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 non-opposed motion to continue oral arguments on the State's Second Motion to Dismiss Haeg's PCR Application,

IT IS HEREBY ORDERED that the state's non-opposed motion is GRANTED and oral arguments on the state's second motion to dismiss Haeg's PCR application is set for March 22, 2012, at 2:30 a.m./p.m. for one hour.

DONE at Kenai, Alaska, this 6th day of March, 2012.

Carl Bauman

Superior Court Judge Carl Bauman

MAR - 2 2012

CERTIFICATION OF DISTRIBUTION

I certify that a copy of the foregoing was mailed to the following at their addresses of record:

Haeg, Peterson

3-7-12 Roberts

Date Clerk

02000

D

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 NON-OPPOSED MOTION TO CONTINUE ORAL ARGUMENTS SET FOR MARCH 13, 2012

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 non-opposed motion to continue oral arguments set for March 13, 2012, at 3:00 p.m. The state is asking for the hearing to be continued as the Assistant Attorney General handling this matter is unavailable and will be out of state. This motion is non-opposed by Mr. Haeg.

The State is asking for the hearing to be rescheduled between the dates of March 19, 2012, and March 30, 2012. Mr. Haeg is not available on March 20-21, 2012. The state is generally available on those dates with the following exceptions: March 19, 2012, from 9:30 – 10:30, 2:00 – 3:00 and 4:00 – 5:30; March 21, 2012, from

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

2:00 - 3:00; and March 23, 2012, from 3:00 – 5:30. Both parties are available anytime the week of March 26, 2012.

DATED this 28th day of February, 2012, at Anchorage, Alaska.

MICHAEL C. GERAGHTY
ATTORNEY GENERAL

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

CERTIFICATION

I certify that on this date, correct copies of the foregoing, Affidavit, and Order were mailed to:

David Haeg

_____ 2/29/12
Tina Osgood Dated

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. I am unavailable to attend the scheduled hearing as I will be on leave on August 13, 2012 and out of state. This vacation was planned approximately six months ago.

4. The Office of Special Prosecutions received notice of the scheduled Oral Arguments on February 23, 2012. I did not see the notice prior to leaving work on Friday, February 24, 2012. I contacted Mr. Haeg via email regarding my unavailability upon reading the notice on Monday, February 27, 2012.

5. Mr. Haeg called me later in the afternoon and informed me that he does not oppose the state's motion. Mr. Haeg informed me that he is not available on March 20-21, 2012.

6. I am generally available from March 19, 2012 – March 30, 2012, but I am unavailable the following times:

- March 19, 2012 from 9:30 – 10:30 and from 2:00 – 3:00
- March 21, 2012 from 2:00 – 3:00
- March 23, 2012 from 3:00 – 5:30.

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

7. This motion is not being filed for the purpose of harassment or delay.

Further your affiant sayeth naught.

DATED at Anchorage, Alaska, this 28th day of February, 2012.

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

SUBSCRIBED AND SWORN to before me this 28 day of February, 2012.

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)

The applicant's 2-24-12 motion, for an extension of time, to March 19, 2012, in which to file a memorandum detailing the ineffectiveness of Cole and Robinson, is hereby GRANTED / ~~DENIED~~.

Done at Kenai, Alaska, this 24th day of February, 2012.

Carl Bauman

Superior Court Judge

CARL BAUMAN

SEAL OF THE TRIAL COURTS OF THE STATE OF ALASKA THIRD JUDICIAL DISTRICT

FEB 24 2012

I certify that a copy of the foregoing was
✓ mailed to Haeg / Petersen
___ placed in court box to ___
___ faxed to ___
___ scanned to ___
LC 2-27-12
Judicial Assistant Date

d

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)

2-24-12 UNOPPOSED MOTION FOR EXTENSION OF TIME (TO MARCH 19, 2012) IN WHICH TO FILE INEFFECTIVE ASSISTANCE MEMORANDUM

COMES NOW Applicant, David Haeg, and hereby files this unopposed motion for an extension of time in which to file an ineffective assistance memorandum.

Prior Proceedings

(1) On January 3, 2012 the court ordered Haeg, by February 29, 2012, to depose Cole and to file a memorandum detailing the ineffectiveness of both Cole and Robinson.

(2) On February 7, 2012 – after weeks of filings/requests by Cole and the state to quash Cole's subpoena, eliminate Cole's deposition, and/or to change the location - Haeg was finally able to depose Cole in Anchorage, Alaska.

(3) On February 21, 2012 a member of Haeg's family died.

(4) On February 22, 2012 Haeg attempted to contact state attorney Peterson by phone, was unsuccessful, and left a message. Haeg then attempted contact by email and Peterson responded the state did not oppose an extension of time in which Haeg could file the memorandum.

Conclusion

In light of the above Haeg respectfully asks that he be granted an extension of time, to March 19, 2012, in which to file a memorandum detailing the ineffectiveness of Cole and Robinson.

I declare under penalty of perjury the forgoing is true and correct. Executed on February 24, 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 February 12, 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:

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 9-23-11 motion for protection order*/ that he not be required to give up his right against self-incrimination and that he is allowed to answer the state's discovery request as attached, is hereby GRANTED / ~~DENIED~~ IN PART.**

Done at Kenai, Alaska, this 21st day of February, 2011.

I certify that a copy of the foregoing was
✓ mailed to Haeg / Peterson
___ placed in court box to ___
___ faxed to ___
___ scanned to ___
LC 2-22-12
Judicial Assistant Date

Carl Bauman
Superior Court Judge Carl Bauman

SEP 23 2011

*/ No proposed protective order was lodged. No opposition to the motion for a protective order was filed by the state.

**/ NO specific discovery requests were identified as implicating the privilege against self incrimination. The discovery requests submitted to the court in support of the Haeg motion include Haeg's responses. The 5th Amendment is either invoked question-by-question or waived by proceeding to answer.

cjb

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)

cj 6

JAN 30 2012

The applicant's 1-30-12 motion, that ~~the required~~ oral argument ~~hearing~~ be held on the state's second motion to dismiss Haeg's PCR application, is hereby GRANTED / ~~DENIED.~~

Oral Argument is set for March 13, 2012 at 3:00 p.m. for one hour.

Done at Kenai, Alaska, this 21st day of February, 2012.

SEAL OF THE TRIAL COURTS OF THE STATE OF ALASKA THIRD JUDICIAL DISTRICT

Carl Bauman
Carl Bauman
Superior Court Judge

I certify that a copy of the foregoing was
✓ mailed to Haeg / Pitirson
___ placed in court box to ___
___ faxed to ___
___ scanned to ___

LC 2-22-12
Judicial Assistant 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)

The applicant's 8-3-11 MOTION TO RECONSTRUCT PCR RECORD with the March 19, 2010 (filed March 26, 2010) opposition to the state's motion to dismiss Haeg's PCR application is hereby GRANTED / DENIED.

AUG - 4 2011

Done at Kenai, Alaska, this_____day of_____, 2011.

_____

Superior Court Judge Carl Bauman

MOOT - The Haeg opposition is in the PCR record. CJB

I certify that a copy of the foregoing was
✓ mailed to Haeg / Peterson
___ placed in court box to_____
___ faxed to_____
___ scanned to_____

LC 2-22-12
Judicial Assistant Date

d

Person Filing Proposed Order:

Name: _____ Daytime Telephone No. _____

Mailing Address: _____

IN THE DISTRICT/SUPERIOR COURT FOR THE STATE OF ALASKA AT _____

_____)
_____ Plaintiff(s),)
vs.)
_____)
_____ Defendant(s).)

CASE NO. 3KN-10-1295 CI

ORDER ON MOTION FOR

Correction of March 25, 2011

MOOT

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)

4/6/11

Further Orders:

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____ _____
Date Judge's Signature

_____
Type or Print Judge's Name

I certify that on _____
a copy of this order was mailed to (list names):

Clerk:_____

In the Superior Court for the State of Alaska at Kenai

~~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)

2-13-12 REPLY, MOTION, AND AFFIDAVIT FOR EVIDENTIARY HEARING AND FOR ORAL ARGUMENT HEARING ON SUPERIOR COURT JUDGE CARL BAUMAN'S REFUSAL TO DISQUALIFY HIMSELF FOR CAUSE

COMES NOW Applicant, David Haeg, and hereby files this reply, motion, and affidavit for an evidentiary hearing and for an oral argument hearing on Superior Court Judge Carl Bauman's refusal to disqualify himself for cause.

After Judge Bauman refused to disqualify himself for cause, AS 22.20.020 requires that an independent judge hear and determine the request for Judge Bauman's disqualification.

Prior Proceedings

(1) On November 21, 2009 Haeg filed his post-conviction relief (PCR) application/memorandum/affidavit. In these documents Haeg asked multiple times for hearings before his PCR was decided.

(2) On December 31, 2009 Haeg filed for expedited PCR consideration.

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(3) On January 20, 2010 the state opposed expedited PCR consideration.

(4) On January 20 2010 the court denied Haeg's motion for expedited PCR consideration – without giving Haeg the *required* time in which to reply to the state's opposition – so the court did not consider Haeg's timely reply of January 25, 2010 in deciding to deny his motion for expedited consideration.

(5) On January 21, 2010 the state filed a motion that Judge Margaret Murphy should decide Haeg's PCR application – when one of Haeg's PCR claims was that Judge Murphy, while she was presiding over Haeg's trial, was corruptly chauffeured full-time by the main witness against Haeg.

(6) On January 27, 2010 Haeg filed an opposition that Judge Murphy could not decide the case against herself.

(7) On February 23, 2010 the state filed a motion to dismiss Haeg's PCR.

(8) On March 3, 2010 Fairbanks Judge Raymond Funk assigned Judge Murphy to decide Haeg's PCR – over another of Haeg's objections Judge Murphy could not decide a case against herself.

(9) On March 8, 2010 Haeg filed a motion for Judge Funk to reconsider his decision to let Judge Murphy decide the case against herself. Judge Funk denied Haeg's motion.

(10) On March 10, 2010 Haeg filed a motion to disqualify Judge Murphy for cause, on March 15, 2010 the state opposed this, and on April 23, 2010 Judge Murphy denied Haeg's motion she could not decide the case against herself.

(11) On March 19, 2010 Haeg filed an opposition to the states motion to dismiss. *In this opposition Haeg cited the fact he had already asked for hearings before his PCR application was decided.*

(12) On April 7, 2010 the state filed a reply to Haeg's opposition.

(13) On April 30, 2010 presiding Judge Sharon Gleason assigned Superior Court Judge Stephanie Joannides to review Judge Murphy's decision not to disqualify herself from the case against herself.

(14) On May 2, 2010 Haeg filed a reply, affidavit, and request for hearing on Judge Murphy's refusal to disqualify herself for cause.

(15) On July 9, 2010 Judge Joannides ruled Haeg could supplement the case that Judge Murphy must be disqualified. On July 25, 2010 Haeg filed supplemental evidence that Judge Murphy must be disqualified – evidence proving Judge Murphy was chauffeured by the main witness against Haeg (Trooper Gibbens) while Judge Murphy presided over Haeg's case, Judge Murphy and Trooper Gibbens lied about this during the investigation into it, and they conspired with judicial conduct investigator Marla Greenstein to cover everything up.

(16) On July 28, 2010 Judge Joannides ordered a two-day evidentiary hearing to be held on Haeg's motion to disqualify Judge Murphy for cause.

(17) On August 25, 2010 Judge Joannides granted Haeg's motion that Judge Murphy must be disqualified for cause.

(18) On August 27, 2010 *Judge Joannides certified Haeg's evidence of Judge Murphy's corruption and conspiracy with judicial conduct investigator*

Marla Greenstein and Trooper Brett Gibbens and referred this evidence to the Alaska Commission on Judicial Conduct (ACJC) "for its consideration".

(19) On October 29, 2010 presiding Judge Sharon Gleason assigned Valdez Judge Daniel Schally to Haeg's case.

(20) On November 3, 2010 Haeg filed a "Motion for Change of Venue to Kenai or if Change of Venue to Kenai is Not Granted, to Notice of Change of Judge Daniel Schally".

(21) On November 8, 2010 the state opposed changing venue to Kenai.

(22) On December 1, 2010 presiding Judge Sharon Gleason assigned Kenai Judge Peter Ashman to Haeg's PCR for all purposes.

(23) On December 3, 2010 the state peremptorily disqualified Kenai Judge Ashman from Haeg's case.

(24) On December 8, 2010 presiding Judge Sharon Gleason assigned Kenai Judge Carl Bauman to Haeg's case.

(25) On December 13, 2010 Haeg's PCR file was sent to Kenai "for Judge Bauman to rule upon motions."

(26) On December 28, 2010 Haeg filed an Alaska Bar Association complaint against Marla Greenstein, who is a licensed attorney. On March 1, 2011 the Bar ruled there was probable cause to investigate Greenstein but "deferred" its investigation of Greenstein until Haeg's PCR was finished "since the issues he [Haeg] raised in his complaint will be addressed in PCR proceedings."

(27) On December 28, 2010 Judge Bauman ordered venue be changed "from Homer to Kenai".

(28) On January 5, 2011, because Judge Bauman had just been assigned after lengthy maneuvering by the state to keep Haeg from a venue he could afford (Kenai), and no one had given Haeg the hearings he had previously asked for during the pleadings on the state's motion to dismiss, Haeg filed ANOTHER motion for the required hearing in response to the state's Motion to Dismiss. In this additional motion for hearing to Judge Bauman Haeg specifically states:

> "In his PCR application and memorandum Haeg asked for a hearing before his PCR application was decided; the State filed a motion to dismiss the PCR application: and Rule 77 states that a hearing must be held on motions to dismiss. A hearing in which oral argument is presented and witness credibility can be determined will affect the fairness of this decision."

(29) On March 25, 2011, after the Alaska Commission on Judicial Conduct decided her August 27, 2010 referral "was not genuine", Judge Joannides reissued her certified evidence of the corruption and conspiracy of Judge Murphy, Trooper Brett Gibbens, and judicial conduct investigator Marla Greenstein. In her new 77-page referral (which Judge Joannides sent to Haeg; Judge Bauman; all 9 members (3 judges, 3 attorneys, and 3 public persons) of the ACJC; the Alaska Bar Association; the Ombudsman; judicial conduct investigator Marla Greenstein; Judge Murphy's attorney Peter Maassen; and original to the Kenai Court to be placed in its file). In her new referral Judge Joannides stated,

> "These errors have further frustrated a long and fairly complicated case that required careful review."

To make sure the ACJC was acting on Judge Joannides referral this time Haeg, and most of the witnesses whose testimony ACJC investigator Marla Greenstein had falsified, tried to testify during the public testimony portion of one of the ACJC's quarterly meetings – but were told they could not testify and were met at the door by a law enforcement SWAT team. ACJC chairman Judge Ben Esch stated that since Marla Greenstein was covered by "confidentiality" the only way Haeg or the other witnesses would ever know if Marla Greenstein were disciplined would be if she no longer worked for the ACJC. Imagine how surprised all were when, nearly a year later, it was Marla Greenstein who dismissed Haeg's ACJC complaint that Judge Bauman was falsifying sworn affidavits in order to be paid when he had issues outstanding for more than six months and that Judge Bauman was corruptly covering up Marla Greenstein's corrupt investigation of Judge Murphy. In her dismissal Greenstein never even mentioned Haeg's principal claim that Judge Bauman was falsifying sworn affidavits. See attached Haeg complaint and attached Greenstein dismissal.

(30) *On July 6, 2011 Judge Bauman held a hearing and specifically asked Haeg in person if Haeg saw a reason for oral argument on the state's motion to dismiss – and then asked Haeg, "Other than the fact the whole case hangs in the balance?"* This statement by Judge Bauman is why Rule 77(e) requires oral argument to be held on motions to dismiss if it is requested – because a motion to dismiss can resolve the entire proceeding. Haeg answered Judge

Bauman that he absolutely wanted oral arguments on the state's motion to dismiss. Judge Bauman then stated, "If I need the benefit of oral argument, I'll schedule oral argument on fairly short notice." This proves Judge Bauman mistakenly thought oral argument on motions to dismiss was in the discretion of the judge even if it was requested. Judge Bauman asked the state attorney Peterson, 'what's your view on oral argument on your long-pending motion to dismiss?" - proving Judge Bauman knew it had been made long ago. See July 6, 2011 court record.

(31) On August 3, 2011 Judge Bauman asked the state to brief Haeg's January 5, 2011 motion for hearing on the state's motion to dismiss Haeg's PCR - *even though this meant the state would get to oppose Haeg's motion 7 months after Haeg made it – when the rules are that the state must have opposed within 10 days of Haeg's motion.* See Rule 77(c)(2).

(32) On August 23, 2011 *the state filed a 47-page opposition to Haeg's motion for the required hearing on the state's motion to dismiss.*

(33) On September 2, 2011 Haeg filed a reply to the state's opposition to Haeg's request for hearings on the state's motion to dismiss – specifically citing the fact it was a required hearing.

(34) On January 3, 2012 Judge Bauman granted most of the state's motion to dismiss –*without ever ruling on Haeg's numerous motions for the required oral argument hearing - and without holding the required hearing.* In this corrupt decision Judge Bauman (a) eliminated the corruption and conspiracy between Judge Murphy (Haeg's trial judge), Trooper Gibbens (the main witness

against Haeg), and judicial conduct investigator Marla Greenstein *because it was too "attenuated" (weak)* – when Judge Joannides had ruled this was so strong it precluded Judge Murphy from presiding over Haeg's PCR proceedings and prompted Judge Joannides to certify the evidence and make 43 and 77 page referrals of corruption and conspiracy to the ACJC; (b) falsified Haeg's claim that Judge Murphy and Trooper Gibbens had conspired to rig Haeg's entire trial and sentencing – Judge Bauman now falsely states that Haeg had limited this claim of corruption to a now worthless plane (having sat outside rusting away for the past 8 years in the state's impound yard); (c) eliminated Haeg from presenting the evidence that Marla Greenstein, after Judge Joannides' referral, *falsified a "verified" document to cover up her corrupt investigation of Judge Murphy;* (d) falsely ruled many of Haeg's claims have already been decided; (e) falsely ruled Haeg had no constitutional claims that could be brought up during PCR; and (f) falsely claimed Haeg had not made a "prima facie" case that his attorneys were ineffective – when to do this all Haeg had to do was to swear a claim, which if true and without considering any evidence from the state, would mean Haeg did not get effective representation. In his PCR application/memorandum/affidavit Haeg swore his own attorneys lied to him, conspired with each other, the prosecution, and the presiding judge to illegally, unjustly, and unconstitutionally convict and sentence him. In other words, if Haeg's own attorneys actually did all this, would it mean Haeg did not get effective counsel or a fair trial? If it does (which it irrefutably does) then Haeg has met his burden of a making "prima facie" case –

and then Haeg must be allowed to present the evidence and witnesses proving his claims in an "open to the public" evidentiary hearing and then the state must present evidence and witnesses refuting them – if they can. The significance of all this is that if Judge Bauman rules Haeg has not made a "prima-facie" case, Haeg will never get to present the mountain of evidence and witnesses he already has to prove the incomprehensible injustice. A copy of Haeg's application/memorandum/affidavit, proving Judge Bauman's above falsehoods, is located at www.alaskastateofcorruption.com and the Kenai courthouse for those wishing to see the proof themselves.

(35) On 1-13-12 Haeg filed a motion that Judge Bauman must be disqualified for corruption. In his motion Haeg claimed Judge Bauman (in addition to violating other laws, rules, and canons to deny Haeg mandatory open-to-the-public hearings):

> *"has almost certainly falsified the sworn affidavits he is required to submit to be paid – since it is unlikely he has gone without pay for the over 6 months since he was required to have decided Haeg's motion for a hearing according to AS 22.10.190* (which requires a judge to swear under oath that no item submitted for an opinion or decision is older than 6 months – and Haeg's motion for a hearing is over a year old)."

(36) On January 18, 2012, after his motion that Judge Bauman must be disqualified for cause, Haeg obtained a copy of Judge Bauman's affidavit for the pay period ending on the last day of December 2011 – *in which Judge Bauman claims no issue presented to him for an opinion or decision was older than 6*

months – when the court record irrefutably proves this is not true. See attached affidavit.

(37) On January 23, 2012 Haeg filed a criminal complaint that Judge Bauman was falsifying sworn affidavits so he could be paid after not deciding motions within the six-month time limit. See attached criminal complaint.

(38) On January 23, 2012 Haeg filed an Alaska Commission on Judicial Conduct complaint that Judge Bauman was falsifying sworn affidavits so he could be paid after not deciding motions within the six-month time limit. See attached judicial conduct complaint.

(32) On February 2, 2012 (2-5-12) Judge Bauman (immediately after receiving Haeg's criminal and judicial complaints against him) issued numerous orders (approximately 20) denying all of Haeg's motions. One of the orders Judge Bauman issued on this date was to deny Haeg's "1-5-11 Motion for Hearing and Rulings Before Deciding State's Motion to Dismiss". See attached order. This means *Judge Bauman ruled on Haeg's motion over a year after Haeg made it – in exact opposition to Judge Bauman's sworn 1-3-12 affidavit that:*

> *"no matter currently referred to me for opinion or decision has been uncompleted or undecided by me for a period of more than six months."* See Judge Bauman's attached affidavit.

Another order Judge Bauman issued on February 2, 2012 was to deny Haeg's April 11, 2011 motion for Judicial Notice of Additional Caselaw – meaning *Judge Bauman issued this order on Haeg's motion over 10 months after Haeg made it - in exact opposition to Judge Bauman's sworn 1-3-12 affidavit that:*

"no matter currently referred to me for opinion or decision has been uncompleted or undecided by me for a period of more than six months." See Judge Bauman's attached affidavit.

(33) As shocking as the forgoing is that *Judge Bauman backdated, to January 17, 2012, his ruling on Haeg's 8-1-11 Motion for an Order Invalidating the Southern Boundary Change to Guide Use Area 19-07 – to fraudulently make it appear that this order was made within six months of when it was referred to Judge Bauman.* The courts own date stamp of February 2, 2012 on the order itself proves this backdating by Judge Bauman, along with the courts postmark of February 3, 2012 on the envelope to Haeg.

(34) To explain away the denial of Haeg's required oral argument hearing Judge Bauman claims Haeg filed his January 5, 2011 request for a hearing after the 5 day deadline for doing so had expired. Yet Judge Bauman ignores the fact that, before Judge Bauman had ever been assigned to Haeg's case, Haeg had previously asked for the hearing within the required time limit. It was a year AFTER he first requested a hearing, and AFTER Judge Bauman was assigned to hear Haeg's PCR, that Haeg filed ANOTHER motion for a hearing on January 5, 2011 – because no one had ruled on Haeg's previous motions for a hearing or given him the required hearing.

Law

Alaska Statute 22.10.190. Compensation.

(b) *A salary warrant may not be issued to a superior court judge until the judge has filed with the state officer designated to issue salary warrants an affidavit that no matter referred to the judge for*

opinion or decision has been uncompleted or undecided by the judge for a period of more than six months.

Civil Rule 77(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.

(3) If oral argument is to be held, the argument shall be set for a date no more than 45 days from the date the request is filed or the motion is ripe for decision, whichever is later.

AS 22.20.020 Disqualification of Judicial Officer for Cause

(c) If a judicial officer is disqualified on the officer's own motion or consents to disqualification, the presiding judge of the district shall immediately transfer the action to another judge of that district to which the objections of the parties do not apply or are least applicable and if there is no such judge, the chief justice of the supreme court shall assign a judge for the hearing or trial of the action. If a judicial officer denies disqualification the question shall be heard and determined by another judge assigned for the purpose by the presiding judge of the next higher level of courts or, if none, by the other members of the supreme court. The hearing may be ex parte and without notice to the parties or judge.

Rule 35.1 Post-Conviction Procedure

(f) Pleadings and Judgment on Pleadings.
(1) *In considering a pro se* [someone representing themselves like Haeg] *application the court shall consider substance and disregard defects of form...*

Alaska Code of Judicial Conduct

Canon 1. A Judge Shall Uphold the Integrity and Independence of the Judiciary.

An independent and honorable judiciary is indispensable to achieving justice in our society.

Commentary. -- Deference to the judgments and rulings of courts depends upon public confidence in the integrity and independence of judges. The integrity and independence of judges depend in turn upon their acting without fear or favor. Public confidence in the impartiality of the judiciary is maintained when judges adhere to the provisions of this Code.

Conversely, *violation of this Code diminishes public confidence in the judiciary and thereby does injury to the system of government under law.*

Canon 2. A Judge Shall Avoid Impropriety and the Appearance of Impropriety in All of the Judge's Activities.

A. In all activities, *a judge shall exhibit respect for the rule of law, comply with the law,* avoid impropriety and the appearance of impropriety,* and act in a manner that promotes public confidence in the integrity and the impartiality of the judiciary.

Commentary. -- Public confidence in the judiciary is eroded by irresponsible or improper conduct by judges. *A judge must avoid all impropriety and appearance of impropriety.* A judge must expect to be the subject of constant public scrutiny. A judge must therefore accept restrictions on the judge's conduct that might be viewed as burdensome by the ordinary citizen and should do so freely and willingly.

The prohibition against behaving with impropriety or the appearance of impropriety applies to both the professional and personal conduct of a judge. Because it is not practicable to list all prohibited acts, the proscription is necessarily cast in general terms that extend to conduct by judges that is harmful although not specifically mentioned in the Code.

Actual improprieties under this standard include violations of law, court rules, and other specific provisions of this Code. The test for appearance of impropriety is whether the conduct would create in

reasonable minds a perception that the judge's ability to carry out judicial responsibilities with integrity, impartiality, and competence is impaired.

(7) A judge *shall* accord to every person the right to be heard according to law.

(8) A judge *shall* dispose of all judicial matters *promptly,* efficiently, and *fairly.*

D. Disciplinary Responsibilities.

A judge having information establishing a likelihood that another judge has violated this Code shall take appropriate action.

[Why Judge Joannides documented, certified, and referred the evidence of Judge Murphy's and judicial investigator Marla Greenstein's corruption and conspiracy to cover up that Judge Murphy was chauffeured by the main witness against Haeg during Haeg's entire week-long trial and two day sentencing]

The words "shall" and "shall not" mean a binding obligation on judicial officers, and a judge's *failure to comply with this obligation is a ground for disciplinary action.*

"Law" means court rules as well as statutes, constitutional provisions, and decisional law.

Discussion

(1) There is irrefutable evidence that Judge Bauman has been falsifying the sworn pay affidavits required by 22.10.190 so he can be paid while he is denying Haeg's right to a prompt decisions and prompt PCR disposition.

(2) It is clear that Judge Bauman has now fraudulently pre-dated orders to avoid further evidence of his perjury in falsifying his sworn pay affidavits.

(3) It is clear that Judge Bauman is fraudulently claiming Haeg missed the deadline with his hearing request of January 5, 2011 to corruptly cover up his

denial of Haeg's required oral argument hearing. Haeg had filed requests for the hearing in TIMELY responsive pleadings over a year previous to January 5, 2011 and the only reason Haeg filed ANOTHER motion for a hearing on January 5, 2011 is that after a whole year no one had given him the hearing that was required to be given within 45 days of asking. It is common sense that with a new judge just assigned (Bauman) that Haeg would renew his year old request for a hearing. And Judge Bauman's claim the "hearing" which Haeg requested was a non-required "evidentiary" hearing instead of an "oral argument" hearing, Haeg specifically cited "oral argument" in his motions and Rule 77(e) specifically states you request a "hearing" NOT an "oral argument hearing". Judge Bauman is falsifying the truth and using semantics to justify denying Haeg the required open-to-the-public oral argument needed to expose the widespread corruption and conspiracy that taints Haeg's prosecution.

(4) The following excerpt of the transcription of Haeg's last in-person hearing with Judge Bauman on July 6, 2011 proves just how puzzling Judge Bauman's claim is that Haeg did not request "oral argument" or that Haeg did not ask for it in a timely manner:

> Judge Bauman: The next motion that it appears to the court that should have priority is in fact the Peterson motion on behalf of the state to dismiss the postconviction relief petition. That is what I might characterize as a common motion. It's not uncommon early in a PCR case for the state to move to dismiss. I haven't reviewed that motion yet. And remind me Mr. Haeg, have you filed an opposition to the states motion to dismiss the PCR?
>
> Haeg: I have and the state has filed a reply to my opposition.

Judge Bauman: Right. I will ask you first Mr. Haeg. Do you see a reason for *oral argument* on that motion? *Other than the fact the whole case hangs in the balance?*

Haeg: I would like to have *oral argument* on it. As you have pointed out if it's granted it's over. I pack up and go home. *So I would greatly like to have oral arguments on that.*

Judge Bauman: Mr. Peterson, what is your view on *oral argument* on your *long-pending* motion to dismiss?

Peterson: I don't know that there is a need for *oral argument*, not to be argumentative with Mr. Haeg. A lot of the basis for the states motion to dismiss is just pointing out that certain claims that he is raising in his PCR were fully addressed on his appeal and that as a matter of law the court can take a look at that, can take a look at the appellate record and see that yes the court of appeals did deal with this issue and therefore not be raised in the PCR. Now things like the ineffective assistance of counsel the state objected to being raised in the appeal and that was not dealt with because the court said it was an appropriate matter to be raised in a PCR. So clearly that issue I suspect will survive. So I would think the court can dismiss the claims that were appropriately addressed on appeal and could greatly narrow and focus this pending PCR so the parties have a nice focus on where were headed as opposed to re-litigating every aspect of the trial and the prior appeal.

Judge Bauman: Well, at this point where I'm going to leave the motion to dismiss is it's my intention to review that motion, the opposition, the reply, and also take into account the several subsequent motions, or motions along the way by Mr. Haeg to supplement. I'll be looking at it with an eye to sorting out, if you will, those claims that have been addressed by the Court of Appeals. I have the sense that they've addressed some claims that may have been included by Mr. Haeg in this PCR. I had actually hoped an attorney for Mr. Haeg would be helping the court in that exercise because one of typically appointed duties of appointed counsel, one of the duties of appointed counsel, is to go through the PCR and weed out those things that the attorney cannot stamp, if you will, or bless under rule 11. I don't have the benefit of that. We didn't get to that part. So that's what I'll be doing. If I get through that exercise

and feel that I need the benefit of *oral argument*, I'll schedule *oral argument* on fairly short notice.

The last line of the above statement by Judge Bauman proves that he believed (or was leading Haeg to believe) oral argument was not required to be held if it is requested on a motion to dismiss. It is now clear that Judge Bauman proceeded to decide the motion to dismiss without the required hearing and, ONLY AFTER Haeg protested this denial of the required due process, fraudulently manufactured an excuse to justify his not holding the very oral arguments he encouraged Haeg to request in the July 6, 2011 hearing.

(5) Another glaring example of the bias that Judge Bauman gives the State over that which he gives Haeg: On January 5, 2011 (docketed by the court on January 10, 2011) Haeg filed his motion for Hearing and Rulings Before Deciding States Motion to Dismiss. Judge Bauman then the allowed the state to file an opposition (without the state ever having asked for an extension) to this on August 26, 2011, *or over 7 months later, when the time limit for the state to do so was 10 days*. This is the same motion Judge Bauman falsely claims Haeg missed the deadline for filing. It is the state that missed their deadline of 10 days by well over 7 months – while Haeg never missed the filing deadline. Something is terribly wrong for Judge Bauman to punish Haeg for non-existent violations and then give the state a "wink and nod" for massive due process violations.

