(92) Robinson testified that the jurisdiction defect was so strong he recommended Haeg not refute the state's case at trial. Yet Robinson has testified under oath that the jurisdiction defect had been cured before trial. This proves Robinson's "tactic" was invalid and that he did not pusue valid tactics, meeting both Risher standards of deficient attorney performance and harm to client. *See* Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(93) Robinson testified that the reason he never filed a motion to suppress was that the state never used Haeg's statement. Yet Robinson, in a reply brief written by him prior to trial, specifically states that the state was using Haeg's statement in the information charging Haeg. *See* court record. This proves

Robinson's sworn testimony to be irrefutably false, more proven perjury by Robinson, is another attempt to cover up his and Cole's sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – as Haeg was entitled to effective assistance of counsel, had a right against self-incrimination, and Robinson's perjury proves his conflict of interest. *See* Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(94) Robinson testified that the reason he brought up the use of Haeg's statement in a reply brief is that the state had brought up the use of Haeg's statement in the state's opposition brief. Yet the state's opposition brief proves this is false. *See* court record. This proves Robinson's sworn testimony to be irrefutably false, more proven perjury by Robinson, is another attempt to cover up his and Cole's sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – as Haeg was entitled to effective assistance of counsel, had a right against self-incrimination, and Robinson's perjury proves his conflict of interest. *See* Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(95) Robinson testified that another reason he brought up the use of Haeg's statement in a reply brief is that new issues can be brought up in reply and the court had to address them. Yet the Alaska Court of Appeals ruled that Judge Murphy properly refused to consider Robinson's protest on Haeg's statement use since it was brought up in a reply brief. *See* court record. And all ruling caselaw

prohibits bringing up new issues in a reply because the opposing party then has no opportunity to refute the new issue:

> "[T]he issue of improper motive was raised for the first time before the superior court in APEA's reply memorandum (in support of its motion for Rule 11 sanctions). Thus, ASEA did not have a chance to reply to the allegation of improper motive. As a matter of fairness, the trial court could not consider an argument raised for the first time in a reply brief. In effect, APEA has abandoned the issue of improper purpose." AK State Employees Ass'n v. AK Public Employees Ass'n, 813 P.2d 669 (AK Supreme Court 1991).
>
> "The function of a reply memorandum is to respond to the opposition to the primary motion, not to raise new issues or arguments, much less change the nature of the primary motion." Demmert v. Kootznoowoo, Inc, 960 P.2d 606 (Ak Supreme Court 1998).

This proves Robinson's sworn testimony to be irrefutably false, more proven perjury by Robinson, is another attempt to cover up his and Cole's sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – as Haeg was entitled to effective assistance of counsel, had a right against self-incrimination, and Robinson's perjury proves his conflict of interest. *See* Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(96) Robinson testified, "Why would it have been?" when asked why he never put the use of Haeg's statement in Haeg's points of appeal. The use of Haeg's statement would irrefutably overturn Haeg's conviction, unlike Robinson point of appeal that the court did not have subject matter jurisdiction, which, as shown above, the court irrefutably had. This proves Robinson's sworn testimony

to be irrefutably false, more proven perjury by Robinson, is another attempt to cover up his and Cole's sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – as Haeg was entitled to effective assistance of counsel, had a right against self-incrimination, and Robinson's perjury proves his conflict of interest. *See* Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(97) Robinson testified the use of Haeg's statement in the charging information did not make the charging information defective. Yet Evidence Rule 410 and all caselaw holds otherwise. *See* Gonzalez, North, and Kastigar above and below. This proves Robinson's sworn testimony to be irrefutably false, more proven perjury by Robinson, is another attempt to cover up his and Cole's sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – as Haeg was entitled to effective assistance of counsel, had a right against self-incrimination, and Robinson's perjury proves his conflict of interest. *See* Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(98) Robinson testified that he did not know what the penalty was for the state using Haeg's statement. Yet it was Robinson's irrefutable and specific duty to know this - for all caselaw holds any prosecution using such a statement must be overturned:

State of Alaska v. Gonzalez, 853 P.2d 526 (AK Supreme Court 1993) Procedures and safeguards can be implemented, such as isolating the prosecution team or certifying the state's evidence before trial, but the accused often will not adequately be able to probe and test the state's adherence to such safeguards.

Innumerable people could come into contact with the compelled testimony, either through official duties or, in a particularly notorious case, through the media. Once persons come into contact with the compelled testimony they are incurably tainted for nonevidentiary purposes.

Even the state's utmost good faith is not an adequate assurance against nonevidentiary uses because there may be "non-evidentiary uses of which even the prosecutor might not be consciously aware." State v. Soriano, 68 Or.App. 642, 684 P.2d 1220, 1234 (1984) (only transactional immunity can protect state constitutional guarantee against nonevidentiary use of compelled testimony). We sympathize with the Eighth Circuit's lament in McDaniel that "we cannot escape the conclusion that the [compelled] testimony could not be wholly obliterated from the prosecutor's mind in his preparation and trial of the case." McDaniel, 482 F.2d at 312. This incurable inability to adequately prevent or detect nonevidentiary use, standing alone, presents a fatal constitutional flaw in use and derivative use immunity.

Because of the manifold practical problems in enforcing use and derivative use immunity we cannot conclude that [former] AS 12.50.101 is constitutional. Mindful of Edward Coke's caution that 'it is the worst oppression, that is done by colour of justice,' we conclude that use and derivative use immunity is constitutionally infirm." State of Alaska v. Gonzalez, 853 P2d 526 (Ak Supreme Court 1993)

"[N]one of the testimony or exhibits...became known to the prosecuting attorneys...either from the immunized testimony itself or from leads derived from the testimony, directly or indirectly...we conclude that the use of immunized testimony by witnesses to refresh their memories, or otherwise to focus their thoughts, organize their testimony, or alter their prior or contemporaneous statements, constitutes evidentiary use rather than nonevidentiary use. This observation also applies to witnesses who studied, reviewed, or were

exposed to the immunized testimony in order to prepare themselves or others as witnesses.

When the government puts on witnesses who refresh, supplement, or modify that evidence with compelled testimony, the government uses that testimony to indict and convict.

From a prosecutor's standpoint, an unhappy byproduct of the Fifth Amendment is that Kastigar may very well require a trial within a trial (or a trial before, during, or after the trial) if such a proceeding is necessary for the court to determine whether or not the government has in any fashion used compelled testimony to indict or convict a defendant. If the government chooses immunization, then it must understand that the Fifth Amendment and Kastigar mean that it is taking a great chance that the witness cannot constitutionally be indicted or prosecuted.

Finally, and most importantly, an ex parte review in appellate chambers is not the equivalent of the open adversary hearing contemplated by Kastigar. *See* United States v. Zielezinski, 740 F.2d 727, 734 (9th Cir.1984).

This burden may be met by establishing that the witness was never exposed to North's immunized testimony, or that the allegedly tainted testimony contains no evidence not "canned" by the prosecution before such exposure occurred.

Where immunized testimony is used... the prohibited act is simultaneous and coterminous with the presentation; indeed, they are one and the same. There is no independent violation that can be remedied by a device such as the exclusionary rule: the...process itself is violated and corrupted, and the indictment [or trial] becomes indistinguishable from the constitutional and statutory transgression. If the government has in fact introduced trial evidence that fails the Kastigar analysis, then the defendant is entitled to a new trial. If the same is true as to grand jury evidence, then the indictment must be dismissed." United States v. North, 910 F.2d 843 (D.C.Cir. 1990).

"The Government must do more than negate the taint; it must affirmatively prove that its evidence is derived from a legitimate source wholly independent of the compelled testimony." Kastigar v. United States, 406 U.S. 441 (U.S. Supreme Court 1972)

This proves Robinson is ineffective, trying to cover up his and Cole's sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – as Haeg was entitled to effective assistance of counsel, had a right against self-incrimination, and Robinson's perjury proves his conflict of interest. *See* Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(99) Robinson testifies that Evidence Rule 410 prevents a plea agreement statement from being used at trial. Yet Evidence Rule 410(a) states that a plea agreement statement cannot be used in anywhere – not just at trial:

> "Evidence of.... statements or agreements made in connection with any of the foregoing pleas or offers, is not admissible in any civil or criminal action, case or proceeding....."

This proves Robinson's sworn testimony to be irrefutably false, more proven perjury by Robinson, is another attempt to cover up his and Cole's sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – as Haeg was entitled to effective assistance of counsel, had a right against self-incrimination, and Robinson's perjury proves his conflict of interest. *See* Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(100) Robinson again testifies that the state could use Haeg's statement, made in Cole's office and not on the record, to impeach Haeg. Yet Evidence Rule 410(b) specifically states:

> This rule shall not apply to (1) the introduction of voluntary and reliable statements made in court on the record in connection with any of the forgoing plea when offered in subsequent proceedings as prior inconsistent statements…

This proves Robinson's sworn testimony to be irrefutably false, more proven perjury by Robinson, is another attempt to cover up his and Cole's sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – as Haeg was entitled to effective assistance of counsel, had a right against self-incrimination, and Robinson's perjury proves his conflict of interest. *See* Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(101) Robinson testified that he told Haeg at trial that Haeg had to testify because the state was going to use only all the bad things Haeg said during Haeg's statement and for all the good things to be heard Haeg had to testify. In other words, Robinson irrefutably proves he and the state used Haeg's statement to force Haeg to testify at trial. This proves Robinson's ineffectiveness, sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – as Haeg was entitled to effective assistance of counsel and had a right against self-incrimination. *See* Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(102) Robinson testified that there was nothing in the warrant affidavits seizing evidence and property that "was not probable." Yet the state's own GPS coordinates proved the state had falsified all evidence locations to the Game

Management Unit in which Haeg guided. In other words, there was a devastatingly prejudicial error far more certain then "was not probable." This proves Robinson's sworn testimony to be irrefutably false, more proven perjury by Robinson, is another attempt to cover up his and Cole's sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – as Haeg was entitled to effective assistance of counsel, had a right against unreasonable searches and seizures, ecersing this would have eliminated nearly all the evidence against Haeg, and Robinson's perjury proves his conflict of interest. *See* Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(103) Robinson testified that he did not think the state had falsified the location of all the evidence they put on the affidavits. Yet all evidence locations had been falsified on the affidavits. See court record and Haeg's PCR exhibits. This proves Robinson's sworn testimony to be irrefutably false, more proven perjury by Robinson, is another attempt to cover up his and Cole's sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – as Haeg was entitled to effective assistance of counsel, had a right against unreasonable searches and seizures, and Robinson's perjury proves his conflict of interest. *See* Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(104) Robinson testified that the state falsifying all the evidence to the Game Management Unit where Haeg guided would not make it easier for the state

to claim Haeg was killing wolves where he guided to benefit his business. This is like saying it would not make it easier to convict someone of murder if the body were found outside the shooters house rather then inside the shooters house. It may be murder either way - but the likelihood it was self-defense instead of murder is exponentially greater if the dead body was found inside the shooters house. No one would agree that it would make no difference if the state claimed the body was found outside your house instead of inside when you are claiming self-defense. This proves Robinson's sworn testimony to be irrefutably false, more proven perjury by Robinson, is another attempt to cover up his and Cole's sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – as Haeg was entitled to effective assistance of counsel, had a right against the state using material perjury to convict him, and Robinson's perjury proves his conflict of interest. *See* Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(105) Robinson testified that he told Haeg the he could file a motion to suppress. Yet Haeg has tape recordings of Robinson, documents, and witnesses, proving Robinson never told Haeg that a motion to suppress could be filed. See Haeg's PCR exhibits. This proves Robinson's sworn testimony to be irrefutably false, more proven perjury by Robinson, is another attempt to cover up his sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – as Haeg was entitled to effective assistance of counsel, had a right against self-incrimination, against the state using material perjury to convict him,

against unreasonable searches and seizures, and Robinson's perjury proves his conflict of interest. *See* Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(106) Robinson testified that he didn't know if the location of the wolves could make it more or less likely that Haeg would be charged as a guide or with violating the wolf control program. Yet the states whole case was that Haeg was taking wolves where he guided to benefit his guide area and that this meant Haeg had to be charged and found guilty of guide crimes. This proves Robinson's sworn testimony to be irrefutably false, more proven perjury by Robinson, is another attempt to cover up his sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – as Haeg was entitled to effective assistance of counsel, to the equal protection of the law, against the state using material perjury to convict him, against unreasonable searches and seizures, and Robinson's perjury proves his conflict of interest. *See* Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(107) Robinson testified that the only location that mattered to Haeg being charged with guiding crimes was whether the wolves were taken in the permitted area. Haeg asked Robinson if that meant he could be charged with guiding crimes if he took wolves inside one of the "donut holes" (areas not open to the wolf control program that were completely surrounded by the open wolf control program area). Robinson testified, "I never thought you should be charged as a

guide to begin with if you recall." This proves Robinson's sworn testimony to be irrefutably false, more proven perjury by Robinson, is another attempt to cover up his and Cole's sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – as Haeg was entitled to effective assistance of counsel, to the eqaul protection of the law, against the state using material perjury to convict him, against unreasonable searches and seizures, and Robinson's perjury proves his conflict of interest. *See* Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(108) Robinson testified that it would have made no difference if it was proved that the state had intentionally falsified the evidence locations to Haeg's guide area. Yet this is irrefutably false:

> "[T]he dignity of the U.S. Government will not permit the conviction of any person on tainted testimony. The government of a strong and free nation does not need convictions based upon such testimony. It cannot afford to abide with them." Mesarosh v. U.S., 352 U.S. 1 (U.S. Supreme Court 1956).
>
> "Conviction obtained through use of false evidence, known to be such by representatives of the State, is a denial of due process, and there is also a denial of due process, when the State, though not soliciting false evidence, allows it to go through uncorrected when it appears. Principle that a State may not knowingly use false evidence, including false testimony, to obtain a tainted conviction, implicit in any concept of ordered liberty, does not cease to apply merely because the false testimony goes only to the credibility of the witness." Napue v. Illinois, 360 U.S. 264 (U.S. Supreme Court 1959).
>
> "Requirement of 'due process' is not satisfied by mere notice and hearing if state, through prosecuting officers acting on state's behalf,

has contrived conviction through pretense of trial which in truth is used as means of depriving defendant of liberty through deliberate deception of court and jury by presentation of testimony known to be perjured, and in such case state's failure to afford corrective judicial process to remedy the wrong when discovered by reasonable diligence would constitute deprivation of liberty without due process." Mooney v. Holohan, 294 U.S. 103 (U.S. Supreme Court 1935).

"The principle that a State may not knowingly use false evidence, including false testimony, to obtain a tainted conviction, [is] implicate in any concept of ordered liberty..." Giles v. Maryland, 386 U.S. 66 (U.S. Supreme Court 1967).

"We hold the Due Process Clause of the Fifth Amendment is violated when a defendant has to stand trial on an indictment which the government knows is based partially on perjured testimony..." United States v. Basurto, 497 F.2d 781 (9th Cir. 1974).

This proves Robinson's sworn testimony to be irrefutably false, more proven perjury by Robinson, is another attempt to cover up his and Cole's sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – as this renders Haeg's conviction invalid, that nearly all evidence had to be suppressed, and Robinson's perjury proves his conflict of interest. *See* Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(109) Robinson testified he knew that Haeg and Zellers, during their statements, had told prosecutor Leaders the evidence locations had been falsified but did not know if Leaders had a duty to correct the false evidence locations. Yet a prosecutor must correct what he knows is false. *See* United States Supreme Court:

"A lie is a lie, no matter what its subject, and, if it is in any way relevant to the case, the district attorney has the responsibility and duty to correct what he knows to be false and elicit the truth." Napue v. Illinois, 360 U.S. 264 (U.S. Supreme Court 1959).

In conclusion, the clear defects in Bowie's trial were the direct result of the prosecutor's pretrial constitutional failure to guard against improbity in the trial process, a failure which rendered the trial itself patently unfair in due process terms. The manner in which the trial unfolded leaves us with the definite conviction that the process itself lacked fundamental fairness and delivered a palpably unreliable result. In this connection, the principles which compel our decision here are not designed to punish society for the misdeeds of a prosecutor, see United States v. Agurs, 427 U.S. 97, 110 n.17 (U.S. Supreme Court 1976), but to vindicate the accused's constitutional right to a fair trial, a fundamental right for which the prosecution shares responsibility with the courts.

This important mission is utterly derailed by unchecked lying witnesses, and by any law enforcement officer or prosecutor who finds it tactically advantageous to turn a blind eye to the manifest potential for malevolent disinformation. *See* United States v. Wallach, 935 F.2d 445 (2nd Cir. 1991) ("Indeed, if it is established that the government knowingly permitted the introduction of false testimony `reversal is virtually automatic.' ") (citations omitted); Cf. Franks v. Delaware, 438 U.S. 154 (U.S.Supreme Court 1978) ("[I]t would be an unthinkable imposition upon [the authority of a magistrate judge] if a warrant affidavit, revealed after the fact to contain a deliberately or recklessly false statement, were to stand beyond impeachment.").