(6) The court record of Haeg's PCR proves Haeg has been persistently claiming each and every PCR hearing to which he is entitled. PCR Rule 35.1(f):

"*In considering a pro se* [someone representing themselves like Haeg] *application the court shall consider substance and disregard defects of form...*"

Judge Bauman has apparently never read this – for he is ignoring substance and holding pro se Haeg to unattainably high form, and allowing the state to violate all the rules. And all the while Judge Bauman himself falsifies the facts, falsifies affidavits, and pre-dates orders, so he can be paid while denying Haeg the required hearings and prompt proceedings.

Conclusion

(1) No one would believe they had an unbiased judge if that judge was *irrefutably* falsifying sworn affidavits to be paid after failing to make the required rulings on that person's case – especially when that person were filing over and over, as Haeg has for years, for expedited consideration of their case. It would confirm anyone's fear that the delays totaling very nearly 8 years were intentional- and meant to "starve" Haeg and his family into submission.

(2) No one would believe they had an unbiased judge if, after being caught red-handed going over the deadline for doing so, the judge immediately issued approximately 20 orders an long with pre-dating orders so it would appear as if they were made within the six-month deadline for doing so.

(3) No one would believe they had an unbiased judge if, after being caught red-handed failing to provide required and asked for hearing, the judge falsified past events to provide a justification for not providing the hearing.

Especially when the motive for failing to provide the required hearing is so obvious – *the opposing party (in Haeg's case the state) had filed a 47-page opposition to the required hearing.*

(4) The above actions by Judge Bauman, all of which benefit the state and harm Haeg, are either felony crimes or violations of rules that are not within the discretion of any judge. In other words they irrefutably prove Judge Bauman's actual bias for the state and against Haeg.

(5) For a *single* count of *unsworn* falsification (a misdemeanor) Haeg, who had no criminal history whatsoever, was sentenced to 90 days in jail. For his *multiple* counts of *sworn* falsification (all felonies) Judge Bauman will be sentenced to at least several years in prison. *It is more than apparent that Judge Bauman cannot be allowed to preside over the case of the very person (Haeg) who filed the criminal charges against Judge Bauman.*

(6) In our country, land of the free and home of the brave, we have an absolute and unquestionable right to a judge who is not, for whatever reason, falsifying sworn affidavits – *PERIOD*.

(7) A recent deposition of Haeg's first attorney (Brent Cole) produced shocking new evidence of why the fundamental breakdown in justice started. Cole testified under oath that he had "personal" conflict of interest against Haeg and for the state but "could keep this separate from my professional duty" to Haeg. Yet Cole, in his written contract to "represent" Haeg for $200 per hour, certified he had no conflicts of interests with Haeg. In other words Cole lied so he could be a

double agent and "second prosecutor" for the state prosecution and sell ignorant and unsuspecting Haeg out to the state – explaining why Cole lied to Haeg about his rights and why every single thing Cole did harmed Haeg and benefited the state. As Mark Osterman (Haeg's third attorney) told Haeg on tape, "This is the biggest sellout of a client by an attorney I have ever seen - you didn't know your attorneys were goanna load the dang dice so the state would always win."

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.

Our constitution and the innumerable people who have died for it demand nothing less.

Prayer for Relief

In light of the above Haeg respectfully asks for an evidentiary hearing and for an oral argument hearing on Judge Bauman's refusal to disqualify himself for

cause. Further, Haeg respectfully asks that after these hearings are held that Judge Bauman be disqualified for cause.

I declare under penalty of perjury the forgoing is true and correct. Executed on February 13, 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 February 13, 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:

ALASKA COURT SYSTEM

AFFIDAVIT

For the pay period ending on the last day **of** December, 2011

I, being first duly sworn, state that to the best of my knowledge and belief no matter currently referred to me for opinion or decision has been uncompleted or undecided by me for a period of more than six months.

Signature: Carl Bauman Date: 1-5-2012

Title: Carl Bauman Address: 125 Trading Bay Drive #100

Print Name: Superior Court Judge Kenai, AK 99611

Subscribed and sworn to or affirmed before me at Kenai, Alaska, on 1/3/12.

SEAL OF THE TRIAL COURTS OF THE STATE OF ALASKA THIRD JUDICIAL DISTRICT

(notary seal)

Julie A Roberts

Signature of Notary Public, Clerk of Court, or other person authorized to administer oaths.

My commission expires: with office

I certify under penalty of perjury that the foregoing is true, that this statement is being executed at _____, Alaska, and that no notary public or other official empowered to administer oaths is available.

Date Signature

INSTRUCTIONS

This affidavit must be signed before a notary public, postmaster, or any other person authorized by AS 09.63.010 to administer oaths. If there is no one available who is authorized to administer oaths, you should sign and date the statement certifying that the affidavit is true (AS 09.63.020).

An affidavit must be completed at the end of each pay period. Pay periods end on the 15th day and the last day of each month. The completed affidavit must be sent to the Division of Finance in Juneau at the end of each pay period:

Mail:	*Fax:*	*Scan and Email:*
P. O. Box 110204 Juneau, Alaska 99811-0204	(907) 465-5639	DOA.DOF.PR.Affidavits@alaska.gov

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-10-7295 CI

ORDER ON MOTION FOR

1-5-11 Hearing & Ruling Before Deciding State's Motion to Dismiss

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:

1/10/11

1-17-2012
Date

Carl Bauman
Judge's Signature

CARL BAUMAN
Type or Print Judge's Name

I certify that on 2-3-12 a copy of this order was mailed to (list names): Haeg, Peterson, Flanigan

Clerk: Roberts

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

Judicial Notice of Additional caselaw.

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:

1-17-2012
Date

Judge's Signature

CARL BAUMAN
Type or Print Judge's Name

I certify that on 2-3-12
a copy of this order was mailed to (list names): Haeg, Peterson, Flanigan

Clerk: Roberts

CIV-820 (5/02) (cs)
ORDER ON MOTION

Civil Rules 7(b) & 77

02036

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)

AUG - 1 2011

The applicant's 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 is hereby ~~GRANTED~~/ DENIED.

Done at Kenai, Alaska, this 17th day of January, ~~2011~~ 2012.

Carl Bauman

Superior Court Judge Carl Bauman

CERTIFICATION OF DISTRIBUTION
I certify that a copy of the foregoing was mailed to the following at their addresses of record:
Haeg, Peterson, Flanigan
2-3-12 A Roberts
Date Clerk

Alaska State Troopers

January 23, 2012

This is a formal criminal complaint against Kenai Superior Court Judge Carl Bauman for falsifying a sworn affidavit. See attached copy of Judge Bauman's affidavit.

The official court documents proving Judge Bauman's affidavit is false are located in the court record of David Haeg's PCR case 3KN-10-01295CI.

The courthouse in Kenai, Alaska currently holds these records.

The attached 1-5-11 Motion for Hearing is a copy of one of the court records proving Judge Bauman's perjury.

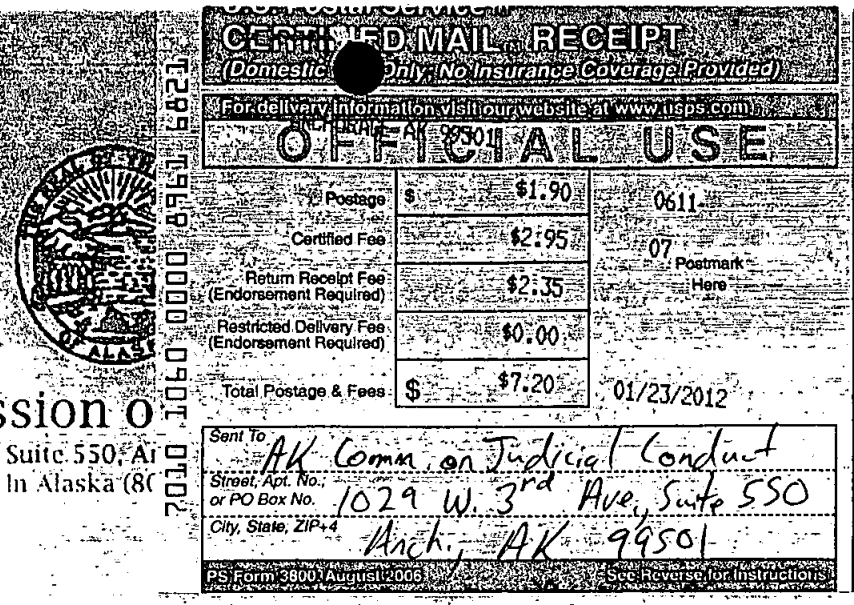
The attached copy of the 1-13-12 Motion to Disqualify Judge Bauman for Cause (Corruption) identifies other court records proving Judge Bauman committed perjury and provides evidence why he did so and that he did so knowingly.

In addition the 1-13-12 Motion identifies other mandatory rules, cannons, and rights Judge Bauman violated during the same criminal enterprise.

I declare under penalty of perjury the forgoing is true and correct. Executed on January 23, 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.

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

by [signature]
1-24-12



Alaska Commission o

1029 W. 3rd Ave., Suite 550, Al
(907) 272-1033 In Alaska (8(

Marla N. Greenstein
Executive Director
E-mail: mgreenstein@jcs.state.ak.us

Complaint About An Alaska State Court Judge

Date: 1-23-12

Name of Judge: Carl Bauman

Court: Supreme ____ Appeals ____ Superior X District ____

Court Location: Kenai, Alaska

Case Name (*If Relevant*): David Haeg v. State of Alaska

Case Number (*If Relevant*): 3KN-10-01295 CI

Your Name: David Haeg

Use of your name: If the box below is not checked, the Commission will proceed at its own discretion.

(✓) ☑ The Commission may use my name in any communications with the judge related to the Commission's disciplinary functions.

Your Telephone No: 907-262-9249 (Day) Same (Evening)

Your Address: PO Box 123
Soldotna, AK 99669

Your Signature: D. Haeg

Please specify exactly, in your own words, what action or behavior of the judge is the basis of your complaint. Please provide relevant dates and names of others who witnessed the action or behavior.

You may use additional paper, or reverse side if necessary.

Judge Bauman has broken numerous laws, rules, and judicial canons including falsifying a sworn affidavit, to unjustly and unconstitutionally cripple David Haeg's ability to expose the ongoing corruption and conspiracy infecting his case. This corruption and conspiracy now includes Judicial Conduct investigator Marla Greenstein. See #6 attached copy of Judge Bauman's affidavit and the attached motion to disqualify Judge Bauman for the specific dates, instances, and court records proving Judge Bauman's corruption.

Alaska Commission on Judicial Conduct

1029 W. 3rd Ave., Suite 550, Anchorage, Alaska 99501-1944
(907) 272-1033 In Alaska 800-478-1033 FAX (907) 272-9309

Marla N. Greenstein
Executive Director
E-Mail: mgreenstein@acjc.state.ak.us

CONFIDENTIAL

January 27, 2012

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

Re: Nonjurisdictional Accusation Judge Bauman

Dear Mr. Haeg:

I have reviewed your complaint that Judge Bauman made several rulings that you believe are incorrect and made statements that you believe were false. All of your concerns seem to be related to decisions the judge made concerning your Post-Conviction Relief Petition and do not appear to raise any ethics issues under the Alaska Code of Judicial Conduct. Whether to grant oral argument, for example, is up to the discretion of the judge and is not required.

The Commission on Judicial Conduct has limited powers and duties under Alaska law (see A.S. 22.30.011) and has no power to enter into cases or reverse judicial decisions. The complaint you have filed does not appear to raise an ethical issue. The judge's decisions in the case may be appealable, but do not appear to constitute misconduct as defined in A.S. 22.30.011 (copy enclosed).

Commission staff has consequently concluded that your complaint against the judge be dismissed as being outside the scope of the commission's authority. The full commission will review your complaint at its next meeting, March 16th in Anchorage. If you have additional information you wish to present, please contact this office. If this dismissal is set aside, your complaint will be reopened and you will be informed.

Sincerely,

Marla N. Greenstein
Executive Director

Enclosures: A.S. 22.30.011

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT KENAI

DAVID S. HAEG,

Applicant,

vs.

STATE OF ALASKA,

Respondent.

Case No. 3KN-10-1295 CI

STATE'S REPLY TO 1-30-12 OPPOSITION TO STATE'S SECOND MOTION TO DISMISS HAEG'S APPLICATION FOR PCR AND OPPOSITION TO 1-30-12 MOTION FOR ORAL ARGUMENT HEARING ON STATE'S SECOND 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 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.

COMES NOW the State of Alaska (hereinafter "State"), by and through its undersigned Assistant Attorney General, Andrew Peterson ("Peterson") and hereby files this reply to Haeg's 1-30-12 opposition to the State's second motion to dismiss and an opposition to Haeg's motion for oral argument hearing on the motion to dismiss.

This Court should dismiss Haeg's supplemental PCR claim based on the fact that Haeg failed to plead specific facts showing prejudice and instead pleaded a mere conclusion of facts. See LaBrake v. State, 152 P.3d 474, 481 (Alaska App. 2007). This

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

Court is not obligated to presume the truth of a mere allegation without proof offered by the moving party. See id.

This Court should further dismiss the supplemental claim alleging prosecutorial misconduct due to the fact that Haeg's allegations do not give rise to an assertion that would warrant relief. See id., at 480. The LaBrake opinion sets forth the general rules for resolving a first-phase state motion to dismiss a PCR claim. LaBrake provides that when a court resolves a first-phase motion to dismiss for failing to plead a prima facie case, the court must treat as true all "well-pleaded factual assertions made by the applicant and must then determine whether those well-pleaded assertions, if ultimately proven at a hearing, would warrant relief. See id, at 480.

In this case, Haeg repeatedly filed motions and affidavits under oath attesting that he personally was the owner of the airplane that was forfeited by the court to the State. See Exh. A, Notarized Affidavit of David Haeg on Attorney Osterman's pleading paper submitted to the Court of Appeals, signed April 21, 2006 stating "I am the owner of one Piper PA-12 airplane with FAA Registration no. N4011M." Haeg cannot now come before this Court and claim that the mere fact that his corporation is the registered owner will somehow defeat the forfeiture of his airplane to the State. Haeg has already challenged the forfeiture of his airplane to the Court of Appeals and his claim that the airplane was wrongfully seized an wrongfully forfeited was denied by the Court of Appeals.

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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

Haeg is further not entitled to any relief in this case. Haeg's corporation has repeatedly been offered the opportunity to file for a remission hearing. No pleading by The Bush Pilot, Inc. has been filed. The reason for the corporation's failure to file is presumably due to the fact that the corporation, which is solely owned by Haeg, must show that it was an innocent third party and had no knowledge that Haeg was using the airplane to commit criminal acts. This will be impossible given Haeg's testimony at his own trial in which he admitted flying the airplane and killing wolves outside of the predator control zone. The mere fact that the FAA has a policy of requiring court judgments to provide specific information before transferring title is not grounds to show that a fraud is being committed by the state or that Haeg is entitled to some relief.

The Court of Appeals previously addressed Haeg's claim that the forfeiture of his plane was illegal and that he was entitled to the return of his plane. Haeg maintained all through the appellate process that he was the owner of the airplane and that it should be returned to him. The Court of Appeals denied Haeg's claim. Similarly, this Court should deny Haeg's claim that the State's prosecutor committed misconduct by filing a motion for modification or clarification with the trail court that would allow the State to register the plane that was properly forfeited to the State. There is no scenario in which Haeg is entitled to relief and this Court should dismiss his claim and not allow Haeg to make allegations that are contrary to his previously filed notarized documents.

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PHONE: (907) 269-6250

Haeg is similarly not entitled to an evidentiary hearing if this Court grants the State's motion to dismiss. A PCR applicant, like the State in a criminal prosecution, does not get to conduct discovery or have a hearing on faith that the missing elements exist. The elements must be alleged. If it is not, the case goes no further. See Billy v. State, 5 P.3d 888, 889 (Alaska App. 2000)(upholding trial court's dismissal of a petition for PCR based on the applicant's failure to meet his burden of pleading). Similarly, Haeg is not entitled to an evidentiary hearing in this case if he is unable to meet his burden of pleading. Consequently, this Court should deny Haeg's motion for an evidentiary hearing.

DATED at Anchorage, Alaska this 1st day of February 2012.

MICHAEL C. GERAGHTY
ATTORNEY GENERAL

By: _____
Andrew Peterson
Assistant Attorney General
ABA #0601002

This is to certify that on this date, a correct copy of the forgoing was mailed to:
David Haeg

_____ 2/1/12
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

EXHIBIT A pg 1 of 19
CASE NO. A-09455
DATE: 4/16/06

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

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 in 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.

CASE: A-09455
DAT: 4/6/06

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 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 21st day of April, 2006.

Notary Public in and for Alaska

JOYCE SULLIVAN
My Commission Expires
NOTARY PUBLIC
STATE OF ALASKA
April 15, 2009

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)

JAN 30 2012

The applicant's 1-30-12 motion, that Cole appear and be deposed at 310 K Street, Suite 308 Anchorage, AK 99501 on February 7, 2012 starting at 10 am, is hereby GRANTED /~~DENIED~~.

Done at Kenai, Alaska, this 2nd day of Feb, 2012.

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, Cole
2-2-12 Date
Roberts Clerk

02047

Brent R. Cole, Esq.
Law Offices of Marston & Cole, P.C.
821 N Street, Suite 208
Anchorage, AK 99501
(907) 277-8001

IN THE DISTRICT COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT KENAI

DAVID HAEG,)
)
Applicant,)
vs.)
)
STATE OF ALASKA,)
)
Respondent.)
) Case No.: 3KN-10-01295CI

ORDER QUASHING SUBPOENA

Brent R. Cole, having moved for an order quashing the subpoena requiring his appearance at a deposition on January 31, 2012, at 10:00 am, and the court being advised,

IT IS ORDERED that the subpoena issued January 18, 2012, to Brent Cole is quashed. Mr. Cole is not required to appear at the deposition on January 31, 2012.

DATED this ____ day of _____, 2012, at Anchorage, Alaska.

DENIED

Carl Bauman
Judge of the District Court

CERTIFICATION OF DISTRIBUTION
I certify that a copy of the foregoing was ~~mailed~~ faxed to the following at their addresses of record:
Haeg, Peterson, Cole
2-2-12 Roberts
Date Clerk

LAW OFFICES OF MARSTON & COLE, P.C.
821 N Street, Suite 208
Anchorage, Alaska 99501
(907) 277-8001
(907) 277-8002 fax

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 DENYING PERMISSION TO FILE CLASS ACTION COMPLAINT FOR DAMAGES IN THIS PCR PROCEEDING

David Haeg, through counsel, has filed a motion to permit the filing in this pcr case of a class action complaint for damages. The State opposed the motion, and a reply was filed on behalf of Mr. Haeg.

A post conviction relief proceeding under AS 12.72 and Criminal Rule 35.1 has limitations. See Criminal Rule 35.1(a) & (b). Those limitations lead the court to decline to hear a class action complaint for damages in the context of a PCR proceeding. The motion to permit the filing of the class action complaint in this PCR proceeding is therefore denied, without prejudice to the merits or lack thereof in the class action complaint. The class action complaint may be filed in the superior court as a new, separate case.

Dated this 2nd day of February, 2012.

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, Flanigan
2-3-12 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-10-1295 CI

DECISION ON MOTION TO DISQUALIFY JUDGE AND STRIKE JANUARY 2012 RULINGS

David Haeg filed a 25-page motion on January 13, 2012, to disqualify the undersigned judge and to strike the rulings entered on January 3, 2012. Various grounds are alleged for disqualification and to strike the January rulings. Mr. Haeg filed supplemental information on January 23, 2012, regarding a pay affidavit by the undersigned, and a motion for an evidentiary hearing on his motion to disqualify and to strike the January 2012 rulings.

Prefatory Points: In his 43-page memorandum filed on November 30, 2009, in support of his application for post-conviction relief, Mr. Haeg stated, among other things, on page 42:

> (4) if no justice is granted after exhausting all remedies Haeg will exercise the one right that does not need an attorney, has yet to be taken away, and that is reserved for dire situations such as this, his Second Amendment rights.

The Second Amendment provides a constitutional right for people to keep and bear arms. One reading of what Mr. Haeg wrote is a not-so-veiled threat to "exercise" (i.e., use) the arms which the Second Amendment permits him to keep and bear. In other words, a subtle threat that if a judge does not rule in his favor, Mr. Haeg may shoot the judge. In the five

hearings held to date in this case by the undersigned, Mr. Haeg has conducted himself appropriately. The undersigned has not perceived and does not perceive a personal safety threat, veiled or otherwise, from Mr. Haeg.

In other pleadings Mr. Haeg has made it clear that he will sue a judge for conspiracy if the judge issues rulings adverse to Mr. Haeg. Judges in Alaska have immunity, so an express or implied threat of civil action presents no particular concern. However, given the thinly veiled rule-in-my-favor-or-I-will-shoot-you-or-sue-you (paraphrase) commentary by Mr. Haeg, the opportunity to grant a motion to disqualify and avoid this case has superficial appeal. But doing so would not be consistent with the obligations of a judge as set forth in the Code of Judicial Conduct and the law of Alaska. A judge has a duty to sit. In other words, a judge may not recuse himself or herself "simply because she does not want to hear the matter, because of the difficulty of the subject matter, or even because of calendar constraints." Alaska Federation for Community Self-Reliance v. Alaska Public Utilities Comm'n, 879 P.2d 1015, 1021 (Alaska 1994), *quoting* In re Ellis, 108 B.R. 262,266 (D. Hawaii 1989).

Canon 3 of the Code of Judicial Conduct and the commentary thereto counsel against the temptation to escape a case by granting a baseless request for recusal, but also remind the court to bear in mind the importance of avoiding the appearance of bias. There is a non-exclusive list in Canon 3 of instances in which disqualification is appropriate where the judge's impartiality might reasonably be questioned. Alaska Statute 22.20.020(a) also sets forth grounds for disqualification of a judge for cause. Some of the grounds for disqualification in AS 22.20.020 duplicate grounds covered in Canon 3.

AS 22.20.020(c) provides in pertinent part:

> If a judicial officer denies disqualification the question shall be heard and determined by another judge assigned for the purpose by the presiding judge of the next higher level of courts or, if none, by the other members of the supreme court. The hearing may be ex parte and without notice to the parties or judge.

The undersigned is not aware of any ground to disqualify him from sitting on this case. It is not uncommon for a party to believe a judge is biased against them when the judge rules against them on a procedural or substantive motion. Something more is required to establish bias or a reasonably based appearance of bias.

> Judges are required to recuse themselves not only if there is actual bias but also if there is the appearance of bias. However, the mere appearance of bias requires a "greater showing" by the petitioner for recusal. The refusal by a judge to be recused from a case is reviewed for an abuse of discretion. Issuing an evidentiary ruling against Jourdan does not constitute bias. The evidentiary ruling is appealable and has in fact been appealed. Even if Judge Hunt's ruling on this evidentiary issue were found to be improper, this does not rise to the level of bias.

Jourdan v. Nationsbanc Mortg. Corp., 42 P.3d 1072, 1082 (Alaska 2002) (footnotes omitted) (the alleged grounds for bias included Judge Hunt having been appointed by a Governor who was a close personal friend of one of the adversary parties, which the Alaska Supreme Court found not to create an appearance of impropriety). The court noted that the party seeking recusal in the Jourdan case did not exercise the right to peremptorily challenge Judge Hunt and instead waited until after an adverse substantive ruling was issued. Similar rulings have been made in other cases. See, e.g., DeNardo v. Corneloup, 163 P.3d 956 (Alaska 2007). In this DeNardo case the Court held,

> Judges should recuse themselves if there is the appearance of bias, but "[b]y themselves, interpretations of the law are not sufficient to demonstrate the existence of bias." We have recognized that "[d]isqualification 'was never intended to enable a discontented litigant to oust a judge because of adverse rulings made.' "

DeNardo v. Corneloup, 163 P.3d at 967, quoting Wasserman v. Bartholomew, 38 P.3d 1162, 1171 (Alaska 2002). The Alaska Court of Appeals has explained that a judge has a counter-

balancing duty to avoid the appearance of shirking responsibility. Feichtinger v. State, 779 P.3d 344, 348 (Alaska App. 1989). Bearing the foregoing in mind, the court will address the reasons Mr. Haeg advances for disqualification, tracking his 18 numbered issues.

1. Mr. Haeg contends he was entitled to oral argument under Civil Rule 77(e) before the court ruled on the State's motion to dismiss. Civil Rule 77(e)(1) provides a five day period within which an oral argument must be requested if desired after service of a responsive pleading or when the responsive pleading was due, whichever is earlier. The State filed a Motion to Dismiss Application for Post-Conviction Relief on March 10, 2010 (the "Motion to Dismiss"). Mr. Haeg filed an Opposition to the Motion to Dismiss on March 19, 2010 (the "Opposition"). The State filed a "reply" on April 12, 2010, in which it provided notice that it would rely upon its motion and not file a reply brief in response to Mr. Haeg's Opposition. Mr. Haeg did not request oral argument on the motion to dismiss within five days of his Opposition or within five days of the non-substantive reply. In a pleading filed on January 10, 2011, Mr. Haeg requested a hearing and rulings on various motions before deciding the motion to dismiss. His description of the hearing he wanted was one at which witnesses would be called to testify and their credibility judged. Mr. Haeg made it clear that he wanted a hearing at which witnesses would be permitted and compelled to testify in the largest courtroom in Kenai to accommodate interested members of the public. Such a hearing would have been an evidentiary hearing, not a mere oral argument. There is no requirement for a court to conduct an evidentiary hearing on a motion to dismiss. The court has discretion whether to hear oral argument on non-dispositive motions, whether to hear oral argument on dispositive motions when the oral argument request is not timely, and whether to grant an evidentiary hearing on a motion to dismiss.

Here the court exercised its discretion not to hear oral argument and not to have an evidentiary hearing on the motion to dismiss. It is noteworthy that Haeg PCR proceeding was not dismissed in the January 3, 2012, Order. Mr. Haeg was given additional time and opportunity to gather information on his ineffective assistance of counsel claims. Oral argument on the motion to dismiss after the further briefing opportunity has not been foreclosed. Also, an evidentiary hearing may be held in due course on any claims that survive the motion to dismiss.

2. Mr. Haeg claims the undersigned maliciously violated Civil Rule 77(e)(2) and illegally acquiesced in the State's 47-page request that public oral argument take place. The 47-page State request referenced by Mr. Haeg played no role in the court's decision not to hear oral argument at this stage of the motion to dismiss. The reasons no oral argument was scheduled include (a) the request was untimely under Civil Rule 77(e), (b) this PCR case already has five volumes of court files, (c) time was passing, and (d) the court did not perceive a benefit from oral argument on the issues at hand.

3. Mr. Haeg claims the court is 322 days, and counting, past the mandatory time limit for holding an oral argument "hearing." Oral argument and an evidentiary hearing are not the same.

4. Mr. Haeg claims the undersigned has falsified pay affidavits. This PCR proceeding is not the appropriate forum for complaints about pay affidavits. Through the documents provided with his January 23, 2012, Motion to Supplement, Mr. Haeg's concerns have been raised with the Alaska State Troopers and with the Alaska Commission on Judicial Conduct.

5. Mr. Haeg claims a blatant effort by the court to keep corruption from public view. The pleadings and court proceedings in a PCR proceeding such as this are public.

6. Mr. Haeg claims he was precluded from bringing in new evidence. He was not. The court ruled that some of the material Mr. Haeg wanted to add to this PCR proceeding is not "newly discovered." The court provided Mr. Haeg an opportunity in the January 3, 2012, rulings to gather and present new evidence and argument on particular, identified points.

7. Mr. Haeg claims the court mischaracterized or misunderstood his newly discovered evidence claim to involve an entrapment defense. The Alaska Court of Appeals already addressed the Haeg argument that the State violated Evidence Rule 410 by using a statement he made during failed plea negotiations to charge him with crimes more serious than he initially faced.

8. Mr. Haeg claims that the court has precluded him from raising constitutional rights violations with regard to ineffective assistance of counsel. The ineffective assistance of counsel claims as to attorneys Cole and Robinson are alive in this case, subject to the January 3, 2012 rulings.

9. Mr. Haeg argues the post-trial and post-sentencing issues the court ruled were "too attenuated" are not. The January 3, 2012 rulings stand.

10. Mr. Haeg disputes the January 3, 2012 ruling with regard to attorney Osterman. The January 3, 2012 ruling as to Osterman stands.

11. Mr. Haeg contends the court failed to recognize his trial/conviction was illegal despite his self-incriminating testimony at trial. The self-incriminating testimony noted by the undersigned is from the Court of Appeals decision on the appeal.

12. On the issue whether Mr. Haeg did or did not show sufficient detail regarding the lack of affidavits by his trial counsel, the January 3, 2012 rulings stand.

13. On the issue whether Mr. Haeg or the State bear the burden of presenting a prima facie case before the merits are reached, the January 3, 2012 rulings stand.

14. See the response to point 13.

15. The issue of any conspiracy between Judge Murphy and Trooper Gibbens is one as to which Mr. Haeg has an opportunity per the January 3, 2012 rulings, but has not yet, met his burden of a prima facie showing.

16. As to whether parts of the PCR application are defective, which Mr. Haeg disputes, the January 3, 2012 rulings stand.

17. Mr. Haeg alleges the court is covering up corruption and a conspiracy rather than allowing it to be exposed in open court. See response to points 5 and 15. The January 3, 2012 rulings stand.

18. Mr. Haeg contends the court is trying to starve him into submission. Mr. Haeg insisted on retaining a controlling hand in his representation, and decided to reject the counsel appointed at public expense. The *pro se* presentations by Mr. Haeg have been voluminous but have not yet established a prima facie case for post-conviction relief. The court devoted time, attention, and priority to the issues regarding Mr. Haeg's master guide license. That effort was not intended to starve Mr. Haeg into submission, just the opposite. Mr. Haeg has been given additional time per the January 3, 2012 rulings.

CONCLUSION AND ORDERS

Based on the foregoing, the motion to disqualify the undersigned is denied. The motion to supplement the motion for disqualification is granted. The motion for an evidentiary hearing on the motions to disqualify and to strike the January 3, 2012 rulings is denied. The motion to strike the January 3, 2012 rulings is denied.

Dated this 2nd day of February, 2012.

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, Flanigan
2-3-12 Date
Roberts Clerk

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

DEC - 5 2011

ORDER

This matter having come before the Court on the motion of the Plaintiff for a one day extension to file his Reply Brief, re: Motion to Permit Filing of Supplemental Complaint, good cause having been shown,

IT IS HEREBY ORDERED, that the motion is granted.

DATED THIS 17th DAY OF January, ~~2011.~~ 2012

JUDGE, SUPERIOR COURT

CERTIFICATION OF DISTRIBUTION
I certify that a copy of the foregoing was mailed to the following at their addresses of record:
Haeg, Peterson, Flanigan
2-3-12 Date
Roberts Clerk

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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing
Order
was served by mail this 1st day of December, 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

DEC - 5 2011

ORDER

This matter having come before the Court on the motion of the Plaintiff to allow an overlength brief, good cause having been shown,

IT IS HEREBY ORDERED, that the motion is granted.

DATED THIS 17th DAY OF January, 2012.

JUDGE, SUPERIOR COURT

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing *Order* was served by mail this 1st day of December, 2011 on:

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

FLANIGAN & BATAILLE

CERTIFICATION OF DISTRIBUTION
I certify that a copy of the foregoing was mailed to the following at their addresses of record:
Haeg, Peterson, Flanigan
12-3-12 Roberts
Date Clerk

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

Trial Case No. 4MC-04-00024 CR

ORDER

Having considered the applicant's 9-15-11 Motion for Transcription, the state's opposition, and any response thereto,

IT IS HEREBY ORDERED that the applicant's motion is DENIED.

DONE at Kenai, Alaska, this 17th day of Jan, 2012 ~~2011.~~

Carl Bauman
Superior Court Judge Carl Bauman

CERTIFICATION OF DISTRIBUTION
I certify that a copy of the foregoing was mailed to the following at their addresses of record:
Haeg, Peterson, Flanigan
2-3-12 Roberts
Date Clerk

02061

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 9-15-11 motion, that the state must transcribe the deposition of Arthur Robinson and to make this transcription available to Haeg, is hereby ~~GRANTED~~ / DENIED.

Done at Kenai, Alaska, this 17th day of January, ~~2011~~ 2012.

Carl Bauman

Superior Court Judge Carl Bauman

SEP 15 2011

CERTIFICATION OF DISTRIBUTION
I certify that a copy of the foregoing was mailed to the following at their addresses of record:
Haeg, Peterson, Flanigan
2-3-12 Date
J Roberts Clerk

02062

D

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
1-5-11 Hearing & Ruling Before Deciding State's Motion to Dismiss

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)

1/10/11

Further Orders:

1-17-2012
Date

Carl Bauman
Judge's Signature
CARL BAUMAN
Type or Print Judge's Name

I certify that on 2-3-12
a copy of this order was mailed to (list names): Haeg, Peterson, Flanigan

Clerk: Roberts

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

Judicial Notice of Additional Caseload.

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:

1-17-2012
Date

Judge's Signature

CARL BAUMAN
Type or Print Judge's Name

I certify that on 2-3-12
a copy of this order was mailed to (list names): Haeg, Peterson, Flanigan

Clerk: Roberts

CIV-820 (5/02) (cs)
ORDER ON MOTION

Civil Rules 7(b) & 77

02064

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 APPLICANT'S MOTION FOR EVIDENTIARY HEARING

Upon consideration of the motion for an evidentiary hearing and the opposition to it,

IT IS ORDERED that the motion is DENIED.

DATED: 1-17-2012, ~~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, Flanigan
2-3-12 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

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)

AUG - 1 2011

The applicant's 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 is hereby ~~GRANTED~~/ DENIED.

Done at Kenai, Alaska, this 17th day of January, ~~2011~~ 2012.

Carl Bauman

Superior Court Judge Carl Bauman

CERTIFICATION OF DISTRIBUTION
I certify that a copy of the foregoing was mailed to the following at their addresses of record:
Haeg, Peterson, Flanigan
2-3-12 J Roberts
Date Clerk

02066

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 12-15-11 motion for immediate hearings, rulings, and restart of PCR proceedings, is hereby GRANTED / DENIED.

DEC 15 2011

Done at Kenai, Alaska, this 17th day of JAN, 2012 ~~2011~~.

Carl Bauman

Superior Court Judge Carl Bauman

CERTIFICATION OF DISTRIBUTION
I certify that a copy of the foregoing was mailed to the following at their addresses of record:
Haeg, Peterson, Flanigan
2-3-12 Roberts
Date Clerk

02067 D

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

ORDER

This matter having come before the Court on the Plaintiff's motion for an extension of time to file a Reply to the Defendant's Opposition to Plaintiff's Motio for Leave to File a Class Action Complaint. good cause having been shown,

IT IS HEREBY ORDERED that the Plaintiff's motion is granted, the Plaintiff's Reply Brief is now due on 11/30/2011.

DATED THIS 2nd DAY OF February, 2012.

Carl Bauman

JUDGE, SUPERIOR COURT

CERTIFICATION OF DISTRIBUTION

I certify that a copy of the foregoing was mailed to the following at their addresses of record:

Haeg, Peterson, Flanigan

2-3-12 Date

J. Roberts Clerk

NOV 28 2011

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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Order granting *Motion for extension of Time* was served by mail this 28th day of November, 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, 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 State's unopposed motion for an extension of time to reply to Mr. Haeg's complaint, and any response thereto,

IT IS HEREBY ORDERED that the State has until October 21, 2011, to respond to the Plaintiff's Supplemental Class Action Complaint.

DONE at Kenai, Alaska, this 2nd day of Feb, 2012.

Superior Court Judge Carl Bauman

OCT 19 2011

CERTIFICATION OF DISTRIBUTION
I certify that a copy of the foregoing was mailed to the following at their addresses of record:
Haeg, Peterson, Flanigan
2-3-12 Roberts
Date Clerk

02070

D

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

OCT - 5 2011

ORDER

Having considered the state's motion for an extension of time to file a reply, the applicant's opposition, and any response thereto,

IT IS HEREBY ORDERED that the motion to continue is granted. The state has until October 14, 2011, to respond to the Opposition to State's Notice of Supplemental Authority.

DONE at Kenai, Alaska, this 2nd day of Feb, 2012.

Carl Bauman

Superior Court Judge Carl Bauman

CERTIFICATION OF DISTRIBUTION
I certify that a copy of the foregoing was mailed to the following at their addresses of record:
Haeg, Peterson, Flanigan
2-3-12 Date
Roberts Clerk

02071

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT KENAI

DAVID HAEG,

Plaintiff,

vs.

STATE OF ALASKA,

Defendant.

Filed in the Third Judicial District at Kenai, Alaska

NOV 21 2011

Clerk of the Trial Courts

By _____ Deputy

Case No. 3KN-10-01295 Civil

Unopposed Motion for Extension of Time

Comes Now, David Haeg, by and through counsel, Flanigan & Bataille, and moves the court for an extension of time until Wednesday, November 23, 2011 to file his Reply to the Opposition to Motion to Allow Filing of Supplemental Class Action Complaint. Counsel for the defendant has advised he has no opposition to this extension.

DATED THIS 18th DAY OF November, 2011.

FLANIGAN & BATAILLE
Attorneys for Plaintiff

By Michael W. Flanigan
ABA #7710114

CERTIFICATION OF DISTRIBUTION
I certify that a copy of the foregoing was mailed to the following at their addresses of record:
Haeg, Peterson, Flanigan
2-3-12 Date
Roberts Clerk

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

ORDER

IT IS SO ORDERED.

Dated: 2-2-12

SUPERIOR COURT JUDGE
CARL BAUMAN

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing
Unopposed Motion for Extension of Time
was served by mail this 18th day of November, 2011 on:

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

FLANIGAN & BATAILLE

CERTIFICATION OF DISTRIBUTION
I certify that a copy of the foregoing was mailed to the following at their addresses of record:
Haeg, Peterson, Flanigan
2-3-12 Roberts
Date Clerk

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.

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

NOV 15 2011

Clerk of the Trial Courts
By _____ Deputy

Case No. 3KN-10-01295 Civil

Unopposed Motion for Extension of Time

Comes Now, David Haeg, by and through counsel, Flanigan & Bataille, and moves the court for an extension of time until Friday, November 18, 2011 to file his Reply to the Opposition to Motion to Allow Filing of Supplemental Class Action Complaint. Counsel for the defendant has advised he has no opposition to this extension.

DATED THIS 14th DAY OF November, 2011.

FLANIGAN & BATAILLE
Attorneys for Plaintiff

ABA #8330 04

By Michael W. Flanigan
ABA #7710114

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

ORDER

IT IS SO ORDERED.

Dated: 2-2-2012

Carl Bauman
SUPERIOR COURT JUDGE

CARL BAUMAN

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing *Unopposed Motion for Extension of Time* was served by mail this 14rd day of November, 2011 on:

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

FLANIGAN & BATAILLE

CERTIFICATION OF DISTRIBUTION
I certify that a copy of the foregoing was mailed to the following at their addresses of record:
Haeg, Peterson, Flanigan
2-3-12 Roberts
Date Clerk

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.

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

NOV - 4 2011

Clerk of the Trial Courts
By _____ Deputy

Case No. 3KN-10-01295 Civil

Unopposed Motion for Extension of Time

Comes Now, David Haeg, by and through counsel, Flanigan & Bataille, and moves the court for an extension of time until Monday, November 14, 2011 to file his Reply to the Opposition to Motion to Allow Filing of Supplemental Class Action Complaint. Counsel for the defendant has advised he has no opposition to this extension.

DATED THIS 3rd DAY OF November, 2011.

FLANIGAN & BATAILLE
Attorneys for Plaintiff

By Michael W. Flanigan
ABA #7710114

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

ORDER

IT IS SO ORDERED.

Dated: 2-2-2012

SUPERIOR COURT JUDGE
CARL BAUMAN

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing
Unopposed Motion for Extension of Time
was served by mail this 3rd day of November, 2011 on:

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

FLANIGAN & BATAILLE

NOV - 4 2011

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

CERTIFICATION OF DISTRIBUTION
I certify that a copy of the foregoing was mailed to the following at their addresses of record:
Haeg, Peterson, Flanigan
2-3-12 Roberts
Date Clerk

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

/

ORDER GRANTING TELEPHONIC PARTICIPATION

The Court having noted that Mark D. Osterman lives in Indiana and is not readily available for appearance before the court, and further that a toll-free number has been provided for court contact when necessary,

IT IS ORDERED that telephonic participation is GRANTED.

Carl B. Bauman
Superior Court Judge

AUG 15 2011

CERTIFICATION OF DISTRIBUTION
I certify that a copy of the foregoing was mailed to the following at their addresses of record:
Haeg, Peterson, Osterman
2-3-12 Roberts
Date Clerk

CERTIFICATE OF SERVICE Peterson, AAG Haeg
I certify that all attorneys/parties of record have been served with the above-entitled document by first class mail/facsimile/personal delivery.
DATE 8/4/11
SIGNED

02078

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

_____/

ORDER GRANTING PROTECTIVE ORDER AND QUASHING SUBPOENA AND DEPOSITIONS

This matter appears before the court on the Petition of a non--party seeking to quash a subpoena demanding records and further seeking deposition of such records. The court notes that counsel retained by Mister Haeg to prepare and perfect an appeal has opposed a subpoena issued on August 3, 2011, Documents Requested for Scheduled Telephonic Deposition, and Notice of Taking Telephonic Records Deposition.

AUG 15 2011

Based upon the arguments of counsel and the ethical opinion provided hereunder, IT IS ORDERED that a Protective Order is GRANTED, that the Subpoena for Documents issued to Mark D. Osterman is QUASHED, and that no Deposition of Mark D. Osterman shall be set without the express consent of this court.

MOOT

Carl S. Bauman
Superior Court Judge

CERTIFICATE OF SERVICE

Petitioner, AAG, Haeg, ...

I certify that all attorneys/parties of record have been served with the above-entitled document by first class mail/facsimile/~~personal~~ delivery.

DATE 8/4/11

SIGNED _____

02079

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

ORDER PERMITTING FILING OF SUPPLEMENTAL CLASS ACTION COMPLAINT

This matter having come before the Court on the Motion of Plaintiff, 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 with this Court, good cause having been shown,

IT IS HEREBY ORDERED THAT the Plaintiff's motion is granted. The Defendant shall file an answer to the Supplemental Class Action Complaint within 40 days.

DATED THIS _____ DAY OF _____, 2011.

NOT USED

_____
JUDGE, SUPERIOR COURT

OCT - 5 2011

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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing *ORDER PERMITTING FILING OF SUPPLEMENTAL CLASS ACTION COMPLAINT* was served by mail this 4th day of October, 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,	)
	)
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 1-13-12 motion for oral argument on his motion to strike Judge Bauman's 1-3-12 orders is hereby GRANTED / DENIED.

Done at Kenai, Alaska, this_____day of_____, 2012.

NOT USED

Superior Court Judge Carl Bauman

JAN 13 2012

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)

The applicant's 1-13-12 motion to strike Judge Bauman's 1-3-12 orders is hereby GRANTED / DENIED.

Done at Kenai, Alaska, this _____ day of _____, 2012.

NOT USED

_____

Superior Court Judge Carl Bauman

JAN 13 2012

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 1-13-12 motion that Judge Bauman be disqualified for cause is hereby GRANTED / DENIED.

Done at Kenai, Alaska, this ____ day of _____, 2012.

NOT USED

_____

Superior Court Judge Carl Bauman

JAN 13 2012

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 1-13-12 motion for oral argument on his motion that Judge Bauman be disqualified for cause is hereby GRANTED / DENIED.

Done at Kenai, Alaska, this_____day of_____, 2012.

JAN 13 2012

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-10-01295CI) (formerly 3HO-10-00064CI))))

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

The applicant's 1-23-12 motion to supplement evidence that Judge Bauman must be disqualified for cause is hereby GRANTED / DENIED.

Done at Kenai, Alaska, this_____day of_____, 2012.

NOT USED

_____

Superior Court Judge Carl Bauman

JAN 23 2012

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 1-23-12 motion for an evidentiary hearing on the motion to disqualify Judge Bauman from Haeg's PCR for cause is hereby GRANTED / DENIED.

Done at Kenai, Alaska, this_____day of_____, 2012.

NOT USED

_____

Superior Court Judge Carl Bauman

JAN 23 2012

02087

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 1-23-12 motion for an evidentiary hearing on the motion to strike Judge Bauman's 1-3-12 orders is hereby GRANTED / DENIED.

Done at Kenai, Alaska, this_____ day of_____, 2012.

NOT USED

Superior Court Judge Carl Bauman

JAN 23 2012

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)

2-1-12 MOTION FOR RULING, BY FEBRUARY 3, 2012, ON THE MOTIONS CONCERNING COLE'S DEPOSITION

COMES NOW Applicant, David Haeg, and hereby files this motion for ruling, by February 3, 2012, on the motions concerning Cole's deposition.

Prior Proceedings

(1) On January 27, 2012 the court granted Brent Cole's motion for expedited consideration to quash Haeg's subpoena for Cole to be deposed on January 31, 2012 at Haeg's office. The court granted expedited consideration, ruled that the deposition could not be held at the location picked by Haeg, ruled that the deposition may take place at a location agreed to by all the parties, and ruled Haeg must have any opposition filed by 1 pm on January 30, 2012.

9

(2) On January 27, 2012 Haeg called Cole and Peterson and both agreed to hold the deposition at Petersons's office on February 7, 2012 at 10am.

(3) On January 30, 2012 11:26 am Haeg filed his opposition to Cole motion to quash and provided evidence that Cole and Peterson had agreed to hold the deposition in Peterson's office on February 7, 2012 at 10 am – if the subpoena was not quashed.

(4) No ruling on Cole's motion to quash was made by the court on January 30, 2012, as should have occurred due to the granting of expedited consideration and as the deposition was to have been held on January 31, 2012 at 10 am.

(5) On February 1, 2012 Haeg attempted to contact Cole and Peterson to see if they would oppose the court ruling by February 3, 2012 on the motions concerning Cole's deposition. Cole's secretary stated Cole was in Juneau and could not be contacted and Peterson said he would not oppose the court ruling on the motions by February 3, 2012.

Discussion

If the court does not make a decision on Cole's and Haeg's motions before February 7, 2012 no one will know whether they should prepare for or attend Cole's deposition which was rescheduled to February 7, 2012 10 am due to the courts January 27, 2012 order.

Conclusion

In light of the above Haeg respectfully asks the court to decide, by February 3, 2012 both his and Cole's motions concerning Cole's deposition.

I declare under penalty of perjury the forgoing is true and correct. Executed on February 1, 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 February 1, 2012 a copy of the forgoing was served by mail and fax to the following parties: Peterson, Cole, 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)

1-30-12 OPPOSITION TO COLE'S MOTION TO QUASH SUBPOENA;

1-30-12 MOTION FOR ORDER THAT COLE APPEAR TO BE DEPOSED ON FEBRUARY 7, 2012 IN ANCHORAGE;

1-30-12 MOTION FOR ORAL ARGUMENT HEARING ON STATE'S SECOND MOTION TO DISMISS;

1-30-12 OPPOSITION TO STATE'S SECOND MOTION TO DISMISS HAEG'S APPLICATION FOR PCR

COMES NOW Applicant, David Haeg, and hereby files: (1) this opposition to Cole's motion to quash subpoena; (2) this motion for order Cole appear to be deposed on February 7, 2012 in Anchorage; (3) this motion for oral argument hearing on state's second motion to dismiss Haeg's PCR; and (4) this opposition to state's second motion to dismiss Haeg's PCR.

Prior Proceedings

(1) On January 17, 2012 Haeg called his former attorney Cole and informed him a subpoena was being issued so Haeg could depose Cole, and

requested to know when Cole would be available. Cole responded that he would be available to be deposed on January 31, 2012.

(2) On January 18, 2012 Haeg issued a subpoena, along with the witness and travel fees, for Cole to be deposed in Haeg's office on January 31, 2012.

(3) On January 27, 2012 Haeg received a 20-page emailed motion from Cole to quash the subpoena requiring Cole to be deposed by Haeg or, in the alternative, that it be held in a "safer" location then Haeg's office.

(4) On January 27, 2012 Haeg received an emailed copy of the state's response to Cole's motion to quash his subpoena. In this response the state offered the use of a "secure" state conference room at 310 K Street, Suite 308, Anchorage AK 99501. In addition, the state expressed concern there was no longer a judge assigned because of Haeg's motion to disqualify Judge Bauman for cause.

(5) On January 27, 2012 Judge Bauman faxed Haeg an order that Haeg must file any response to the motion to quash by 1 pm on 1-30-12 and,

> "The depo will not occur in Mr. Haeg's home in Soldotna, but may occur on 1-31 if conducted at a court reporter's office or other mutually agreed location."

(6) On January 27, 2012 Haeg received the state's second 42-page motion to dismiss Haeg's PCR application.

(7) On January 27, 2012 – although Judge Bauman must be disqualified for corruption - Haeg contacted both Cole and Peterson and all agreed to hold Cole's deposition in Peterson's conference room (310 K Street, Suite 308

Anchorage, AK 99501) on February 7, 2012, beginning at 10 am – if the court does not quash Cole's subpoena. [*See* attached emails].

Discussion of Motion to Quash Cole's Subpoena

(1) Cole claims Haeg has already questioned him about the matters in question. Haeg has looked at the questions he is currently drafting for Cole's deposition and they have never been asked of Cole.

(2) Cole claims "Collateral Estoppel" prevents Haeg from deposing Cole because Haeg had previously litigated the issue during Alaska Bar Association fee arbitration against Cole. Cole then cites the requirement that the issue to be precluded from re-litigation must be *identical* to that decided in the first action. Haeg filed fee arbitration against Cole to recover money he had paid Cole and this is not identical to Haeg's PCR claim Cole gave him ineffective assistance of counsel which resulted in an unfair trial and sentencing. The fee arbitrators specifically wrote that Haeg's fee arbitration complaint was Haeg:

"should be excused from paying a fee."

After fee arbitration the Alaska Bar Association specifically wrote:

> *"Whether Mr. Cole committed ineffective assistance in your criminal case is not a question that is resolved through disciplinary proceedings."*

It is clear Haeg's claim of ineffective assistance of counsel was not litigated during the Alaska Bar Association fee arbitration proceedings.

(3) Haeg has previously asked for an affidavit from Cole and Cole responded in writing:

"I am not aware of any legal duty I have to spend my time answering these questions. I do not intend to answer any of your questions."

Now that he has been subpoenaed Cole provides an affidavit that answers absolutely none of the questions Haeg requires Cole to answer for the ineffective assistance of counsel claim. Cole doesn't even answer any of the questions Haeg asked in his original affidavit questions for Cole. In other words if Cole is allowed to answer questions of Cole's own making Haeg is effectively prevented from a fair presentation of his case – *as Cole will only provide answers that will not incriminate himself or prove he was ineffective.*

Every ruling authority has stated the attorney must answer the written questions presented to him *by the client* claiming ineffective assistance and, if the attorney refuses this, as Cole has, the attorney must answer *the client's* questions during a formal deposition. [*See* State v. Jones, 759 P.2d 558 (AK 1988)]. Having an attorney answer questions of his own design is absolutely useless – as was proven by Osterman's "affidavit" - which answered not a single one of Haeg's questions. Questions attorneys will ask of themselves: "Were you an a good attorney?" Answer: "Why yes, and I was also handsome and polite to boot."

Cole will never ask himself if the state gave Haeg immunity for the 5-hour statement *(covering everything Haeg was prosecuted for)* the state required Haeg to make. For Alaska law, in both AS 12.50.101 and the Alaska Supreme Court case State v. Gonzalez, 853 P.2d 526 (AK Supreme Court 1993), *prohibit*

prosecution for anything a person talks about during a statement given due to a grant of immunity – no matter what other evidence there is:

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 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.
>
> Once persons come into contact with the compelled testimony they are incurably tainted.
>
> 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.

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."

"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."

Haeg has a tape recordings of Cole and Cole's partner during Haeg's prosecution (attorney Kevin Fitzgerald) testifying under oath that the state specifically gave Haeg "transactional immunity" – preventing Haeg from ever being prosecuted no matter what other evidence there was.

Black's Law Dictionary (9th Ed. 2009).

"Transactional immunity protects a witness from prosecution for the offense to which the compelled testimony relates."

Adding insult to injury is the fact that not only was Haeg prosecuted when he could not be, he was prosecuted with this immunized statement being used in innumerable ways: (a) the exact people who took Haeg's immunized statement (Prosecutor Scot Leaders and Trooper Brett Gibbens) were the very ones who later prosecuted and were the main witness against Haeg at trial – [*See* Gonzalez and North] above; (b) before his trial excerpts of Haeg's immunized statement were printed in the Anchorage Daily News and all other major Alaska newspapers for Haeg's jurors and witnesses against him to read – [*See* Gonzalez and North] above (c) the map Haeg was required to make during his immunized statement was the main exhibit presented to Haeg's jurors at trial in order to convict Haeg – [*See* Gonzalez and North] above (d) prosecutor Leaders and Trooper Gibbens recorded

themselves using the map Haeg was required to make to prepare Zellers before his trial testimony against Haeg – [*See* Gonzalez and North] above and (e) Zellers, and Zellers' attorney Kevin Fitzgerald, have testified Zellers cooperated and testified for the state as a direct result of Haeg's statement – [*See* Gonzalez and North] above.

To keep this document short Haeg will not go over in detail the numerous other issues that prove Cole knowingly helped the state protect the Wolf Control Program by first illegally breaking Haeg financially and then by illegally framing Haeg for guiding crimes – the elimination of all evidence that the state was fraudulently conducting the Wolf Control Program by telling permittees like Haeg they must take the very actions Haeg was then prosecuted for taking; the knowing falsification of evidence to Haeg's guiding area - which the state then used to justify charging Haeg with guiding crimes and shift the focus from the Wolf Control Program; the knowing use of false warrants to the seize and deprive Haeg of planes and other property he needed to provide for his family; the failure to provide the required immediate hearings to protest the deprivation of Haeg's business property; the illegal use of a plea agreement to strip Haeg of a years income before forcing him to trial; and the refusal to obey valid subpoenas to answer in open court questions of the forgoing.

<u>In light of the above it is clear Cole must answer questions of Haeg's choice; and not answer questions of his own choice.</u>

(4) The above also serves to conceal the fact that all Haeg is required at this stage is make the case that there is a material issue in dispute that requires an evidentiary hearing to resolve. In other words all that is required of Haeg is to make a claim, which, if true, would mean he is entitled to post-conviction relief and to have Cole (or any of Haeg's other attorneys) respond that Haeg's claims are not true. Then, since there is "a material issue in dispute" an evidentiary hearing must be held in open court for witnesses and evidence to be presented so the court may determine the credibility of the witnesses by their demeanor, as they are thoroughly cross-examined. [*See* State v. Jones, 759 P.2d 558 (AK 1988), Peterson v. State, 988 P.2d 109 (AK 1999), and Puisis v. State, 2003 WL 22800620 (AK 2003)]. All authorities hold that open court testimony and cross-examination in front of a judge is required when credibility is an issue. Instead, *Haeg is being forced to conduct his entire PCR by written questions and depositions so skilled, evasive, and corrupt attorneys do not have to face the corruption cleansing effect of testimony and cross-examination in open-court while watched by the public.*

(5) Cole claims his deposition cannot be held in Haeg's office because:

> *"Haeg has a history of threatening counsel and has acted irrationally in the past."*

Haeg has never threatened counsel and has not acted irrationally – proved by Cole not being able to provide a single instance of either. All Haeg has done is consistently stated that he will not stop until Cole, and all those who have conspired to violate our constitution by using the publics trust and the color of

law, are held accountable. Haeg does not feel this is threatening or irrational – Haeg feels it appropriate and required by our constitution and all those who have died for it.

(6) Other statements made by Cole in his "affidavit", which answer only questions of his own choosing, are misleading or provably false. This additional perjury by Cole is to create the impression that he had informed Haeg of what could be done to combat the numerous constitutional violations by the state to illegally prosecute and bankrupt Haeg and that his actions in regard to an ineffective assistance of counsel claim have already been litigated during fee arbitration. Other false and misleading claims by Cole are that it was the responsibility of Haeg's second attorney (Arthur "Chuck" Robinson) to combat the state's illegal prosecution of Haeg. This is very puzzling as Haeg has tape-recordings of Robinson currently stating the reason he did nothing to combat the state's illegal prosecution of Haeg was that it was Cole's duty to do so in the beginning and that he (Robinson) had no obligation to do so later or to expose or use the ineffective assistance of counsel by Cole to help Haeg later.

(7) In response to the court's 1-27-12 order (even though Judge Bauman must be removed from Haeg's case for corruption) Haeg contacted both Cole and Peterson and both agreed to conduct Cole's deposition in the state's conference room at 310 K Street, Suite 308, Anchorage, AK 99501 on February 7, 2012 – unless the court (not Judge Bauman) grants Cole's motion to quash his subpoena.

State's Second Motion to Dismiss Haeg's PCR

State attorney Andrew Peterson claims in his second motion to dismiss that Haeg's supplemental PCR claim, that Peterson himself committed prosecutorial misconduct by falsifying the law to the court, must be dismissed.

Prior Proceedings

(1) On June 8, 2010 and on April 7, 2011 Peterson filed motions with Magistrate Woodmancy (who has no legal training whatsoever) that the judgment against Haeg must be, and could be, modified because the state wanted to sell the plane seized during Haeg's case but could not get title to it. Peterson explained that the Federal Aviation Administration would not transfer the plane title to the state because the corporation Bush Pilot Inc. owned the plane and the judgment the state was trying to use to authorize transfer of title was against David Haeg.

(2) *In his oppositions, sent to both Peterson and Magistrate Woodmancy, Haeg pointed out his judgment was pronounced nearly 5 years previous and the law (AS 12.55.088), backed up by the Alaska Supreme Court (Davenport v. State, 543 P.2d 1204 (AK Supreme Court 1975)) clearly and specifically prohibited modification of a judgment after 180 days of judgment being pronounced – even if the reason was fraud.* The Supreme Court specifically ruled no court had authority to relax the 180-day time limit imposed by AS 12.55.088.

(3) Magistrate Woodmancy took no action on the state's June 8, 2010 motion *but after being affirmatively informed the law specifically prohibited this,*

granted the state's April 7, 2011 motion to amend the judgment against Haeg over 5 years after judgment was pronounced - so the state could obtain title to a plane which was owned by a legal entity that was never charged, taken to trial, or convicted.

(4) Haeg appealed Woodmancy's order and filed a motion to amend his PCR with the claim Peterson committed prosecutorial misconducts by falsifying the law to ignorant Magistrate Woodmancy.

(5) In his illegal orders of January 3, 2012 (made without the required and demanded open-to-the-public hearings) Judge Bauman, after completely gutting Haeg's PCR of all substance, granted Haeg's request to add Peterson's prosecutorial misconduct to what little remained of Haeg's PCR claims.

(6) On January 19, 2012 Peterson filed his second motion to dismiss Haeg's PCR claim of prosecutorial misconduct by falsifying the law to the court. In his 42-page motion Peterson again and again makes the claim the court must modify the judgment against Haeg 5 years after the fact so the state can dispose of the plane seized during the prosecution of Haeg. *In his current 42-page motion Peterson makes not a single reference to, or dispute, Haeg's claim the law (AS 12.55.088), backed up by the Alaska Supreme Court (Davenport v. State, 543 P.2d 1204 (AK 1975)) prohibit modification of a judgment after 180 days of the judgment first being pronounced – even if the reason was fraud.*

Peterson simply claims, "Haeg's allegation is without merit and should be dismissed by the court."

Discussion

It is unacceptable that the state, with full knowledge of what it is doing and in full view of the public, is using its incredible power to intentionally violate the law that is meant to protect the fragile citizen from the government.

It is clear the motive for this is to "fix" and cover up the fact the state never provided the plane's legal owner (Bush Pilot Inc) with the *required* hearings, charges, and trial that would (1) expose the plane's seizure warrants were intentionally and materially falsified; (2) expose the immediate due process mandatory when seizing business property was not provided; (3) expose the state had destroyed evidence proving no crime had been committed; (4) expose the state had manufactured false evidence to create a crime; (5) expose the state had intentionally violated numerous other rights that are supposed to guarantee fair proceedings; and (6) expose that Judge Murphy, Trooper Gibbens, prosecutor Leaders, judicial conduct investigator Marla Greenstein, and numerous other attorneys including Peterson have conspired to do and cover up the forgoing.

Rather then admit and expose the illegality – proven by the Federal Aviation Administration's refusal to transfer title – *it is far easier to just break the law again to now convict and sentence the Bush Pilot Inc. without any trial or sentencing* – exactly as the state broke a stunning amount of laws and constitutional rights when they prosecuted Haeg.

The state's continued insistence the court become a party in breaking the indisputable law, because "the end justifies the means", proves the chilling fact

that this corruption must be very widespread and accepted. Even after being found out Peterson still fully expects the courts to sanction and approve, as they must always have in the past, the blatant illegality.

After this display of naked corruption it is no wonder no one hesitated to frame Haeg to cover up for the fraudulent Wolf Control Program.

And think very carefully of this: who could not be convicted of anything, no matter how innocent they are, if the state is allowed to destroy favorable evidence and to manufacture false evidence – all concealed by the false advice of your own trusted attorneys?

Conclusion

In light of the above Haeg respectfully asks the court to:

(1) Deny Cole's motion to quash his subpoena.

(2) Order Cole to appear and be deposed at 310 K Street, Suite 308 Anchorage, AK 99501 on February 7, 2012 starting at 10 am.