In 1976, the Court was called on yet again to visit this recurring issue, noting that it "has consistently held that a conviction obtained by the knowing use of perjured testimony is fundamentally unfair and must be set aside if there is any reasonable likelihood that the false testimony could have affected the judgment of the jury." United States v. Agurs, 427 U.S. 97, 103 (U.S. Supreme Court 1976). The Court observed that the Mooney line of cases applied this strict standard "not just because they involve prosecutorial misconduct, but more importantly because they involve a corruption of the truth-seeking function of the trial process."Commonwealth v. Bowie, 243 F.3d 1109 (9th Cir. 2001)

This proves Robinson's sworn testimony to be irrefutably false, more proven perjury by Robinson, is another attempt to cover up his and Cole's sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – as Robinson's perjury proves his conflict of interest and it was unclaisitiotunatl for Haeg to be convcite with perjury know to the prosecution. *See* Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(110) Robinson testified that when Trooper Gibbens falsified the evidence locations during his trial testimony, Haeg was angry and concerned that Gibbens would continue to do so after Gibbens knew they were false. Robinson further testified that Haeg demanded that Gibbens be confronted and forced to admit he knew his prior testimony was false – which Robinson admitted he did. Yet Robinson further testified that it was not perjury when Gibbens changed his testimony only AFTER he knew his false testimony had been found out – and this is why he never did anything about it. Gibbens admitting he had falsified his testimony only after he knew he had been found out proves he knew his testimony was false when he had given it moments before, proves he is guilty of perjury, and cannot "correct" his mistake.

> AS 11.56.200. Perjury
> (a) A person commits the crime of perjury if the person makes a false sworn statement which the person does not believe to be true.
> (b) In a prosecution under this section, it is not a defense that
> (1) the statement was inadmissible under the rules of evidence; or

(2) the oath or affirmation was taken or administered in an irregular manner.

(c) Perjury is a class B felony.

AS 11.56.235. Retraction as a defense.

(a) In a prosecution under AS 11.56.200 or 11.56.230, if the false statement was made in an official proceeding, it is an affirmative defense that the defendant expressly retracted the false statement

(1) during the course of the same official proceeding;

(2) before discovery of the falsification became known to the defendant;

(3) before reliance upon the false statement by the person for whom it was intended; and

(4) if the official proceeding involved a trier of fact, before the subject matter of the official proceeding was submitted to the ultimate trier of fact.

This proves Robinson's sworn testimony, that Gibbens did not commit perjury is false, more proven perjury by Robinson, is another attempt to cover up his and Cole's sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – as Haeg could not be convicted with the state knowingly using material perjury against him and Robinson's perjury proves his conflict of interest. *See* Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(111) Robinson testified that due process required Haeg to be given a hearing within days if to hours of the state seizing the airplane (the primary source of Haeg's income) but the reason he never protested Haeg never getting a hearing is that by the time Haeg hired Robinson "it was too late to do anything about it." This obviously not true – if due process required the state to give Haeg an immediate hearing the passage of time without a hearing just makes the

constitutional violation worse, not better and it can never be "too late" to do something about it.

> Waiste v. State, 10 P.3d 1141 (Ak Supreme Court 2000) "This court's dicta, however, and the persuasive weight of federal law, both suggest that the Due Process Clause of the Alaska Constitution should require no more than a prompt postseizure hearing... The State argues that a prompt postseizure hearing is the only process due, both under general constitutional principles and under this court's precedents on fishing-boat seizures, whose comments were not dicta...But given the conceded requirement of a prompt postseizure hearing on the same issues, in the same forum, 'within days, if not hours' the only burden that the State avoids by proceeding ex parte is the burden of having to show its justification for a seizure a few days or hours earlier... The State does not discuss the private interest at stake, and Waiste is plainly right that it is significant: even a few days' lost fishing during a three-week salmon run is serious, and due process mandates heightened solicitude when someone is deprived of her or his primary source of income... As the Good Court noted, moreover, the protection of an adversary hearing 'is of particular importance [in forfeiture cases], where the Government has a direct pecuniary interest in the outcome.' An ensemble of procedural rules bounds the State's discretion to seize vessels and limits the risk and duration of harmful errors. The rules include the need to show probable cause to think a vessel forfeitable in an ex parte hearing before a neutral magistrate, to allow release of the vessel on bond, and to afford a prompt postseizure hearing."

This proves Robinson's sworn testimony is false, more proven perjury by Robinson, is another attempt to cover up his and Cole's sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – as Haeg was deprived of the primary means by which he provided a livelihood and Robinson's perjury proves his conflict of interest. *See* Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(112) Robinson testified that he asked for a hearing about the airplane and that Judge Murphy denied it. Yet Robinson never asked for a hearing about the airplane and Judge Murphy never denied it. This is proven by the court record. *See* court record. This proves Robinson's sworn testimony is false, more proven perjury by Robinson, is another attempt to cover up his and Cole's sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – as Haeg was deprived of the primary means by which he provided a livelihood and Robinson's perjury proves his conflict of interest. *See* Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(113) Peterson prevented Haeg from questioning Robinson about his belief of the law. Yet it is automatic ineffective assistance of counsel if an attorney has an erroneous belief of the law and this harms the defendant. Because of this Haeg must have a hearing in which to ask Robinson his belief of the law and before this hearing happens Haeg's PCR cannot be dismissed.

(114) Robinson testified that a judge could not force prosecutor Leaders or the state to give Haeg credit for the guide year already given up even though the state promised to give Haeg credit for it. Yet all caselaw proves this false:

> "Government must adhere strictly to the terms of agreements made with defendants—including plea, cooperation, and immunity agreements…" Santobello v. New York, 404 U.S. 257 (U.S. Supreme Court 1971)
>
> "When the prosecution makes a 'deal' within its authority and the defendant relies on it in good faith, the court will not let the

defendant be prejudiced as a result of that reliance." United States v. Goodrich, 493 F.2d 390, 393 (9th Cir. 1974).

"[A] court must carefully scrutinize the agreement to determine whether the government has performed; in doing so, court must strictly construe the agreement against the government." Stolt-Nielsen v, U.S., 442 F.3d 177 (3d. Cir. 2006)

"Modern notions of due process have belied the notion that a prosecutor may invoke his discretion to evade promises made to a defendant or potential defendant as part of an agreement or bargain. That being the case, a defendant or witness does have more to rely upon than merely the "grace or favor" of the prosecutor... to allow the defendant some redress for prosecutorial reneging." Surina v. Buckalew, 629 P.2d 969 (Alaska 1981)

"Where an accused relies on a promise... to perform an action that benefits the state, this individual...will not be able to "rescind" his or her actions. ... In the plea bargaining arena, the United States Supreme Court has held that states should be held to strict compliance with their promises. ...courts consider the defendant's detrimental reliance as the gravamen of whether it would be unfair to allow the prosecution to withdraw from a plea agreement. Closson v. State, 812 P.2d 966 (Ak. 1991)

"Detrimental reliance may be demonstrated where the defendant performed some part of the bargain; for example, where the defendant provides beneficial information to law enforcement." Reed v. Becka, 333 S.C. 676, 511 S.E.2d 396 (Ct. App. 1999)

"The basic Fifth Amendment guarantee against double jeopardy, which is enforceable against the States by the Fourteenth Amendment is violated when punishment already exacted for an offense is not fully 'credited' in imposing a new sentence for the same offense . . .. [T]he Constitution was designed as much to prevent the criminal from being twice punished for the same offence as from being twice tried for it. We hold that the constitutional guarantee against multiple punishments for the same offense absolutely requires that punishment already exacted must be fully "credited" in imposing sentence..." North Carolina v. Pearce, 395 U.S. 711 (U.S. Supreme Court 1969).

This proves Robinson's sworn testimony is false, more proven perjury by Robinson, is another attempt to cover up his and Cole's sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – as Haeg never received credti for the guide year given up and Robinson's perjury proves his conflict of interest. *See* Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(115) Robinson testified there was nothing he could do to about the use of Trooper Gibbens false trial testimony against Haeg after Gibbens had admitted he knew it was false when he gave it. Robinson could have, and was required to, ask for a new trial so the taint of Gibbens false testimony didn't affect the rest of trial and Haeg's sentencing – as it irrefutably did. For Judge Murphy, at Haeg's sentencing, specifically cited Gibbens false testimony as the reason for Haeg's sentence. *See* court record, "Since the majority, if not all the wolves were taken in 19-C...in the area where you were hunting." If Judge Murphy specifically used Gibbens known false testimony to justify Haeg's sentence it is certain Haeg's jury used the known false testimony to convict Haeg.

> "[T]he dignity of the U.S. Government will not permit the conviction of any person on tainted testimony. The government of a strong and free nation does not need convictions based upon such testimony. It cannot afford to abide with them." Mesarosh v. U.S., 352 U.S. 1 (U.S. Supreme Court 1956)
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> "Conviction obtained through use of false evidence, known to be such by representatives of the State, is a denial of due process, and there is also a denial of due process, when the State, though not soliciting false evidence, allows it to go through uncorrected when it appears. Principle that a State may not knowingly use false evidence,

including false testimony, to obtain a tainted conviction, implicit in any concept of ordered liberty, does not cease to apply merely because the false testimony goes only to the credibility of the witness." Napue v. Illinois, 360 U.S. 264 (U.S. Supreme Court 1959)

"Requirement of 'due process' is not satisfied by mere notice and hearing if state, through prosecuting officers acting on state's behalf, has contrived conviction through pretense of trial which in truth is used as means of depriving defendant of liberty through deliberate deception of court and jury by presentation of testimony known to be perjured, and in such case state's failure to afford corrective judicial process to remedy the wrong when discovered by reasonable diligence would constitute deprivation of liberty without due process." Mooney v. Holohan, 294 U.S. 103 (U.S. Supreme Court 1935)

"The principle that a State may not knowingly use false evidence, including false testimony, to obtain a tainted conviction, [is] implicate in any concept of ordered liberty..." Giles v. Maryland, 386 U.S. 66 (U.S. Supreme Court 1967)

This proves Robinson's sworn testimony, that Gibbens did not commit perjury is false, more proven perjury by Robinson, is another attempt to cover up his and Cole's sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – as Haeg could not be convicted with the state knowingly using material perjury against him and Robinson's perjury proves his conflict of interest. *See* Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(116) Robinson testified it was an injustice for Judge Murphy to specifically use Gibbens known false testimony against Haeg but that it was up to Haeg, and not Robinson, to do something about it. (Robinson further testified if Judge Murphy had specifically used Gibbens known false testimony to sentence

Haeg, it was possible Haeg's jury used Gibbens known false testimony to convict Haeg.) Yet ignorant Haeg had hired Robinson for about $50,000 to exercise his rights that would guarantee a fair trial and sentencing, proving it was Robinson, and not ignorant Haeg, who should have done something to cure the taint of Gibbens perjury from Haeg's case while Robinson was representing Haeg.

> "Of all the rights that an accused person has, the right to be represented by counsel is by far the most pervasive for it affects his ability to assert any other rights he may have." United States v. Cronic, 466 U.S. 648 (U.S. Supreme Court 1984)
>
> "The right to be heard would be, in many cases, of little avail if it did not comprehend the right to be heard by counsel. Even the intelligent and educated layman has small and sometimes no skill in the science of law. If charged with crime, he is incapable, generally, of determining for himself whether the indictment is good or bad. He is unfamiliar with the rules of evidence. Left without the aid of counsel he may be put on trial without a proper charge, and convicted upon incompetent evidence, or evidence irrelevant to the issue or otherwise inadmissible. He lacks both the skill and knowledge adequately to prepare his defense, even though he have a perfect one. He requires the guiding hand of counsel at every step in the proceedings against him. Without it though he not be guilty, he faces the danger of conviction because he does not know how to establish his innocence." Powell v. Alabama, 287 U.S. 45 (U.S. Supreme Court 1932)
>
> "A layman will ordinarily be unable to recognize counsel's errors and to evaluate counsel's professional performance; consequently a criminal defendant will rarely know that he has not been represented competently until after trial or appeal, usually when he consults another lawyer about his case." Kimmelman v. Morrison, 477 U.S. 365 (U.S. Supreme Court 1986)

This proves Robinson's sworn testimony, that it was up to Haeg to defend himself while Robison was representing Haeg, is more proven perjury by Robinson, is another attempt to cover up his and Cole's sellout of Haeg, and meets both Risher

standards of deficient attorney performance and harm to client – as Haeg was had a right to the assistance of counel, could not be convicted with the state knowingly using material perjury against him, and Robinson's perjury proves his conflict of interest. *See* Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(117) Robinson testified that prosecutor Leaders never used Haeg's statement during the state's case in chief. When Haeg asked Robinson if he remembered Leaders, during his case in chief, presenting the map Haeg was required to make during his statement, Robinson testified it was Zellers who presented the map – not Leaders. But the court record of Haeg's case irrefutably proves it was Leaders who presented the map, made by Haeg during his statement, as evidence against Haeg during the state's case in chief. *See* court record. This proves Robinson's sworn testimony is false, more proven perjury by Robinson, is another attempt to cover up his and Cole's sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – as Haeg could not be convicted in violation of his right against self-incrimination and Robinson's perjury proves his conflict of interest. *See* Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(118) Robinson testified that Zellers had already testified and used the map before the map was presented by Leaders. Yet the court record proves that long before Zellers testified, Leaders had already presented Haeg's map against Haeg in the state's case in chief during Trooper Gibbens testimony. *See* court record. This

proves Robinson's sworn testimony is false, more proven perjury by Robinson, is another attempt to cover up his and Cole's sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – as Haeg could not be convicted in violation of his right against self-incrimination and Robinson's perjury proves his conflict of interest. *See* Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(119) Robinson testified that the state was using ZELLERS statement against Haeg when the state presented the map HAEG made against Haeg during the state's case in chief. This is so undeniably false that it's chilling that Robinson made it. This proves Robinson's sworn testimony is false, more proven perjury by Robinson, is another attempt to cover up his and Cole's sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – as Haeg could not be convicted in violation of his right against self-incrimination and Robinson's perjury proves his conflict of interest. *See* Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg..

(120) Robinson testified that it you are given immunity in Alaska this means the government is "not going to prosecute you. Period."

(121) Robinson testified that he never asked Cole why Cole had Haeg give a statement or asked Cole if Haeg had immunity "because I never ask attorneys why they had their client do something or the other." Yet if Robinson had investigated the facts of the case by simply picking up the phone and calling Cole

he would have found out that Haeg had immunity and could not be prosecuted. This is incredibly compelling evidence of Robinson's ineffectiveness and proof of harm to Haeg - meeting both Risher standards of deficient attorney performance and harm to client – as had Robinson investigated he would have found out Haeg could not be prosecuted. *See* Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

> "The record …underscores the unreasonableness of counsel's conduct by suggesting that their failure to investigate thoroughly stemmed from inattention, not strategic judgment." Wiggins v. Smith, 539 U.S. 510 (U.S. Supreme Court 2003)
>
> "In order to render "effective assistance"… counsel must be familiar with the facts of the case and the applicable law so that he can fully advise the defendant of the options available to him." Arnold v. State, 685 P.2d 1261, (Ak 1984)
>
> "A mistake made out of ignorance rather then from strategy cannot be later validated as being tactically defensible." Kimmelman v. Morrison, 477 U.S. 365 (U.S. Supreme Court 1986)
>
> Because counsel failed to investigate at all, calling his decision not to present… evidence as strategic "strips that term of all substance." Sanders v. Ratelle, 21 F.3d 1446 (9th Cir. 1994)
>
> Counsel ineffective in murder case for failing to investigate circumstances of taking of first confession. Bess v. Legursky, 465 S.E.2d 892 (W. Va. 1995)
>
> Counsel was ineffective in drug possession case for failing to adequately investigate and cross examine the arresting officer. The court held, "[n]o reasonable attorney would have allowed this case to go to the jury without having investigated [the officer's] testimony and without having raised questions about his observations." Asch v. State, 62 P.3d 945 (Wyo. 2003)

Prejudice presumed in drug case because "[s]trategic justification cannot be extended to the failure to investigate" King v. State, 810 P.2d 119 (Wyo. 1991)

"Knowledge of the law is a basic prerequisite to providing competent legal assistance. If an attorney does not investigate clearly relevant law, then he or she has objectively failed to provide effective assistance." State v. Ross, 951 P.2d 236 (Utah Ct. App. 1997)

(122) Robinson testified that he did not research to find out if Haeg's statement was used to obtain Zellers cooperation "because it didn't matter." Yet this is irrefutably not true. *See* Gonzalez, North, Kastigar, and Evidence Rule 410 above. This proves Robinson's sworn testimony is false, more proven perjury by Robinson, is another attempt to cover up his and Cole's sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – as Zellers' testimony could not have been used against Haeg in the charging informations or at trial – violating Haeg's right against self-incrimination - and Robinson's perjury proves his conflict of interest. *See* Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(123) Robinson testified that his concern was that Haeg had given a statement that was potentially damaging to Haeg's innocence but "there was no reason to have it [Haeg's statement] suppressed other then the fact they couldn't use it." This is evidence of Robinson's ineffective assistance of counsel, and harm to Haeg – as the state irrefutably used Haeg's statement against Haeg. This meets both Risher standards of deficient attorney performance and harm to client – as

Haeg could not be convicted in violation of his right against self-incrimination and the use of Haeg's statement violated this right. *See* Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(124) Robinson testified that if Cole has testified that Haeg had immunity it means Haeg should have never been prosecuted. Cole has testified under oath in 2 separate proceedings, and attorney Kevin Fitzgerald (who was working with Cole during Haeg's case) once, that Haeg had been given immunity by the state. Robinson and Cole letting Haeg be prosecuted after being given immunity is the height of ineffective assistance of counsel – because Haeg could not be prosecuted. Period. No matter what evidence there was. *See* Haeg's original PCR memorandum, exhibits, and affidavits for evidence and for how this harmed Haeg.