(3) Order and schedule an open-to-the-public oral argument hearing in open court on the state's motion to dismiss – AS IS REQUIRED BY RULE 77(e)(2).

(4) AFTER holding the REQUIRED open-to-the-public oral argument in open court on the state's second motion to dismiss, deny the state's second motion to dismiss.

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.

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 January 30, 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 January 30, 2012 a copy of the forgoing was served by mail to the following parties: Peterson, Cole, Judge Gleason, Judge Joannides, U.S. Department of Justice, FBI, and media.
By:

Faxed to Cole at 5:03PM January 27, 2012

Haeg

From: "Haeg" <haeg@alaska.net>
To: "Karin Gustafson" <KGustafson@MarstonCole.com>;
Cc: "Peterson, Andrew (LAW)" <andrew.peterson@alaska.gov>
Sent: Friday, January 27, 2012 4:45 PM
Subject: Re: Haeg v. Cole

Brent Cole,

Although your secretary stated you were in I have yet to get a phone call back from you. Andrew Peterson offered to hold your deposition in his conference room (OSPA) in Anchorage. The dates both he and I can make are February 2 (starting at noon), 3, 7, 9, or 10. Let me know ASAP which of these days are acceptable in case the court does not grant your motion to quash the subpoena.

I will ask the court to order you appear on one of these days in Peterson's conference room if you do not get back to me before I finalize my opposition to your motion to quash.

David Haeg
907-262-9249

----- Original Message -----
From: Karin Gustafson
To: haeg@alaska.net ; andrew.peterson@alaska.gov
Sent: Thursday, January 26, 2012 6:07 PM
Subject: Haeg v. Cole

Attached are copies of the following pleadings which were fax filed today with the Kenai court:

Motion to Quash Subpoena, Memorandum in Support, Affidavit in Support, and proposed Order
Motion for Expedited Consideration and proposed Order

Karin Gustafson
Law Offices of Marston & Cole, P.C.
821 N Street, Suite 208
Anchorage, Alaska 99501
(907) 277-8001 (voice)
(907) 277-8002 (fax)
kgustafson@MarstonCole.com(email)

Cole fax: 907-277-8002
Successfully sent on January 27, 2012
at 5:03 PM.

Haeg

From: "Karin Gustafson" <KGustafson@MarstonCole.com>
To: "Haeg" <haeg@alaska.net>
Sent: Friday, January 27, 2012 5:01 PM
Subject: RE: Haeg v. Cole

Dear Mr. Haeg,

Mr. Cole again apologizes for not getting back to you, but he had a 4:30 deadline for filing a brief and wasn't able to break away until it was finished. Assuming the court rules that he is required to give his deposition, he accepts your offer to have the deposition taken on February 7, 2012, beginning at 10:00 am, in Mr. Peterson's conference room in Anchorage.

Please let me know if you have any other questions.

Karin Gustafson

From: Haeg [mailto:haeg@alaska.net]
Sent: Friday, January 27, 2012 4:45 PM
To: Karin Gustafson
Cc: Peterson, Andrew (LAW)
Subject: Re: Haeg v. Cole

Brent Cole,

Although your secretary stated you were in I have yet to get a phone call back from you. Andrew Peterson offered to hold your deposition in his conference room (OSPA) in Anchorage. The dates both he and I can make are February 2 (starting at noon), 3, 7, 9, or 10. Let me know ASAP which of these days are acceptable in case the court does not grant your motion to quash the subpoena.

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David Haeg
907-262-9249

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>
> Karin Gustafson
> Law Offices of Marston & Cole, P.C.
> 821 N Street, Suite 208
> Anchorage, Alaska 99501
> (907) 277-8001 (voice)
> (907) 277-8002 (fax)
> kgustafson@MarstonCole.com(email)
>
>

Brent R. Cole, Esq.
Law Offices of Marston & Cole, P.C.
821 N Street, Suite 208
Anchorage, AK 99501
(907) 277-8001

IN THE DISTRICT COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT KENAI

DAVID HAEG, Applicant, vs. STATE OF ALASKA, Respondent.	Case No.: 3KN-10-01295CI

ORDER GRANTING EXPEDITED CONSIDERATION OF MOTION TO QUASH SUBPOENA

Having considered Brent R. Cole's Motion for Expedited Consideration of his Motion to Quash Subpoena, and any oppositions relating thereto,

IT IS ORDERED that Brent R. Cole's Motion to Quash Subpoena will be decided on an expedited basis.*

DATED this 27th day of JAN, 2012, at Anchorage, Alaska.

Carl Bauman
Carl Bauman
Judge of the District Court

* The court understands the depo is scheduled for 1-31-12. Any response by Haeg is due by 1 p.m. on 1-30-12. The depo will not occur in Mr. Haeg's home in Soldotna, but may occur on 1-31 if conducted at a court Reporter's office or other mutually agreed location.

LAW OFFICES OF MARSTON & COLE, P.C.
821 N Street, Suite 208
Anchorage, Alaska 99501
(907) 277-8001
(907) 277-8002 fax

CERTIFICATION OF DISTRIBUTION
I certify that a copy of the foregoing was ~~mailed~~ faxed to the following at their addresses of record:
Haeg, Peterson, Cole
Clerk
1-27-12
Date

02109
C 15 D

Brent R. Cole, Esq.
Law Offices of Marston & Cole, P.C.
821 N Street, Suite 208
Anchorage, AK 99501
(907) 277-8001

IN THE DISTRICT COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT KENAI

DAVID HAEG, Applicant, vs. STATE OF ALASKA, Respondent.	Case No.: 3KN-10-01295CI

MOTION FOR EXPEDITED CONSIDERATION OF MOTION TO QUASH SUBPOENA

Brent R. Cole, by and through counsel, the Law Offices of Marston & Cole, P.C., moves for expedited consideration of his Motion to Quash Subpoena. Mr. Cole requests his motion be decided on an expedited basis because the deposition is scheduled for January 31, 2012. This motion is supported by the attached Affidavit of Counsel.

DATED this 26th day of January, 2012, at Anchorage, Alaska.

LAW OFFICES OF MARSTON & COLE, P.C.

By: _____
Brent R. Cole
AK State Bar No. 8606074

LAW OFFICES OF MARSTON & COLE, P.C.
821 N Street, Suite 208
Anchorage, Alaska 99501
(907) 277-8001
(907) 277-8002 fax

Brent R. Cole, Esq.
Law Offices of Marston & Cole, P.C.
821 N Street, Suite 208
Anchorage, AK 99501
(907) 277-8001

IN THE DISTRICT COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT KENAI

DAVID HAEG,

Applicant,

vs.

STATE OF ALASKA,

Respondent.

Case No.: 3KN-10-01295CI

CERTIFICATE OF SERVICE

This is to certify that on this 26th day of January, 2012, copies of the Motion to Quash Subpoena, Memorandum, Affidavit of Counsel, and proposed Order and Motion for Expedited Consideration and proposed Order were mailed, faxed, e-mailed to the following:

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

Andrew Peterson, Esq.
OSPA, Special Prosecutions Unit
310 K Street, Suite 308
Anchorage, AK 99501

LAW OFFICES OF MARSTON & COLE, P.C.
821 N Street, Suite 208
Anchorage, Alaska 99501
(907) 277-8001
(907) 277-8002 fax

DATED this 24th day of January, 2012, at Anchorage, Alaska.

LAW OFFICES OF MARSTON & COLE, P.C.

By: _____
Brent R. Cole
AK State Bar No. 8606074

LAW OFFICES OF MARSTON & COLE, P.C.
821 N Street, Suite 208
Anchorage, Alaska 99501
(907) 277-8001
(907) 277-8002 fax

Certificate of Service
Haeg v. SOA, 3KN-10-01295CI

Brent R. Cole, Esq.
Law Offices of Marston & Cole, P.C.
821 N Street, Suite 208
Anchorage, AK 99501
(907) 277-8001

Filed in the Trial Courts
State of Alaska, Third District
At Kenai, Alaska
JAN 27 2012
Clerk of the Trial Courts
By _____ Deputy

IN THE DISTRICT COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT KENAI

DAVID HAEG,	)	
	)	
Plaintiff,	)	
vs.	)	
	)	
STATE OF ALASKA,	)	
	)	
Defendant.	)	
	)	Case No.: 3KN-10-01295CI

MOTION TO QUASH SUBPOENA

COMES NOW Brent R. Cole and moves to quash the subpoena to Brent Cole which commands his appearance at Mr. Haeg's house on January 31, 2012, at 10:00 am. The reasons for this motion are more fully set forth in the memorandum filed herewith. An Order is provided for the Court's convenience.

DATED this 26th day of January, 2012, at Anchorage, Alaska.

LAW OFFICES OF MARSTON & COLE, P.C.

By: _____
Brent R. Cole
AK State Bar No. 8606074

LAW OFFICES OF MARSTON & COLE, P.C.
821 N Street, Suite 208
Anchorage, Alaska 99501
(907) 277-8001
(907) 277-8002 fax

Brent R. Cole, Esq.
Law Offices of Marston & Cole, P.C.
821 N Street, Suite 208
Anchorage, AK 99501
(907) 277-8001

IN THE DISTRICT COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT KENAI

DAVID HAEG,

Applicant,

vs.

STATE OF ALASKA,

Respondent.

Case No.: 3KN-10-01295CI

MEMORANDUM IN SUPPORT OF MOTION TO QUASH SUBPOENA TO BRENT R. COLE

Brent Cole, as previous counsel for Mr. Haeg, seeks to quash a subpoena issued by the Applicant in the above-captioned matter for the following reasons:

1. There is no reason for the applicant to question counsel about the matters in question because he has already done so on a previous occasion. Mr. Haeg questioned counsel under oath extensively during a fee arbitration case that was held in 2006. The applicant raised the same issues in the fee arbitration case that he is raising in this post-conviction relief application. Namely that counsel failed to provide competent legal services during his representation of Mr. Haeg from April 2004 until he was dismissed in November 2004.

LAW OFFICES OF MARSTON & COLE, P.C.
821 N Street, Suite 208
Anchorage, Alaska 99501
(907) 277-8001
(907) 277-8002 fax

LAW OFFICES OF MARSTON & COLE, P.C.
821 N Street, Suite 208
Anchorage, Alaska 99501
(907) 277-8001
(907) 277-8002 fax

2. The Doctrine of Collateral Estoppel precludes the applicant from re-litigating the same issues that have already been litigated and ruled upon by the fee arbitration, Kenai Superior Judge Brown, the Alaska Supreme Court, and the U.S. Supreme Court. Mr. Haeg was a party in those prior proceedings, the same issues of attorney competence were raised, and he had every opportunity to litigate these issues in the fee arbitration proceedings.

3. Counsel is providing an affidavit regarding the allegations in the applicant's application for post-conviction relief.

4. The applicant has scheduled this deposition at his home in Soldotna. Counsel agreed to this date thinking that the deposition was going to be in Anchorage. The applicant has a history of threatening his counsel and has acted irrationally in the past. Counsel does not feel safe having this deposition at the applicant's home. Counsel is requesting that if a deposition is necessary, that it be done in Anchorage at a neutral site where any safety concerns can be addressed. Under these circumstances, it is not prudent for a former attorney of the applicant to appear at a deposition in his home.

I. FACTS

Counsel represented the applicant from approximately April 10, 2004, through his arraignment in November 2004. The applicant then fired counsel and hired Mr. Chuck Robinson who represented the applicant through trial. The applicant was ultimately convicted and this conviction was affirmed on appeal. In 2006, the applicant initiated a fee arbitration complaint against counsel. A fee arbitration hearing was conducted over

LAW OFFICES OF MARSTON & COLE, P.C.
821 N Street, Suite 208
Anchorage, Alaska 99501
(907) 277-8001
(907) 277-8002 fax

several days. Mr. Haeg represented himself at these proceedings and claimed that counsel was ineffective in representing him in 2004, entitling him to a return of all monies paid and compensation. These proceedings were recorded, although there were problems, but the applicant also had a tape recorder and has had these recordings transcribed. These transcripts were made part of the record on his appeals.[1] The Fee Review Committee rendered its decision on August 25, 2006 and rejected the applicant's claims that counsel was ineffective. Mr. Haeg appealed the Fee Committee's decision to the Superior Court in Kenai, which affirmed the Fee Review Committee's decision on June 15, 2007. Mr. Haeg went on to appeal the decision of the Kenai Superior Court to the Alaska Supreme Court. The Alaska Supreme Court affirmed the Fee Review Committee's ruling with one exception, to direct the superior court to delete the affirmative award of fees in favor of counsel as an award on a claim not submitted. *See Haeg v. Cole,* Alaska Supreme Court Opinion No. 6334, January 30, 2009. Mr. Haeg then petitioned for a rehearing on the Alaska Supreme Court's decision, which petition was denied. On May 14, 2009, Mr. Haeg filed a petition for a writ of certiorari with the Supreme Court of the United States, and that petition was denied on October 5, 2009.

II. ARGUMENT

A. Prior Questioning Under Oath.

At this point, Mr. Haeg has already questioned counsel under oath. This occurred at the fee arbitration hearing. This testimony was both recorded and transcribed and is in

[1] Counsel has not attached the transcript or the decision and award or any of the decisions on appeal because of the voluminous nature of these documents and the need for an expedited decision. Copies of any of these documents

But this is not the same case.

the applicant's possession. It is part of the record on the applicant's appeal of the fee arbitration hearing and part of record in this case. Generally speaking a litigant only gets one opportunity to depose and individual in a case. The applicant has essentially already had the opportunity to question counsel under oath on the very issues which he now seeks another deposition. There has been no showing of why he needs a second opportunity to question counsel in this matter, or how the issues might be different in this case than in the fee arbitration case. Absent such a showing, he should not be given a second opportunity to take the deposition of counsel.

B. Collateral Estoppel.

"There are three requirements for application of collateral estoppel: (1) The plea of collateral estoppel must be asserted against a party or one in privity with a party to the first action; (2) The issue to be precluded from re-litigation by operation of the doctrine must be identical to that decided in the first action; (3) The issue in the first action must have been resolved by a final judgment on the merits." *State v. United Cook Inlet Drift Ass'n*, 868 P.2d 913 (Alaska 1994) citing *Murray v. Feight*, 741 P.2d 1148, 1153 (Alaska 1987). In this case, all three requirements for applying collateral estoppel to the applicant's claims against counsel are in place and should be applied. The applicant was a party in the fee arbitration hearing. He is the same party in these proceedings. The applicant now claims that counsel was ineffective in representing him from April 2004 through November 2004. He made the same claims when he pursued the fee arbitration

LAW OFFICES OF MARSTON & COLE, P.C.
821 N Street, Suite 208
Anchorage, Alaska 99501
(907) 277-8001
(907) 277-8002 fax

can be provided in expedited fashion upon request.

claims against counsel back in 2006. Finally, the fee arbitration panel ruled against the applicant and this ruling was affirmed at every level including the Alaska Supreme Court and the U.S. Supreme Court. Under these circumstances, the applicant should be collaterally estopped from relitigating issues already decided.

C. Affidavit of Brent Cole.

In order to facilitate a resolution of this matter, counsel is providing an affidavit in lieu of a deposition regarding the allegations in the Application for Post-Conviction Relief. *See* Affidavit of counsel. This affidavit mirrors the testimony given at the fee arbitration hearing.

D. Venue of the Deposition.

If the court still determines that the applicant is entitled to take the deposition, counsel requests that the Court order that the deposition be conducted in Anchorage at a site that can insure the safety of the participants. The applicant has threatened other attorneys who have represented him. He can be unstable. The attached affidavit demonstrates that counsel does not feel comfortable having the deposition taken at applicant's home. Counsel also requests that this deposition be done in Anchorage to reduce the inconvenience and to allow it to be taken in a place more conducive to the safety of the parties.

III. CONCLUSION

For the reasons forth above, it is requested that the Court hear this matter on shortened time and grant the requested relief.

LAW OFFICES OF MARSTON & COLE, P.C.
821 N Street, Suite 208
Anchorage, Alaska 99501
(907) 277-8001
(907) 277-8002 fax

DATED this 26th day of January, 2012, at Anchorage, Alaska.

LAW OFFICES OF MARSTON & COLE, P.C.

By: _____
Brent R. Cole
AK State Bar No. 8606074

LAW OFFICES OF MARSTON & COLE, P.C.
821 N Street, Suite 208
Anchorage, Alaska 99501
(907) 277-8001
(907) 277-8002 fax

Brent R. Cole, Esq.
Law Offices of Marston & Cole, P.C.
821 N Street, Suite 208
Anchorage, AK 99501
(907) 277-8001

IN THE DISTRICT COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT KENAI

DAVID HAEG,

Applicant,

vs.

STATE OF ALASKA,

Respondent.

Case No.: 3KN-10-01295CI

AFFIDAVIT OF COUNSEL IN SUPPORT OF MOTION TO QUASH SUBPOENA AND FOR EXPEDITED CONSIDERATION

STATE OF ALASKA)
) ss
THIRD JUDICIAL DISTRICT)

Brent R. Cole, being first duly sworn, deposes and says:

1. I received a subpoena on January 24, 2012, to give testimony in this matter. This subpoena directs me to appear at Mr. Haeg's house in Soldotna, Alaska, at 10:00 am. Although I spoke with Mr. Haeg about this date, I specifically requested that this deposition be held in Anchorage.

2. I was retained by Mr. Haeg to represent him on Fish & Game charges on or about April 10, 2004. This representation occurred as a result of meetings I had with Mr. Haeg regarding an ongoing trooper investigation for killing wolves same day airborne outside an area where he had a permit to operate. Mr. Haeg was a well known and

LAW OFFICES OF MARSTON & COLE, P.C.
821 N Street, Suite 208
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licensed big game guide who provided spring bear hunting opportunities for his clients. These hunts can be particularly lucrative with guides charging $10-$15,000 per hunter. When I spoke with Mr. Haeg at the time, the troopers had seized one of his aircraft after searching both his lodge and his home with search warrants. Mr. Haeg was extremely emotional at the time and was very concerned that he was going to lose his guiding business, which he had worked many years to build into a successful operation. Mr. Haeg never denied that he shot the wolves in question or that they were outside the area for which he had an aerial wolf hunting permit. He had falsified documents when the wolf hides were sealed by incorrectly identifying where and how the wolves were killed.

3. At that time, AS 08.54.605 mandated that if a big game guide received a sentence in excess of five days in jail or a $1,000 fine for violating a fish & game statute or regulation, the violator was precluded from applying for their big game commercial services license for a period of five years.

4. In 2004 I had been practicing for approximately 18 years in Alaska. While a prosecutor for the state of Alaska, I worked with the commercial services enforcement division with the Alaska State Troopers, which focused on prosecuting guides and outfitters for fish and wildlife violations. After leaving the district attorney's office, I later began practicing criminal defense law and specialized in representing hunters, fishermen, guides, assistant guides, and outfitters in all facets of fish and game law. I have represented individuals and corporations on fish and game matters around the state. I have taught courses on fish and game crimes and sanctions in the state.

5. After listening to Mr. Haeg's story, I likewise was very concerned with how he would be punished if and when this case was filed and felt there was a strong possibility that unless a plea agreement was negotiated, he would receive a sentence exceeding five days in jail or a $1,000 fine. In either instance, such a sentence would

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automatically disqualify him from being a guide for five years pursuant to AS 08.54.605. Based on my experience, I also believed that if a negotiated disposition was not reached, he would have his privilege to hunt taken away by a court in Alaska, which would also disqualify him from being a guide during the period of revocation. Finally, I had been involved in a number of cases involving guides who conducted illegal hunts through the use of aircraft or boats and was sure that the state of Alaska had a legal basis for seizing and forfeiting Mr. Haeg's aircraft. I advised Mr. Haeg of all of these concerns early in my representation of him. Because his overwhelming desire was to avoid losing his guide license we agreed upon a strategy to minimize the damages in his case and the length of any suspension of his guide license.

6. In handling a case where your client has obviously violated the law and when faced with this knowledge and the possibility of severe penalties, there are limited strategies available for a defendant. On one hand, you can refuse to negotiate with the prosecutor, demand the return of any equipment seized, and contest each and every aspect of the state's case. This can be a positive strategy if you are successful. Unfortunately, it can also be an extremely detrimental strategy if you are unsuccessful and you are convicted. On the other hand, it is not uncommon in these types of case for the parties to engage in a dialog whereby a defendant cooperates with the prosecuting authorities in order receive concessions on the crimes that he will be convicted of and the punishment he will receive. The negative side to this strategy is that once you engage in discussions with the prosecuting authorities, you are often required to give statements outlining your criminal culpability and the culpability of others. Additionally, once you start down this track, it is very difficult to change course later on and adopt a strategy to fight the charges. The positive results from this strategy are that a defendant can receive significant reductions in penalties and charges that are brought against him or her based

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upon their acceptance of responsibility. These different strategies were explained to Mr. Haeg, and he ultimately agreed that it was better to try to take steps to minimize any license revocations or suspensions of his big game commercial services license than to fight the case brought by the state.

7. Additionally, Mr. Haeg had a number of spring bear hunters who were coming to Alaska to hunt that spring. In order to keep the state from shutting down his business that spring and having to return all the deposits that had been made to those hunters, we were able to negotiate that Mr. Haeg would be able to continue to conduct these hunts. The state required that Mr. Haeg give a full statement to the investigating officer outlining his criminal culpability in the shooting of the wolves in question. Additionally, the state agreed not to immediately file charges but to work toward a mutual resolution of this case through a plea agreement. Mr. Haeg was in agreement with this strategy because it allowed him to conduct his spring bear hunts, and it avoided the immediate filing of charges which would almost assuredly have resulted in onerous bail conditions and immediate trial preparation. Mr. Haeg was interviewed and the trooper had a tape recorder at the interview, but despite numerous requests, we never received a copy of the tape and were informed that the recorder had malfunctioned.

8. Mr. Haeg did occasionally make inquiries about whether or not he could get back his aircraft which had been seized by the troopers in late March or early April of 2004. I repeatedly told him that I felt there was sufficient evidence for the state to seize and forfeit that aircraft because he was a big game commercial services guide who owed special duties to the state of Alaska to conduct his affairs in matters involving the fish and game at the highest level of professionalism and because the aircraft was used to facilitate the unlawful killing of wolves. I knew that this demand was deal killer with Mr. Leaders, and any attempts to try to recover the aircraft from the state would have resulted in a

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(907) 277-8001
(907) 277-8002 fax

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breakdown of any negotiations. Over the next several months, Mr. Haeg would raise issues relating to defenses of the charges against him and the seizure of the property. On every occasion, I reminded him that our strategy was to cooperate with the government in order to receive limitations on any license revocations in order to protect his business. I always reminded him that if he chose to fight the charges against him, it would result in a complete breakdown of any negotiations and would put him in a position where if he was convicted, his sentence would be dictated by a judge and he would not have the benefit of negotiating a positive outcome. Based on Mr. Haeg's statements to me and the evidence I had, it was clear that he was guilty of the offenses and that if he went to trial, he would be convicted on most if not all of the charges involving shooting wolves same day airborne, shooting wolves outside of his permit, unlawful possession, and unsworn falsification. A conviction on any of these counts, in my opinion, would have resulted in Mr. Haeg's receiving a sentence of more than five days incarceration and a fine of more than $1,000 and resulted in him losing his right to apply for a guide license for five years. I consistently warned him against placing himself in a situation where he was proceeding "open sentencing" and allowing a judge to make determinations on his sentence after argument by the parties. My experience in fish and game matters is that judges often accept the sentencing recommendations of law enforcement and prosecutors in fish and game matters. I explained as much to Mr. Haeg on numerous occasions.

9. The parties engaged in extensive settlement negotiations leading up to Mr. Haeg's arraignment on November 9, 2004. Initially, this was scheduled to be an arraignment and a sentencing hearing, but the parties reached a resolution on all facets of the sentence the night before. In fact, Mr. Haeg and his family celebrated this fact with me on the evening of November 8, 2004. Thereafter, further negotiations developed over the return of Mr. Haeg's aircraft that was seized by the troopers. After he learned that the

state would not accept a substitute aircraft be forfeited, Mr. Haeg fired me and hired Mr. Arthur Robinson to represent him at his trial. At that point, all that had happened was that he had been arraigned, and he was free through his attorney to file any motions or assert any defenses to the charges against him.

10. Mr. Robinson contacted me and asked me about the statement that Mr. Haeg had given. I explained to him that I understood that that statement could not be used against Mr. Haeg at the trial. He asked me to, and I subsequently did, send a letter to Mr. Leaders confirming this understanding.

11. I later learned, as I expected, that Mr. Haeg was convicted on a number of counts at trial in McGrath. This subjected him to being sentenced by the court based upon the arguments of his counsel and counsel for the state of Alaska, a situation I repeatedly warned him against. I received a subpoena to attend his sentencing, with a list of questions that he proposed I answer. I contacted Mr. Robinson, his attorney, and explained that if I was called to the stand, that in addition to answering the questions that the court allowed, this would result in Mr. Haeg waiving his attorney-client privilege regarding our prior conversations and could lead to very damaging information being presented to the court against Mr. Haeg. Mr. Robinson agreed that that would be a poor idea and that it would not be necessary for me to travel to McGrath for the hearing. I did inform him that I would be by the phone that day and if he needed to contact me, I would be available. I never received a call that day.

12. In 2006, Mr. Haeg filed for fee arbitration against me. He claimed that I was ineffective as his counsel for almost the same reasons that he now seeks a finding of ineffective assistance of counsel under Criminal Rule 35.1. This proceeding occurred over several days and both Mr. Haeg and I testified under oath, subject to each other's cross-examination questions. Mr. Haeg has had that entire proceeding transcribed and

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made part of the record in the appeals that he filed after the fee review committee decided against him. At that hearing, Mr. Haeg admitted that he violated the law by shooting wolves outside the area for which he had a permit. He was given full latitude to question me about all facets of his allegations of ineffective advocacy.

13. Mr. Haeg appealed the decision of the Fee Review Committee to the Superior Court in Kenai. Judge Brown affirmed the decision of the fee review committee. Mr. Haeg appealed this decision to the Alaska Supreme Court, and the Alaska Supreme Court also affirmed this decision. Finally, Mr. Haeg appealed the fee arbitration committee's decision to the United States Supreme Court and they rejected his appeal.

14. Since Mr. Haeg has already had the opportunity to examine me under oath at the fee arbitration, I'm not sure what more testimony I can provide that hasn't already been touched upon in my prior testimony. Because I was not the trial attorney, I had no control over what happened at trial, the presentation of evidence, or the ultimate determinations that the jury and the judge made. Nothing that I did prevented Mr. Haeg from raising any and all defenses or motions to any of the charges against him. I have reviewed his application for post-conviction relief, and at least as to me, it appears to be a rehash of the same issues that he raised in the fee arbitration hearing.

15. Over the last several years, I have had occasion to speak with Mr. Haeg. I am concerned about his mental health and my well being. When Mr. Haeg contacted me about this deposition, I agreed to the January 31 date, assuming that this deposition, if it was actually going to take place, would occur in Anchorage. Because of Mr. Haeg's implied threats to his former attorneys, I do not feel comfortable having the deposition being conducted at his house without some type of arrangements being made to protect the safety of all involved. If it is truly necessary for me to give a deposition, even after

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the filing the underlying motion to quash, I have two requests. First, that Mr. Haeg not be allowed to relitigate issues which he has already lost on and appealed. This would require Mr. Haeg delineating issues of ineffective assistance of counsel that were not raised at the fee arbitration from issues that are being raised at this post-conviction relief application. Second, I request that the deposition be held in Anchorage at a neutral site where the safety concerns of involved can be accommodated.

16. I attempted to contact Mr. Haeg regarding the filing of this motion. No one picked up the phone so I left a voice message at the number. I am also serving these pleadings on by e-mail.

Brent R. Cole

SUBSCRIBED AND SWORN to before me this 26th day of January, 2012.

KARIN S. GUSTAFSON NOTARY PUBLIC STATE OF ALASKA

Notary Public in and for Alaska
My commission expires: 8-14-2014

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Anchorage, Alaska 99501
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(907) 277-8002 fax

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT KENAI

DAVID S. HAEG,

Applicant,

vs.

STATE OF ALASKA,

Respondent.

Case No. 3KN-10-1295 CI

STATE'S SECOND 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 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.

COMES NOW the State of Alaska (hereinafter "State"), by and through its undersigned Assistant Attorney General, Andrew Peterson ("Peterson"), and pursuant to Criminal Rule 35.1(f)(3) and this Court's Order on Motions to Supplement PCR on January 3, 2012, hereby moves this Court for dismissal of David S. Haeg's (hereinafter "Haeg" or "Applicant") Application for Post-Conviction Relief with respect to Haeg's supplemental claim that Peterson committed prosecutorial misconduct regarding the seized plane. The State will rely upon the facts and proceedings statement set forth by

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the Court of Appeals decision in Haeg v. State, 2008 WL 4181532 (Alaska App. 2008) and the Order on Motion to Dismiss by this Court from January 3, 2012.

Haeg's amended PCR allegation claims that Peterson committed prosecutorial misconduct by seeking a modification of Haeg's judgments in order to allow the State of Alaska to title Haeg's airplane which was forfeited to the state in the underlying criminal case. Haeg's argument appears to allege that Peterson violated Alaska Rules of Professional Conduct 3.3(a)(1) by making a false statement of law to a tribunal. See Haeg 4-21-11 Motion to Supplement PCR, p. 8. Haeg's allegation is without merit and should be dismissed by this Court.

On July 5, 2005, Haeg 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, under penalty of perjury, 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.

On June 9, 2010, the state filed a motion for modification of Haeg's judgment. See Exh. 2. The state informed the trial court that it was seeking a modified judgment in order to allow the state to register Haeg's airplane. Haeg filed an opposition to the state's motion alleging that there was no authority to issue the modified judgment as Criminal Rule 35 prohibits modification after 180 days. The

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Criminal Rule 53 gives the trial court the authority to relax the criminal rules when a strict adherence to the rules will result in an injustice. The state argued that it was the intent of the trial court to forfeit the airplane seized as to all owners and that it would be an injustice to not uphold this ruling based on a policy of the FAA.

The state further argued that it was not seeking to limit the rights of any innocent third party owner. If there was an innocent third party owner, that individual and/or corporation could file a motion for a remission hearing and attempt to establish the factors set forth in Rice. No motion for remission was ever filed by The Bush Pilot, Inc.

No order was ever issued with respect to the state's motion filed on June 9, 2010. The state filed a renewed motion for modification of judgment on April 4, 2010. See Exh. 4. The state served both Haeg and The Bush Pilot, Inc. a copy of the renewed motion for modification of judgment. The state requested that The 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 either party. The trial court granted the state's renewed motion.

The pleadings filed by the State of Alaska in this case make it clear that the prosecutor never lacked candor toward the tribunal. The prosecutor sufficiently argued that Criminal Rule 35 did not apply and specifically set forth a Criminal Rule allowing for relaxation of Criminal Rule 35. Finally the prosecutor repeatedly invited State's Second Motion to Dismiss Application for Post Conviction Relief

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state filed a reply in July 2, 2010 specifically addressing Haeg's allegations. See Exh. 3.