(125) Robinson testified he did not know why Haeg hired an attorney when Haeg asked if Haeg hired an attorney because of his ignorance of the law. This proves Robinson's sworn testimony is false, more proven perjury by Robinson, is another attempt to cover up his and Cole's sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – as Haeg had a right to assistance of cousel because of his ignorance, hired attorneys because of his ignorance. and Robinson's perjury proves his conflict of interest. *See* Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(126) Robinson testified that he did not remember Haeg asking if he and Robinson should go talk to Zellers before Zellers pled out. Yet Haeg has tape recordings, letters, and witnesses proving Haeg and Robinson discussed this – with Robinson steadfastly refusing to talk to Zellers about what the state was trying to do. See Haeg's PCR exhibits. This proves Robinson's sworn testimony is false, more proven perjury by Robinson, is another attempt to cover up his and Cole's sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – as Haeg had a right to assistance of cousel and Robinson's perjury proves his conflict of interest. *See* Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(127) Robinson testified that he didn't know if, to help Haeg get credit for the year of guiding already given up, Cole testified the state promised to give Haeg credit for the guide year if he gave it up before trial – when the state was claiming under oath they had no idea why Haeg had given up the year guiding so Haeg would not get credit. It is undeniable Cole's testimony would have been helpful to Haeg and devastating to the state's false claim. This proves Robinson's sworn testimony is false, more proven perjury by Robinson, is another attempt to cover up his and Cole's sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – as Haeg never got credit for the guide year and Robinson's perjury proves his conflict of interest. *See* Haeg's

original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(128) Robinson testified that Cole testifying the state had robbed Haeg of a whole year guiding would mean nothing because:

> "in legal parlance you would have been directly dealing with Scott Leaders – it was your case – not Brent Cole."

Yet Cole never let Haeg talk directly with Leaders, so Haeg's testimony of what happened would be hearsay and thus not admissible as evidence – so Cole's testimony meant everything. This proves Robinson's sworn testimony is false, more proven perjury by Robinson, is another attempt to cover up his and Cole's sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – as Haeg hired Cole to represent him, Haeg never got credit for the guide year and Robinson's perjury proves his conflict of interest. *See* Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(129) Robinson testified that after Haeg demanded Cole be subpoenaed; paid for him to be subpoenaed; bought Cole an airline ticket; and gave Robinson a list of 56 written questions he demanded Cole be asked about how Haeg had been robbed of year of guiding by Cole and Leaders working together, it was still Robinson's right to tell Cole he didn't have to come and testify – without ever having to tell Haeg that this is what he was going to do. Yet the ruling caselaw holds Haeg is in command of the ship – not Robinson:

> Jones v. Barnes, 463 U.S. 745 (U.S. Supreme Court 1983) & Brookhart v. Janis, 384 U.S. 1 (U.S. Supreme Court 1966) ruled it is the defendant, not the attorney, who is captain of the ship: "Although the attorney can make some tactical decisions, the ultimate choice as to which direction to sail is left up to the defendant. The question is not whether the route taken is correct; rather, the question is whether [the defendant] approved the course."... "The defendant, and not his lawyer or the State, will bear the personal consequences of a conviction... And although he may conduct his own defense ultimately to his own detriment, his choice must be honored out of 'that respect for individual which is the lifeblood of the law.'" (Quoting *People v. Malkin*, 250 N. Y. I85, 350-51 (1970) Brennan, J. concurring).

And it is clear why Robinson never told Haeg this was what he was going to do – Haeg could have fired Robinson and found an attorney willing to question Cole about his sellout of Haeg – or Haeg could have questioned Cole himself. This proves Robinson's sworn testimony is false, more proven perjury by Robinson, is another attempt to cover up his and Cole's sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – as it was Haeg's right to require Cole to testify (right to compel witnesses in his favor), Haeg never got credit for the guide year, and Robinson's perjury proves his conflict of interest. *See* Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(130) Robinson testified that he didn't remember if he asked all the written questions, about all Haeg had done for the plea agreement he had been robbed of, that Haeg had prepared for all the witnesses who Haeg had testify on behalf of Haeg at sentencing. Yet Haeg has tape recordings, letters, and witnesses proving Robinson knew he refused to ask these question – telling Haeg at the time "now is

not the time" and then afterward telling Haeg "its too late to ask them now." This proves Robinson's sworn testimony is false, more proven perjury by Robinson, is another attempt to cover up his and Cole's sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – as it was Haeg's right to require these witnesses to testify (right to compel witnesses in his favor), Haeg never got credit for the guide year, and Robinson's perjury proves his conflict of interest. *See* Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(131) Peterson prevents Haeg from asking Robinson questions about the advantage of establishing the state told Haeg it was in the best interest of the state for Haeg to take the very actions the state charged Haeg with taking. This means there must be a hearing at which Haeg is allowed to question Robinson on this matter and until this hearing takes place Haeg's PCR cannot be dismissed.

(132) Robinson testified that he didn't know if it was a violation for Haeg's statement to be published in the Anchorage Daily News – Alaska's most widely published paper – and didn't know if Haeg's jurors had read it. Yet all caselaw holds this is a violation. *See* Gonzalez, North, Kastigar, and Evidence Rule 410 above. This proves Robinson's sworn testimony is false, more proven perjury by Robinson, is another attempt to cover up his and Cole's sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – as Haeg could not be convicted in violation of his right against self-incrimination and the publishing of Haeg's statement violated this right. *See*

Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(133) Robinson testified he did not remember telling Haeg that because his sentence was legal Haeg could not appeal it. Yet Haeg has tape recordings and witnesses proving Robinson told Haeg that he could not appeal his sentence because it was legal. In addition, the court record proves that Judge Murphy failed to inform Haeg of his right to appeal his sentence as required by Criminal Rule 32.5 and Appellate Rule 215. *See* court record. The harm to Haeg from Robinson's false advice and Judge Murphy's failure to inform Haeg of his right to appeal was that Haeg never got to appeal his sentece as he wanted and because the court had specifically based Haeg's severe sentence on admitted false testimony from the state. Courts may not actually rely on inaccurate information in sentencing a defendant. Actual reliance is demonstrated when the court gives "explicit attention" to the inaccurate information. United States v. Tucker, 404 U.S. 443 (U.S. Supreme Court 1972).

This proves Robinson's sworn testimony is false, more proven perjury by Robinson, is another attempt to cover up his and Cole's sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – as Haeg would have appealed his sentence and exposed Judge Murphy specific use of the state's perjury. *See* Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(134) Robinson testified he saw Judge Murphy ride with Trooper Gibbens, never saw Judge Murphy drive, that Judge Murphy was an "overweight woman", and that Trooper Gibbens was the main investigator and witness against Haeg. (1) Haeg's trial took place in a small office building in McGrath (which doubles as an Iditarod Sled Dog Race checkpoint); (2) Judge Murphy flew in from Aniak to conduct Haeg's trial, there are no taxi's in McGrath, (3) Judge Murphy never walked, and the only vehicle usually present at the building was Trooper Gibbens *state* truck. This is evidence that Judge Murphy was bias against Haeg - requiring his conviction be overturned.

(135) Robinson testified that he didn't know if it was evidence that Haeg's statement was being used to prepare witnesses against Haeg when state witness Toby Boudreaux, during his trial testimony against Haeg, repeatedly referred to Tony Zellers as Tony Lee. *See* court record. The state never knew Tony Lee was involved in any way whatsoever until Haeg told the state about Tony Lee's involvement during Haeg's statement. This proves Robinson's sworn testimony is false, more proven perjury by Robinson, is another attempt to cover up his and Cole's sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – as Haeg could not be convicted in violation of his right against self-incrimination and the use of Haeg's statement violated this right. *See* Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(136) Robinson testified that Judge Murphy and Trooper Gibbens lying about the chauffeuring during Haeg's case would be significant because it would raise questions as to the impartiality of Judge Murphy if she and Trooper Gibbens were trying to hide something. Robinson testified the reason he didn't protest anything because he could not when Judge Murphy was "commandeered" by Trooper Gibbens. Yet there is no valid excuse to allow Haeg to be deprived of an impartial judge – one the most important and basic rights a person has.

> "A trial judge's involvement with witnesses establishes a personal, disqualifying bias." Bracy v. Gramley, 520 U.S. 899 (U.S. Supreme Court 1997)

This proves Robinson's sworn testimony is false, more proven perjury by Robinson, is another attempt to cover up his and Cole's sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – as Haeg could not be convicted in violation of his right to an unbiased judge and Robinson's perjury proves his conflict of interest. *See* Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(137) Robinson testified that Judge Murphy granted the state's protection order that sought to prevent Haeg from defending himself. After Judge Murphy granted this protection order Haeg was prevented from proving that his wolf control permit and the wolf control law (along with the state falsifying all the evidence and telling Haeg that the wolf control program required the very actions he was charged with taking) prevented Haeg from being charged or convicted of

guiding violations.See court record. Judge Murpy ruled she could do this becaeu it wa a "legal" issue for her to decide. But days earlier she had ruled this issue was a "factual" issue for the jury to decide. In other words Judge Murphy was making rulings that were incompatible with each other in order to harm Haeg – clear evidence of bias. See court record. Yet Robinson never brought this up in his points of appeal even though Haeg asked him to. See court record and Haeg's PCR exhibits. This proves Robinson's sellout of Haeg and meets both Risher standards of deficient attorney performance and harm to client – as Haeg could not be convicted in violation of his right to an unbiased judge. *See* Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(138) Robinson testified that he never told Haeg that Cole lying to Haeg in and of itself may not be ineffective assistance of counsel. Yet Haeg has tape recordings and witnesses proving Robinson told Haeg exactly this. See Haeg's PCR exhibits. This proves Robinson's sworn testimony is false, more proven perjury by Robinson, is another attempt to cover up his and Cole's sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client This proves Robinson's sworn testimony is false, more proven perjury by Robinson, is another attempt to cover up his and Cole's sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – as Haeg could not be convicted in violation of his right to effective assistance of counsel and Robinson's perjury proves his conflict of interest. *See* Haeg's original

PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(139) Robinson testified that an attorney lying to his own client may not be ineffective assistance of counsel. Yet if the client hired the attorney for his counsel and the attorney were giving him false counsel this is by definition ineffective assistance of counsel. In addition, for an attorney to lie to his own client the attorney must have a conflict of interest.

> "[P]rejudice is presumed when counsel is burdened by an actual conflict of interest. In those circumstances, counsel breaches the duty of loyalty, perhaps the most basic of counsel's duties. Moreover, it is difficult to measure the precise effect on the defense of representation corrupted by conflicting interests." Strickland v. Washington, 466 U.S. 668 (U.S. Supreme Court 1984)
>
> "[T]he conflict itself demonstrated a denial of the right to have the effective assistance of counsel. Thus, a defendant who shows that a conflict of interest actually affected the adequacy of his representation need not demonstrate prejudice in order to obtain relief. Because it is in the simultaneous representation of conflicting interests against which the Sixth Amendment protects a defendant, he need go no further than to show the existence of an actual conflict. An actual conflict of interest negates the unimpaired loyalty a defendant is constitutionally entitled to expect and receive from his attorney." Cuyler v. Sullivan, 446 U.S. 335 (U.S. Supreme Court 1980)
>
> "[I]n a case of joint representation of conflicting interests the evil – it bears repeating – is in what the advocate finds himself compelled to refrain from doing....It may be possible in some cases to identify from the record the prejudice resulting from an attorney's failure to undertake certain trial tasks, but even with a record of the sentencing hearing available it would be difficult to judge intelligently the impact of a conflict on the attorney's representation of a client. And to assess the impact of a conflict of interests on the attorney's options, tactics, and decisions in plea negotiations would be virtually

impossible." Holloway v. Arkansas, 435 U.S. 475 (U.S. Supreme Court 1978)

"Defense counsel must perform at least as well as a lawyer with ordinary training and skill in the criminal law and must conscientiously protect his client's interest, undeflected by conflicting considerations." Risher v. State, 523 P.2d 421 (Ak Supreme Court 1974)

"We believe it self-evident that an indispensable component of the guarantee of effective assistance of counsel is the accused's right to be advised of basic procedural rights, particularly when the accused seeks such advice by specific inquiry. Without knowing what rights are provided under law, the accused may well be unable to understand available legal options and may consequently be incapable of making informed decisions." Smith v. State, 717 P.2d 402 (AK 1986)

"In order to render "effective assistance"... counsel must be familiar with the facts of the case and the applicable law so that he can fully advise the defendant of the options available to him." Arnold v. State, 685 P.2d 1261, (AK 1984).

"It is a denial of the right to effective assistance of counsel for an attorney to advise a client erroneously on a clear point of law." Beasley v. U.S., 491 F2d 687 (6th Cir. 1971).

This proves Robinson's sworn testimony is false, more proven perjury by Robinson, is another attempt to cover up his and Cole's sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – as Haeg could not be convicted in violation of his right to effective assistance of counsel and Robinson's perjury proves his conflict of interest. *See* Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(140) Robinson testified that Judge Murphy was a "law-enforcement type judge and not the independent judiciary type you're supposed to have." Yet Robinson never brought this up in his points of appeal even though Haeg asked him to. See court record and Haeg's PCR exhibits. This proves Robinson's sellout of Haeg and meets both Risher standards of deficient attorney performance and harm to client – as Haeg could not be convicted in violation of his right to an unbiased judge. *See* Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(141) Robinson testified that Judge Murphy first denied Haeg's motion that that the wolf control program law protected him from guiding charges or conviction, ruling this was a factual issue the jury to decide. Robinson then testified that a few days later Judge Murphy granted the state's protection order preventing Haeg from arguing to the jury that the wolf control program law prevented – by claiming this was a legal issue for her to decide. In other words, when Judge Murphy needed to deny Haeg's motion it was a factual issue for the jury to decide and then when she needed to grant the state's motion to strip Haeg of any defense it to be a legal issue for Judge Murphy to decide. In other words, to deprive Haeg of the defense he was participating in the wolf control program and his actions should be governed by wolf control program law, Judge Murphy made two decisions that are in exact opposition with each other. Finally, Robinson failed to answer Haeg's question why he never protested this. Because of this Haeg must

have a hearing in which Robinson is required to answer this and before this hearing happens Haeg's PCR cannot be dismissed.

(142) Robinson testified he never used the ineffectiveness of Cole for Haeg's defense because Haeg didn't hire him for this purpose. Robinson further testified that he never told Haeg of the defense of ineffective assistance of counsel because he wasn't supposed to. Yet the denial of effective counsel is one of the greatest defenses Haeg had to criminal charges and Robinson's refusal to use it when there was such overwhelming evidence of it is overwhelming proof of Robinson's ineffectiveness.