The state's reply specifically set forth the law regulating forfeiture. The court's judgment forfeited the airplane used by Haeg to the State of Alaska as to all owners. If an innocent third party owner exists, that owner must file for a remission hearing and sufficiently establish that the owner had no knowledge or reason to believe that the property forfeited would be used to violate the law. See Exh. 3, p. 2, citing State v. Rice, 626 P.2d 104 (Alaska 1981).

The state argued that under Rice, Haeg would be unable to show the existence of an innocent third party owner. See id. The corporation, "The Bush Pilot, Inc.," is a corporate entity that is 100% owned by Haeg and according to Haeg's previous affidavit, signed under penalty of perjury, he personally is the owner of the airplane. See id.

The state further argued that Criminal Rule 35 did not apply to this case. Specifically, the state argued that Criminal Rule 35 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. The intent to forfeit Haeg's airplane by the trial court was upheld by the Court of Appeals. The only issue that remained was a modification of the judgment showing that the plane was forfeited to the State of Alaska as to all owners, thus allowing the state to properly title the airplane. The state further argued that even if Criminal Rule 35 applied, that

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the corporation to file for a remission hearing if a valid claim existed. The trial court judge was fully aware of all of the pleadings filed with respect to the state's requested modification and the court ultimately agreed with the state and signed the state's proposed order. Based upon these facts, this Court should dismiss Haeg's claim of prosecutorial misconduct as Haeg has failed to set forth a prima facie case that the prosecutor knowingly made a false statement of law to a tribunal.

Finally, it appears from the pleadings that Haeg is seeking a new trial by alleging that the prosecutor committed misconduct. This remedy is not applicable to Haeg based upon the state seeking a modification of his judgment five years after his conviction. Rather, Haeg's corporation, The Bush Pilot, Inc. is at most entitled to a remission hearing. The state has repeatedly offered to allow Haeg's corporation to file for a remission hearing and once again makes the same offer. The state will not oppose a motion for remission filed by The Bush Pilot, Inc. filed in Kenai on the grounds that it is untimely. The state will, however, make the corporation meet its burden as set forth under Rice if it intends to seek remission of the airplane forfeited to the State of Alaska.

DATED at Anchorage, Alaska this 19th day of January 2012.

RICHARD SVOBODNY
ACTING ATTORNEY GENERAL

By: _____
Andrew Peterson
Assistant Attorney General
ABA #0601002

This is to certify that on this date, a correct copy of the forgoing was ~~mailed~~ / faxed / hand-delivered to: Kenai court; David Haeg

Signature 1-19-12 Date

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PHONE: (907) 269-6250

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: Bonnie Burke

EXHIBIT 1

PAGE 1 OF 3

Robin Associates
35401 Kenai Spur Hwy
Soldotna, Alaska 99669
(907) 262-9164 Telefax (907) 262-7034

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.

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35401 Kenai Spur Hwy
Soldotna, Alaska 99669
(907) 262-9164 Telefax (907) 262-7034

EXHIBIT 1
PAGE 2 OF 3
02134

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 3
02135

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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EXHIBIT 2
PAGE 1 OF 5

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

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DEPARTMENT OF LAW
OFFICE OF SPECIAL PROSECUTIONS AND APPEALS
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EXHIBIT 2
PAGE 2 OF 5

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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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 w/o/12

_____
Notary Public in and for Alaska
My commission expires: w/o/12

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EXHIBIT 2
PAGE 4 OF 5

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
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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.

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.

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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.

EXHIBIT 3
PAGE 1 OF 15

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

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DEPARTMENT OF LAW
OFFICE OF SPECIAL PROSECUTIONS AND APPEALS
310 K STREET, SUITE 308
ANCHORAGE, ALASKA 99501
(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,

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DEPARTMENT OF LAW
OFFICE OF SPECIAL PROSECUTIONS AND APPEALS
310 K STREET, SUITE 308
ANCHORAGE, ALASKA 99501
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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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[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: _____
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 July 2, 2010 to the following attorney/parties of record: David Haeg PO Box 123 Soldotna, Alaska 99669.

_____
Tina Osgood
Law Office Assistant I

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DEPARTMENT OF LAW
OFFICE OF SPECIAL PROSECUTIONS AND APPEALS
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ANCHORAGE, ALASKA 99501
(907) 269-6250

EXHIBIT 3
PAGE 5 OF 15
02145

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, Aniak 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 Kiana 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 4 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 ASST DPS DA Kubiena
Clerk: [signature]

CR-464 (2/05)
JUDGMENT – DISTRICT COURT- FISH AND GAME

Crim. R. 32 AND 32.6
AS12.55.041

Exh. I
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. L 02147

[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 (1.1/06)(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

Name:	David S Haeg

EXHIBIT 3
PAGE 9 OF 15

Exh. 2
pg. 1-4

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 294

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

EXHIBIT 3
PAGE 11 OF 15

Exh. 2
pg. 3 of 4

08-590 Revised 08/04 ulh

SEE ENCLOSED SHEET FOR INSTRUCTIONS

For Official Use Only

FILE NO. 57078 — D

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

Filed for Record
State of Alaska
DEC 05 2002
Department of Commerce and Economic Development

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.			SIC code changes:		
Primary	Secondary	Other	Primary	Secondary	Other
7999					

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	No. of Shares	Class	Series	Par Value Per Share
10000			0				

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 S 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. 4 of 4

02152

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

N4011M 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 29 3
02154

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.

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

EXHIBIT 4
PAGE 1 OF 14

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 4

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

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).

IN THE DISTRICT COURT FOR THE STATE OF ALASKA AT MCGRATH

☒ STATE OF ALASKA ☐ CASE NO. 4MC-04-024CR

RECEIVED
OCT 11 2005
ROBINSON & ASSOCIATES 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 1442, Anchorage, AK 99510-1442 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 2:30 pm 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~~ guide 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 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 any predator control program.

EXHIBIT 4
PAGE 6 OF 14

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: D.F.G. A.S.T. D.P.S. DA Kenai
Clerk: [signature]

CR-404 (2/05)
JUDGMENT - DISTRICT COURT - FISH AND GAME

CAR COPY
Crim. R. 32 AND 32.6

02161

Need (copy Serial #

IN THE DISTRICT COURT FOR THE STATE OF ALASKA AT MCGRATH

☒ STATE OF ALASKA ☐ CASE NO. 4MC-04-02CR

vs.

DAVID HAEG ATN Tracking No. Count I

DOB 1-19-66 ID# 5743491 ATN 1071137278

RECEIVED OCT 1 1 2006 ROBINSON & ASSOCIATES LAWYERS

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, McGrath, AK 99627 by 1-30-07.

☐ 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 2:30 p.m. 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~~ 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 4
PAGE 7 OF 14

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 + DPS
Clerk: [signature]

CR-404 (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# 5743491 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 $ 2,500.00 with $ 1,500.00 suspended. The unsuspended $ 1,000.00 is to be paid to the McGrath District Court by 8-30-07.

☐ 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

☒ Guns and ammunition

☒ Defendant's ☒ ~~sport fishing~~ guide ☐ 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 4

PAGE 8 OF 14

9-30-05
Effective Date

Margaret L. Murphy (signature)
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~~ DA, Gibson AST, DPS

Clerk: (signature)

CR-464 (2/05) Crim. R. 32 AND 32.6

JUDGMENT – DISTRICT COURT FISH AND GAME

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 1-19-66 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 probation control program.

EXHIBIT 4
PAGE 9 OF 14

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, AST, DPS
Clerk: [signature]

CR-464 (2/05) JUDGMENT – DISTRICT COURT – FISH AND GAME

Crim. R. 32 AND 32.5

02164

Online Public Notices | Department of Commerce | find

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

EXHIBIT 4
PAGE 10 OF 14

Name:	David S Haeg

EXHIBIT 2
PAGE 1 OF 2

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 19

Page 2 of 2

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 14

EXHIBIT 3
PAGE 1 OF 3

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

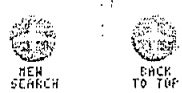

EXHIBIT 4
PAGE 14 OF 14 Page 3 of 3

FILED
STATE OF ALASKA
2012 JAN 23 PM 3:32
CLERK OF TRIAL COURT
BY
DEPUTY 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)

1-23-12 MOTION TO SUPPLEMENT EVIDENCE THAT JUDGE BAUMAN BE DISQUALIFIED FOR CAUSE (CORRUPTION) AND 1-23-12 MOTION THAT EVIDENTIARY HEARINGS BE HELD ON HAEG'S MOTIONS TO DISQUALIFY JUDGE BAUMAN AND TO STRIKE JUDGE BAUMAN'S 1-3-12 ORDERS

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 motions to supplement the evidence that Judge Bauman must be disqualified for corruption and that evidentiary hearings be held on Haeg's motion to disqualify Judge Bauman for cause and on Haeg's motion to strike Judge Bauman's 1-3-12 orders.

Prior Proceedings

(1) On 1-5-11 Haeg filed a Motion for Hearing with Judge Bauman in response to the state's Motion to Dismiss – a hearing that is **required** if requested and which is required to be held within 45 days of it being requested.

(2) On August 3, 2011 Judge Bauman asked for briefing from the state on Haeg's motion for hearing.

(3) On August 23, 2011 the state filed a 47-page opposition to Haeg's request for the required hearing.

(4) On January 3, 2012 Judge Bauman granted most of the state's motion to dismiss –without ever ruling on Haeg's over year old motion for the required hearing or holding the required hearing.

(5) On 1-13-12 Haeg filed a motion that Judge Bauman must be disqualified for corruption. In his motion Haeg claimed Judge Bauman (in addition to violating other laws, rules, and cannons to deny Haeg mandatory open-to-the-public hearings):

> "has almost certainly falsified the sworn affidavits he is required to submit to be paid – since it is unlikely he has gone without pay for the over 6 months since he was required to have decided Haeg's motion for a hearing according to AS 22.10.190 (which requires a judge to swear under oath that no item submitted for an opinion or decision is older than 6 months – and Haeg's motion for a hearing is over a year old)."

(6) On January 18, 2012, after his motion that Judge Bauman must be disqualified for cause, Haeg obtained a copy of Judge Bauman's

affidavit for the pay period ending on the last day of December 2011 – in which Judge Bauman claims no issue presented to him for an opinion or decision is older than 6 months. See attached affidavit.

(7) On January 23, 2012 Haeg filed a criminal complaint against Judge Bauman. See attached criminal complaint.

(8) On January 23, 2012 Haeg filed an Alaska Commission on Judicial Conduct complaint against Judge Bauman. See attached complaint.

Discussion

Haeg just obtained new evidence that Judge Bauman is in fact falsifying affidavits in order he may be paid – just as Haeg claimed might be happening in his January 13, 2012 motion. Because this new evidence is material to Haeg's claim Judge Bauman must be disqualified for corruption, it should be allowed to supplement Haeg's claim.

In addition, because of the evidence against Judge Bauman, which now includes committing felony perjury so he can be paid while he is violating Haeg's right to prompt decisions and Haeg's right to mandatory hearings, Haeg should be granted an evidentiary hearing on his motion to disqualify Judge Bauman and on his motion to strike Judge Bauman's January 3, 2012 orders.

Conclusion

In light of the above Haeg respectfully asks the court to: (1) supplement the record of Haeg's case with the attached copy of Judge Bauman's affidavit, the attached copy of Haeg's criminal complaint against Judge Bauman, and the

attached copy of Haeg's Alaska Commission on Judicial Conduct complaint against Judge Bauman; (2) order an evidentiary hearing be held on Haeg's motion to disqualify Judge Bauman for cause; and (3) order an evidentiary hearing be held on Haeg's motion to strike Judge Bauman's January 3, 2012 orders.

I declare under penalty of perjury the forgoing is true and correct. Executed on January 23, 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 January 23, 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:

ALASKA COURT SYSTEM

AFFIDAVIT

For the pay period ending on the last day **of** December, 2011.

I, being first duly sworn, state that to the best of my knowledge and belief no matter currently referred to me for opinion or decision has been uncompleted or undecided by me for a period of more than six months.

Signature Carl Bauman
Title Carl Bauman
Print Name Superior Court Judge

Date 1-5-2012
Address 125 Trading Bay Drive #100
Kenai, AK 99611

Subscribed and sworn to or affirmed before me at Kenai, Alaska, on 1/3/12.

SEAL OF THE TRIAL COURTS OF THE STATE OF ALASKA THIRD JUDICIAL DISTRICT
(notary seal)

Julie A Roberts
Signature of Notary Public, Clerk of Court, or other person authorized to administer oaths.

My commission expires: with office

I certify under penalty of perjury that the foregoing is true, that this statement is being executed at _____, Alaska, and that no notary public or other official empowered to administer oaths is available.

Date _____ Signature _____

INSTRUCTIONS

This affidavit must be signed before a notary public, postmaster, or any other person authorized by AS 09.63.010 to administer oaths. If there is no one available who is authorized to administer oaths, you should sign and date the statement certifying that the affidavit is true (AS 09.63.020).

An affidavit must be completed at the end of each pay period. Pay periods end on the 15th day and the last day of each month. The completed affidavit must be sent to the Division of Finance in Juneau at the end of each pay period:

Mail:
P. O. Box 110204
Juneau, Alaska 99811-0204

Fax:
(907) 465-5639

Scan and Email:
DOA.DOF.PR.Affidavits@alaska.gov

ADM-100 (9/10)
AFFIDAVIT

AS 22.05.140(b), AS 22.07.090(b)
AS 22.10.190(b), AS 22.15.220(c)

Alaska State Troopers

January 23, 2012

This is a formal criminal complaint against Kenai Superior Court Judge Carl Bauman for falsifying a sworn affidavit. See attached copy of Judge Bauman's affidavit.

The official court documents proving Judge Bauman's affidavit is false are located in the court record of David Haeg's PCR case 3KN-10-01295CI.

The courthouse in Kenai, Alaska currently holds these records.

The attached 1-5-11 Motion for Hearing is a copy of one of the court records proving Judge Bauman's perjury.

The attached copy of the 1-13-12 Motion to Disqualify Judge Bauman for Cause (Corruption) identifies other court records proving Judge Bauman committed perjury and provides evidence why he did so and that he did so knowingly.

In addition the 1-13-12 Motion identifies other mandatory rules, cannons, and rights Judge Bauman violated during the same criminal enterprise.

I declare under penalty of perjury the forgoing is true and correct. Executed on January 23, 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.

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

Alaska Commission on Judicial Conduct

1029 W. 3rd Ave., Suite 550, Anchorage, Alaska 99501
(907) 272-1033 In Alaska (800) 478-1033 Fax (907) 272-9309

Marla N. Greenstein
Executive Director
E-mail: mgreenstein@acjc.state.ak.us

Complaint About An Alaska State Court Judge

Date: 1-23-12

Name of Judge: Carl Bauman

Court: Supreme ____ Appeals ____ Superior X District ____

Court Location: Kenai, Alaska

Case Name(*If Relevant*): David Haeg v. State of Alaska

Case Number(*If Relevant*): 3KN-10-01295 CI

Your Name: David Haeg

Use of your name: If the box below is not checked, the Commission will proceed at its own discretion.

(√) ☑ The Commission may use my name in any communications with the judge related to the Commission's disciplinary functions.

Your Telephone No: 907-262-9249 (Day) Same (Evening)

Your Address: PO Box 123
Soldotna, AK 99669

Your Signature: David Haeg

Please specify exactly, in your own words, what action or behavior of the judge is the basis of your complaint. Please provide relevant dates and names of others who witnessed the action or behavior.

You may use additional paper, or reverse side if necessary.

Judge Bauman has broken numerous laws, rules, and judicial canons including falsifying a sworn affidavit, to unjustly and unconstitutionally cripple David Haeg's ability to expose the ongoing corruption and conspiracy infecting his case. This corruption and conspiracy now includes Judicial Conduct investigator Marla Greenstein. See the attached copy of Judge Bauman's affidavit and the attached motion to disqualify Judge Bauman for the specific dates, instances, and court records proving Judge Bauman's corruption.

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

7010 1060 0000 8961 6814 mailed 1-18-12

To: Brent Cole
Address: 821 N St., Suite 208 Anchorage AK 99501

You are commanded to appear and testify under oath in the above case at:
Date and Time: January 31, 2012 at 10:00 am
Offices of: David Haeg
Address: 32283 Lakefront Drive, Soldotna, AK 99669

Notice, as required by Civil Rule 45(d), has been served upon State of Alaska on January 18, 2012. You are ordered to bring with you nothing

January 18, 2012
Date

Dawn Pelatti (SEAL)
Deputy Clerk

Subpoena issued at request of
David Haeg
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)

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)

1-18-12 NOTICE OF BRENT COLE'S DEPOSITION

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 gives notice of the deposition of Brent Cole on January 31, 2012 at 10:00 a.m. at 32283 Lakefront Drive, Soldotna, Alaska, 99669. The deposition will be recorded by audio and audio/visual means and a court reporter will not be used.

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 1-18-12 a copy of the forgoing was served by mail to the following parties: State of Alaska
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)

1-13-12 MOTION TO DISQUALIFY JUDGE BAUMAN FOR CAUSE (CORRUPTION) AND TO STRIKE JUDGE BAUMAN'S 1-3-12 ORDERS

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 disqualify Judge Bauman for cause and to strike Judge Bauman's 1-3-12 orders.

Prior Proceedings

(1) Haeg filed for post-conviction relief (PCR) on November 21, 2009 *or over two years ago.* In his 19 page PCR application, 43 page PCR memorandum/affidavits, 310 pages of supporting evidence, and 7 independent affidavits Haeg laid out a shocking case of corruption, conspiracy, and cover up by his own attorneys, the state prosecutor, the troopers involved, and the judge presiding over his trial - which stemmed from Haeg's involvement in the incredibly controversial Wolf Control Program.

(2) Because Haeg has been nearly starved out by this time (the Haeg family's business property was seized with false warrants on April 1, 2004) Haeg immediately filed for "expedited" PCR consideration – which the court denied.

(3) On August 27, 2010 and March 25, 2011 Superior Court Judge Stephanie Joannides certified, in 43 and 77 page referrals to the Alaska Commission on Judicial Conduct, evidence proving Haeg's claims of corruption, conspiracy and cover up by Haeg's trial judge (Judge Margaret Murphy), the main witness against Haeg (Trooper Brett Gibbens), and Judicial Conduct's only investigator of judges for the past 25 years (Marla Greenstein). Because of the shocking evidence Judge Joannides ruled Judge Murphy, who had been assigned to decide Haeg's PCR at the state's request, could not decide Haeg's PCR. In addition, *Judge Joannides ruled that Haeg's PCR claims* ***required*** *an evidentiary hearing to be decided.*

(4) On December 8, 2010, *or well over a year ago,* Judge Bauman was assigned to decide Haeg's PCR.

(5) On February 11, 2011 a U.S. Department of Justice section chief told Haeg the DOJ was attending the proceedings in Haeg's case and that it was clear why judicial conduct investigator Marla Greenstein covered up for Judge Murphy and Trooper Gibbens: *"No one in America would believe you got a fair trial if the judge that was presiding over your prosecution was being chauffeured by the main witness against you."*

(6) On January 5, 2011, *or over a year ago,* Haeg filed, *with Judge Bauman,* a motion for an oral argument hearing on the state's motion to dismiss.

(7) Judge Bauman, in one of the last open court in-person hearings with Haeg, specifically asked if Haeg wanted an oral argument hearing before he (Judge Bauman) decided the state's motion to dismiss - and even stated Haeg should think carefully about this because it could greatly affect Haeg's PCR. *Haeg answered Judge Bauman, in open court and in front of a packed courtroom, that he absolutely wanted an oral argument hearing before the state's motion to dismiss was decided – again proving, beyond any doubt, Judge Bauman was aware of Haeg's request for oral argument on the state's motion to dismiss.*

(8) On August 3, 2011, or almost exactly 7 months after Haeg's motion for a hearing on the state's motion to dismiss, *Judge Bauman requested briefing from the state on Haeg's request for a hearing on the state's motion to dismiss – again proving, beyond any doubt, Judge Bauman was aware of Haeg's request for an oral argument hearing on the state's motion to dismiss.* Rule 77(c)(2) required the state's briefing to have been filed within 10 days of Haeg's motion – *not the 7 months Judge Bauman gave the state.*

(9) On August 23, 2011 the state sent Judge Bauman a 47-page opposition to Haeg's request for a hearing on the state's motion to dismiss – *again proving, beyond any doubt, that Judge Bauman was aware of Haeg's request for an oral argument hearing on the state's motion to dismiss.*

(10) On September 2, 2011 Haeg sent Judge Bauman a 10-page reply to the state's opposition – *citing first and foremost that Rule 77(e)(2)* ***required*** *a hearing to be held if requested on a motion to dismiss – again proving that Judge Bauman was aware of Haeg's request for an oral argument hearing on the state's motion to dismiss and that Judge Bauman knew this hearing was required.*

(11) On December 15, 2011 Haeg filed another motion with Judge Bauman for a hearing before Judge Bauman decided the state's motion to dismiss *– again proving that Judge Bauman was aware of Haeg's request for an oral argument hearing on the state's motion to dismiss.*

(12) On January 3, 2012 Judge Bauman issued orders that effectively gutted Haeg's entire PCR - *without ever holding the asked for, and required, "open to the public" oral argument hearing.* In the orders Judge Bauman: (a) eliminated Haeg from presenting Judge Joannides' certified evidence of Judge Murphy's and Trooper Gibbens' corruption during Haeg's trial and sentencing; (b) eliminated Haeg from presenting Judge Joannides' certified evidence that Judicial Conduct investigator Marla Greenstein conspired with Judge Murphy and Trooper Gibbens to cover up Judge Murphy's conspiracy and corruption with Trooper Gibbens during Haeg's trial and sentencing and afterward falsified her investigation of Judge Murphy to cover up Judge Murphy's conspiracy and corruption with Trooper Gibbens during Haeg's trial and sentencing; (c) eliminated Haeg from presenting the evidence that Marla Greenstein, after Judge Joannides' referral, falsified a "verified" document to cover up her corrupt

investigation of Judge Murphy; (d) falsely ruled many of Haeg's claims have already been decided; (e) falsely ruled Haeg had no constitutional claims that could be brought up during PCR; (f) altered the substance of Haeg's claims; and (g) falsely claimed Haeg had not made a "prima facie" case that his attorneys were ineffective – when to do this all Haeg had to do was to swear a claim, which if true and without considering any evidence from the state, would mean Haeg did not get effective representation. In his PCR application/memorandum/affidavit Haeg swore his own attorneys lied to him, conspired with each other, the prosecution, and the presiding judge to illegally, unjustly, and unconstitutionally convict and sentence him. In other words, if Haeg's own attorneys actually did all this, would it mean Haeg did not get effective counsel or a fair trial? If it does (which it irrefutably does) then Haeg has met his burden of a making "prima facie" case – and then Haeg must be allowed to present the evidence and witnesses proving his claims in an "open to the public" evidentiary hearing and then the state must present evidence and witnesses refuting them – if they can. The significance of all this is that if Judge Bauman rules Haeg has not made a "prima-facie" case, Haeg will never get to present the mountain of evidence and witnesses he already has to prove the incomprehensible injustice. A copy of Haeg's application/memorandum/affidavit, proving Judge Bauman's above falsehoods, is located at www.alaskastateofcorruption.com and the Kenai courthouse for those wishing to see the proof themselves.

Law

Rule 77. Motions.

(e) Oral Argument.

(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.*

(3) *If oral argument is to be held, the argument shall be set for a date no more than 45 days from the date the request is filed or the motion is ripe for decision, whichever is later.*

Alaska Statute 22.10.190. Compensation.

(b) *A salary warrant may not be issued to a superior court judge until the judge has filed with the state officer designated to issue salary warrants an affidavit that no matter referred to the judge for opinion or decision has been uncompleted or undecided by the judge for a period of more than six months.*

United States Constitution, Fourteenth Amendment
No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; 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.*

ADMISSIBILITY OF RELEVANT EVIDENCE

Rule 401. Definition of Relevant Evidence.

Relevant evidence *means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.*

Rule 402. Relevant Evidence Admissible-- Exceptions--Irrelevant Evidence Inadmissible.

All relevant evidence is admissible, except as otherwise provided by the Constitution of the United States or of this state, by enactments of the

Alaska Legislature, by these rules, or by other rules adopted by the Alaska Supreme Court. Evidence which is not relevant is not admissible.

Rule 35.1 Post-Conviction Procedure

(f) Pleadings and Judgment on Pleadings.

(1) *In considering a pro se* [someone representing themselves like Haeg] *application the court shall consider substance and disregard defects of form...*

Alaska Code of Judicial Conduct

Canon 1. A Judge Shall Uphold the Integrity and Independence of the Judiciary.

An independent and honorable judiciary is indispensable to achieving justice in our society.

Commentary. -- Deference to the judgments and rulings of courts depends upon public confidence in the integrity and independence of judges. The integrity and independence of judges depend in turn upon their acting without fear or favor. Public confidence in the impartiality of the judiciary is maintained when judges adhere to the provisions of this Code.

Conversely, *violation of this Code diminishes public confidence in the judiciary and thereby does injury to the system of government under law.*

Canon 2. A Judge Shall Avoid Impropriety and the Appearance of Impropriety in All of the Judge's Activities.

A. In all activities, *a judge shall exhibit respect for the rule of law, comply with the law,* avoid impropriety and the appearance of impropriety,* and act in a manner that promotes public confidence in the integrity and the impartiality of the judiciary.

Commentary. -- Public confidence in the judiciary is eroded by irresponsible or improper conduct by judges. *A judge must avoid all impropriety and appearance of impropriety.* A judge must expect to be the subject of constant public scrutiny. A judge must therefore accept restrictions on the judge's conduct that might be viewed as burdensome by the ordinary citizen and should do so freely and willingly.

The prohibition against behaving with impropriety or the appearance of impropriety applies to both the professional and personal conduct of a judge. Because it is not practicable to list all prohibited acts, the proscription is necessarily cast in general terms that extend to conduct by judges that is harmful although not specifically mentioned in the Code.

Actual improprieties under this standard include violations of law, court rules, and other specific provisions of this Code. The test for appearance of impropriety is whether the conduct would create in reasonable minds a perception that the judge's ability to carry out judicial responsibilities with integrity, impartiality, and competence is impaired.

(7) A judge *shall* accord to every person the right to be heard according to law.

(8) A judge *shall* dispose of all judicial matters *promptly,* efficiently, and *fairly.*

D. Disciplinary Responsibilities.

A judge having information establishing a likelihood that another judge has violated this Code shall take appropriate action.

[Why Judge Joannides documented, certified, and referred the evidence of Judge Murphy's and judicial investigator Marla Greenstein's corruption and conspiracy to cover up that Judge Murphy was chauffeured by the main witness against Haeg during Haeg's entire week-long trial and two day sentencing]

The words "shall" and "shall not" mean a binding obligation on judicial officers, and a judge's *failure to comply with this obligation is a ground for disciplinary action.*

"Law" means court rules as well as statutes, constitutional provisions, and decisional law.

Argument

(1) *It is clear that Judge Bauman, according to Rule 77(e)(2), could not legally decide the state's motion to dismiss until a public oral argument hearing had been held.* In other words Judge Bauman's January 3, 2012 orders are illegal,

violates Haeg's constitutional rights to due process and equal protection of law, violates judicial cannons, violates Haeg's right to an "open public" hearing, and is not worth the paper it is written on.

(2) Because numerous filings were sent to Judge Bauman for the "required" hearing before the state's motion to dismiss was decided, because Haeg specifically pointed out to Judge Bauman the hearing was "required", and because Judge Bauman specifically asked Haeg if he wanted an oral argument hearing before the state's motion to dismiss was decided and Haeg said "yes" to Judge Bauman himself, *it is clear Judge Bauman intentionally, knowingly, and maliciously violated Rule 77(e)(2) and Haeg's constitutional rights in order to illegally acquiesce to the state's 47-page request, made to Judge Bauman himself, that no public oral argument hearings take place.*

(3) It is now over a year since Haeg first asked for a hearing on the state's motion to dismiss and over a year since the motion to dismiss was ripe for a decision, when the time limit for holding a hearing, according to Rule 77(e)(3), is 45 days after these events. *Judge Bauman is now 322 days, and counting, past the mandatory time limit for holding Haeg's mandatory oral argument hearing.*

(4) It is clear Judge Bauman has almost certainly falsified the sworn affidavits he is required to submit to be paid – since it is unlikely he has gone without pay for the over 6 months since he was required to have decided Haeg's motion for a hearing according to AS 22.10.190 (which requires a judge to swear under oath that no item submitted for an opinion or decision is older than 6 months

– and Haeg's motion for a hearing is over a year old). If Judge Bauman has been paid within the last 6 months it means he will have also committed felony perjury.

(5) The above actions by Judge Bauman irrefutably violate the law, court rules, the Cannons of Judicial Conduct, and is clearly a blatant attempt to keep the chilling and widespread corruption in Haeg's case from being witnessed in person by the public - who have been attending the hearings in Haeg's case in ever larger numbers – packing Haeg's PCR court to standing room only.

(6) In his orders Judge Bauman has ruled Haeg cannot bring in new evidence and claims because Haeg's trial happened too long ago. As shown over and over it is the court itself that has delayed Haeg's case for years over Haeg's objections and requests for "expedited" consideration. Earlier the state asked for 380 days in which to file for a single brief – *which Rule 217(d) required to be filed within 20 days – and the court granted the state all 380 days* – over Haeg's repeated objections. *It is the height of injustice to have Judge Bauman and the courts delay proceedings for years over Haeg's objections and then rule Haeg cannot submit evidence and claims because of the delay.*

(7) In his orders Judge Bauman claims that Haeg's "newly discovered evidence" claim is that he was entrapped and since Haeg knew this before trial Haeg cannot claim it is "newly discovered evidence." Yet this is not the "newly discovered evidence" Haeg claimed: (a) in Haeg's PCR memorandum/ affidavit he specifically states "Long after Haeg was convicted, sentenced, or could use it on appeal" he had found out material evidence "had been removed out of the record

while evidence it had been submitted remained in the record." Haeg attached, to his PCR memorandum/affidavit, the very evidence proving this; (b) in Haeg's PCR memorandum/ affidavit he specifically cites the fact that prosecutor Scot Leaders, long after Haeg's trial and sentencing, falsified a sworn document to cover up his illegal and unconstitutional use of Haeg's immunized statement. Haeg attached, to his PCR memorandum/affidavit, the very evidence proving this; (c) in Haeg's PCR memorandum/ affidavit he specifically cites the fact that, long after Haeg's trial and sentencing, irrefutable evidence surfaced that would have prevented Haeg from ever being charged or prosecuted for anything. Haeg attached, to his PCR memorandum/affidavit, the very evidence proving this; and (d) in Haeg's PCR memorandum/ affidavit he specifically cites the fact that, long after Haeg's trial and sentencing, irrefutable evidence surfaced that his attorneys had lied to him. Haeg attached, to his PCR memorandum/affidavit, the very evidence proving this. *Judge Bauman's claim, that Haeg's only "newly discovered evidence" PCR claim is that of entrapment, is proven false.*

(8) In his orders Judge Bauman claims Haeg has no constitutional rights volitions that he can bring up in PCR. Ineffective assistance of counsel is a constitutional right that can be brought up in PCR; the fact the official record of his case was tampered with, tampering only found out long after trial, to remove favorable evidence is a PCR issue that violates the constitutional rights to due process and to the equal protection of the law; and the proof that prosecutor Leaders, falsified a verified document long after trial to cover up his use of Haeg's

immunized statement is a clear PCR violation of the constitutional right against self-incrimination. In Haeg's memorandum/affidavit numerous other instances of PCR appropriate constitutional rights violations are specifically cited and proved.