> "[T]he right to counsel is the right to the effective assistance of counsel." McMann v. Richardson, 397 U.S. 759 (U.S. Supreme Court 1970).
>
> "Of all the rights that an accused person has, the right to be represented by counsel is by far the most pervasive for it affects his ability to assert any other rights he may have." United States v. Cronic, 466 U.S. 648 (U.S. Supreme Court 1984).
>
> "From counsel's function as assistant to the defendant derive... the more particular duties to consult with the defendant on important decisions and to keep the defendant informed...The reasonableness of counsel's actions may be determined or substantially influenced by the defendants own statements or actions. Counsel's actions are usually based, quite properly, on informed strategic choices made by the defendant and on information supplied by the defendant. In short, inquiry into counsel's conversations with the defendant may be critical to a proper assessment of counsel's ...litigation decisions." Strickland v. Washington, 466 U.S. 668 (U.S. Supreme Court 1984)
>
> "[I]n a case of joint representation of conflicting interests, the evil -- it bears repeating -- is in what the advocate finds himself compelled to refrain from doing, not only at trial but also as to possible pretrial plea negotiations and in the sentencing process...to assess the impact

> of a conflict of interests on the attorney's options, tactics, and decisions in plea negotiations would be virtually impossible." Holloway v. Arkansas, 435 U.S. 475 (U.S. Supreme Court 1978)
>
> "[P]rejudice is presumed when counsel is burdened by an actual conflict of interest. In those circumstances, counsel breaches the duty of loyalty, perhaps the most basic of counsel's duties. Moreover, it is difficult to measure the precise effect on the defense of representation corrupted by conflicting interests." Strickland v. Washington, (U.S. Supreme Court)

This proves Robinson's sworn testimony is false, more proven perjury by Robinson, is another attempt to cover up his and Cole's sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – as Haeg had a right to use Cole's ineffectiveness in Haeg's defense, Haeg could not be convicted in violation of his right to effective assistance of counsel, and Robinson's perjury proves his conflict of interest. *See* Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(143) Robinson testified that Cole could not be ineffective because he did not represent Haeg during trial. Yet caselaw proves this is false.

> "Particularly where, as here, it is the pretrial and post-trial performance of counsel as well as the performance during trial that is specifically alleged to have been inadequate, it is not sufficient that he trial judge found counsel's performance as observed in the course of trial to be adequate." Wood v. Endell, 702 P.2d 248 (AK 1985)

This proves Robinson's sworn testimony is false, more proven perjury by Robinson, is another attempt to cover up his and Cole's sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – as

Haeg had a right to use Cole's ineffectiveness in Haeg's defense, Haeg could not be convicted in violation of his right to effective assistance of counsel, and Robinson's perjury proves his conflict of interest. *See* Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(144) Robinson testified that it seemed the state went "overboard" and got "carried away" in its prosecution of Haeg, that Haeg's prosecution may have had a lot of "political pressure" and that taking Haeg's:

> "license and plane and all that [nearly two years in jail, $19,500 fine, $4500 restitution] was a bit much for wolves that didn't even have a salvage value…"

Yet Robinson never appealed Haeg's severe sentence and even told Haeg he could not appeal it. See court record and Haeg's PCR exhibits. This proves Robinson's sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – as Haeg had a right to use Cole's ineffectiveness in Haeg's defense, Haeg could not be convicted in violation of his right to effective assistance of counsel and Robinson's false advice to Haeg proves his conflict of interest. *See* Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(145) Robinson testified (after Peterson asked him if this was the case) that if Zellers pointed to the marks that Haeg had made on the map (after the map had been presented to Haeg's jury by the state), it meant the marks were now made by Zellers. This is such a blatant lie it is incredible. This would mean the state could

play the tape of Haeg's statement to the jury, then have someone come in afterward and parrot it, and then claim the statement was not Haeg's. All caselaw holds there can be no taint:

> "First, the prosecution could use the compelled testimony to refresh the recollection of a witness testifying at North's criminal trial.
>
> The second basis for our decision is that the state cannot meaningfully safeguard against nonevidentiary use of compelled testimony. Nonevidentiary use "include assistance in focusing the investigation, deciding to initiate prosecution, refusing to plea-bargain, interpreting evidence, planning cross-examination, and otherwise generally planning trial strategy." United States v. McDaniel, 482 F.2d 305, 311 (8th Cir.1973). Innumerable people could come into contact with the compelled testimony, either through official duties or, in a particularly notorious case, through the media. Once persons come into contact with the compelled testimony they are incurably tainted for nonevidentiary purposes.
>
> Even the state's utmost good faith is not an adequate assurance against nonevidentiary uses because there may be "non-evidentiary uses of which even the prosecutor might not be consciously aware." State v. Soriano, 68 Or.App. 642, 684 P.2d 1220, 1234 (1984) (only transactional immunity can protect state constitutional guarantee against nonevidentiary use of compelled testimony). We sympathize with the Eighth Circuit's lament in McDaniel that "we cannot escape the conclusion that the [compelled] testimony could not be wholly obliterated from the prosecutor's mind in his preparation and trial of the case." McDaniel, 482 F.2d at 312. This incurable inability to adequately prevent or detect nonevidentiary use, standing alone, presents a fatal constitutional flaw in use and derivative use immunity.
>
> Because of the manifold practical problems in enforcing use and derivative use immunity we cannot conclude that [former] AS 12.50.101 is constitutional. Mindful of Edward Coke's caution that 'it is the worst oppression, that is done by colour of justice,' we conclude that use and derivative use immunity is constitutionally infirm." State of Alaska v. Gonzalez, 853 P2d 526 (Ak Supreme Court 1993)

"[N]one of the testimony or exhibits...became known to the prosecuting attorneys...either from the immunized testimony itself or from leads derived from the testimony, directly or indirectly...we conclude that the use of immunized testimony by witnesses to refresh their memories, or otherwise to focus their thoughts, organize their testimony, or alter their prior or contemporaneous statements, constitutes evidentiary use rather than nonevidentiary use. This observation also applies to witnesses who studied, reviewed, or were exposed to the immunized testimony in order to prepare themselves or others as witnesses.

When the government puts on witnesses who refresh, supplement, or modify that evidence with compelled testimony, the government uses that testimony to indict and convict.

From a prosecutor's standpoint, an unhappy byproduct of the Fifth Amendment is that Kastigar may very well require a trial within a trial (or a trial before, during, or after the trial) if such a proceeding is necessary for the court to determine whether or not the government has in any fashion used compelled testimony to indict or convict a defendant. If the government chooses immunization, then it must understand that the Fifth Amendment and Kastigar mean that it is taking a great chance that the witness cannot constitutionally be indicted or prosecuted.

This burden may be met by establishing that the witness was never exposed to North's immunized testimony, or that the allegedly tainted testimony contains no evidence not "canned" by the prosecution before such exposure occurred.

If the government has in fact introduced trial evidence that fails the Kastigar analysis, then the defendant is entitled to a new trial. If the same is true as to grand jury evidence, then the indictment must be dismissed." United States v. North, 910 F.2d 843 (D.C.Cir. 1990)

"The Government must do more than negate the taint; it must affirmatively prove that its evidence is derived from a legitimate source wholly independent of the compelled testimony." Kastigar v. United States, 406 U.S. 441 (U.S. Supreme Court 1972).

This proves Robinson's sworn testimony is false, more proven perjury by Robinson, is another attempt to cover up his and Cole's sellout of Haeg, and meets

both Risher standards of deficient attorney performance and harm to client – as Haeg could not be convicteed in vilation of his right against self-incrimination – which the state's use of Hag's map was, Haeg could not be convicted in violation of his right to effective assistance of counsel, and Robinson's perjury proves his conflict of interest. *See* Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(146) Robinson testified, after being asked if this was the case by Peterson, that that falsification of the evidence locations was irrelevant. Yet the state's whole case was that Haeg was taking the wolves where he guides to benefit his guide area. And irrefutable proof the falsification to Haeg's guide area was relevant was Judge Murphy's specific use of the false location to justify Haeg's severe sentence. And all caselaw holds a falsification by the state is relevant in nearly every instance:

> "Conviction obtained through use of false evidence, known to be such by representatives of the State, is a denial of due process, and there is also a denial of due process, when the State, though not soliciting false evidence, allows it to go through uncorrected when it appears. Principle that a State may not knowingly use false evidence, including false testimony, to obtain a tainted conviction, implicit in any concept of ordered liberty, does not cease to apply merely because the false testimony goes only to the credibility of the witness." Napue v. Illinois, 360 U.S. 264 (U.S. Supreme Court 1959)
>
> "The principle that a State may not knowingly use false evidence, including false testimony, to obtain a tainted conviction, [is] implicate in any concept of ordered liberty..." Giles v. Maryland, 386 U.S. 66 (U.S. Supreme Court 1967).
>
> "Requirement of 'due process' is not satisfied by mere notice and hearing if state, through prosecuting officers acting on state's behalf,

has contrived conviction through pretense of trial which in truth is used as means of depriving defendant of liberty through deliberate deception of court and jury by presentation of testimony known to be perjured, and in such case state's failure to afford corrective judicial process to remedy the wrong when discovered by reasonable diligence would constitute deprivation of liberty without due process." Mooney v. Holohan, 294 U.S. 103 (U.S. Supreme Court 1935).

"[T]he dignity of the U.S. Government will not permit the conviction of any person on tainted testimony. The government of a strong and free nation does not need convictions based upon such testimony. It cannot afford to abide with them." Mesarosh v. U.S., 352 U.S. 1 (U.S. Supreme Court 1956).

This proves Robinson's sworn testimony, that the falsification of material evidence locations is irrelevant, is more proven perjury by Robinson, is another attempt to cover up his and Cole's sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – as Haeg could not be convicted with the state knowingly using material perjury against him and Robinson's perjury proves his conflict of interest. *See* Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

8-25-10 Dale Dolifka Testimony

Superior Court Judge Stephanie Joannides presiding

Judge Joannides: I thought based upon the information that was submitted to me and the information and the affidavits that the importance of -uh- the public confidence in hearings and proceedings was very important and there was an appearance of impropriety at a minimum.

Mr. Haeg: You have – you know you've alluded to the fact that my concerns about Judge Murphy and Trooper Gibbens were that they rode together

and you know and that's been muted because there've been a decision that in rural locations it's all right for law enforcement to chauffer judges around. My bigger concern that dwarfs that into minuteness is the fact that when I filed a complaint I have it on tape that the person that investigated the single investigator in this state – her name is Marla Greenstein - they testified to her the rides never took place. Both Trooper Gibbens and Judge Murphy. You agree or basically looked like agreed because of the and they – they said that one ride took place but only after I was sentenced. So the – the rides never took place during my case. You address the fact that the rides did took place before I was sentenced. It's irrefutable in their own words she "commandeered" him. So now we don't have the case of a judge riding around with a Trooper because she flew in from one village to another and you know we'll - we'll just kind of loosen things up a little bit to -uh- because there's no public transportation. Now you have a sitting judge lying to the official investigator and not only that conspiring with the Trooper who was giving her rides so he would testify falsely also. That is – that is a felony, it's a conspiracy, and it shows that all my concerns of her decisions that everyone went for that Trooper and even when it was proven he committed perjury, during my trial, nothing was done and I can read the law about perjury during a trial. This is the US Supreme Court…and this one has…

Judge Joannides: Well I – I understand but let…

Mr. Haeg: Ok.

Judge Joannides: … me just tell you I don't – let me just explain to you. I didn't reach that issue of what happened before the Judicial Conduct Commission because that issue isn't really before me. But as you'll see in my confidential order I do point out all those issues that you raise and address them for the Judicial Conduct Commission and that's why I'm sending their affidavits so to the – the additional affidavits you filed so to the extent that there was any testimony or information presented to the Commission they can review that and compare it to the affidavits. So I didn't discount your position.

Mr. Haeg: I – I understand it's kind of like you realize that this was something more than what you were assigned to but me after 6 years and my family and all my friends here that have seen what's going on. They're crying for somebody to do something about it. Because we've been to everyone that should and guess what? It's been wiped away. Can I ask you did you listen to the CD recordings of Marla Greenstein?

Judge Joannides: Well let just say – Mr. Haeg I don't – I'm not – I don't want you to misinterpret what I – what I said in the order. And as you will see in the confidential order that's coming out all the issues and the concerns you address

specifically about what the Commission did are laid out in the order and the Commission is made up of a number of members. And the order will go to them. So it isn't just that the investigator looks at my order it's the Commission looks at – at the order. And the Commission is made up of a number of members, attorneys, as well as public members who will look at it. So while I understand you're very frustrated at this I really – we need to stay focused on – I know you want justice and I know you want it now but it – at this point what you did is you were successful in – in challenging Judge Murphy's sitting on the case. Your allegations are going back to the Commission so they can look at them…

Mr. Haeg: Ok.

Judge Joannides: If you want to put on some testimony to make your record because as I understand and you're alleging -um- some coercion with respect to -uh- your obtaining counsel I would give you an opportunity to make a limited record but I want – I would say I would give you – how long do you need? You said 2 witnesses.

Mr. Haeg: -Um- I would say – I don't know an hour?

Judge Joannides: Who would you like to call first?

Mr. Haeg: -Um- and I'd – I guess I'd like say this on the record I apologize for doing it but I'd like to call Dale Dolifka.

Judge Joannides: All right. Mr. Dolifka would you please come forward? And if you'd remain standing the clerk would administer an oath to you.

The Clerk: Do you solemnly swear or affirm that the testimony you're about give in this case now before this court will be the truth, the whole truth and nothing but the truth?

Mr. Dolifka: I do.

The Clerk: Thank you. Sir for the record can you please state your first and last name?

Mr. Dolifka: -Um- my name is Dale Dolifka.

Attorney Peterson: How long have you been an attorney?

Mr. Dolifka: -um- almost 35 years.

Mr. Haeg: Ok and have you ever been a criminal attorney?

Mr. Dolifka: Just briefly. I was a Teamster lawyer. I did misdemeanors but for a very short time.

Mr. Haeg: Ok and how long have you been my business attorney? Approximately?

Mr. Dolifka: I don't remember how long. It's been a long time.

Mr. Haeg: -Uh- would you say it is over 20 years?

Mr. Dolifka: It could be I don't – I don't…

Mr. Haeg: -Um- when I got into the trouble a little over 6 years ago did I ask you to defend me?

Mr. Dolifka: -Um- my recollection is you called one day and you brought your CPA Mr. Obendorf with you to my office -um- you were very emotional, you explained what had happened to you and I immediately knew although not a criminal attorney per say I knew your world was about to change and I told you I could not be your attorney cause I was not certainly wasn't seasoned to do that. But I recommended Jim McCommas -uh- who I believed to be the best criminal lawyer in Alaska and I believed you needed the best criminal lawyer in Alaska given what you faced.

Mr. Haeg: Ok and -um- throughout all this you know -um- did I not just move on to the other attorneys did I try to keep you in the loop to maybe not at first but basically did I express that I had trust in you and basically go to you even though you had said you were not a profess – or a criminal attorney but basically I kept you abreast of what was going on?

Mr. Dolifka: Well I think that's where we probably differ in what our conversations were. I actually thought you were calling me as a friend because I – I was very worried about you and I did consider you a friend. I made it very clear to you I think every phone call we had that I was not a criminal attorney -um- but I somewhat relaxed because -um- when Mr. McCommas didn't represent you – you did hire an attorney that he had referred you to so -um- I tried not to interfere with your – your criminal case but I did you're correct I did talk with you many times -um- but as much of that was just trying to befriend you because I was very worried about – about you.

Mr. Haeg: Ok when you say worry about me can you explain more?

Mr. Dolifka: And the case that you had is very different then the normal criminal case because I knew, as did Mr. Obendorf, when you lost your airplane that your livelihood was impacted. It wasn't like you had shot a moose and you were goanna get a fine. Your life because your livelihood had changed is what really concerned me as your business attorney I didn't know how I was goanna - uh- protect you that way. And that what you came to me originally to see how – how to do asset protection things like that.

Mr. Haeg: Ok -um- and I – I take it you remember I hired Brent Cole is that correct?

Mr. Dolifka: Yea – well yes – I…

Mr. Haeg: And -um- did I -uh- oh present to you after I had – I guess did there come a point when I had such concerns with Brent Cole I came to you again and said, "hey is this right or what do you think about these issues"?

Mr. Dolifka: Well my recol – I mean this has been a long time ago and I've been very ill for 2 years so my memories not what is should be. But -um- my recollection is you hired Mr. Cole who I did not know. And I don't really recall be very much involved in the case in the early stage but there was a day that you came to me I actually think you had fired Mr. Cole. And -um- I then gave you another referral to -uh- Chuck Robinson who is from Soldotna. He's been my friend and colleague for – we actually practiced in the same law firm initially. And -um- I had great faith in him and so when it didn't work out with Mr. Cole who I didn't know or have anyway to judge I encouraged you to go to Mr. Robinson, which you ultimately did.

Mr. Haeg: Ok and I'm just goanna -uh- point out or -uh- oh one specific instance here is do you ever remember reading a letter I had wrote basically to the Court about why my side of what happened -um- and I can – I can maybe give you…

Mr. Dolifka: I don't – I noticed that letter in one of your recent pleas. I – I have no recollection reading that letter. I'm not saying I didn't I just don't remember it.

Mr. Haeg: Ok -um- do you ever remember stating and these are probably near exact words that "after I read the letter - as I read the letter even though I'm not a hunter the hackles stood up on the back of my neck because I knew exactly why you had done what you had did" and then you went on to say that you felt that that letter, which I was asking should it be presented to the Court – should it.

You said that it should be – you thought it should be presented because you thought it may be my only defense and I…

Mr. Dolifka: I don't – I don't remember that. I do remember the hackles on my neck have stuck up a lot of times in your case not just that time. But I don't remember that issue.

Mr. Haeg: Ok -um- but that's – that was I may be the only specific instant – well I can't testify here but anyway that's what I remember but I'll move on here. -Um- -uh- did I end up hiring Chuck Robinson?

Mr. Dolifka: Yes.

Mr. Haeg: Ok and -um- did it seem like things I informed you that things were breaking down with him also?

Mr. Dolifka: Well it was my recollection is pretty much the same as the other time. I - when you hired Chuck I was greatly relieved cause I had a lot of faith in him. And my – my memory is it went quiet for a while. I didn't actually know what was going on and then it was a repeat almost exactly of the other one. Then one day you came and -um- something had happened in the case and then – that actually was when I took a look at your case. -Um- again I'm not a criminal lawyer but – when - when things crashed with Mr. Robinson -uh- I became more proactive in actually reading documents and that's when I became very confused about your case. Again not being a criminal lawyer I still am an attorney and I was very confused. Even to the point of contacting Judge Hansen – my old friend from Kenai of 20 years Superior Court judge and called him more than once about your case because I – I couldn't get my arms around it. It made no sense what had happened.

Mr. Haeg: Ok and do you remember that after Chuck Robinson do you remember saying that I absolutely should not hire another attorney in this state and I should look for one outside the state?

Mr. Dolifka: You know I – I don't remember actually saying that to you. I – I may have because when you had -um- when it didn't work with Mr. McCommas or his referral and then when it didn't work with a lawyer that I had great faith in -um- and – and I really couldn't understand what happened -um- I – I may have said that cause I – I was quit disturbed when a – an attorney that I had that much faith in and it -um- and I couldn't understand your case.

Mr. Haeg: Ok and the reason why you couldn't under – couldn't understand it is that - did I tell you that I thought there were defenses such as

evidence being moved to my guide area, -um- that the State told and induced me to do what they then charged me with, that we had made a plea agreement, gave up a year of our livelihood and then it was broken did you think that the reason why – the reason why basically your hackles were standing up is because there were defenses that I was bringing up that weren't – that weren't ever utilized by attorneys?

Mr. Dolifka: Well again I'm not a criminal attorney but there's two things about your case I've - I'm tired of trying to figure out. I don't understand all the issues that went on with your plea agreement – it's – it's shocking to me how that all played out. And I don't understand how you possibly had due process with regard to the seizure of your airplane. I have read it and read it and read it. I've - I could write a doctors brief on it and I can't – and – and I'm just wore out trying to figure it out. Cause I – I can't.

Mr. Haeg: Ok. -Um- I had this is something I remember and is this correct? And I guess this is the question. Did you say that I must hire a great attorney from outside Alaska and when I walked into their office if the carpet wasn't 6 inches deep to turn around and walk out? Could you have ever said something?

Mr. Dolifka: I – I might have said that. I – I don't…

Mr. Haeg: And – and if you did why would you have said – said that – "that if the carpet wasn't 6 inches deep turn around and walk out"? Why would you…

Mr. Dolifka: Well one of the reasons I would have said those things about the time your case took place I was very cynical about our court system. Particularly the court system in Kenai and I think that really jaded me in a lot of ways with regards to your case because you were not by any means the only person coming into my office -um- with problems with the – with the judicial system in Kenai. I've been there 35 years. I love my community. My wife and I have given greatly to the community. I've - during probate laws I get very close to a lot of people and what went on in my office for about a 5 to 6 year period of a steady stream of people coming into my office telling me of things that went on in our system down there and of course I had to hold them confidentially but I would – I've sent them to the Governor we sent them everywhere. So your case -um- actually only was one of many -um- to the point actually it wore my wife and I out. You – you called me many times I tried to befriend you. But you were not the only one calling and our home phone our -um- and finally my doctor just said you got to stop. Bec – and my wife too. I mean it – it was to the point that cause I watched my community implode, Judge Hansen watched the community implode,

and my friend Fred Angleton watched it implode. He was involved in many of those situations. And I was so proud of Kenai Soldotna. We rose up as a community and we got our community back. Now you got a problem and others have a problem but it is a different community today then it was even two or three years ago because there were people that had the guts to stand up. And I know you're not goanna call Mr. Angleton but I believe he could back – he's a former State Trooper. Judge Hansen would come here and I – I mean I'm here saying now but he would validate everything I've just said to you. -Um- so I don't know if that answers your question but it – it – it does -um- like I said I was very cynical during this 4 years when you were calling me.

Mr. Haeg: Ok and -uh- I just some of these questions I have don't flow real well how you answer but – did – did you know or possibly did you help me seek an attorney outside of Alaska and were we successful in that?

Mr. Dolifka: I wish I had kept notes. If I'd known I'd have been here today I or how this was goanna play out I would have kept notes but I didn't cause I – I was just kind of being your friend. But I did get a call. I don't remember the lawyer the lawyer's name. I think he was from Minnesota who – the only word I could use was he was appalled by your case. He had read pieces of your case. He just he said "you've got a kangaroo court up there". It was very disparaging -um- that's the only recollection of anyone I have. And – and I wish I would of wrote that down. I mean if I could do that over I would of -um-

Mr. Haeg: Ok would you believe that that same attorney was flying up here to one of these proceedings and was reading the actual transcripts and in Seattle turned around and went home because he said troopers conspiring with judges is so scary he refuses to come to Alaska - would you believe that?

Mr. Dolifka: Well I don't – I don't know whether. I mean don't - I never heard that. I …

Mr. Haeg: But would you believe with your knowledge of the corruption here that that is a valid concern?

Mr. Dolifka: Well I – I guess it was a concern. I – mine wasn't. I don't know so much. I don't know corruptions the right word for that. Not so many of the cases were corrupt as just blatant incompetency of -um- I mean it was embarrassing. I would have family, from Colorado who got the Clarion, would call me and – and say, "god what is going on up there?" They would read where Judge Card had just reamed out -uh- one of our DA's and they would call about district attorneys who had screwed up our grand juries. I mean that was embarrassing and that would be during an era down there that was kind of part of

our system. Now whether it was corrupt or not I don't know that that's the right word but it certainly bread great cynicism in our community. It was talked about at school board meetings. It was talked about at assembly meetings. It's how are we going to get our community back? This cannot go on. So I guess I could believe that. I don't – I didn't know that had happened. -um-

Mr. Haeg: Ok when I failed to get an attorney outside the state did I ask you if I should represent myself and if I did what your – do you remember what your response was?

Mr. Dolifka: Well I can't imagine. I – I mean I have an old adage that he who represents himself has a fool for – or whatever that one is. So I – I understand the incredible importance of having an attorney. Now having said that I agree with the district attorney you – you put a lot of lawyers to shame whatever - for whatever that means. I have read your pleadings. I've read what you sent to the Supreme Court and -um- you are far above average in what -um- the pleadings that I see by other lawyers. So I -um- I can't imagine I told you to represent yourself. Cause I don't I – I as judge has said here today it's important to have a lawyer. -Um- but you have pleasantly surprised me in how you've represented yourself.

Mr. Haeg: Ok so -uh- I guess to paraphrase it is it true that that you encouraged me to get an attorney outside the state but when I couldn't you were adamant I still get an attorney and is that basically true? I mean…

Mr. Dolifka: Well without it yes. I'm…

Mr. Haeg: I'm kind of caught you know.

Mr. Dolifka: Well I know I would have told you to get an attorney. I can't image I would…

Mr. Haeg: Ok.

Mr. Dolifka: Given – given that I had told you to go get the best lawyer in the State of Alaska out of the chute I can't imagine I would reversed and say "gee things have changed". Cause actually by then things were worse.

Mr. Haeg: Ok and so to you knowledge did I hire a 3rd attorney after your…

Mr. Dolifka: Well you did it wasn't one that I recommended nor would I have recommended.

Mr. Haeg: Ok but I -uh- …

Mr. Dolifka: Yes you did.

Mr. Haeg: Ok – ok and do you have an idea ok do you know who that attorney was?

Mr. Dolifka: I do and I've read all the pleadings and they were just more mind numbing to me. I -uh- it was just more par for the course. The more you read the more you were like "I – I don't believe in this".

Mr. Haeg: Ok and was that attorneys name Mark Osterman?

Mr. Dolifka: Yes.

Mr. Haeg: Ok and -um- is Mark from what you know of the pleadings and stuff with Mark Osterman, my 3rd attorney, is what happened with him what you feared may happen if I hired an attorney inside this State for the 3rd time?

Mr. Dolifka: Well yeah if you read the tape recordings you made of what he said to you. I mean that just – that's part of when I said the hackles come up on my neck. How could you – any lawyer – especially who believes in ethics read those tapes of things he said to you assuming they're transcribed correctly and – and not be appalled by what happened. That's…

Mr. Haeg: Ok and do the – the recordings basically say, you know before I hire him, "my God it's the biggest sellout of a client I've ever seen by not only by one but two attorneys and we're goanna get this thing reversed. We're goanna sue them". And then I hire Mr. Osterman and then he flops around 180 degrees and says, "not only have I spent all that money" which was supposed to be all the money for the appeal but "here's another bill for another $36,000.00 and by the way I can't do anything with what I agreed was a sell out quote "because I can't affect the livelihoods of your first 2 attorneys". I - and is that what appalled you in the transcripts?

Mr. Dolifka: Not only is that what appalled me that is primarily what I sought counsel from Judge Hanson. That - those were the things that disturbed me – was – we were – with … Judge Hanson and I were talking about – as was Mr. Angleton about other cases that were just disturbing. But the main thing with yours that I would talk with Judge Hanson was – I … I mean I would actually call him and say "Judge am I losing my mind? Am I reading this correctly?" And he took an interest in your case and I think he was shocked by those tapes as well. Of

what you just read. And - and because I – when I couldn't – not being a criminal lawyer and - and again he had become a good friend and I just – I did… Your case became more and more troubling to me cause it was endemic of our whole community. It would - might have been the cutting edge but it wasn't the only one. And for what - what Mr. Osterman said to you on tape -um- should disturb any lawyer who believes in ethics of any kind.

Mr. Haeg: Ok and -uh- I – I guess you answered this but in essence the fear or the reason why you had advised me to go outside the state was proven correct. It wasn't just a theory that this was going on. It was proven correct because of Mark Osterman. Because the tape recordings if you looked at them I taped everything from the day I called him to hire him to the day I fired him. And so would it be fair to say that you and I knowing that this may happen prepared – or I prepared for it and Mr. Osterman proved this was going on? That – that attorneys are – are intentionally not representing their clients?

Attorney Peterson: Your honor I just – I want to object because he doesn't remember actually telling him to go outside. He speculated that he may have. And Mr. Haeg's kind of testifying about a conclusion here. I'd – I'd just like him to ask the questions and…

Judge Joannides: I'll – I'll give him a little leeway. I recognize that the question is not evidence. But just the answer.

Mr. Haeg: Ok -um- and Mr. Dolifka's goanna not like this but -um- did you know that I taped recorded nearly every conversation I've ever had with you?

Mr. Dolifka: Yeah.

Mr. Haeg: Ok -um- I would like to just go over and ask you some -uh- questions that are actual quotes of conversations. And I have the cd's that the State's more then happy to have copies of. That are the actual conversations. So this – I'd actually like to admit these cd's as evidence.

Judge Joannides: Let me ask you and – and (excuse me) before we admit them into evidence could you just explain to me a little bit what you hope to show through these conversations?

Mr. Haeg: I'd like to show that there – that I am not voluntarily giving up my right to counsel. I want to show through these conversations that it's not only my belief that I – you know I don't know how you want to put it. I don't know if you want to call it corruption whatever, collusion, good old boys club might the best word for it. But – but that … I am having…

Judge Joannides: But let (undecipherable) for (undecipherable)...

Mr. Haeg: ... a -uh- as I said for the greater good of the State. You know Mr. Dolifka's laid out his concerns about that is going on here and I wish to -um- stand up as Mr. Dolifka said and do my part and this is actual conversations with a I forget what is was 37 year attorney who has been following my case from the beginning.

Judge Joannides: So is it – is what you're what you are attempting to elicit is that you were represented, you then went and hired Mr. Osterman -uh- who did not – who was basically unwilling proceed on the case -uh- because of impacting the livelihood of others, that you had an attorney that you tried to hire from the lower 48 who refused to represent you, and that a member – a member of the bar here believes that you're goanna have some challenges with finding a lawyer to represent you so you're really in a position to being unable to find a lawyer?

Mr. Haeg: Exactly. It – it's and it isn't necessary that I'm unable as proven with Mr. Osterman. He – he said "holy cow this is the holy grail of my career. I'm goanna not only overturn a very big conviction I this state but I'm goanna sue two of the biggest attorneys" and he told us "we're goanna get rich off of this". He said that he needed 12,000 dollars total upfront because he charges 3 to 5 thousand dollars per point on appeal. But he figured he'd be able to get everything done a little quicker cause I'd done a lot of the leg work. And he said 12,000 dollars he needed it all up front. It would be total. And after he had my money and after my appeal brief was up to about 7 days from being due to the Alaska Court of Appeals he hands me a brief that's a piece of no good. And says, "by the way the12,000 dollars is gone. Here's another bill..." - for I think it was 36,000 - ... he says, "Because I now charge 8,000 dollars per point on appeal with no limit. And by the way I can't use anything in your brief that I agreed too when you hired me because I can't affect the lives and livelihoods of your first 2 attorneys". And he had agreed that a successful ineffective assistance of counsel claim is prima-facie evidence of malpractice.

Judge Joannides: All right...

Mr. Haeg: Ok and I think that it was going very well -um- and I - you know – it just is something so – as... If Mr. Dolifka feels it's so bizarre. - I want everybody to - here to know how do I feel about it who bore the brunt of it. And my family bore the brunt of it. When we have a specific right of counsel that's written into our Constitution and the US Supreme Court over and over has said that's effective representation. Yet I cannot find effective representation. No

matter how much money I spend. And I've spent hundreds of thousands of dollars on attorneys. Hundreds.

Judge Joannides: And do you have a tape of Mr. Osterman's comments to you that he did – he won't take the case because it would affect Mr…

Mr. Haeg: He wouldn't – he wouldn't use the arguments. He took the case…

Judge Joannides: No but that he wouldn't use the arguments because he didn't want to impact …

Mr. Haeg: Correct…

Judge Joannides: …their livelihood? Then you have that one tape?

Mr. Haeg: Yep.

Judge Joannides: Just encourage you to stay focused a little on the issue.

Mr. Haeg: Ok -um- -uh- Mr. Dolifka I've got some -uh- basically excerpts out of conversations and I just am going to -uh- read through them. And I just like you to -uh- to either agree or disagree that this is something you said or – or possibly said. -Um- 'Cole giving the State and interview -um- was malpractice' and that – that has to do with that we didn't get anything for it and they used it against us but anyway that's just one excerpt. Is that something you could have said?

Mr. Dolifka: Well I could have but if you're just goanna just pull out excerpts without the whole context what – what very well may have come in front of that would have been 'if this and this happened it would have been malpractice'. What I never understood and still don't nor do other lawyers on your plea agreement is how you were -you believed you were goanna have - plea to these lesser charges that was in place in theory. And the next thing we know you go and sing like a bird, tell everything you know, and all of a sudden you – the charges against you are just exponentially increased. What – what I – I don't know – I'm sure I said it if I'm on tape but if the question was you know depends on how it played out. I the way I interpreted reading and reading and reading over and over and over how you could have found yourself in that position where you went and told everything. When you – you're – the case was actually a very poor case until you – until you spoke. Every lawyer said that, Robinson said it, Osterman said it, that until you went to Scot Leaders and told all that you told there were a lot of holes in that case. My point I probably did say that but it would

have been in the context of how in the world did you go and tell all that you told and not have a plea agreement nailed down. Because over and over what was then said later is 'oh they can use all that they want'. What lawyer would have let you lay all of that out and get your – get you charges increased exponentially? So yeah I probably did say it. But it's – it's kind of unfair to just pull out a sentence out without…

Mr. Haeg: I – I understand I just -um- I'm not a lawyer I – I now understand why it's you know – I have the entire conversations I was just going to try to you know as everybody knows I only have a limited amount of time. -um- I will just go through just some of them that I marked here. Do you remember saying that 'never has – never has there been a case in history that cries out more for outside intervention because you've been to all the major players'? Is – I mean…

Mr. Dolifka: Oh I'm sure I said that.

Mr. Haeg: Ok.

Mr. Dolifka: And I believe that.

Mr. Haeg: And that's because we…

Mr. Dolifka: Of all the places you've been.

Mr. Haeg: Jim McCommas?

Mr. Dolifka: Yeah.

Mr. Haeg: Chuck Robinson? Brent Cole? Even Kevin Fitzgerald…

Mr. Dolifka: Yeah.