(9) All private citizens who have seen the evidence that (a) Judge Murphy was chauffeured by the main witness against Haeg (Trooper Gibbens) during Haeg's prosecution (evidence certified as true by Superior Court Judge Joannides); (b) both Murphy and Gibbens lied about this during the official investigation into this by judicial conduct investigator Marla Greenstein (evidence certified as true by Superior Court Judge Joannides); (c) judicial conduct investigator Greenstein falsified all testimony from every single witness to cover up for Judge Murphy's corruption (evidence certified as true by Superior Court Judge Joannides); and irrefutable proof (tape recordings) that, after Judge Joannides' referral was submitted, investigator Greenstein falsified a "verified" document to cover up her own corrupt investigation – meaning she has added felony perjury to her list of crimes. Every single private citizen who has seen this evidence agrees that this ***alone*** would convince him or her that Haeg did not receive a fair prosecution – yet Judge Bauman has ruled this is "too attenuated" (weak) to be included in the evidence Haeg can use to prove he did not receive a fair prosecution. Rule 401 and 402 above and Judge Joannides use of this same evidence to disqualify Judge Murphy from presiding over Haeg's case also prove Judge Bauman's claim is false.

(10) Judge Bauman states Osterman's affidavit claims Haeg fired Osterman before Osterman could finalize Haeg's appeal – implying that since Osterman did not finish Haeg's appeal this negated any effect Osterman may have had on Haeg's appeal. Then Judge Bauman claims that Haeg's claim of ineffective assistance of counsel against Mark Osterman must be dismissed. Yet Haeg's main PCR claim against Osterman (supported by recordings of Osterman, Cole, and Robinson) was that Osterman had a direct conflict of interest with Haeg and was conspiring with Haeg's pretrial and trial attorneys Cole and Robinson to cover up their conflicts of interest. (Osterman was caught on tape stating the reason he could not put the "sellout" of Haeg by Cole and Robinson in Haeg's appellate brief was that Osterman "could not do anything that would affect the lives of Cole and Robinson.") The U.S. Supreme Court in Cuyler v. Sullivan, 446 U.S. 335 (1980), cited in Haeg's PCR, specifically holds that if you prove your attorney had a conflict of interest you do not need to establish the attorney's conduct caused harm. After Osterman's "sell out" Haeg was forced to represent himself on appeal, when he has no training in the law – proving Osterman's conflict of interest irrefutably harmed Haeg. And more shocking yet is the recordings of Osterman while he was Haeg's attorney irrefutably prove Osterman lied throughout the entire affidavit he filed in response to Haeg's PCR claims. In other words *Judge Bauman violated the ruling caselaw in another attempt to deprive Haeg of opportunity to show he did not get a fair trial or appeal, that his attorneys conspired to do this, and are now conspiring to cover it up.*

(11) Judge Bauman claims Haeg "must reconcile his ineffective assistance of counsel claims with the fact that he took the stand at trial and admitted to killing wolves outside the predator control zone. His admissions provide a basis to uphold his conviction, regardless of the conduct of his counsel." In his PCR memorandum/affidavit/attachments Haeg, (a) claimed and provided proof that the state told him he had to kill wolves outside the predator control zone and then claim they were taken inside so the program would be seen as effective; (b) claimed and provided proof that his own attorneys told him this was not a legal defense; (c) claimed and provided proof that when he put evidence of what he had been told into the court record (over his attorneys objections) it was removed while evidence it had been in the court record remained; (d) claimed and provided proof that the state telling Haeg the survival of the Wolf Control Program depended on Haeg doing this was an irrefutable defense - and would have kept Haeg from ever being prosecuted or convicted; (e) claimed and provided proof that the state gave him immunity for a 5-hour statement about his actions with the Wolf Control Program; (f) claimed and provided proof that his attorneys told him he could be prosecuted after being forced to give a statement by a grant of immunity (a grant of immunity replaces your right against self-incrimination - if you refuse to talk you are thrown in jail until you do); (g) claimed and provided proof that if this state gives someone immunity for a statement they can never be charged or prosecuted for the actions talked about in the statement – no matter what other evidence there is; (h) claimed and provided proof that not only was he

prosecuted the state irrefutably used his statement to do so; (i) claimed and provided proof that his attorneys told him that the state could, and was, using his statement against him at trial so Haeg was forced to testify at trial; (j) claimed and provided proof that all of this was one of the most horrendous violations of the right against self-incrimination in any case Haeg has found anywhere in the nation; (k) claimed and provided proof that the state had promised him mild charges if he gave up guiding for a year; (l) claimed and provided proof that, after he had given up the year guiding and it was in the past, the state changed the charges so they were devastating; (m) claimed and provided proof that his attorneys told him nothing could be done about the state changing the charges to severe ones after Haeg had paid in full for minor ones; (n) claimed and provided proof that after he had paid in full for minor charges the state could not charge him with severe charges; (o) claimed and provided proof the state presented known false testimony against him at trial; (p) claimed and proved proof the state falsified all evidence locations to his guide area (which the state claimed justified guide charges against Haeg) on everything from search warrants to trial testimony; (q) claimed and proved Judge Murphy specifically relied on the state's perjury; and (r) *claimed and provided overwhelming caselaw that any of the forgoing render Haeg's conviction illegal no matter what Haeg testified to at trial.*

(12) Judge Bauman claims Haeg did not show what effort was made to get an affidavit from his former attorneys in response to his ineffective assistance claims. Yet Haeg provided proof in his PCR filings that he sent his former

attorneys affidavits to fill out responding to Haeg's claims and provided proof his former attorneys refused to fill out the affidavits - and he cannot force them to.

(13) Judge Bauman claims Haeg must now depose Cole "at Haeg's expense" (puzzling as Judge Bauman ruled Haeg indigent) and then "file a succinct and clear memorandum detailing (a) the alleged ineffective assistance of counsel Cole, with citations to the record and to the deposition, addressing both Risher standards, and (b) alleged ineffective assistance of counsel Robinson with citations to the record and to the deposition, addressing both Risher standards." Yet the ruling caselaw in State v. Jones, 759 P.2d 558 (Alaska 1998) proves this is not the proper procedure. Jones states if a PCR application:

> "[S]ets out facts which, if true, would entitle the applicant to the relief claimed, then the court must order the case to proceed and call upon the state to respond on the merits. The filing of a response on the merits by the state commences the second phase of the post-conviction relief proceeding. This stage is designed to provide 'an orderly procedure for the expeditious disposition of non-meritorious applications... without the necessity of holding a full evidentiary hearing.' The rule does so by allowing the parties an opportunity to ascertain whether any genuine issues of material fact actually exist. To this end, Criminal Rule 35.1(f)(3) and (g) place the full range of discovery mechanisms at the disposal of the parties. The final phase of a post-conviction relief proceeding is the evidentiary hearing, as provided for under Criminal Rule 35.1(g). A hearing is required when, upon completion of the discovery and disposition phase, genuine issues of material fact remain to be resolved. "

In his PCR application Haeg has *specifically, irrefutably, and in detail* "set out facts, which, if true" would entitle Haeg to the relief claimed. Yet Judge Bauman has not ordered "the case to proceed and call upon the state to respond on the merits", *as required.* Instead, *Judge Bauman has skipped requiring the state to*

respond on the merits and gone directly to the Rule 26 "discovery mechanisms" of depositions (which have already occurred and which Judge Bauman is requiring more of), admissions and interrogatories – which the state has been using for the last 6 months. (On August 4, 2011 the state required Haeg to fill out 28 pages of interrogatories, admissions, and releases.) It is clear Judge Bauman is violating the rules by not requiring the state to respond to the PCR merits before discovery is conducted, which is a disadvantage for Haeg. It is a further violation for Judge Bauman to *order* further discovery "at Haeg's expense" without requiring the state to respond to the merits of Haeg's case. Further injustice is that on September 22, 2011 state Assistant Attorney General Andrew Peterson filed an affidavit stating: "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."

Haeg never received a copy of Cole's affidavit from the state, (eliminating any need to depose Cole) and now Judge Bauman is ordering indigent Haeg to conduct the expensive (subpoenas, travel, witness fees, camera's, recorders, etc) deposition anyway – when Cole has already provided the state an affidavit.

(14) As shown above Haeg made an irrefutable and shocking "prima facie" case against all his attorneys in his 19 page application 43 page PCR memorandum/affidavits (in which Haeg specifically identified when, where, how, and why his attorneys lied to him about each issue, specifically identified the facts along with the proof proving they had lied to him, and then specifically applied the

law that established that had he not been lied to there would have been a different outcome). See Haeg's PCR filings; the state's motion to dismiss, Haeg's opposition to the state's motion to dismiss; and the state's reply. These documents prove Judge Bauman's claim Haeg has not made a "prima facie" case of ineffective assistance to be false; prove his claim Haeg's testimony at trial prevents him from relief is false; proves the evidence against investigator Greenstein and attorney Osterman is incredibly relevant to Haeg's PCR; proves new evidence has been discovered; and proves there are constitutional violations properly brought up in this PCR. It is as if Judge Bauman never read Haeg's PCR memorandum/affidavits and instead relied only upon the state's motion to dismiss.

> Barry v. State, 675 P.2d 1292 (Alaska 1984) "As the supreme court of California pointed out in People v. Pope, 23 Cal.3d 412 (1979), *an evidentiary hearing is almost always a prerequisite to an effective assertion of ineffective assistance of counsel."*
>
> Wood v. Endell 702 P.2d 248 (Alaska 1985) "It is settled that a claim of ineffective assistance of counsel is one that generally requires an evidentiary hearing to determine whether the standard adopted in Risher v. State, 523 P.2d 421 (AK 1974) was met by counsel's performance."
>
> Machibroda v. United States, 368 U.S 487 (U.S. Supreme Court 1962) We cannot agree with the Government that a hearing in this case would be futile because of the apparent lack of any eyewitnesses to the occurrences alleged, other than the petitioner himself and the Assistant United States Attorney. *The petitioner's motion and affidavit contain charges which are detailed and specific.*
>
> Not by the pleadings and the affidavits, but by the whole of the testimony, must it be determined whether the petitioner has carried his burden of proof and shown his right to a discharge. The Government's contention that his allegations are improbable and unbelievable cannot serve to deny him an opportunity to support them by evidence. *On this record, it is his right to be heard.*

> There will always be marginal cases, and this case is not far from the line. *But the specific and detailed factual assertions of the petitioner, while improbable, cannot at this juncture be said to be incredible. If the allegations are true, the petitioner is clearly entitled to relief. Accordingly, we think the function of 28 U.S.C. 2255 can be served in this case only by affording the hearing which its provisions require.*

Haeg's claims are incredibly specific, factual, and detailed; backed up by court documents, tape recordings, affidavits, and sworn testimony – and also by a certified finding of corruption by a Superior Court Judge – ***who ruled Haeg had a right to a PCR evidentiary hearing.*** *And, according to the U.S. Supreme Court in Machibroda v. United States above Haeg has overwhelmingly met his burden of proving his right to an evidentiary hearing so he may prove his case in open court.*

(15) Judge Bauman's orders irrefutably altered Haeg's claims to strip them of substance. Judge Bauman's claim Haeg had only complained of Judge Murphy and Trooper Gibbens' conspiracy to seize the plane – Haeg's actual claim was that Judge Murphy and Trooper Gibbens had conspired to illegally prosecute and convict Haeg and to then to sentence Haeg to almost 2 years in jail, $19,500 fine, forfeiture of $100,000 in property, and the deprivation of Haeg's guide license (Haeg family's only income) for 5 years. *In other words if Judge Murphy and Trooper Gibbens were conspiring during Haeg's case, why would Haeg claim the conspiracy was limited to a now worthless plane (rusted to pieces in the last 8 years) instead of claiming the conspiracy covered everything including conviction and all penalties?*

(16) As shown above Judge Bauman's orders strips Haeg of numerous claims and mountains of compelling, pertinent evidence by falsely claiming defects of form in Haeg's PCR application/memorandum/affidavits. Even if there were defects, which there isn't, *Rule 35.1 specifically states, "a court must consider substance and disregard defects of form" when someone is "pro se" or representing himself or herself in PCR – as Haeg is doing.*

(17) Every single member of the public who has read Judge Bauman's orders, made without Haeg's required, open-to-the-public "day in court" - believes wholeheartedly that it is a corrupt and illegal attempt by Judge Bauman to cover up the corruption and conspiracy rather then exposing it in open court - and that it is a deliberate and malicious deprivation of Haeg's constitutional right to an effective opportunity to present his case of shocking corruption in open court where the public, news reporters, and the U.S. Department of Justice can attend. Every single member of the public also believes Judge Bauman's orders were further driven by the "can of worms", "scandal", and "toxic release" that would spread to other cases if Haeg proved his own prominent attorneys were conspiring with the state prosecution and judges to frame people and rig trials – and then that the only investigator of judges in Alaska for the past 25 years was falsifying official investigations to cover up for the corrupt judges. How many cases could this place in jeopardy? Every judge investigated by Marla Greenstein in the past 25 years would be suspect. The reality of this is proven by the recent "Jailing Kids for Cash" scandal in Pennsylvania – *where the outing of just two corrupt judges*

caused over 4000 convictions to be overturned. The public believes the incredible number and length of delays Haeg has experienced, totaling nearly 8 years at present, is a deliberate attempt to "starve" Haeg and his family into submission.

Conclusion

In light of the above:

(1) Haeg respectfully asks that Judge Bauman be disqualified from Haeg's PCR for cause – as Judge Bauman has intentionally, knowingly, and maliciously violated law, court rule, and mandatory judicial cannon to prevent Haeg from exposing the conspiracy and corruption surrounding his prosecution. *Since Judge Bauman has broken law, rule, and cannon to harm Haeg - denying Haeg the prompt public oral argument hearing that irrefutably was Haeg's right and to "set the stage" for denying Haeg what was supposed to be a prompt public evidentiary hearing at which Haeg can present the shocking evidence of corruption and conspiracy of his own attorneys, Judge Murphy, Trooper Gibbens, prosecutor Leaders, and investigator Greenstein – Judge Bauman cannot be allowed to preside any further over Haeg's case.* Haeg is filing criminal and judicial conduct complaints against Judge Bauman. Marla Greenstein, the only investigator of judges in Alaska, will investigate Judge Bauman for covering up the corruption of Marla Greenstein - another fantastic conflict of interest.

(2) Haeg respectfully asks that Judge Bauman's January 3, 2012 orders be stricken from the record.

(3) Haeg respectfully asks that a new, uncorrupt judge - one unwilling to cover up for the crimes and conspiracy of previous judges, attorneys, troopers, and judicial investigators - be immediately assigned to decide Haeg's PCR. On tape Robinson has stated the "good old boys club of Judges, Troopers, and prosecutors protect their own" when Haeg asked how they can get away with such blatant crimes. When Haeg said he was going to sue Robinson stated the Shaw v. State, 861 P.2d 566 (AK 1993) prevented Haeg from suing his attorneys unless he overturned his conviction on an ineffective assistance claim. Haeg also asks the new Judge allow him to supplement the record of his case with the evidence and claims of Judge Bauman's corruption; that after a new judge is assigned he or she immediately schedule oral arguments in open court on the state's motion to dismiss; and that Haeg be given at least 45 minutes for his oral argument.

(4) Haeg asks oral argument be held in Kenai's largest courtroom because of the growing crowd wishing to witness this judicial corruption scandal unfold in person. The last hearing had standing room only.

(5) After oral arguments on the state's motion to dismiss is over Haeg asks that a scheduling hearing be promptly held to schedule a PCR evidentiary hearing of at least one week long in order that Haeg may fully and fairly present his evidence and witnesses proving he did not receive a fair trial or sentencing.

(6) In the bitter end, paid for by almost 8 years of agony by the Haeg family, all Haeg asks for is his basic constitutional right to present evidence and witnesses in his favor effectively in open court *and then to allow the state every*

opportunity to refute it. This means Haeg must be able to subpoena and examine, in open court and under oath, at a very minimum all three of Haeg's attorneys, judicial conduct investigator Marla Greenstein, the witnesses whose testimony Marla Greenstein falsified, Judge Margaret Murphy, Trooper Brett Gibbens, and prosecutor Scot Leaders – exactly as Superior Court Judge Joannides allowed Haeg when making the case Judge Murphy should be disqualified. *In other words Haeg asks for the same opportunity to put on his case as the state was allowed when prosecuting Haeg almost 8 years ago – where the state was allowed to present any and all evidence and any and all witnesses they wished in Haeg's week-long trial and two day sentencing.* Superior Court Judge Joannides has already determined Haeg made a "prima facie" of Judge Murphy's corruption during Haeg's prosecution, *granted a two day long evidentiary hearing on this issue alone*, and then, *for cause*, disqualified Judge Murphy from presiding over Haeg's PCR – ruling that *"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."* It seems clear that if Judge Murphy's actions during Haeg's prosecution prevent her from presiding over Haeg's PCR it is evident her same actions prevented Haeg from a fair prosecution. And Cannon 2 of Judicial Conduct states a judge shall avoid impropriety and the appearance of impropriety. Judge Joannides ruled Judge Murphy has already, ***at a minimum*** violated a Judicial Cannon that is ***required*** to be complied with. But if Judge Bauman never allows Haeg to present, in an open court hearing, the evidence

along with witnesses Judge Murphy, Marla Greenstein, Haeg's attorneys, Trooper Gibbens, and prosecutor Leaders, they will never have to refute anything and the blatant violations of the "Bill of Rights" in Haeg's case by the government will never be known or addressed - rights to equal protection of law, right to due process, right against unreasonable searches and seizures; right against self incrimination; right to compel witnesses; right to the assistance of counsel; and right to petition the Government with grievances.

> *"The object of any tyrant would be to overthrow or diminish trial by jury, for it is the lamp that shows that freedom lives."* Sir Patrick Devlin (1905-1992) British Lord of Appeal, lawyer, judge and jurist

> "During the debates on the adoption of the Constitution, *its opponents repeatedly charged that the Constitution as drafted would open the way to tyranny by the central government. Fresh in their minds was the memory of the British violation of civil rights before and during the Revolution. They demanded a "bill of rights" that would spell out the immunities of individual citizens.* Several state conventions in their formal ratification of the Constitution asked for such amendments; others ratified the Constitution with the understanding that the amendments would be offered." U.S. National Archives and Records Administration

> "In my judgment *the people of no nation can lose their liberty so long as a Bill of Rights like ours survives and its basic purposes are conscientiously interpreted, enforced and respected so as to afford continuous protection against old, as well as new, devices and practices which might thwart those purposes.* " Justice Hugo L. Black, US Supreme Court Justice

Judge Bauman has clearly "opened the way to tyranny by the government" by breaking law, Cannon, and rule to deny Haeg the public hearing process due under the numerous and specific rights, rules, Cannons, statutes, and laws above.

(7) Haeg, and what he feels is a growing number of those seriously concerned, will continue to very carefully document the expanding web of corruption and conspiracy and will eventually, when no more are willing (or forced) to enter the net to cover up for everyone else, fly to Washington DC to demand federal prosecution of everyone involved for the felonies of conspiring to use positions of trust and the color of law to intentionally violate our constitution.

(8) Finally, Haeg asks that oral arguments be held on both his motion to disqualify Judge Bauman for cause and his motion to strike Judge Bauman's January 3, 2012 orders.

I declare under penalty of perjury the forgoing is true and correct. Executed on January 13, 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 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 January 13, 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:

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 MOTIONS REGARDING FORFEITED PROPERTY

In open court on June 13, 2011, this court ordered the State to put the title transfer of the plane on hold pending a substantive ruling on related Haeg motions in this PCR proceeding. The seized and forfeited property also includes firearms, wolf hides, and a wolverine hide. As noted in the January 3, 2012 Order on the State's motion to dismiss, the forfeiture of seized property involved in the offenses of which Haeg was convicted was not mandatory, but rather was a matter of sentencing discretion.

PCR procedure and authority is addressed in Chapter 72 of Title 12 of the Alaska Statutes and in Criminal Rule 35.1. Subsection (b) of Cr. Rule 35 states that a PCR proceeding is not a substitute for, nor does it affect, any remedy incident to the proceedings in the trial court, or direct review thereof. From the State's perspective, a remedy incident to the conviction and the forfeiture to the State of the seized plane and other items is sale of those items or conversion to use by the State. Direct review of the forfeitures was taken by appeal of the constitutionality of the seizures, which the Court of Appeals addressed and resolved against him in Case No. A-10015.

Forfeiture and disposition (i.e., sale or other use) of property after a conviction is governed by AS 16.05.195. The court concludes that disposition of the forfeited plane and other items is a matter for the district court in the underlying criminal case (referenced for ease here as the "McGrath case"). To whatever extent a defendant has a right to appeal a disposition of forfeited property, the appeal would presumably be to the Alaska Court of Appeals. This court will not entertain in this PCR proceeding a motion or appeal from a modification of judgment in the McGrath case, 4MC-S04-24CR, or other order regarding disposition of property forfeited in that case.

It is possible that this PCR proceeding could result in the conviction or sentencing of Haeg in the McGrath case being set aside. If the forfeiture of the seized property were set aside, after the property has been sold by the State, then the State may be liable to reimburse the owner for the fair market value of the property. Issues might arise regarding whether the fair market value of the property should be determined as of the date of seizure, the date of forfeiture, or the date of sale.

For the foregoing reasons, the motions by Haeg regarding the seized and forfeited property are denied.

Dated at Kenai, Alaska, this 3rd day of January, 2012.

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, Flanigan
1-4-12 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-10-1295 CI

ORDER ON MOTIONS TO SUPPLEMENT PCR

This order addresses the pending motions to supplement by David Haeg ("Haeg") to supplement his PCR application.

HAEG'S PCR CLAIMS

The original Haeg PCR filing is a 19-page application. Haeg has filed motions to supplement that original PCR Application:

1) Motion to Supplement PCR Application with Claim and Evidence, filed January 20, 2011 (Docket #89);
2) Motion to Supplement PCR Application with Evidence, filed February 11, 2011 (Docket #96);
3) Motion to Supplement Haeg's PCR Application with the Alaska Bar Association's March 1, 2011, Letter for Marla Greenstein and the Alaska Bar Association's March 1, 2011, Letter to David Haeg, filed March 7, 2011 (Docket #102); and
4) Motion to Supplement PCR Application with Claims and Evidence, filed April 21, 2011 (Docket #114).

1. In the first motion to supplement PCR, Haeg requests leave to supplement his PCR Application in seven numbered respects including the claim that his conviction is not valid because Alaska Commission of Judicial Conduct ("ACJC") investigator Marla

Greenstein allegedly falsified her investigation to cover up Trooper Gibbens' chauffeuring of Judge Murphy; and that his conviction is not valid because a conspiracy existed between Judge Murphy, Trooper Gibbens, and ACJC Investigator Greenstein to cover up what Haeg alleges was judicial misconduct.

The court has plenary power in a PCR proceeding to address judicial misconduct. The claim that ACJC Greenstein falsified her investigation is too attenuated and long after the fact of the 2005 jury conviction and the sentencing of Haeg. Haeg has been permitted to depose the trial judge and the Trooper. No challenge to the ACJC investigator or her investigation will be permitted in this PCR proceeding. The first Haeg motion to supplement is denied.

2. In the second motion to supplement PCR, Haeg provides ACJC documentation and his complaint to the Alaska Bar Association ("ABA") against Investigator Marla Greenstein. The ABA apparently accepted Haeg's grievance complaint against Greenstein, but deferred investigating the complaint until these PCR proceedings have concluded. Haeg asks that the letters from the ABA be made part of the PCR record. The court finds that to whatever extent information was attached to the Haeg motion to supplement that information is therefore part of the court file. That finding does not mean that the information is admissible or relevant to any issue in the PCR proceeding, nor does the finding mean that any such information is not relevant or potentially admissible. Attaching a document to a motion does not mean that the document is admitted evidence for the truth of facts addressed therein. In accordance with the court denial of the first Haeg motion to supplement, the court will not entertain as part of the Haeg PCR any issue regarding what the ACJC or ABA did or did not do. To the extent that the second Haeg motion to supplement is to add new PCR

claims, it is denied. To the extent that the motion attaches new documents and new information pertaining to existing claims, that information is now part of the court file.

3. In the third motion to supplement PCR, Haeg requests that his PCR application be supplemented with additional evidence, namely Alaska Bar Association letters to Marla Greenstein and to David Haeg. As with the disposition of the second motion to supplement, to the extent the third motion to supplement attaches new documents and new information pertaining to existing claims, that information is now part of the court file. To the extent the third Haeg motion to supplement is to add new PCR claims, it is denied.

4. In the fourth motion to supplement Haeg alleges the conduct and representations of prosecutor Andrew Peterson constitute prosecutorial misconduct. He requests that his PCR application be supplemented to include the prosecutorial misconduct claims and that the record in this case include the prosecutor's court filings and arguments in the underlying criminal proceeding regarding the seized plane. Some types of prosecutorial misconduct may be raised in a PCR proceeding and some may not.

Haeg specifically alleges that Peterson filed a request for hearing to set a remand date for Haeg to serve his jail sentence – and Haeg alleges this is violated Appellate Rule 206(a)(1), which Haeg reads to require a stay of imprisonment if an appeal is taken and the defendant is released pending appeal. Haeg says that based on Peterson's erroneous advice, Haeg served 35 days in jail. There is also an issue that Peterson "said the State would oppose electronic monitoring," which allegedly enforced Woodmancy's erroneous belief that electronic monitoring was inappropriate in Haeg's case (when Haeg believes it was under 33.30.065). Haeg also believes that Peterson engaged in prosecutorial misconduct when he filed Motions with Magistrate Woodmancy so the State could get the plane. Finally, Haeg

argues that Peterson failed to inform the court that at the state's request the license suspension had been stayed during appeal which effectively turned Haeg's 5 year suspension into a 9 year suspension while his appeal was pending.

In Lockuk v. State, 2011 WL 5027060, a claim of prosecutorial misconduct, that the prosecutor had threatened three witnesses, was heard by the superior court in Dillingham in an evidentiary hearing in a PCR case. In another case, Wilson v. State, 244 P.3d 535 (Alaska App. 2010), the defendant filed for PCR on the basis that he received ineffective assistance of counsel because defense counsel was ineffective in responding to prosecutorial misconduct. The superior court judge dismissed the PCR application for failure to state a prima facie case and the court of appeals reversed.

On the one hand the alleged prosecutorial misconduct occurred after the jury conviction of Haeg in 2005. On the other hand the plane seizure is one of the primary subjects for which Haeg seeks relief in this PCR proceeding.

The court finds that the alleged prosecutorial misconduct regarding the request for remand while the appeal was pending and the opposition to electronic monitoring by DOC are too attenuated and after the fact to merit inclusion in this PCR proceeding. The fourth motion to supplement his PCR in that regard is denied.

The fourth motion to supplement his PCR with that regard to alleged prosecutorial misconduct regarding the seized plane is granted.

CONCLUSION AND ORDER

Based on the foregoing findings and rulings the State will have 20 days to respond to the alleged prosecutorial misconduct claim regarding the seized plane permitted above as a supplement to the Haeg PCR application.

Dated at Kenai, Alaska, this 3rd day of January, 2012.

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, Flanigan

1-3-12 Date

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-10-1295 CI

ORDER ON MOTION TO DISMISS

David Haeg ("Haeg") was convicted by a jury in 2005 in 4MC-04-024CR of five counts of unlawful acts by a guide for same day airborne hunting of wolves, two counts of unlawful possession of game, one count of unsworn falsification, and one count of trapping wolverines in a closed season. Haeg appealed. In Haeg v. State, 2008 WL 4181532 (Alaska App. 2008), the Court of Appeals affirmed Haeg's convictions, but found that his guide license was suspended, not revoked. Haeg's appeals/petitions for review to the Alaska Supreme Court and the United States Supreme Court were denied.

Haeg filed an Application for Post-Conviction Relief ("PCR") in November 2008. Haeg's guide license was fully reinstated pursuant to an order of this court on July 5, 2011. Four motions to supplement the PCR application are pending. The State filed a Motion to Dismiss Application for Post-Conviction Relief on March 10, 2010 (the "Motion to Dismiss"). Haeg filed an Opposition to the Motion to Dismiss on March 19, 2010 (the "Opposition"). The State did not file a reply, but later filed a Notice of Supplemental

Authority to which Haeg filed an opposition. The purpose of this order is to resolve the Motion to Dismiss.

THE SCOPE OF POST-CONVICTION RELIEF IN ALASKA

PCR proceedings are governed by AS 12.72.010 – 040 and Alaska Criminal Rule 35.1. The scope of a PCR action is not unlimited. A defendant is barred from raising a post-conviction relief claim that was raised or could have been raised by direct appeal. AS 12.72.020(a)(2). Collateral estoppel and res judicata apply in PCR proceedings. Brown v. State, 803 P.2d 887 (Alaska 1990). An issue that is litigated in a criminal prosecution and addressed on the merits on appeal is outside of the scope of relief and may be dismissed. Id.

With regard to allegations that a defendant received ineffective assistance of counsel, the standard is whether the counsel performed at least as well as a lawyer with ordinary training and skill in criminal law and conscientiously protected the client's interest, un-deflected by conflict of interest considerations. See Risher v. State, 523 P.2d 421 (Alaska 1974). A PCR claim of ineffective assistance of counsel can require an evidentiary hearing to determine whether the standard adopted in Risher was met by counsel's performance. See Wood v. Endell, 702 P.2d 248 (Alaska 1985). However, counsel are presumed competent, and the PCR applicant has the burden to rebut that presumption. To prevail on a PCR based on ineffective assistance of counsel, the applicant must not only meet the first test in the Risher case, but must also meet the second test. The Risher court explained that the first prong requires the accused to prove that the performance of trial counsel fell below an objective standard:

> 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.
>
> ...

> Secondly, there must be a showing that the lack of competency contributed to the conviction. If the first burden [the burden of proving deficient performance] has been met, all that is required additionally is to create a reasonable doubt that the incompetence contributed to the outcome.

Risher v. State, 523 P.2d at 424-25. See also State v. Jones, 759 P.2d 558, 567-68 (Alaska App. 1988).