Mr. Haeg: was part of it with my codefendant. Ok -um- do you remember saying something 'sold your soul for a deal and then the State and Cole sold you down the river'. Is that?

Mr. Dolifka: I – I could have very well said that…

Mr. Haeg: Ok.

Mr. Dolifka: Cause your – your whole plea thing just boggles my mind to this day.

Mr. Haeg: Ok 'other than just an outright payoff of a judge or jury it is hard to imagine anyone being sold down the river more'?

Mr. Dolifka: I don't remember saying that but I – I might of.

Mr. Haeg: Ok -um- -uh-…

Mr. Dolifka: That could have been in the context of – of all of the – the little travels… I mean your stuff even with the proprieties that went on I'm so glad you got a new judge on this because one of the things that smelled so bad to – to lay people was all the stuff that you filed for new judge about. The judge riding around with the Trooper and commandeering vehicles. I mean that smelled to high heaven. Especially to non-lawyers. That was one of the things he community was most outraged was just…

Mr. Haeg: Well and not only that – that when I went to the single investigator of judicial conduct and I can prove she lied. I mean that and when she told me – well I guess I'm testifying but… Is the fact that she investigated and because she's been the only judicial investigator for 21 years and – and you reading the stuff should know she lied. Was that a concern?

Mr. Dolifka: Of course. I mean it was and it was… Look at the people that are here today. It was those things that became so troubling. Not only in your case but other cases down there. You would see this stuff and you would just go 'my god that cannot be…

Mr. Haeg: Ok.

Mr. Dolifka:…true'…

Mr. Haeg: Ok. Well let me – I'll just 'your end of the bargain was not met. It was heads I win tails you loose. You didn't even have to be a lawyer or you don't even have to be a lawyer to know inherently there's something wrong with that'.

Mr. Dolifka: I – I'm sure I said that and I still feel that way. That how you – when you went and told everything that you did thinking you had an agreement. Turns out you didn't have agreement and your charges got exponentially increased. That statement I made right there. I absolutely said it. I'm sure and I agree with it today.

Mr. Haeg: Ok if I told – 'if you told a thousand ordinary citizens that for a deal you went in an spilled your guts and then never got the deal they would find that appalling. That's what smelled so bad to me'?

Mr. Dolifka: I'm sure I said that.

Mr. Haeg: -Um- 'the fruit of the poisonous tree started with the warrants which claimed all the evidence was found where you guide. The dominos should have all went down right there. That's what I thought Chuck would latch onto'?

Mr. Dolifka: Well yeah when – when I read your case and the lay people here read your case it appears that the whole the whole foundational things built on a lie. Unless we're all misreading it - it looks like it - it the whole deal about section this and all the affidavits. Everything had it. And then the hearing while it wasn't that at all it – when I used it… And that was kind of odd thing to use as fruit of the poisonous tree. We all had that. For us old coots that was a common theory in law school. And once you poison something it's like a house without a foundation. So all the good folks that are here today that we would talk about – I think almost everyone goes back to that original seminal issue that how the hell did this case go on when it appears to lay people and to me a lot of it was built on a lie in a sworn affidavit?

Judge Joannides: And Mr. Haeg just want to tell you that this kind of information (undecipherable) is the kind of information that generally goes to PCR judge about the legal defects in the case.

Mr. Haeg: -Um- 'everyone in your case has had a political price to pay if they did right by you. If they did right by you the DA would take it out on them and other cases. Then you got the case of your lawyer and the other lawyer got hurt. You had a series of situations which everyone was doing things to protect everyone rather than you because there was a price to pay'?

Mr. Dolifka: I agree with that.

Mr. Haeg: Ok. -Um- 'your case has shades of Selma in the 60's. Where judges, sheriffs, and even assigned lawyers were all in cahoots together'?

Mr. Dolifka: Well I don't remember that but as a southerner I probably said that.

Mr. Haeg: Ok. 'Troopers at least didn't try to kill you like they did one of my other clients'?

Mr. Dolifka: I don't remember saying that but that doesn't mean I didn't.

Mr. Haeg: Ok. -Um- 'the attorneys of this state have banded together against you. Under no circumstances get another attorney in Alaska. Contact firms'... and I think you said Washington. 'Tell them that you have the goods on two law firms'?

Mr. Dolifka: Well I – I could have said that.

Mr. Haeg: Ok this actually is and I'm getting close to the end here -um- at least this. Did we come to you fairly recently to try work out how to pay off are credit card debts and have a meeting with you with me and my wife and Tom Stepnosky?

Mr. Dolifka: Not fairly. I haven't talked to you for a long - long time.

Mr. Haeg: Ok well was -uh- I when I say fairly recently 8-19-08 oh yeah 2 years ago. But anyway let me just see if you remember this. 'The reason why you have still not resolved your legal problems is corruption. I can tell you exactly what happened. In the early stages you were one of the first that I realized it was corruption. At first I thought it was ineptness. Over time in this journey with you here's a corrupt case here's a corrupt case and here's a corrupt case. Now here's what happens when they come up on appeal. You have a Supreme Court sitting there looking at a pile of dung and if they right by you and reveal you know you have the attorneys going down, you have the magistrates going down, you have the troopers going down. You are one small part of the pocket. A lot of lawyers would agree with me. The reason is all gummed up at the top. You're just one of many. It's absolute unadulterated self-bred corruption'?

Mr. Dolifka: If that was in that era down there I – I probably did say that. I – I was – I had got to such a point of cynicism that I – I was ready to throw in the towel.

Mr. Haeg: Ok and then you...

Mr. Dolifka: But I...

Mr. Haeg: ...you gone on 'I talked to Judge Hanson about this. I talked to Judge Hanson for 3 hours about your case. I lean on him all the time. He now sees it. The system crushes them. I don't have any question now because I couldn't figure out why your appeal could be over and done with. I walked over here and lawyer A says my god they're violating every appeal rule ever. How can it be like this?'

Mr. Dolifka: Well I probably…

Mr. Haeg: Ok. I mean this is you know then you said 'I absolutely have no faith left in the system'?

Mr. Dolifka: During that time that I probably would have said that. My faith in the system has somewhat been renewed with …

Mr. Haeg: Ok.

Mr. Dolifka: I would – I do want to add to that. That I'm – I'm not as cynical as I was. The last 2 years in Kenai has improved immeasurably. With new judges and new head DA everything is better. But when – one of the things… everything that you've quoted me as saying you have to remember I was very down. It was a very tough time in our community for me. I was – my wife and I almost on a daily basis was listening to people's struggles. Some of them worse than yours. And we would sit there and listen and listen and listen. So I don't doubt that I said those things but if you don't put it in the context the times we lived -um- …

Mr. Haeg: -Um- and I you know I am kind of ambushing you here and I you know I apologize for that but it's something that needs to come out. Even if it's goanna affect our friendship or relationship. - but … 'the Supreme Court frankly does not know what to do because of the incredible corruption'?

Mr. Dolifka: Well I – I again I don't know the date that that was said but you have to remember the whole State was in turmoil. Look – look at Senator Stevens's case. I mean go back look at all of the State legislators that were – I – I don't know when I may have said that. But really though the whole State for a 3 or 4 year period when all of our legislators and - and all of that was going on I mean that – that would have not – I mean that would have been a common statement made by most people. So you know I don't – I …

Mr. Haeg: Yeah.

Mr. Dolifka:…probably did s… If you got a tape of it I obviously…

Mr. Haeg: Yeah.

Mr. Dolifka: … did say it.

Mr. Haeg: And you know I'll just validate kind of. 'At some point 2 years from now or whenever I hope you can get on with a normal life'. And do you know the date you said that was 8-19-08? 'Two years from now I hope you can get on with a normal life'. It's now over 2 years.

Mr. Dolifka: I probably did say it.

Mr. Haeg: Ok and that ok 'as these indictments have hit all these different levels' and I think we are talking about the – the VECO corruption thing 'all we have left is to indict a judge'. Is that – I mean basically did you think the corruption was – or that statement led me to believe that you thought the corruption was so bad that that even judges were into stuff that they could be indicted for.

Mr. Dolifka: Well I don't know that I – I know of a judge. I think probably what I said that was at the rate we're going all - all that we had left. We had indicted senators, legislators, the – I mean Uncle Teddy had been indicted. I probably said something like "all we have left and the whole thing will implode is when judges start going down". I don't know of a – I'm not saying that I knew of a corrupt judge.

Mr. Haeg: Ok. -Um- and I actually think that's about it for Mr. Dolifka. And - and like I said I could just like make a statement that -um- what I've done here today is something that he's probably been fearing for a long time and I…

Mr. Dolifka: I haven't feared it.

Mr. Haeg: Well…

Mr. Dolifka: I knew – I knew it was coming and I have no fear. If I tell the truth I have no fear.

Mr. Haeg: Ok. Well thanks.

Mr. Dolifka: Ok.

Conclusion

In his deposition Cole admitted he had two conflicts of interest that were in direct conflict with Haeg's. (1) That if he advocated for Haeg by filing motions to

suppress, because of Haeg's statement use, because of the evidence falsification, to get the airplane back, or enforce the plea agreement he would not be able to make deals with the state in the future. (2) That he had a "personal" interest in making sure the Wolf Control Program was not harmed that was in conflict with his professional duty to Haeg. Yet he never informed Haeg of these conflicts either before Haeg hired him or while he represented Haeg. As Cole failed to take numerous actions because of his conflict of interest this requires Haeg's conviction to be overturned. See caselaw above and in Haeg's original PCR memorandum.

In his deposition Robinson stated he had no duty to use Cole's ineffective assistance (a violation of Haeg's constitutional rights) to defend Haeg – proving Haeg's claim that Robinson placed Cole's interest in not being found guilty of ineffective assistance (the equivalent of malpractice) above Haeg's interest. Yet he never informed Haeg of this conflict of interest. As Robinson failed to take numerous actions because of his conflict of interest this requires Haeg's conviction to be overturned. See caselaw above and in Haeg's original PCR memorandum.

Haeg has tape recordings of his third attorney, Mark Osterman, first stating that the "sellout" of Haeg by Cole and Robinson "was the biggest sellout of a client I have ever seen" and that "you didn't know they were goanna load the dang dice so the state would always win." Yet just before he was to file a brief on Haeg's behalf Osterman on tape stated that he could use nothing of the sellout for

Haeg's defense because he (Osterman) could do nothing that would affect Cole or Robinson – proving Osterman himself had fallen into the trap of protecting Cole and Robinson at Haeg's expense. As Osterman failed to take numerous actions because of his conflict of interest this requires Haeg's conviction to be overturned. See caselaw above and in Haeg's original PCR memorandum.

Even Dale Dolifka, Haeg's business attorney, recognized the conflicts of interest after he reviewed the filings in Haeg's case, testifying under oath that he agreed Haeg ended up with "a series of situations which everyone was doing things to protect everyone than you [Haeg] because there was a price to pay" and that,

> "your [Haeg's] case has shades of Selma in the 60's – where judges, sheriffs, and even assigned lawyers were all in cahoots together."

There is caselaw that this situation can and does occur – with a defendant's counsel turning against his or her own client - becoming a "second prosecutor", and making a situation in which the client "would have been better off to have been merely denied counsel."

> "Governments collaboration with defendant's attorney during investigation and prosecution violated defendants Fifth and Sixth Amendment right and required dismissal..." United States v. Marshank, 777 F. Supp. 1507 (N.D. 1991)

> "[Counsel] so abandoned his overarching duty to advocate the defendant's cause that the state proceedings were almost totally non-adversarial. [T]he record supports the district court's finding that defense counsel turned against [defendant], and that this conflict in loyalty unquestionably affected his representation. Such an attorney, like unwanted counsel, 'represents' the defendant only through a tenuous and unacceptable legal fiction. A defense attorney who

abandons his duty of loyalty to his client and effectively joins the state in an effort to attain a conviction... suffers from an obvious conflict of interest. In fact, an attorney who is burdened by a conflict between his client's interests and his own sympathies to the prosecution's position is considerably worse than an attorney with loyalty to other defendants, because the interests of the state and the defendant are necessarily in opposition. The performance of [defendant's] counsel was constitutionally unreasonable, but more importantly, the evidence presented overwhelmingly established that his attorney abandoned the required duty of loyalty to his client. [Defendant's] attorney did not simply make poor strategic choices; he acted with reckless disregard for his clients best interests and, at times, apparently with the intention to weaken his client's case. Prejudice, whether necessary or not, is established under any applicable standard." Osborn v. Shillinger, 861 F.2d 612 (10th Cir. 1988)

"Prejudice presumed because counsel did not serve as advocate – such that he was a 'second prosecutor' and defendant would have been 'better off to have been merely denied counsel.'" Rickman v. Bell, 131 F.3d 1150 (6th Cir. 1997)

The depositions of Cole and Robinson (along with the affidavit of Osterman) prove that Haeg's attorneys have now committed blatant and proven perjury throughout their sworn testimony in a last ditch effort to justify the court dismissing just about the last claim the court has left Haeg with – ineffective assistance of counsel. This lying under oath to cover up how they represented Haeg can only mean one thing – that they gave Haeg deficient representation and that this deficient representation harmed Haeg, meeting both Risher criteria - meaning that they are also guilty of malpractice. See caselaw above.

Summary of just some of the deficient attorney conduct, prosecutorial misconduct, judicial corruption, and how this harmed Haeg. For a complete list of instances, and how each meets both Risher standards of deficient

conduct and resulting harm, please refer to Haeg's original PCR application, memorandum, affidavits, and exhibits

A. Cole has testified that it was not a legal defense that Haeg was told by the state officials running the Wolf Control Program that if was in the best interest of the state for Haeg to take wolves outside the open area but claim they had been taken inside the open area - exactly as the state then charged Haeg with doing. Haeg has recordings that Cole, while he represented Haeg, stated this was not a legal defense. See PCR exhibits. Yet caselaw above proves this was a legal defense. Even after Cole told Haeg this was not a legal defense Haeg felt so strongly about it that he wrote a letter to the court explaining in detail that the state told and induced him to take the exact actions they then prosecuted him for. Cole testified that he remembers Haeg writing this letter and remembers submitting this letter to the court on Haeg's behalf. See PCR exhibits. Yet now all that remains in the court record is the cover sheet from Cole proving Haeg's letter had been submitted – Haeg's letter is gone from the official court record and all that remains is the proof it had been submitted. See pre trial court record. Robinson testified the reason he never brought up that the state told and induced Haeg to do what they charged him with doing because this would be like Haeg was admitting to taking wolves outside the open area. Yet then he had Haeg himself take the stand and admit he knowingly took wolves outside the open area and claim they were taken inside the open area – and skipped the part that the state told him he had to do this. Then Robinson never explained the state had falsified the evidence of taking

wolves to Haeg's guide area to specifically justify charging and convicting Haeg of guide violations. The failure of Haeg's counsel to litigate what the state had told Haeg, combined with them not litigating that the state falsified the evidence to Haeg's guide area changed the whole case from Haeg was a knight in shining armor saving the Wolf Control Program at the state's request to Haeg was a rogue guide out to feather his own nest – absolutely incredible harm to Haeg. This proves everyone was working together against Haeg to knowingly cover up the state's misconduct in telling and inducing Haeg to be their knight in shining armor. And the recordings, testimony, and exhibits prove that had it not been for his attorneys Haeg himself would have done far more then just write and submit a letter to raise the defense of entrapment. And the court record being tampered with to remove even Haeg's letter, evidencing this defense, is proof the court itself was involved in rigging Haeg's trial – requiring the overturning of Haeg's conviction on its own.

B. Cole testified under oath that Haeg had been given transactional immunity for his statement. This means Haeg could never have been prosecuted (See Blacks Law definition of transactional immunity) – yet not only was Haeg prosecuted he was convicted and sentenced to the complete destruction of the guiding business he built over his lifetime. This in and of itself is incomprehensibly deficient attorney performance that resulted in incomprehensible harm to Haeg. Compounding this already unbelievable injustice is that after Cole let the state prosecute Haeg in violation of the law he let the state use Haeg's immunized

statement in innumerable ways to do so – with the state specifically quoting Haeg's statement in the charging informations and releasing it to the media where it was published for the world to read. Then Robinson tries to cover up this sellout by bringing it up in a reply brief where the court is not allowed to act on it (see caselaw above) instead of the required motion to suppress – so the state could just remove the actual quotes yet still prosecute Haeg while using Haeg's statement in innumerable other ways not so obvious (See Gonzalez and North above) including presenting Haeg's map against Haeg at trial. And the proof Robinson knew how critically important it was to cover all this up before it got out is, in addition sending the protest to Leaders office by courier and fax, the fact Robinson even tracked prosecutor Leaders down at a hotel and faxed him "Please deliver to Scott Leaders, attending the District Attorney Conference and guest at your hotel ASAP" along with a copy of the affidavit Robinson had Haeg sign stating Leaders should not use Haeg's statement in the charging information. See attachment. Leaders must believe the courts are very corrupt indeed for him to not remove the specific use of Haeg's statement even after being informed in so many ways. More proof of Robinson's sellout is the fact that Haeg, after he was convicted, asked Robinson to include in Haeg's appeal the fact the state used his statement in the charging information (see attachment), Robinson never did so, and then when asked why this was not a point of Haeg's appeal, Robinson testified that it was – when Robinson's points of appeal prove this is false. See Robinson's points of appeal. Irrefutable proof Leaders was part of this conspiracy, knew he should not

be using Haeg's statement, that he is also committing perjury to cover up, and that Robinson committed ineffective assistance of counsel: Haeg filed a Bar complaint that Leaders had used Haeg's statement in the information charging Haeg. Leaders, in a verified response Leaders testified that he never used Haeg's statement in the charging informations and the proof of this was that Haeg's counsel never filed a motion to suppress. See Haeg's PCR exhibits. Yet the charging informations and the numerous other ways Leaders was informed he was using Haeg's statement (by courier, by fax to his office, and even by fax to the hotel where he was attending a conference – see attachment and Robinson's pre trial reply) prove Leaders was positively informed he had used Haeg's statement – proving in turn that he knowingly falsified his later testimony that he had not used Haeg's statement in the charging informations. And the harm proven by all this is as soon as Haeg's statement was used his prosecution was invalid (Not even counting that Haeg could not be prosecuted at all after being given immunity). See Gonzalez, North, and Kastigar above. All this proves everyone was working together to knowing violate Haeg's right against self-incrimination - even Judge Murphy - as Robison had informed her in his reply brief, yet she did nothing to stop this constitutional violation, as was required. And the recordings, testimony, and exhibits prove that had it not been for his attorneys Haeg would have raised the defense of self-incrimination by himself.

C. Cole and Robinson testified that it didn't matter that the state falsified all the evidence locations to Haeg's guide area on all the affidavits used to seize

evidence and Haeg's property (see Haeg's PCR exhibits); that Haeg told the state about the falsified evidence locations during his immunized statement (see Haeg's PCR exhibits); the state continued to falsify the evidence locations during trial (see court record); and - only after the state knew its false testimony had been discovered at trial - admitted it had knowingly used false evidence at trial (see court record). And the proof that this known falsification was effective and material in harming Haeg is the fact that Judge Murphy specifically cited the false evidence locations as the reason for Haeg's severe sentence (see court record). And if the false evidence locations were effective on Judge Murphy (who must document her reasons for action in Haeg's case) it is clear the false evidence locations were effective and material with Haeg's jury (who are not allowed to document their reasons for action in Haeg's case). And the overwhelming caselaw above holds that any knowing use of false material evidence by the state is a violation of due process that renders a conviction invalid. Period. And since it was it was proven the state had knowingly falsified the same evidence as was used on the affidavits seizing the evidence and property, this violates the right against unreasonable searches and seizures and means the evidence and property cannot be used and must be returned. All this proves everyone was working together to knowing violate Haeg's right to due process and against unreasonable searches and seizures. And the recordings, testimony, and exhibits prove that had it not been for his attorneys Haeg would have raised these defenses by himself.

D. Cole and Robinson testified that Haeg had no right to get credit for the year of guiding that he state promised Haeg he would get credit for. Yet all caselaw above holds that Haeg's agreement, that he had given so much for, was like a commercial contract backed up by the United States and Alaska constitutions. All this proves everyone was working together to knowingly violate Haeg's due process right to credit for giving up a whole year of livelihood. And the recordings, testimony, and exhibits prove that had it not been for his attorneys Haeg would have raised this due process defense by himself.

E. Cole has testified that Haeg could not legally obtain the return of the plane that was the primary means to provide a livelihood and Robinson has testified that even though due process was not followed it was legal for the state to keep the plane. Yet all the caselaw above holds the state must follow due process or a seizure violates the constitutional right against unreasonable searches and seizures and is illegal. All this proves everyone was working together to knowingly violate Haeg's due process right before his primary means of providing a livelihood could be taken away before he was charged, convicted or sentenced. And the recordings, testimony, and exhibits prove that had it not been for his attorneys Haeg would have raised this due process defense by himself.

F. Haeg's attorneys never protested that Judge Murphy, while she presided over Haeg's case, was being chauffeured by Trooper Gibbens - the main investigator and witness against Haeg – even though Haeg asked if this was allowed. Yet Robinson testified that this gave the appearance of bias – which is

not allowed. Further, Robins testified that if Judge Murphy and Trooper Gibbens lied during the investigation into the chauffeuring this would prove actual bias – and there is irrefutable evidence that both Judge Murphy and Trooper Gibbens lied during the investigation into the chauffeuring and that they both conspired with judicial conduct investigator Marla Greenstein to boot. See Haeg's PCR exhibits and supplements. All this proves everyone was working together to knowingly violate Haeg's due process right to an unbiased judge. And the recordings, testimony, and exhibits prove that had it not been for his attorneys Haeg would have raised this due process defense by himself.

G. Robinson testified his "tactic" that the court did not have subject matter jurisdiction is still valid and that the U.S. Supreme court case Albrecht supports it. Yet West's Encyclopedia of Law states: "In state court systems, statutes that create different courts generally set boundaries on their subject matter jurisdiction"; the Alaska Constitution states "The jurisdiction of courts shall be prescribed by law"; and Alaska Statute 22.15.060 states that "the district court has jurisdiction of misdemeanors". In other words it is irrefutable the district court had subject matter jurisdiction over Haeg since he was charged with misdemeanors in district court. And Albrecht specifically states that the court positively had subject matter jurisdiction. And Robinson has testified Judge Murphy, before trial, allowed the state to "cure" the subject matter jurisdiction defect – yet he still testifies this was Haeg's only issue for appeal after trial. The evidence that Robinson's "lack of subject matter jurisdiction" is a decoy to hide the real errors in

Haeg's case, and that he is now committing perjury over and over to support it after Haeg figured out his deception, is overwhelming. While representing Haeg he even stated that for this defense to work Haeg must hide, and not bring up, any of the other errors in Haeg's case – because this would "admit" to the court it had subject matter jurisdiction. See exhibits. Robinson is corrupt to the very core.

The enormity and growing size of the cover up being attempted is mind-boggling. Haeg and a growing number of the public continue to watch in horror as attorney after attorney and judge after judge try to cover up the impossible. Calmly, inexorably, and with complete disregard to personal consequences Haeg, along with many others seriously concerned, will continue to very carefully document the now rapidly expanding corruption, conspiracy, and cover up in his case and, when no more are willing, or forced, to "drink the loyalty Kool-Aid", will fly to Washington, DC and not leave until there is a federal prosecution of everyone involved.

Haeg will prevail, no matter how many judges, prosecutors, troopers, or defense attorneys join the conspiracy to cover up, not because he is strong or clever – it is because the axe he swings is named United States Constitution and as the forces against it grow it will burn brighter and brighter, calling all those sworn to protect it to its aid. And while a criminal conspiracy of judges, prosecutors, troopers, and defense attorneys is powerful indeed, our Constitution and those sworn to uphold mightier yet and will prevail no matter what. Our Constitution and the innumerable people who have died for it demand nothing less.

I declare under penalty of perjury the forgoing is true and correct. Executed on March 19, 2012. A notary public or other official empowered to administer oaths is unavailable and thus I am certifying this document in accordance with AS 09.63.020. In addition I would like to certify that copies of many of the documents and recordings proving the corruption in Haeg's case are located at: www.alaskastateofcorruption.com

David S. Haeg
PO Box 123
Soldotna, Alaska 99669
(907) 262-9249 and 262-8867 fax
haeg@alaska.net

Certificate of Service: I certify that on March 19, 2012 a copy of the forgoing was served by mail to the following parties: Peterson, Judge Gleason, Judge Joannides, U.S. Department of Justice, FBI, and media.
By:

LAW OFFICES OF

MARSTON & COLE, P.C.

ERIN B. MARSTON
BRENT R. COLE

745 WEST FOURTH AVENUE, SUITE 502
ANCHORAGE, ALASKA 99501-2136

TELEPHONE (907) 277-8001
TELECOPIER (907) 277-8002
marston@alaska.net
Direct Dial: (907) 277-8004

October 12, 2011

Colton Seale
Supervisory Special Agent
Federal Bureau of Investigation
101 E. 6th Avenue
Anchorage, AK 99501

Re: David S. Haeg Complaint
Our File No. 1037.001

Dear Agent Seale:

Per your request, I am forwarding copies of the documents identified below for your review.

- Administrative Appeal from the Alaska Bar Association Third Judicial District at Anchorage, Appellee's Brief
- Before the Alaska Bar Association, Fee Review Committee, Decision and Award

If you have any questions regarding this transmittal, please do not hesitate to contact me.

Very truly yours,

MARSTON & COLE, P.C.

Christine M. Watne
Paralegal

Enclosures

LAW OFFICES OF

MARSTON & COLE, P.C.

ERIN B. MARSTON
BRENT R. COLE

745 WEST FOURTH AVENUE, SUITE 502
ANCHORAGE, ALASKA 99501-2136

TELEPHONE (907) 277-8001
TELECOPIER (907) 277-8002

October 12, 2011

Colton Seale
Supervisory Special Agent
Federal Bureau of Investigation
101 E. 6th Avenue
Anchorage, AK 99501

Re: David S. Haeg Complaint
Our File No. 1037.001

Dear Agent Seale:

Today I am forwarding copies of the documents identified below for your review.

- Memorandum and Decision Order signed by Judge Harold Brown on June 15, 2007.

If you have any questions regarding this transmittal, please do not hesitate to contact me.

Very truly yours,

MARSTON & COLE, P.C.

Christine M. Watne
Paralegal

Enclosure

LAW OFFICES OF
MARSTON & COLE, P.C.
745 WEST FOURTH AVENUE, SUITE 502
ANCHORAGE, ALASKA 99501-2136
TELEPHONE (907) 277-8001
TELECOPIER (907) 277-8002

ERIN B. MARSTON
BRENT R. COLE
COLLEEN J. MOORE

April 9, 2004

VIA FACSIMILE

Mr. David Haeg
Dave Haeg's Alaskan Hunts
P.O. Box 123
Soldotna, Alaska 99669

Re: Criminal Investigation
Our File No.: 102.484

Dear Dave:

You have requested that Marston & Cole, P.C. ("Firm") represent you in connection with the handling of disputes and claims arising out of a present criminal investigation by the State of Alaska. This letter confirms terms and conditions upon which this Firm is willing to undertake the foregoing representation.

1. Subject of Representation. You have asked this Firm to represent you in the handling of the above-captioned matter. This Firm agrees to represent you during the course of this investigation, any criminal litigation and through any criminal sentencing proceedings. This representation does not include representing you on any appeals which may arise out of this litigation.

2. Potential Conflicts of Interest. We are not aware of any potential conflicts of interest that the Firm may have with regard to this representation. As I indicated in conversations, I advise Mr. Fitzgerald be retained to represent Mr. Tony Zellers to avoid any possible ethical conflicts. While this Firm does not and has not represented the State of Alaska, this firm is occasionally retained by the State of Alaska to act as hearing officers in administrative appeals and to represent state employees in civil litigation. Neither of these appointments will affect your representation in this matter.

3. Professional Undertaking. Brent R. Cole will have primary responsibility for the legal representation undertaken on your behalf. Other attorneys and legal assistants in the office may be used in this matter in the best exercise of our professional judgment. ***We will***

endeavor to assist you in a professional manner and to the best of our abilities, but we cannot guarantee the outcome of any given matter.

4. Fee. Mr. Cole's hourly rate is $200.00 per hour for his services rendered in this matter and the Firm will bill you on a monthly basis. Occasionally Mr. Marston and/or Ms. Moore are required to assist in these matters and their hourly rate is also $200.00 per hour. Whenever possible, work that can be conducted more efficiently by a paralegal or an associate attorney for which we will bill at a rate of $100.00 per hour.

We take into account many factors in charging for services rendered. The principal factor is usually our schedule of hourly rates in effect at the time the services are rendered. Our hourly rates for attorneys and other staff members are based on years of experience and level of professional attainment. In setting fees, we also consider the uniqueness of the services rendered, the result obtained, the time limitation imposed by the client or the circumstances, and whether or not the work precludes other work which we otherwise would have done. Normally the attorney with primary responsibility for your representation will review all statements before they are rendered to ensure that the charges are appropriate.

You have chosen to pay for this firm's legal services on an hourly basis and not on a flat fee basis. If you so request, a flat fee for all services rendered in this case will be quoted after reviewing the police reports and discussing the matter with you. ***There will be a minimum fee of $5,000.00.*** I have advised that if this criminal matter is not resolved short of trial, this case could cost as much as $25,000.00, depending on the number of days in trial. This firm charges a flat fee of $1,500.00 a day in trial.

5. Expenses. Our agreement will require you to pay, ***in addition*** to our hourly rates, for any expenses incurred in our representation of you in this matter. The following is a breakdown of the types of expenses that can be incurred in matters such as this and how you will be charged.

1) Copy Costs:	$.10 per copy
2) Facsimile Costs:	$.25 per page
3) Postage:	Actual cost to the Firm
4) Long Distance telephone:	Actual cost to the Firm
5) Courier Costs:	Actual cost to the Firm
6) Discovery Costs:	Actual cost to the Firm
7) Investigation Costs:	Actual cost to the Firm
8) Legal Research on Data Base:	Actual cost to the Firm

9) Tapes:	$1.00 per tape
10) Secretarial Overtime:	$35.00/hour
11) Transportation Costs:	Actual cost to the Firm

Although this is not an all-inclusive list of possible expenses that can be incurred, it should provide you with an idea of the possible expenses and amounts that may arise in the course of our representation of you.

6. Retainers. In certain matters, we require payment before rendering service. We may ask for a retainer when we are about to start a trial or similar large undertaking, or when a client is new and has no payment history with us. Also, when we foresee substantial disbursements on a particular matter, we may ask you to pay them directly or to fund them in advance. ***In this case we are requiring a retainer of $2000.00, and we reserve the right to require an additional retainer in the future if necessary.***

7. Client's Duty to Be Truthful. In nearly all circumstances, the communications between an attorney and his client are confidential and cannot be disclosed to another party without the client's consent. This protection is available in order to encourage clients to be truthful and forthright with their counsel to ensure that appropriate legal advise is given in any one circumstance. ***Failure to be truthful or forthright with counsel for this Firm constitutes a grounds for terminating this Firm's agreement to represent you.***

8. Billings. Our statements generally will be prepared and mailed within a few days after the end of any month in which services are rendered and disbursements are made. ***Bill amounts left unpaid for more than thirty (30) days will accrue interest at a rate of ten percent (10%) annually.***

You may also be interested to know that we accept payments and retainers by MasterCard and Visa charge cards. To make a payment by charge card, please fill out the form at the bottom of your bill and return it to us. We will credit your account for the amount you indicate on the form, and send you a record of the transaction.

9. Termination. You will have the right to terminate our representation at any time. We will have the same right, subject to our obligation to give you reasonable notice to arrange alternative representation and, where required, to obtain permission of the judge before whom a litigation matter is pending. ***Failure to pay bills on a timely basis constitutes grounds for terminating our agreement to represent you.***

10. Closing Files. Some of the discovery we receive in this matter may consist of audio and video tape recordings. If you would like to keep these items or any documents from your file, please notify us within twenty (20) working days from the completion of your case and we will be happy to accommodate you; otherwise, any unclaimed audio and video tape recordings will be disposed of.

If you are willing to consent to our representation of you based on the conditions stated above, will you please so indicate in the space provided below and return one copy of this letter to us. After reviewing the police reports and listening to any tape recorded proceedings, I will contact you and give you my candid analysis of your case.

I look forward to working with you on this matter, and if you have any questions, please feel free to contact me.

Very truly yours,

MARSTON & COLE, P.C.

Brent R. Cole

BRC/ee

CONSENT

I, David Haeg, consent to Marston & Cole, P.C.'s representation of me on the terms and conditions set forth in the foregoing letter.

DATED this 10th day of April 2004.

David Haeg

faxed 4-11-04

THIS FACSIMILE TRANSMISSION IS CONFIDENTIAL AND MAY BE PRIVILEGED AND IS INTENDED FOR THE USE OF THE ADDRESSEE ONLY. IF YOU ARE NOT THE ADDRESSEE (OR A PERSON RESPONSIBLE FOR DELIVERING THIS TRANSMISSION TO THE ADDRESSEE), DO NOT USE THIS TRANSMISSION IN ANY WAY, BUT PROMPTLY CONTACT THE SENDER BY TELEPHONE.