To prevail on a claim of ineffective assistance of appellate counsel, the Court of Appeals explained, in an unpublished and therefore not-precedent decision, that the standards in the Risher case and Burton v. State, 180 P.2d 964 (Alaska App. 2008) would apply, as follows:

> To prevail in her claim that she received ineffective assistance of counsel on appeal, Slwooko must show that her appellate attorney argued her case incompetently, and that there is a reasonable possibility that she was prejudiced by her attorney's incompetence. Here, Slwooko claims that evidence of a witness's inconsistent statements must be supported by some type of special corroboration— and that it was incompetent for her appellate attorney to fail to include this argument in his opening brief. But even if we assume that it was incompetent for Slwooko's appellate attorney to fail to include this argument in his opening brief, Slwooko has failed to demonstrate that she was prejudiced by her attorney's purported lapse (*i.e.*, prejudiced by the fact that her appellate attorney waited until his reply brief to raise this argument) — because, as a claim of error, this "special corroboration" argument has no merit.

Slwooko v. State, 2011 WL 1998370, 2 (Alaska App. 2011) (footnote 7, a citation to Risher and Burton, omitted). In the Burton case the Court of Appeals addressed, inter alia, the standard for finding plain error:

> Under Alaska law, an error to which no objection was preserved in the trial court will qualify as "plain error" only if (1) the error "was so obvious that it should have been noticed by the trial court *sua sponte* " (*i.e.*, the error should have been apparent to any competent judge or lawyer); (2) the attorney representing the party who now claims error had no apparent tactical reason for failing to object; and (3) the error was so prejudicial to the fairness of the proceedings that failure to correct it would perpetuate manifest injustice.

Burton v. State, 180 P.3d at 968 (footnotes omitted).

THE COURT OF APPEALS DECISION

The Court of Appeals decision speaks for itself, but a review of the key rulings follows to help determine the issues that were raised on appeal. The Court of Appeals decision addressed two appeals by Haeg. In the first appeal, Case No. A-9455, Haeg alleged use by the State of perjured testimony for search warrants, improper charges, improper use of statements made by him during plea negotiations, and ineffective assistance of counsel. He also alleged the district court errors detailed below. In the second appeal, Case No. A-10015, Haeg challenged the denial of his post-trial motion to suppress evidence used at the trial which the State had seized during its investigation, and for return of the property.

Haeg contended in the Court of Appeals that the trial court:

(1) failed to inquire into the failed plea negotiations,

(2) failed to rule on a motion protesting the State's use of Haeg's statement made during plea negotiations as the basis for the charges,

(3) made prejudicial rulings concerning Haeg's defense that he was not "hunting,"

(4) failed to instruct the jury that Haeg's co-defendant, Tony Zellers, was required by his plea agreement to testify against Haeg,

(5) unfairly required Haeg to abide by a term of the failed plea agreement,

(6) failed to force his first attorney to appear at Haeg's sentencing proceeding, and

(7) when imposing sentence, erroneously identified the location where the majority of the wolves were taken.

Other than the change from revocation to suspension of the guide license, the Court of Appeals affirmed the district court rulings, actions, and failures to act challenged by Haeg in the seven numbered paragraphs above and also affirmed against his claim that the State used perjury testimony by Trooper Gibbens to get search warrants.

A. The Haeg claim that the State used perjured testimony:

The Court of Appeals found Haeg did not challenge the search warrant affidavit prior to trial, so that claim was forfeited.

B. The Haeg claim that he could not be convicted of unlawful acts by a guide, hunting wolves same day airborne:

The Court of Appeals concluded that Haeg was arguing in part that Gibbens' allegedly perjured affidavit was an improper basis for which to charge Haeg with unlawful acts as a guide. The Court ruled against Haeg with regard to what his permit allowed, where the wolves were shot, and what the term "hunting" entails under the predator control program and Alaska law.

C. The Haeg claim that he was not guiding when he and Zellers were taking wolves:

The Court of Appeals noted that Gibbens retracted part of his testimony during cross examination, and clarified that the wolves were killed in unit 19D, not in unit 19D-East. The Court also noted that Haeg admitted that none of the wolves was killed in unit 19D-East. No error was found.

D. The Haeg claim that the prosecutor violated Evidence Rule 410:

Haeg argued the State violated Evidence Rule 410 by using a statement he made during failed plea negotiations to charge him with crimes more serious than he initially faced. The Court of Appeals ruled Haeg did not litigate this issue in the district court and therefore had to show plain error to prevail on that point on appeal. The Court commented that "[o]ne of the components of plain error is proof that the asserted error manifestly prejudiced the defendant."

The Court concluded that the initial and amended charges were supported by a probable cause statement that set out Gibbens' investigation and a summation of the statements made by Haeg and Zellers. Thus, even if Haeg's statements were removed from the charging document, the remaining evidence from Gibbens and Zellers would still support the charges against Haeg. The State had discretion to file the more serious charges. The Court concluded that even if the State had not used his statements to support the information, Haeg would still have faced charges that he committed unlawful acts by a guide, hunting same day airborne. The Court therefore concluded Haeg had not shown that the error he asserts manifestly prejudiced him, and therefore did not show that plain error occurred.

The Court found that Haeg did not raise at trial the issue that the State used his interview to convict him. The Court wrote that the record shows that the State did not offer Haeg's pre-trial statement during its case-in-chief or during its rebuttal case. The Court noted that Zellers testified for the State and that his testimony, with Gibbens' testimony, was sufficient to support Haeg's convictions. The Court wrote that in his own testimony, Haeg admitted that he had committed all but two of the charged offenses, and he was acquitted on those two. The Court said Haeg testified that he was a licensed guide, that he had taken the wolves same day airborne, that he knew that he was acting outside the predator control program area, that he and Zellers had falsified the sealing certificates, that they had unlawfully possessed game, and that his leg traps were still catching game after the season had closed. Haeg did not show plain error.

E. The Haeg claim that his attorneys were ineffective:

The Court of Appeals ruled that Haeg's claim of ineffective assistance of counsel must be raised in the trial court in an application for post-conviction relief under Alaska Criminal Rule 35.1.

F. The Haeg claim (# 1) that the district court erred by failing to inquire about plea negotiations:

The Court of Appeals concluded there is no requirement that a trial court in a criminal case, without a motion or request from the parties, must ask why plea negotiations failed.

G. The Haeg claim (# 2) that the trial court failed to rule on an outstanding motion:

The Court of Appeals denied the Haeg claim that the trial judge failed to rule on a motion "protesting the State's use" of the statement Haeg claims he gave during plea negotiations because Haeg did not file a motion to dismiss based on a State violation of Evidence Rule 410. The Court found that Haeg alluded in his reply on his motion to dismiss on other grounds to "another piece of information that needs to be addressed." The Court of Appeals ruled that a trial court can properly disregard an issue that is first raised in a reply to an opposition.

H. The Haeg claim (# 3) that the district court prejudiced his defense:

The Court found no factual or legal basis for the Haeg claim that his defense was prejudiced by trial court rulings on his permit and on hunting. The Court concluded that the trial judge rulings permitted Haeg to present evidence that he was acting in accord with his permit and argue that he was not "hunting," which points the Court noted he argued at length to the jury.

I. The Haeg claim (# 4) that the district court failed to give a required jury instruction:

The Court of Appeals ruled that the trial judge was not required on her own to instruct the jury that Zeller's plea agreement required him to testify against Haeg. Because Haeg did not request an instruction on point, he did not preserve the issue for appeal.

J. The Haeg claim (# 5) that the district court held him to a term of the failed plea agreement:

After a review of the record, including recordings, the Court of Appeals disagreed with the contention by Haeg that the trial judge held him to a term of the failed plea agreement. The Court wrote that the State is allowed to put on evidence at sentencing of a defendant's uncharged offenses even if the defendant objects. Here, the State, irrespective of the failed plea agreement, attempted to show that Haeg had committed an uncharged offense. The State was entitled to do so. The Court noted the judge found that the State did not prove Haeg committed the uncharged offense, and did not consider it when imposing sentence.

K. The Haeg claim (# 6) that the district court erred by not ordering a defense witness to appear at sentencing:

Haeg subpoenaed his first attorney to appear at the sentencing, but the attorney did not show. Because Haeg did not ask the trial court to enforce the subpoena or seek any other relief, his claim of error was waived.

L. The Haeg claim (# 7) that the district court erred when it found that most of the wolves were taken in unit 19C:

The errors asserted by Haeg over where the wolves were killed versus trial court comments at sentencing about where they were killed were addressed and resolved against Haeg by the Court of Appeals. The Court further concluded that the trial court did not

commit clear error when she found that Haeg had illegally killed wolves for his own commercial benefit.

M. The Issues Resolved in Case No. A-10015:

On remand during the appeal the district court ruled on the Haeg arguments that (a) his constitutional rights were violated by the seizure of his property without notice of his right to contest the seizure and (b) the seizure statutes are unconstitutional. The Court of Appeals affirmed the district court decision not to return the property that was ordered forfeited at the sentencing. The forfeited property consisted of the airplane and the firearms that Haeg and Zellers used when taking the wolves, the wolf hides, and a wolverine hide.

Haeg relied in part on a Ninth Circuit decision that due process requires an individualized notice of right to contest when police seize property. The Alaska Court of Appeals found that the United States Supreme Court reversed that Ninth Circuit decision and rejected its imposition of an individualized notice of right to contest forfeiture requirement. City of West Covina v. Perkins, 525 U.S. 234 (1999). The Court of Appeals quoted rulings by the U.S. Supreme Court in the City of West Covina case:

> [W]hen police lawfully seize property for a criminal investigation, the federal due process clause does not require the police to provide the owner with notice of state-law remedies. "[S]tate-law remedies ... are established by published, generally available state statutes and case law." Once a property owner has been notified that his property has been seized, "he can turn to these public sources to learn about the remedial procedures available to him." "[N]o rationale justifies requiring individualized notice of state-law remedies." The "entire structure of our democratic government rests on the premise that the individual citizen is capable of informing himself about the particular policies that affect his destiny."

The Court of Appeals found no violation of federal or State of Alaska constitutional provisions because Haeg was present when the police seized his property and because Criminal Rule 37 provides a post-seizure procedure for an owner to seek return of

their property. The Court ruled there is no right to be separately informed of the right to contest the seizure of property. For similar reasons, the Court rejected Haeg's attack on the constitutionality of Alaska's seizure and forfeiture statutes, adding that Haeg's motion to suppress was waived because he failed to file it prior to trial. The Court further concluded that Haeg provided the district court no grounds for overturning the sentencing judge's decision to forfeit property related to Haeg's hunting violations.

N. Other "potential" claims by Haeg on appeal:

The Court of Appeals observed that Haeg's briefs and other pleadings were sometimes difficult to understand, and noted that he may have intended to raise other claims besides the ones discussed above. The Court ruled that to the extent Haeg was attempting to raise other claims in his briefs or in any of his other pleadings, those claims were inadequately briefed.

HAEG'S PCR CLAIMS

Haeg advances three basic theories for post-conviction relief under AS 12.72.010:

1) Ineffective assistance of counsel under AS 12.72.010(9);
2) Constitutional violations of his rights under AS 12.72.010(1); and
3) Newly discovered evidence under AS 12.72.010(4).

STATE'S MOTION TO DISMISS

In its Motion to Dismiss the State argues that Haeg failed to plead a prima facie case for ineffective assistance of counsel or any other grounds that would justify relief. The State contends defense counsel are presumed to have acted competently, and the defendant bears the burden of rebutting that presumption. Here, the State claims, Haeg failed to obtain supportive affidavits of his former counsel and failed to explain why he could not. Affidavits addressing ineffective assistance of counsel have been held to be essential components of a

prima facie case for post-conviction relief. In addition, the State argues Haeg failed to cite to the record to support his allegations of ineffective assistance of counsel and did not show that the decisions of his counsel were anything more than tactical decisions, which are not sufficient to support relief. Further, the State contends Haeg failed to allege specifically how his conviction and sentence violate the U.S. and Alaska Constitutions, and did not specifically identify his newly discovered evidence. Finally, the State contends the Court of Appeals already addressed the facts and claims raised in the Haeg PCR application.

In his Opposition Haeg attempted to clarify his claims.

1. **The Ineffective Assistance of Counsel Claims:**

Haeg claims that he was poorly served by attorneys Cole, Robinson, and Osterman. Claims for ineffective assistance of counsel are within the permissible scope of a PCR proceeding.

The State argues Haeg has failed to plead a *prima facie* case because Haeg failed to provide affidavits from the allegedly ineffective attorneys in which the attorneys address the claims of ineffective assistance. This is an essential component of a *prima facie* case for ineffective assistance of counsel. Without the required affidavit or an explanation why it cannot be obtained, the court may dismiss a PCR application. Haeg claimed in his PCR application that the attorneys refused to provide affidavits of ineffective assistance of counsel when asked. Haeg asks to subpoena the attorneys to respond to his ineffective assistance of counsel claims.

Haeg has three basic claims for which he would like to have each former attorney respond: (1) that the decisions the attorney made were not based on sound tactical choices;

(2) that there were existing and un-waived conflicts of interest; and (3) that the attorneys erroneously advised Haeg on the law.

The State contends the attorneys made tactical decisions, which are not subject to claims of ineffective assistance. If counsel's actions or failures to act were done for tactical or strategic reasons, "they will be virtually immune from subsequent challenge, even if, in hindsight, the tactic or strategy appears to be mistaken or unproductive." State v. Jones, 759 P.2d 558, 569 (Alaska App. 1998). Haeg argues that tactics are not the basis of his ineffective assistance of counsel claims. He says his counsel had conflicts of interest that affected the representation. And he claims counsel erroneously informed him of the law.

Given the Court of Appeals decision, Haeg must reconcile his ineffective assistance of counsel claims with the fact that he took the stand at trial and admitted to killing wolves outside the predator control zone. His admissions provide a basis to uphold his conviction, regardless of the conduct of his counsel. It is not enough for Haeg to assert that a different strategy may have been more effective in hindsight. Haeg must make a prima facie showing, just as any other PCR applicant alleging ineffective assistance of counsel must meet, that both standards of Risher are met. Haeg has not yet done so. Haeg would like the court to conduct a hearing and require his former counsel to be present to address the issues. That approach would relieve Haeg of his obligation to present a prima facie case before a hearing is justified.

(a) The Cole Situation: Absent an PCR affidavit from his former counsel Cole, the burden was on Haeg to show that he made reasonable efforts to obtain the affidavit from Cole but could not. Haeg has alleged that his former counsel refused to provide an affidavit Haeg has not shown the efforts that he made to obtain the affidavit. If attorney Cole has not

been deposed in this case, Haeg will be permitted the additional time set forth below to depose Cole, at the expense of Haeg. The burden remains on Haeg to make a prima facie showing that Cole provided ineffective assistance of counsel, and that the lack of competency contributed to the conviction, with appropriate references to the record.

(b) The Robinson Deposition: Absent an affidavit from his former counsel Robinson, the burden was on Haeg to show that Haeg made reasonable efforts to obtain an affidavit from Robinson and could not. Haeg has made no such showing. However, attorney Robinson was deposed in this case on September 9, 2011. The burden is on Haeg to make a prima facie showing that Robinson provided ineffective assistance of counsel, and that the lack of competency contributed to the conviction, with appropriate references to the record.

(c) The Osterman Affidavit: On September 29, 2011, attorney Mark Osterman submitted an affidavit in this case. He acknowledges in ¶ 1 that he was retained by Haeg to pursue an appeal. He says he was fired by Haeg before a final product could be produced for the appeal. In ¶¶ 5 and 6 of his affidavit Osterman disputes some of the statements in the Haeg PCR, including the fee quoted by Osterman per issue on appeal. Osterman also writes in ¶ 6 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." The upshot of the Osterman affidavit is that he was fired by Haeg before an opening brief on appeal was finalized. Osterman had no pertinent representation of Haeg at the trial or the sentencing. In ¶ 14 Osterman contends his draft brief did not meet Haeg's requirements, that Haeg provided no input into the brief, and that Haeg fired him.

The court finds that Haeg has not met his burden of coming forward with prima facie evidence regarding ineffective assistance of counsel Osterman or that any ineffective advice by Osterman with regard to the appeal contributed to the conviction of Haeg at the trial court level. The court therefore further finds that any PCR claims by Haeg based on alleged ineffective assistance of counsel Osterman are dismissed.

2. <u>The Constitutional Violations Claims:</u>

The State alleges Haeg offered nothing in his PCR Application to support the claim that his conviction and sentence violated the U.S. and Alaska Constitutions. In his Opposition Haeg sets out nine alleged constitutional violations:

1) The right to due process;
2) The right against unreasonable searches and seizures;
3) The right that no warrants shall issue, but on probable cause, supported by oath or affirmation;
4) The right against self-incrimination;
5) The right to compel witness in your favor;
6) The right against double jeopardy;
7) The right to be informed of the nature and cause of the accusation;
8) The right to equal protection under the laws;
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.

In Haeg's Opposition, after each constitutional claim, Haeg references an alleged error of his attorneys or misinformation provided to Haeg by his attorneys. These claims go to Haeg's ineffective assistance of counsel claims. Haeg does not explain how his conviction or sentence is in violation of the constitution of the United States or the constitution or laws of Alaska. His basic claim is that he was convicted because his counsel was ineffective, and

his constitutional rights were thereby violated. That argument does not form an adequate basis for any of the constitutional claims listed by Haeg.

The constitutional claims are therefore dismissed. Any alleged constitutional violation not previously addressed by the Court of Appeals might come within the Haeg claim of ineffective assistance of counsel.

Forfeiture of equipment used in an offense in violation of AS 8.54 may be forfeited. Forfeiture is a matter of judicial discretion at sentencing and is not mandatory. The continued claim by Haeg that his constitutional rights were violated in the circumstances surrounding the seizure of his airplane was addressed by the Court of Appeals as discussed above, is therefore outside the scope of post-conviction relief, and is hereby dismissed.

Aside from the ineffective assistance of counsel claims, the other Haeg PCR claim that remains potentially viable as to forfeiture of his plane is his claim of improper contacts between the sentencing judge and Trooper Gibbens.

3. The Newly Discovered Evidence Claim:

Haeg's final PCR claim is that he has newly discovered evidence. In his Opposition, Haeg claims the newly discovered evidence is that he was told by State of Alaska officials that the Wolf Control Program was in jeopardy of termination if more wolves weren't taken. Haeg claims that he was specifically told to take more wolves to ensure the continuation of the Wolf Control Program, and if he took them outside the authorized game management area, he should claim that they were taken from inside the area. Haeg's claim is that he was convicted for the very behavior that State game management officials encouraged and directed him to undertake. For ease of reference this will be characterized herein as the inducement/entrapment defense.

The inducement/entrapment defense asserted by Haeg does not meet the standards of newly discovered evidence under Alaska law. AS 12.72.020(b)(2) provides that the court may hear a claim based on newly discovered evidence **if** the applicant establishes due diligence in presenting the claim and sets out facts supported by admissible evidence that the new facts were (A) not known within (i) 18 months after entry of the judgment of conviction if the claim relates to a conviction; (B) are not cumulative to the evidence presented at trial; (C) are not impeachment evidence; and (D) establish by clear and convincing evidence that the applicant is innocent.

In his Opposition Haeg asserts that he tried repeatedly to have the inducement defense presented at his trial. *A fortiori*, the inducement/entrapment defense was not newly discovered. It was known by Haeg prior to his trial. Haeg claims he told his attorneys prior to trial that he was induced by the state to kill wolves out of the approved game management area. He contends his attorneys did not proceed on that theory at trial because, according to Haeg, his attorneys erroneously believed and informed him that entrapment was not a defense. The subject of not pursuing an inducement/entrapment defense therefore comes within the ineffective assistance of counsel claim, but does not constitute newly discovered evidence and is therefore dismissed as a stand-alone claim.

CONCLUSION AND ORDERS

Based on the pleadings, briefing, and information submitted to the court in this case thus far, the court makes the following findings and orders:

1. The Haeg claim of ineffective assistance of counsel as to Osterman is dismissed given the failure by Haeg to make a prima facie showing of ineffective assistance of counsel as to Osterman, an attorney retained by Haeg for the appeal but terminated by Haeg before filing a brief on appeal.

2. No hearings will be conducted on the ineffective assistance of counsel claims in this case until and unless Haeg makes a prima facie showing of ineffective assistance of counsel by attorney Cole or attorney Robinson.

3. Haeg is given an extension until February 29, 2012, by which to depose Cole (if not already deposed in this case) **and** by which to file a succinct and clear memorandum detailing (a) the alleged ineffective assistance of counsel Cole, with citations to the record and to the deposition, addressing both Risher standards, (b) alleged ineffective assistance of counsel Robinson with citations to the record and to the deposition, addressing both Risher standards, and (c) the Haeg claims that the sentence imposed by Judge Murphy was improper by virtue of alleged improper contact with Trooper Gibbens.

4. The federal and state constitutional law violation claims by Haeg are dismissed.

5. The allegedly newly discovered evidence regarding a defense of inducement or entrapment is not new information and is therefore dismissed. To the extent that Haeg can establish ineffective assistance of counsel regarding the alleged legal advice that an inducement or entrapment defense was not legally viable, that should be detailed by Haeg in his filing under ¶ 3(a) and (b) hereof, with citations to legal authority establishing that such a defense was in fact legally viable.

Dated at Kenai, Alaska, this 3rd day of January, 2012.

Carl Bauman
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, Flanigan
1-3-12 Roberts
Date Clerk

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

ORDER

Having considered the applicant's 6-10-11 emergency motion, the state's opposition, and any response thereto,

IT IS HEREBY ORDERED that the applicant's motion is DENIED. Bush Pilot Inc., may file for a remission hearing on or before _____ failure to file for a remission hearing by the date set will result in the state being allowed to transfer title in the Piper PA-12 plane with tail number N4011M.

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

Trial Case No. 4MC-04-00024 CR

ORDER

Having considered the applicant's motion for order that he may immediately return to guiding and the state must return his master guide license, the State's opposition, and any response thereto,

IT IS HEREBY ORDERED that the applicant's motion is DENIED.

DONE at Kenai, Alaska, this _____ day of _____, 2011.

JUN 10 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.	) 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 motion to supplement his PCR record with:

(1) March 1, 2011 Alaska Bar Association letter to Marla Greenstein

(2) March 1, 2011 Alaska Bar Association letter to David Haeg

is hereby GRANTED / DENIED.

Done at Kenai, Alaska, this_____day of_____, 2011.

NOT USED

Superior Court Judge Carl Bauman

MAR - 7 2011

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 motion to supplement his PCR record with:

(1) Haeg's December 22, 2010 Alaska Bar Association complaint against ACJC investigator Greenstein.

(2) ACJC investigator Greenstein's January 21, 2011 response to Haeg's grievance complaint.

(3) The Bar's request for Haeg's reply to ACJC investigator Greenstein's response.

(4) Haeg's February 4, 2011 reply to ACJC investigator Greenstein's response.

(5) The February 4, 2011 recording of Arthur Robinson See attachment 1.

is hereby GRANTED / DENIED.

Done at Kenai, Alaska, this_____day of_____, 2011.

NOT USED

_____

Superior Court Judge Carl Bauman

FEB 11 2011

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
FOURTH JUDICIAL DISTRICT AT FAIRBANKS

DAVID S. HAEG,)
)
Applicant,)
)
vs.)
)
STATE OF ALASKA,)
)
Respondent.)
)

Case No. ~~4MC-09-00005 CI~~ 3KN-10-1295 CI
In Connection w/~~4MC-04-024 CR~~

ORDER GRANTING 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 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.

This matter having come before this court, and the court being fully advised in the premises,

IT IS ORDERED that the Respondent's Motion to Dismiss Application for Post-Conviction relief is hereby **GRANTED**. Applicant's Application for Post-Conviction Relief is hereby **DISMISSED**.

ENTERED at Fairbanks, Alaska this ___ day of _____, 2010.

NOT USED

_____
DISTRICT COURT JUDGE

LODGED
MAR – 5 2010

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

Having considered the applicant's motion for order that he may immediately return to guiding and the state must return his master guide license, the State's opposition and any response thereto,

IT IS HEREBY ORDERED that the applicant's motion is DENIED.

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.	) 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 motion that he may immediately go back to guiding, and that the State must immediately return master guide license #146 to David Haeg, is hereby GRANTED / DENIED.

JAN 27 2011

(1) David Haeg may go back to guiding immediately.

(2) The State is ordered to immediately return master guide license #146 to David Haeg.

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

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

JAN 20 2011

The applicant's motion to supplement his PCR application with claims and evidence is hereby GRANTED / DENIED.

(1) Haeg's PCR application includes Alaska Commission on Judicial Conduct (ACJC) investigator Marla Greenstein's falsification of her investigation to cover up the chauffeuring of Judge Murphy by Trooper Gibbens (the main witness against Haeg) while Judge Murphy was presiding over Haeg's prosecution.

(2) Haeg's PCR application includes the conspiracy between Judge Murphy, Trooper Gibbens, and ACJC investigator Greenstein to cover up that the main witness against Haeg (Trooper Gibbens) chauffeured Judge Murphy while Judge Murphy presided over Haeg's prosecution.

(3) Judge Joannides August 25, 2010 hearing is part of the record upon which Haeg's PCR will be decided – and this hearing will be listened to in open court before Haeg's PCR is decided.

(4) Judge Joannides August 27, 2010 referral to the Alaska Commission on Judicial Conduct is part of the record upon which Haeg's PCR will be decided.

(5) Haeg's 5-2-10 reply, affidavit, and request for hearing to Judge Murphy's refusal to disqualify herself for cause is part of the record upon which Haeg's PCR will be decided.

(6) Haeg's 7-25-10 motion to supplement the case to disqualify Judge Murphy for cause is part of the record upon which Haeg's PCR will be decided.

(7) The Alaska Commission on Judicial Conduct shall immediately provide Haeg a complete copy of ACJC investigator Marla Greenstein's record of her investigation into the chauffeuring of Judge Murphy by Trooper Gibbens during Haeg's case and this is part of the record upon which Haeg's PCR will be decided.

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.	) 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 4-21-11 motion that he may supplement his PCR application with claims and evidence, is hereby GRANTED / DENIED.

Done at Kenai, Alaska, this_____day of_____, 2011.

NOT USED

Superior Court Judge Carl Bauman

APR 21 2011

02237

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 6-10-11 emergency motion for an immediate stay of the June 8, 2011 order modifying the judgment against Haeg nearly 5 years after the fact and for an immediate order preventing the State from disposing of property disputed in Haeg's PCR until Haeg's PCR is concluded, is hereby GRANTED / DENIED.

Done at Kenai, Alaska, this_____day of_____, 2011.

NOT USED

Superior Court Judge Carl Bauman

JUN 10 2011

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)

12-20-11 COUNTER OFFER TO STATE'S OFFER TO RETURN SEIZED AIRPLANE IN ORDER TO END FURTHER PCR LITIGATION

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 counter offer to state's offer to return seized airplane in order to end further litigation in Haeg's post-conviction relief case.

Prior Proceedings

On August 23, 2011 the state asked if Haeg would end further PCR litigation if the state returned the airplane seized in Haeg's case. Haeg refused this settlement offer.

Counter Offer

Haeg, his family, material witnesses, and many of those following this case (after much discussion of the widespread corruption and conspiracy already proved in this case) wish to present the following counter offer to the state in order to end further litigation of Haeg's PCR case:

1. Overturn Haeg's conviction with prejudice.
2. Compensatory damages to Haeg in the amount of $1,000,000 per year - starting from April 1, 2004 to the date Haeg is paid – to be paid jointly and severally by the state, the Alaska Department of Law, the Alaska Department of Public Safety, the Alaska Commission on Judicial Conduct, the Alaska Bar Association, attorney Scot Leaders, Trooper Brett Gibbens, Judge Margaret Murphy, attorney Marla Greenstein, attorney Kevin Fitzgerald, attorney Brent Cole, attorney Arthur Robinson, and attorney Mark Osterman.
3. Punitive damages to Haeg equal to compensatory damages – to be paid jointly and severally by the state, the Alaska Department of Law, the Alaska Department of Public Safety, the Alaska Commission on Judicial Conduct, the Alaska Bar Association, attorney Scot Leaders, Trooper Brett Gibbens, Judge Margaret Murphy, attorney Marla Greenstein, attorney Kevin Fitzgerald,

attorney Brent Cole, attorney Arthur Robinson, and attorney Mark Osterman.

4. Return of all seized property after restoration to the same condition as when seized.

5. Transfer of title, to Haeg, for the land surrounding and upon which Haeg's hunting lodge, associated lake, runway, and hunting camps rest.

6. In the event an exclusive use guide area system is implemented, an exclusive use guide concession to Haeg for all areas he has guided in Game Management Units 19, 9, and 16.

7. State employees Scot Leaders, Brett Gibbens, Margaret Murphy, and Marla Greenstein fired and retirement benefits denied.

8. Attorneys Scot Leaders and Marla Greenstein permanently disbarred.

Conclusion

If the above conditions are met Haeg will not sue the above and will agree not to press criminal charges against anyone involved or implicated. If the conditions are not met Haeg will continue carefully documenting the expanding conspiracy and corruption in this case and will eventually fly to Washington DC to press charges against everyone involved, or implicated, with the U.S. Department of Justice. See Alaska Bar Association Ethics Opinion No. 97-2:

Use of Threats of Criminal Prosecution in Connection with a Civil Matter.

Under Alaska's Ethical Rules, it is ethical for a lawyer to use the possibility of presenting criminal charges against the opposing party in a private civil matter to gain relief for a client, provided that the criminal matter is related to the client's civil claim, the lawyer has well-founded belief that both the civil claim and the criminal charges are warranted by the law and the facts, and the lawyer does not attempt to exert or suggest improper influence over the criminal process.

I declare under penalty of perjury the forgoing is true and correct. Executed on December 20, 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 December 20, 2011 a copy of the forgoing was served by mail to the following parties: Peterson, Cole, Robinson, Osterman, ACJC, ABA, 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)	)

12-15-11 MOTION FOR IMMEDIATE HEARINGS, RULINGS, AND RESTART OF HAEG'S POST-CONVICTION RELIEF PROCEEDINGS

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 immediate hearings, rulings, and restart of proceedings in Haeg's PCR case.

Prior Proceedings

(1) Haeg filed for PCR on November 21, 2009, *or over two years ago.*

(2) On March 5, 2010 the state filed a motion to dismiss Haeg's PCR.

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

(4) On January 17, 2011 Haeg filed a motion to supplement his PCR application with claims and evidence that Judicial Conduct investigator Marla Greenstein entered into a conspiracy with Judge Murphy (Haeg's trial and sentencing judge) and Trooper Gibbens (the main witness against Haeg) to cover up that Trooper Gibbens corruptly chauffeured Judge Murphy while Judge Murphy presided over Haeg's case.

(5) On February 10, 2011 Haeg filed a motion to supplement his PCR application with claims and evidence that Judicial Conduct investigator Marla Greenstein had now falsified a "verified" document (in response to Haeg's Alaska Bar Association complaint against her) to further the conspiracy to cover up the chauffeuring of Judge Murphy by Trooper Gibbens while Judge Murphy presided over Haeg's case.

(6) On March 7, 2011 Haeg filed a motion to supplement his PCR application with the Alaska Bar Association's decision there was probable cause to investigate Marla Greenstein and the investigation would be stayed until Haeg's PCR proceeding was decided, "so that the courts and the Bar do not reach inconsistent results."