ROBINSON & ASSOCIATES
35401 Kenai Spur Highway
Soldotna, AK 99669
Telephone (907) 262-9164
Fax (907) 262-7034

TELECOPY COVER SHEET

PLEASE DELIVER THE FOLLOWING PAGES TO:

Name: District Attorney Scot Leaders

Telecopier Number: 907-754-2200 Date: 5-11-2005

Total Number Of Pages: 3 Including Cover Sheet

In Re Subject/File No.: D. Haeg

If you do not receive all the pages or if you have problems, please contact Laura or Chuck at above phone number.

Hard Copy To Follow By U.S. Mail: ____ Yes X No

Remarks: Please deliver to Scott Leaders attending the District Attorney Conference & guest at your hotel ASAP

IN THE DISTRICT COURT FOR THE STATE OF ALASKA

FOURTH JUDICIAL DISTRICT AT McGRATH

STATE OF ALASKA Plaintiff, vs. DAVID HAEG, Defendant.	))))) Case No.: 4MC-S04-024 Cr.))))

VRA CERTIFICATION
I certify that this document and its attachments do not contain (1) the name of a victim of a sexual offense listed in AS 12.61.140 or (2) a residence or business address or telephone number of a victim of or witness to any offense unless it is an address used to identify the place of the crime or it is an address or telephone number in a transcript of a court proceeding and disclosure of the information was ordered by the court.

AFFIDAVIT OF DAVID HAEG

STATE OF ALASKA)
)ss.
THIRD JUDICIAL DISTRICT)

DAVID HAEG, being first duly sworn, states:

1. I am defendant in the above caption case. I have personal knowledge of the matters stated in this affidavit.

2. From June 2004 to November 2004 I was engaged in plea negotiations with the State's prosecutor Mr. Leaders concerning the filing of state game charges against me.

3. The plea negotiations came to an end on November 8, 2004. The prosecutor, at the last minute, backed out of an agreement I thought was reached. The negotiations ended without a plea agreement between myself and the state. The prosecutor thereafter filed an amended information.

Robinson & Associates
35401 Kenai Spur Hwy
Soldotna, Alaska 99669
(907) 262-9164 Telefax (907) 262-7034

4. I appeared in court on November 9, 2004, for arraignment on the amended information that charges me with numerous violations of state game laws. I pleaded not guilty to all of the charges. The court scheduled a jury trial for me to stand trial on the charges.

5. During the plea negotiations, I gave statements to the police regarding accusations of game violations that are in the statements in support of three informations filed by the prosecutor in my case. These statements from the prosecutor are used to establish probable cause that I committed the crimes alleged in the informations. Without a plea agreement between me and the State these statements should not be used to establish cause to believe I committed any of the crimes charged.

FURTHER AFFIANT SAYETH NAUGHT.

DAVID HAEG

SUBSCRIBED AND SWORN to before me this 10th day of May, 2005.

Irene Robinson
Notary Public in and for Alaska
My Commission Expires: _____.

"OFFICIAL SEAL"
IRENE ROBINSON
NOTARY PUBLIC, STATE OF ALASKA
MY COMMISSION EXPIRES 1/31/09

Robinson & Associates
35401 Kenai Spur Hwy
Soldotna, Alaska 99669
(907) 262-9164 Telefax (907) 262-7034

haeg@alaska.net

From: "Chuck Robinson" <chuck@robinsonandassociates.net>
To: "Dave Haeg" <haeg@alaska.net>
Sent: Monday, October 17, 2005 10:01 AM
Subject: RE: Appeal Stuff

Thanks for your thoughts and research. I think Ex Parte Flowers hits the point precisely regarding jurisdiction. While leave of court is not necessary in Alaska for the filing of an information, Rule 9 requires that information to be valid must be supported by oath. This can only mean oath before a magistrate or judge. An oath of office, under U.S. constitutional cases is not sufficient under the Albrecht requirements.

From: Dave Haeg [mailto:haeg@alaska.net]
Sent: Monday, October 17, 2005 9:46 AM
To: Chuck Robinson
Subject: Appeal Stuff

Chuck,

Here is some more stuff about the appeal:

Important: I found a very obvious reference to exactly what we have been talking about in Rule 5 Alaska Rules of Criminal Procedures. Proceedings Before the Judge or Magistrate. Sections (a) and (b) deal primarily with how arrested persons are handled. Section (c) applies to my case as to what I am informed (informing and giving a copy of the complaint, any affidavits, told not required to make a statement, right to have a preliminary examination, etc. etc.). Section (d) however deals with Initial Determination of Probable Cause. (1) and (2) deals with those that are arrested without warrants while section (3) simply states "If probable cause is not shown, the judicial officer shall discharge the defendant". My question is if this would apply to anyone and everyone? If I read Rule 5 correctly it should. It would literally say that during a persons proceedings before a Magistrate there would be an initial determination of probable cause and if probable cause is not shows the judicial officer shall discharge the defendant. (I am quit certain that Leaders looking at this would say that only those who are arrested would be entitled to an initial determination of probable cause and only those arrested would be discharged if probable cause is not shown. But this is not how it is written.)

1. In chapter 8 of NC Defender Manual it states, "The petition is the official pleading in a juvenile case, and "like an indictment or warrant in a criminal case, confers jurisdiction on the court".

2. Also, almost everywhere, it states, "an indictment, fair upon its face, is sufficient to confer jurisdiction upon the court". How can an information, without any verification, written and not sworn to by the prosecutor, confer that same jurisdiction upon the court?

3. Justice Frankfurter's quote:

The reason for this separation of functions was expressed by Mr. Justice Frankfurter in a similar context.

"A democratic society, in which respect for the dignity of all men is central, naturally guards against the misuse of the law enforcement process. Zeal in tracking down crime is not in itself an assurance of soberness of judgment. Disinterestedness in law enforcement does not alone prevent disregard of cherished liberties. Experience has therefore counselled that safeguards must be provided against the dangers of the overzealous as well as the despotic. The awful instruments of the criminal law cannot be entrusted to a single functionary. The complicated process of criminal justice is therefore divided into different parts, responsibility for which is separately vested in the various participants upon whom the criminal law relies for its vindication." McNabb v. United States, 318 U.S. 332, 343 (1943).

4. Ex parte Flowers - #2. INDICTMENT AND INFORMATION — Preliminary Proceedings — Sufficiency of Affidavit. An information, based upon a sworn affidavit, or sworn testimony filed in the county court, charging the

commission of a misdemeanor, is sufficient to give such court jurisdiction of the subject-matter of such charge.

5. I also think it significant that leave of court is not needed in Alaska for an information to be filed. This shifts even greater responsibility tot he prosecutor to insure the information is sufficiently verified that jurisdiction will attach.

6. Many states require leave of court before an information is filed and that the court must be satisfied there is probable cause before doing so. (see Albrecht v. United States) http://caselaw.lp.findlaw.com/scripts/getcase.pl?court=US&vol=273&invol=1

7. Did Leaders file the information under his "official oath" which in some instances is sufficient to confer jurisdiction? If he didn't we need to point this out!

8. Also should we point out again the information uses much of my statement made in plea negotiations?

9. Should we also point out Leaders states he "has provided a sworn factual basis for the charges in the Second Amended Information" yet in fact he failed to do so? This reinforces the idea the information was not made on his "official oath".

Thanks.

Dave

Very Very Imporkt

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT KENAI

DAVID HAEG, Applicant, vs. STATE OF ALASKA, Respondent.	)	CASE NO. 3KN-10-1295 CI

NOTICE IN RESPONSE TO ORDER BY JUDGE MORAN

The March 12, 2012, Order Regarding Disqualification of Judge Bauman entered in this case pursuant to AS 22.20.020(c) by Judge Moran contains a limited issue remand on whether the undersigned feels he can be fair and impartial in light of the complaints Mr. Haeg has filed with the Alaska State Troopers and the Alaska Commission on Judicial Conduct. The Alaska State Troopers and the Alaska Commission on Judicial Conduct are empowered and authorized to investigate and act on the complaints of citizens, including those of David Haeg regarding the undersigned. I have not been arrested or charged by the Troopers, nor have I received any notification from the Judicial Conduct Commission as a result of Mr. Haeg's reports or complaints, nor do I live in fear of either. I have no personal animosity or problem with the authority of the Troopers or the Judicial Conduct Commission or the exercise by Mr. Haeg of his rights as a citizen. I feel I can be fair and impartial with regard to Mr. Haeg in this case, notwithstanding his filing of reports and complaints.

Dated this 14th day of March, 2012.

CERTIFICATION OF DISTRIBUTION
I certify that a copy of the foregoing was mailed to the following at their addresses of record:
Peterson, Haeg
3-14-12 Roberts
Date Clerk

Carl Bauman
SUPERIOR COURT JUDGE

01993

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IN THE COURT OF APPEALS FOR THE STATE OF ALASKA
(Attention Chief Judge Robert Coats)

DAVID HAEG,	)
	)
Applicant,	)
	)
v.	) POST-CONVICTION RELIEF
	) Case No. 3KN-10-01295CI
STATE OF ALASKA,	) (formerly 3HO-10-00064CI)
	)
Respondent.	)
	)

(Trial Case No. 4MC-04-00024CR)

The applicant's 2-13-12 motion, that an evidentiary hearing and an oral argument hearing be held on Judge Carl Bauman's refusal to disqualify himself for cause, is hereby ~~GRANTED~~ / DENIED.

Done at Anchorage, Alaska, this 8 day of March, 2012.

Superior Court Judge

FEB 13 2012

CERTIFICATION OF DISTRIBUTION
I certify that a copy of the foregoing was mailed/faxed/court box to the following at their addresses of record:
Haeg Peterson
Date: 3/12/12 Clerk: SM
Mailed: 3/13/12

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT KENAI

DAVID HAEG,	)	
	)	
Applicant,	)	
	)	
vs.	)	
	)	
STATE OF ALASKA,	)	
Respondent.	)	
	)	Case No. 3KN -10-1295 CI

ORDER REGARDING DISQUALIFICATION OF JUDGE BAUMAN

This matter was referred to the undersigned court by Chief Judge Robert G. Coats to review the decision of the Honorable Carl Bauman denying the motion to recuse himself for bias in the above referenced case.

Mr. Haeg alleges several reasons why he believes Judge Bauman is biased against him and should be disqualified from continuing to be the assigned judge in his case. Most of these allegations relate to Judge Bauman's decision to grant the State's motion to dismiss and his decision not to hold an oral argument on the motion. Mr. Haeg further alleges the fact he filed a complaint with the Alaska State Troopers and the Alaska Commission on Judicial Conduct claiming Judge Bauman falsified his pay affidavit justifies disqualifying Judge Bauman for cause.

The majority of the reasons cited by Mr. Haeg for disqualifying Judge Bauman have to do with the fact he is unhappy with Judge Bauman's denial of his motion for oral argument and because Judge Bauman ruled in

favor of the State on the State's motion to dismiss.[1] Adverse rulings by a judge against a party are insufficient to demonstrate bias requiring the disqualification of the assigned judge. The disqualification statutes were never intended to allow a dissatisfied litigant to oust a judge just because of an adverse ruling.[2] Moreover, a judge has the additional responsibility not to recuse himself due to the difficult nature of the proceedings and must avoid the appearance of shirking responsibility.[3]

Nothing in Judge Bauman's decision to grant the State's motion to dismiss reflects any bias towards Mr. Haeg. Judge Bauman's seventeen page order thoroughly discusses the legal reasons behind his decision. The fact this decision is adverse to Mr. Haeg does not show bias against Mr. Haeg. If Mr. Haeg believes Judge Bauman has erred in his decision, he can appeal that decision to the appropriate appellate court.

The rest of Mr. Haeg's claims of bias stem from the court denying his motion for oral argument and his belief Judge Bauman did not rule on that motion in a timely fashion. A review of the file reveals Mr. Haeg is confused about the procedural status of his request for oral argument. The State's motion to dismiss was filed on March 10, 2010. Mr. Haeg filed his opposition on March 30, 2010 and the State filed its reply on April 12, 2010. Judge Bauman was assigned to the case on December 8, 2010.

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[1] Judge Bauman did not dismiss the PCR altogether but gave Haeg additional time to develop evidence to support other viable claims for ineffective assistance of counsel.
[2] *DeNardo v. Corneloup,* 163 P.3d 956, 967 (Alaska 2007).
[3] *Alaska Fed'n for Cmty. Self-Reliance v. Alaska Public Util. Comm'n,* 879 P. 2d 1015, 1021 (Alaska 1994); *Feichtinger v. State,* 779 P.2d 344, 348 (Alaska Ct. App. 1989).

Neither party requested oral argument within five days of service of the responsive pleading as required under Civil Rule 77. Mr. Haeg did not submit his request for oral argument until January 10, 2011 - almost nine months after it was due. Because the time for requesting oral argument had expired, it was within the court's discretion to hold oral argument on the issues raised in the State's motion and Mr. Haeg's opposition. Moreover, it appears Mr. Haeg's request for a hearing was in the nature of a request for an evidentiary hearing rather than a request for oral argument. Mr. Haeg states in his motion for a hearing that he wants a hearing where "witness credibility can be determined will affect the fairness of this decision." Whether to hold an evidentiary hearing on issues presented in a motion to dismiss is discretionary with the court. The fact the court decided not to hold a hearing does not demonstrate bias.[4]

The remainder of Mr. Haeg's claim addresses the timeliness of Judge Bauman's decision. Mr. Haeg seems to be confused about when his motion for a hearing was ripe for decision. His motion for a hearing was filed on January 10, 2011. That motion also contained other claims for relief, including a request for a court appointed attorney and a motion to modify the judgment in the underlying criminal case. Mr. Haeg asked for a hearing on all of his motions, but also specifically requested the court not act on the State's motion to dismiss until after the court had ruled on his other outstanding motions, including his request for an attorney.

[4] *DeNardo*, 163 P.3d at 967.

Several other motions were filed regarding Haeg's request for appointed counsel. Ultimately, on May 27, 2011, the court issued an order staying the proceedings until the issue regarding appointment of an attorney was resolved. On June 15, 2011, Mr. Haeg withdrew his motion for an attorney. Judge Bauman held a status hearing regarding all outstanding motions on July 6, 2011. He informed the parties he would schedule oral argument on the outstanding motions if after further review he felt such a hearing was necessary. In August 3, 2011, Judge Bauman issued an order lifting the stay of proceedings and requested the State file a response to Mr. Haeg's request for oral argument. That response was received on August 26, 2011.[5] The court exercised its discretion not to hold oral argument by issuing its decision on January 3, 2012, well within the six month period for resolving the motion.

Mr. Haeg apparently disagrees with the timeliness of Judge Bauman's decision. Mr. Haeg filed a complaint against Judge Bauman with the Alaska State Troopers and the Alaska Commission on Judicial Conduct alleging Judge Bauman did not timely decide the motion to dismiss and therefore allegedly falsified his pay affidavit by claiming he did not have any matters under advisement over six months. Disqualification is not required simply because a party has brought a separate action against the judge in the judge's official capacity or based upon the judge's performance as long as

[5] The State also filed a motion to supplement its motion to dismiss, which Mr. Haeg opposed. It is uncertain whether the court granted the State's motion. In any case, the court's decision on this matter is completely within the court's discretion and would not indicate bias.

the judge believes he can be fair and impartial.[6] Judge Bauman did not specifically address this issue in his order denying disqualification.[7]

Therefore, this matter is remanded back to Judge Bauman on the limited issue of whether he feels he can be fair and impartial in light of the complaints Mr. Haeg has filed with the Alaska State Troopers and the Alaska Commission on Judicial Conduct.

The court specifically finds Mr. Haeg has not presented a demonstrable claim of bias regarding the other allegations in his motion to disqualify Judge Bauman.

THEREFORE, IT IS HERBY ORDERED that Mr. Haeg's motion to disqualify Judge Bauman is DENIED as to all claims except that claim regarding the filing of a complaint with the Alaska State Troopers and the Alaska Commission on Judicial Conduct. That allegation is hereby remanded back to Judge Bauman for further response.

DATED this 12th day of March, 2012 at Kenai, Alaska.

Anna M. Moran
Superior Court Judge

CERTIFICATION OF DISTRIBUTION
I certify that a copy of the foregoing was mailed/faxed/court box to the following at their addresses of record:
Haeg Peterson
Date: 3/12/12 Clerk: SM
Mailed: 3/13/12

[6] *DeNardo v. Maassen*, 200 P.3d 305, 311 (Alaska 2009).

[7] Judge Bauman stated "Mr. Haeg claims the undersigned has falsified pay affidavits. This PCR proceeding is not the appropriate forum for complaints about pay affidavits. Through documents provided with his January 23, 2012 Motion to Supplement, Mr. Haeg's concerns have been raised with the Alaska State Troopers and the Alaska Commission on Judicial Conduct."