(7) On April 11, 2011 Haeg filed a motion for judicial notice of additional caselaw proving Haeg's PCR claims that the state: (a) knowingly falsified the location of the evidence against Haeg on all

warrants used to seize Haeg's property; (b) knowingly testified falsely about the evidence locations at Haeg's trial; (c) knowingly used Haeg's immunized statement against Haeg; (d) knowingly falsified a "verified" document to cover up that the state used Haeg's immunized statement against him; (e) knowingly testified falsely that the state did not know why Haeg had given up guiding for a year prior to Haeg's trial; and (f) that the state could not tell Haeg he must take specific actions for the greater good of everyone who depended on moose and caribou for food and then charge Haeg for those very same actions.

(8) On April 21, 2011 Haeg filed a motion to supplement his PCR application with claims and evidence that state attorney Andrew Peterson (who opposing Haeg in this PCR proceeding) is guilty of prosecutorial misconduct – in part for falsifying the law to illegally modify the judgment against Haeg so the state could sell the seized plane before Haeg's PCR concluded.

(9) On May 27, 2011 the court stayed Haeg's PCR proceedings.

(10) On June 10, 2011 Haeg filed an emergency motion to stay the amendment of the judgment against Haeg (which the state required so it would include a judgment against the corporation which owned the plane seized during Haeg's case – so the state could sell the plane before Haeg's PCR case was finished) and to prevent the state

from disposing of property disputed in Haeg's PCR until Haeg's PCR was concluded.

(11) On July 27, 2011 Haeg filed a motion for an evidentiary hearing to address the claims of privilege and confidentiality presented by Judicial Conduct investigator Marla Greenstein and Judge Murphy – claims which Greenstein and Murphy were using to prevent Haeg from questioning them about Trooper Gibbens corruptly chauffeuring Judge Murphy while Judge Murphy presided over Haeg's case and about the subsequent cover up of this.

(12) On August 1, 2011 Haeg filed a motion for an order invalidating the boundary change to Guide Use Area 19-07 (which was changed without the required notice).

(13) On August 3, 2011 the court lifted the stay of Haeg's PCR proceedings.

(14) On August 4, 2011 Haeg filed a motion to reconstruct the court record with his opposition to the state's motion to dismiss his PCR proceeding (the court claimed Haeg never filed an opposition – when Haeg has a return receipt from the court proving it had been).

(15) On September 15, 2011 Haeg filed a motion for a transcription of Arthur "Chuck" Robinson's deposition.

(16) On September 23, 2011 Haeg filed for a protection order preventing the state from requiring Haeg to give a non- immunized statement

nearly identical to the one Haeg was forced to give 7 years ago by the state's grant of immunity (which the state intends to use to corruptly "cure" the constitutional violation 7 years ago).

Discussion

Haeg filed his application for post-conviction relief *over two years ago*.

Many other motions and requests to the court are nearly a year old – without a ruling yet by the court.

Even considering the 68-day stay of Haeg's PCR proceedings, many of the motions and requests are now over 9 months old without a ruling.

In regard to "discovery" and Haeg's claims of ineffective assistance of counsel: (1) Haeg's trial attorney Arthur "Chuck" Robinson has been deposed and provided approximately 800 pages of evidence; (2) Haeg's appellate attorney Mark Osterman has filed an affidavit and provided other evidence; (3) Haeg's pretrial attorney Brent Cole has provided 8 megabits and over a thousand hard pages of evidence – including evidence that the Department of Justice is conducting an investigation into the widespread corruption that surfaced in Haeg's case; and (4) the state has affirmed that Cole has agreed to file an affidavit responding to Haeg's allegations of ineffective assistance of counsel.

Conclusion

In light of the above Haeg respectfully asks the court to: (1) schedule immediate hearings in regard to the above motions, requests, and applications; (2) make rulings on the above issues immediately after the hearings on the above issues; and (3) immediately restart the proceedings that will decide Haeg's post-conviction relief application.

I declare under penalty of perjury the forgoing is true and correct. Executed on December 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 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 December 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,

Plaintiff,

vs.

STATE OF ALASKA,

Defendant.

Case No. 3KN-10-01295 Civil

PLAINTIFF'S MOTION TO ALLOW OVERLENGTH BRIEF

Comes Now Plaintiff and moves the Court to permit the filing of an overlength Reply Brief re: Plaintiff's motion to permit filing of a Supplemental Complaint. The overlength nature of the Reply Brief was necessitated by the fact that the State's Opposition Brief did not limit itself to the motion to amend, but rather launched into a multi-pronged comprehensive dispositive brief, necessitating a comprehensive dispositive type brief in response requiring the 30 pages normally allowed for a responsive pleading in such circumstances. Plaintiff did argue that the dispositive elements of the Defendant's brief were not ripe, but out of an abundance of caution felt obliged to respond to the dispositive arguments of the Defendant brief, so as not to waive the right to oppose those arguments.

DATED THIS 1st DAY OF DECEMBER, 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
Pl's Motion to Permit Overlength brief
was served by mail this 1st day of December, 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.

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

DEC - 5 2011

Clerk of the Trial Courts
By _____ Deputy

Case No. 3KN-10-01295 Civil

PLAINTIFF'S MOTION TO GRANT AN ADDITIONAL ONE DAY EXTENSION OF TIME TO FILE PLAINTIFF'S REPLY BRIEF

Comes Now Plaintiff and moves the Court to grant one additional day extension to file Plaintiff's Reply Brief re: Plaintiff's motion to permit filing of a Supplemental Complaint. The additional day was necessitated by the loss of an internet connection between Plaintiff's counsel's office and the remote site where he was working preparing the brief.

DATED THIS 1st DAY OF DECEMBER, 2011.

FLANIGAN & BATAILLE
Attorneys for Plaintiff

By Michael W. Flanigan
ABA #7710114

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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing
Pl's Motion to Grant a one day extension of time
was served by mail this 1st day of December, 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

PLAINTIFF'S REPLY TO DEFENDANT'S OPPOSITION TO PLAINTIFF'S MOTION TO ALLOW FILING OF CLASS ACTION COMPLAINT

I
Plaintiff's Supplemental Complaint Meets The Requirements Of ARCP 15

Plaintiff has moved the Court to grant a motion to file a supplemental class action complaint seeking injunctive relief and damages on behalf of guides whose licenses were suspended but not reinstated when the suspensions ended, which this Court ruled was an illegal increase of the sentences imposed by the Courts. The only issue before the Court is whether the filing of the supplemental complaint is to be allowed under Alaska's liberal pleading rules, pursuant to ARCP 15.

Well aware of Alaska's liberal pleadings rules, which include amendments to pleadings under ARCP 15, the Defendant devotes very little space in its brief to contesting the Plaintiff's Rule ARCP 15 motion, other than mentioning the rule in a heading and a few lines on page 5-6 of its brief while claiming, erroneously, (at page 5-6 of its brief) that it is

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

unaware of what pleading is being supplemented or what post complaint occurrence prompted the filing of the Supplemental Complaint. These claims are disingenuous. Plaintiff's motion to permit the filing of the Supplemental Complaint, clearly laid out the circumstances that prompted filing of the Supplemental Complaint, which was the issuance of this Court 7/11/11 decision declaring as illegal the Defendant's practice of not reinstating suspended guiding licenses at the end of the suspension period, coupled with the fact that the practice was continuing in the case of other guides license suspensions, causing damages to Plaintiff and the other guides. The complaint being supplemented is beyond obvious, it is of course the Plaintiff's complaint in this case. That was the event that occurred after the initial filing of the Plaintiff's complaint, upon which the supplemental complaint was premised. The Defendant does not contend that Plaintiff could have pursued damages or injunctive relief prior to such a ruling and in fact controlling precedent prevented requests for such relief until Plaintiff was granted post conviction relief ordering the reinstatement of his suspended license, *Shaw v. State*, 816 P.2d 1358, 1362 (Alaska 1991), .

Contrary to the arguments of Defendant, Plaintiff's motion to allow the filing of a supplemental class action complaint, in this matter is permissible under ARCP 15(d) specifically authorizing supplemental pleadings, upon reasonable notice and upon such terms as are just to include claims which were not originally claimed in the original complaint. The Supreme Court has stated on numerous occasions that ARCP 15 is to be interpreted liberally to permit amendments to pleadings unless prejudice would result,

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

Hallam v. Holland America Line, 27 P.3d 751, 755 (Alaska 2001); *Magestro v. State*, 785 P.2d 1211, 1212 (Alaska 1990); *Estate of Thompson v. Mercedes-Benz, Inc.*, 514 P.2d 1269, 1271 (Alaska 1973). Given the required liberal application of ARCP 15, Plaintiff's supplemental complaint more that satisfies the requirements of that rule.

II
Defendant's Procedural And Substantive Objections To Plaintiff's Supplemental Complaint Are Not Ripe

The only issue which should be considered at this juncture is whether the Plaintiff should be granted leave to file his supplemental complaint, pursuant to ARCP 15. The Alaska Supreme has held that a motion to amend pleadings should not be determined on the basis of collateral attacks on the procedural or substantive aspects of the amended pleading, but only on whether the amendment would be prejudicial, *Hallam v. Holland America Line*, 27 P.3d 751, 755 (Alaska 2001)(citing *Estate Of Thompson v. Mercedes-Benz, Inc.*, 514 P.2d 1269 (Alaska 1973)). Their is no prejudice to the Defendant, as that term is used in ARCP 15, at this early date, nor has the Defendant claimed any. Thus the Plaintiff's Supplemental Complaint should be allowed.

As stated in Plaintiff's initial brief, Plaintiff is compelled by prior decisions against "claim splitting" to present his supplemental claims in this case, rather than commence a new action. Under the procedures adopted in the *Hallam v. Holland America Line*, 27 P.3d 751, 755 (Alaska 2001) and *Estate Of Thompson v. Mercedes-Benz, Inc.*, 514 P.2d 1269 (Alaska 1973) the Defendant may only interpose substantive objections to the Plaintiff's

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

Supplemental Complaint in their Answer and affirmative defenses and file motions thereafter.

There are many reasons for this approach. First and foremost, are the due process rights of the Plaintiff. The Plaintiff is permitted discovery on the new claims once they are added to this case by way of the Supplemental Complaint, but not before, under ARCP 26(d). It would be a denial of the Plaintiff's due process rights at this point to require Plaintiff to respond to the Defendant's dispositive arguments as to Plaintiff's Supplement Complaint, before the Plaintiff has any opportunity to obtain discovery as to the disputed issues, such as the size of the class or whether the Big Game Commercial Services Board's actions are immune from a damages suit, *Kessey v. Frontier Lodge, Inc.*, 42 P.3d 1060, 1063-1064 (Alaska 2002)(error to fail to permit time for discovery before ruling on dispositive motion). Nevertheless, the Plaintiff will respond to the substantive issues raised by the Defendant below, without waiving its argument that such issues are not ripe at this time.

III
Defendant's ARCP 23 Objections Lack Merit

The Defendant's ARCP 23 objections are not well taken. ARCP 23 (c)(1) provides that a decision on class status, will be made after the commencement of a class action, not before leave is granted to file one. Setting that additional hurdle aside, the Defendant's objections to class status are lacking in merit.

The rule permitting class actions was designed to provide a form of action, where the result for one becomes the result for many in the same legal predicament, as is

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

necessary to avoid a multiplicity of duplicative lawsuits, on the same issue, possibly involving a huge waste of judicial resources, *State v. Carlson*, 65 P.3d 851, 872 (Alaska 2003)(rejecting argument that in class action suit contesting increased state licensing fees for out of state commercial fishermen, each affected class member should file their own suit). That is the situation here. As documented in this case, the State Big Game Commercial Services Board was denying reinstatement of guiding licenses that had been suspended based on a regulation requiring periodic renewal of the licenses, which could not occur during the period of suspension. A number of Big Game guides were caught in this "catch 22" dilemma of the Board's making and denied reinstatement of their licenses once their suspensions expired.

The Plaintiff was told by a Board Official that the number of guides denied reinstatement for this reason is nine others, but Plaintiff assumes that is an understated number. Contrary to the assertions in the Defendant's brief, the admission by the Board Official, is admissible as the statement of an agent/employee of a party opponent, pursuant to AROE 801(d)(2)(D), *Rutherford v State*, 605 P.2d 16, 23-24(Ak. 1979); *Kanayurak v North Slope Bor.*, 677 P.2d 893, 896-897(Ak. 1984); *Knight v Amer. Guard & Alert*, 714 P.2d 788, 795-796 (Ak. 1986); *Klawaok Heenya Corp. v Dawson Const.*, 778 P.2d 219, 220 (Ak.1989); *Norcon v Kotowski*, 971 P.2d 158, 170 (Ak. 1999); *Lane v City of Kotzebue*, 982 P.2d 1270, 1273 (Ak. 1999).

Although the Defendant admits they gave the Plaintiff back his Guiding license after this Court's decision, Plaintiff has discovered the Defendant is still denying

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

reissuance of guide licenses to other guides whose license suspensions expired. The Defendant in its opposition brief does not deny this allegation, but rather infers, without stating a figure that the other affected guides are small in number.

So what is happening, is that the State is refusing to apply this Court's decision in this case to other guides in the same position by giving the Plaintiff back his license, thus avoiding an appeal and a binding precedent, while not advising the other guides in the same position of this Court's ruling. This is one of the reasons why the Plaintiff filed the supplemental class action complaint: to obtain equitable relief requiring the Defendant to grant the same relief to the other guides, when their suspension expires, as the Defendant did for the Plaintiff in this case. To require each guide to file a suit over the same issue and risk multiplicative cases and appeals with the possibility of conflicting decisions is exactly the kind of situation Rule 23 was designed to avoid. Furthermore, since the decision in this case has not been communicated to the guides whose licenses were suspended but not reinstated after the suspension period expired, those guides most likely are unaware of the remedy at hand in the first place. That is one of the reasons often given for permitting class actions. As to the specific factors to be considered by the Court in determining whether to certify a class action, the Court should find those factors are met in this case for the following reasons.

ARCP 23(a)

1. Numerosity

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

The inquiry for class action numerosity is whether, under the facts and circumstances of the case, joinder of all potential plaintiffs is impractical. "[I]mpracticability does not mean impossibility." *Rodriguez v. Carlson*, 166 F.R.D. 465, 471 (E.D. Wash. 1996); *Hiatt v. County of Adams*, 155 F.R.D. 605, 608 (S.D. Ohio 1994), citing *Senter v. General Motors Corp.*, 532 F.2d 511, 522 (6th Cir. 1974), cert. denied, 429 U.S. 879 (1976). Plaintiffs need not show that joinder cannot be accomplished. Conte & Newberg, *Newberg on Class Actions* §3:4 p. 230 (4th ed. 2002). A showing of "strong litigation hardship or inconvenience should be sufficient." Id. While the plaintiff has the burden of showing that joinder is impracticable, "a good-faith estimate should be sufficient when the number of class members is not readily ascertainable." Id. §3.5 p. 241.

Judicial economy and the application of common sense may warrant certification of a class comprised of even a relatively small number of members. *Gaspar v. Linvatec Corp.*, 167 F.R.D. 51, 56 (N.D. Ill. 1996) (certifying class of 18 members), *Philadelphia Electric Co. v. Anaconda American Brass Co.*, 43 F.R.D. 452, 463 (E.D. Pa. 1968) (certifying class of 25 members); see also Conte & Newberg, *Newberg on Class Actions* § 3:6 p. 254 (4th ed. 2002). The number of class representatives is "not significant . . . a single plaintiff can adequately represent a class." Conte & Newberg, Newberg on Class Actions § 3:27 pp. 438-39 (4th ed. 2002). Indeed, Rule 23(a) specifically provides that "**[o]ne** or more members of a class may sue . . . ." (Emphasis added).

It is not necessary for plaintiffs to enumerate precisely the members of a class. *See* 3b *Moore's Federal Practice* ¶ 23.05, at 23-150-151 (1987 Ed.) A reasonable estimate of

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

the number of purported class members satisfies the numerosity requirement of Rule 23 (a)(1). *In Re Badger Mountain Irrig. Dist. Sec. Litig.*, 143 F.R.D. 693, 696 (W.D. Wash. 1992); *Arkansas Educ. Ass'n v. Board of Educ.*, 446 F.2d 763 (8th Cir. 1971) (approximately 20 members); *Swanson v. American Consumer Indus., Inc.*, 415 F.2d 1326 (7th Cir. 1969) (40 members); *Cypress v. Newport News Gen. & Nonsectarian Hosp. Ass'n*, 375 F.2d 648 (4th Cir. 1967) (18 members); *Basile v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 105 F.R.D. 506 (S.D. Ohio 1985) (23 members).

2. Common Questions Of Law Or Fact Exist.

Rule 23(a)(2) requires simply that there exist "questions of law or fact common to the class." Courts find this requirement satisfied where the defendant is alleged to have engaged in a "common course of conduct," or the plaintiff's allegations arise from a "common nucleus of operative facts."

> A common question is one which arises from a "common nucleus of operative facts" regardless of whether "the underlying facts fluctuate over the class period and vary as to individual claimants." *Cohen v. Uniroyal, Inc.*, 77 F.R.D. 685, 690-91 (E.D. Pa. 1977); *In re Corrugated Container Antitrust Litig.*, 80 F.R.D. 244, 250 (S.D. Tex. 1978). *See also Muth v. Dechert, Price & Rhoads*, 70 F.R.D. 602, 607 (E.D. Pa. 1976) (common course of conduct yields common questions).

In re Asbestos School Litig., 104 F.R.D. 422, 429 (E.D. Pa. 1984), *aff'd sub nom. In re School Asbestos Litig.*, 789 F.2d 996 (3d Cir. 1986), *cert. denied sub nom. National Gypsum Co. v. School Dist. of Lancaster*, 479 U.S. 915 (1986). If common questions of law or fact exist, the commonality requirement of Rule 23(a)(2) is satisfied.

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

When focusing on the commonality requirement of Rule 23(a)(2), it is often helpful to look at the requirements of Civil Rule 23(b)(3) which requires, in part, that common questions of law and fact predominate over individual questions. Because the "commonality" and the "individuality" of issues are often two sides of the same coin, courts have recognized that the requirements of these two subparts of Rule 23 tend to "overlap." *See Godbey v. Roosevelt School Dist. No. 66*, 131 Ariz. 13, 17, 638 P.2d 235, 239 (Ct. App. 1981). If a single trial of common issues can accomplish significant economies, then the pragmatic test of Rule 23(b)(3) is satisfied. 7A Wright, Miller & Kane, *Federal Practice and Procedure* § 1778 at 527-530 (1986).

The difference between the claims of class members here is limited to the damages The commonality subsection of Rule 23 only requires that there be a single common issue of law or fact. Conte & Newberg, Newberg on Class Actions, §3.10 p. 273 (4th ed. 2002). Where the plaintiff seeks to certify a rule 23(b)(3) class, there is no need to analyze this issue separately from the "predominance" requirement of subsection (b)(3). "[I]f the subsection (b)(3) requirement [of predominance] is met, the subdivision (a)(2) prerequisite [that there be a common issue of law or fact] is automatically satisfied." Id. At 290. The (b)(3) "predominance" issue is discussed in Section IV(B)(1), below.

In evaluating what constitutes a common question, the courts have taken a practical approach. When the class is united by a common interest in determining whether the defendant's course of conduct is legal, differences in the impact of this conduct on individual class members (and other individual differences) do not defeat class

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

certification. *Blackie v. Barrack*, 524 F.2d 891, 902 (9th Cir. 1975), *cert. denied*, 429 U.S. 816 (1976).

In this case, the common issue is the Big Game Commercial Services Board's practice of refusing reinstatement of suspended guide licenses, once a period of suspension ends. Since this Court has already ruled that practice is illegal, the only proof required for liability as to each guide is evidence of refusal to reinstate the license one the period of suspension ended. Since these factual allegations are common to every member of the class, the commonality requirement of Rule 23(a)(2) is clearly satisfied as to this claim.

3. The Class Representatives' Claims Are Typical of the Class.

Rule 23(a)(3) requires the claims of the representative party be typical of the claims of the class. This requirement is satisfied if the representative plaintiff's claim "stems from the same event, practice, or course of conduct that forms the basis of the class claims and is based upon the same legal theory or remedial theory." *Jordan v. County of Los Angeles*, 669 F.2d 1311, 1321 (9th Cir.), *vacated on other grounds*, 459 U.S. 810 (1982).

Courts take a flexible attitude in determining whether the class representative meets the typicality requirement. Wright, Miller & Kane, *Federal Practice and Procedure* §1764 p. 269 (2005). The class representative's claim need not be identical or co-extensive with the claims of the other class members. *Id* at 260. A plaintiff's claim is typical "if it arises from the same event or practice or course of conduct which gives rise to the claims of other class members, and if his or her claims are based on the same legal theory." Conte

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Anchorage, Alaska 99501
Phone 907-279-9999
Fax 907-258-3804

& Newberg, *Newberg on Class Actions* § 3:13 p. 328 (4th ed. 2002), see also *Bartek v. State*, 31 P.3d 100, 104 n.18 (Alaska 2001).

Moreover, the typicality requirement "may be satisfied even though varying fact patterns support the claims or defenses of individual class members or there is a disparity in the damages claimed by the representative parties and the other class members." Wright, Miller & Kane, *Federal Practice and Procedure* §1764 pp. 266-268 (2005). Most courts look to "the elements of the cause of action that the class representative must prove in order to establish the defendant's liability. If they are substantially the same as those needed to be proved by the class members, the representative's claim is typical. When a plaintiff's claim is typical, the plaintiff and each member of the represented group have an interest in prevailing on similar legal claims." Conte & Newberg, *Newberg on Class Actions* §3:15 pp. 359-360, § 3:16 p. 378 (4th ed. 2002). Some courts are even more relaxed in determining typicality and "have indicated that a lack of adversity between the representatives and the absent class members demonstrates that the claims are typical of those held by other members of the class." Wright, Miller & Kane, *Federal Practice and Procedure* § 1764 p. 266 (2005).

In sum, since the claims by the representative plaintiff arise out of the same type of conduct for which the class relief is sought, the typicality requirement which "seeks to assure that the interests of the representatives are aligned with the common questions affecting the class," is amply satisfied as to all claims asserted in the present class action. Conte & Newberg, *Newberg on Class Actions* §3:13 p. 319 (4th ed. 2002).

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

4 Individual Damage Claims Do Not Preclude Class Certification.

The requirements of commonality and predominance do not require uniformity of damages. See, e.g., Wright, Miller & Kane, *Federal Practice and Procedure* §1778 pp. 123-25 (2005); Conte and Newburg, *Newburg on Class Actions*, §4-25 pp. 4-82 – 4-86 (4th ed. 2002). As Conte and Newburg note, the issue of damages is almost always an individual matter. Id. at §4.26 pp. 4-90 – 4-97. Furthermore, there are many ways to reduce the judicial burden of resolving individual damage issues, including devices such as:

> bifurcated trials of liability and damage issues with the same or different juries; use of masters or magistrates to preside over individual damages proceedings; class decertification after liability trial accompanied by notice to the class concerning how they may proceed to prove individual damages; establishment of presumptions or inferences of reliance or causation which are predicates to damages entitlement;[1] identification of aspects of individual damages proofs that are suitable for common adjudication or establishment of damage formulas common for the class, e.g., those that define the damages suffered per unit of items sold, purchased, or owned or those that define the guidelines for eligibility for damages recovery and measurements of amounts or categories of recovery allowed; use of the defendant's records or other available sources to compute or otherwise determine the amount of damages each class member is entitled to recover; use of pilot or test cases for damages with selected class members; and use of subclasses.

[1] For example, in *GEICO v. Graham-Gonzalez*, 107 P.3d 279, 289-90 (Alaska 2005), Justice Fabe and Justice Brenner noted that, while the majority did not reach the issue of an appropriate remedy for an inadequate UM/UIM offer, they supported placing the burden on the insurer to prove that the insured would not have purchased higher limits.

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Fax 907-258-3804

Id. Thus, the authors conclude, the damage issue is better addressed "down the road, if necessary," by altering or amending the class rather than denying certification at the outset. Id.

In *Weinberger v. Thornton*, 114 F.R.D. 599, 603 (S.D. Cal. 1986), the court likewise noted that "damage awards sought by plaintiffs will almost certainly vary." Quoting *In re Memorex Securities Cases*, 61 F.R.D. 88, 103 (N.D. Cal. 1973), the court noted that "to deny a class determination on the ground that the computation of damages might render the case unmanageable would encourage corporations to commit grand acts of fraud instead of small ones with the thought of raising the spectre of unmanageability."

5. The Representative Plaintiffs Will Fairly And Adequately Protect The Interests Of The Class.

The fourth requirement of Rule 23(a), that the representative parties fairly and adequately protect the interests of the class, involves a two-prong test: (1) the named plaintiff must appear to be able to vigorously prosecute the action through qualified counsel, and (2) there must be no conflicting interests between the class representatives and the other members of the class. *Lerwill v. Inflight Motion Pictures, Inc.*, 582 F.2d 507, 512 (9th Cir. 1978). The formulation of these elements is described in *Eisen v. Carlisle & Jacquelin,* 391 F.2d 555, 562 (2d Cir. 1968), *rev'd on other grounds*, 417 U.S. 156 (1974):

> What are the ingredients that enable one to be termed "an adequate representative of the class?" To be sure, an essential concomitant of adequate representation is that the party's attorney be qualified, experienced and generally able to conduct the proposed litigation. Additionally, it is necessary to eliminate so far as possible the likelihood that the litigants are

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Fax 907-258-3804

> involved in a collusive suit or that plaintiff has interests antagonistic to those of the remainder of the class. (emphasis added).

Jordan v. County of Los Angeles, 669 F.2d 1311, 1323 (9th Cir. 1982) (plaintiffs' counsel must be capable and competent to conduct the litigation), *vacated on other grounds*, 459 U.S. 810 (1982); *Weinberger v. Jackson*, 102 F.R.D. 839, 845 (N.D. Cal. 1984) ("The emphasis has been and should be placed on whether the representatives' counsel is capable."); "Adequate representation depends on the qualifications of counsel for the representatives, an absence of antagonism, a sharing of interests between representatives and absentees, and the unlikelihood that the suit is collusive." *Bartek v. State*, 31 P.3d 100, 105 n.19 (Alaska 2001), quoting *Local Joint Executive Bd. v. Las Vegas Sands, Inc.*, 244 F.3d 1152, 1162 (9th Cir. 2001); see also Conte & Newberg, *Newberg on Class Actions* §3:22 p. 409 (4th ed. 2002).

Both prongs of the "adequacy" test are met here. First, particularly in complex litigation, "the focus [of the adequacy of representation inquiry] should be on the qualifications of class counsel." Conte and Newberg, *Newberg on Class Actions* § 22.44 (4th ed. 2005); *In re College Bound Consolidated Litigation*, 1994 WL 236163 p. 4 (S.D.N.Y. 1994). Plaintiffs have retained qualified and experienced legal counsel consisting of the law firm of Flanigan & Bataille. The attorneys representing the class have extensive experience in complex litigation and the resources to ensure adequate representation of the class.

Secondly, as explained herein, the class representatives' interests are the same as the interests of the other members of the proposed class. Since the same issues form the

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basis of the claims of all class members, there is no conflict between the proposed class representatives and the other, non-named, class members.

The only qualification typically required of the class representative is an absence of antagonism between the class representative and the class. *Ditty v. Check Rite, Ltd.*, 182 F.R.D. 639, 643 (D. Utah 1998) ("The only relevant inquiry where the named plaintiffs are concerned is whether they possess some interest that is antagonistic to other members of the class"). "Most courts have rejected any examination of the class representative's knowledge, interests, or motivations as irrelevant in determining adequate representation issues, except insofar as any personal circumstances of the representative are relevant for the court to determine whether any conflict with class members may exist." Conte and Newberg, *Newberg on Class Actions* §15:30 (4th ed. 2002); see also *Bartek v. State*, 31 P.3d 100, 105 n.19 (Alaska 2001) (listing only adequacy of counsel and absence of antagonism as test for adequate representation). "Although some courts have inquired into the named plaintiffs' understanding of the lawsuit or their character, that factor is generally given little weight." *Ditty* at 182 F.R.D. at 642.

In *Surowitz v. Hilton Hotels Corp.*, 383 U.S. 363, 847 (1966), for example, the Supreme Court held the plaintiff was an adequate class representative despite the fact that she "did not understand the complaint at all, that she could not explain the statements made in the complaint, that she had a very small degree of knowledge about what the lawsuit was about, that she did not know any of the defendants by name, [and] that she did not know the nature of their alleged misconduct."

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Those courts that require a showing beyond simply the absence of antagonism generally find that an individual is an adequate representative if he or she is interested in the litigation and willing to cooperate in its prosecution. It is sufficient that "the named plaintiffs know the nature of their complaint against the defendants, they have been in contact with their attorneys, they are aware that they may be called to testify at trial, and they are aware that they are representing a class of similarly situated people." *Latuga v. Hooters, Inc.,* 1996 WL 164427 p. 6 (N.D. Ill. 1996). "Minimal actions such as having read the complaint and asserting a wrong occurred" together with "the willingness of the class representative to participate in the action" is sufficient. *In re Insurance Management Solutions Group, Inc. Securities Litigation*, 206 F.R.D. 514, 517 (M.D. Fla. 2002). "It is not necessary that named class representatives be knowledgeable, intelligent, or that they have a firm understanding of the legal or factual basis on which the case rests in order to maintain a class action." *In re Bristol Bay, Alaska Salmon Fishery Antitrust Litigation*, 78 F.R.D. 622, 627 (W.D. Wash. 1978).

The representative plaintiffs here more than meet any such additional potential requirements for service as a class representative. Plaintiff has conferred and cooperated with their counsel and understand the general nature of the litigation and their responsibility as representative plaintiffs. Plaintiff has a meaningful financial stake in the litigation based on losses they sustained with respect to one or more of the claims asserted in the complaint and, as a consequence, are interested in its success. The plaintiff has

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expressed he is committed to the success of the litigation and understands and accepts his obligations as class representative.

Rule 23(b).

In addition to the four prerequisites for certification found in Rule 23(a), the requirements of either Rule 23(b)(1), (b)(2) or (b)(3) must be met. Plaintiff has moved for certification of this action under Rule 23(b)(3). To certify a (b)(3) class, the court must find "the questions of law or fact common to the members of the class predominate over any questions affecting only individual members, and that a class action is superior to other available methods for the fair and efficient adjudication of the controversy."

1. Common Questions Predominate.

Common questions predominate over individual issues when the common issues present a significant aspect of a case and they can be resolved in a single action. *See* 7A Wright, Miller & Kane, *Federal Practice and Procedure* § 1788 at 528. Common questions predominate if class wide adjudication of the common issues will significantly advance the resolution of the merits on behalf of all the class members. *McClenDonn v. Continental Group Inc.*, 113 F.R.D. 39, 43-44 (D.N.J. 1986). Where a case involves "standardized conduct of the defendants towards the members of the proposed class, a common nucleus of operative facts is typically presented, and the commonality requirement . . . is usually met." *Franklin v. City of Chicago*, 102 F.R.D. 944, 949 (N.D.Ill. 1984). Common questions need not be identical for each member of the class:

> The common questions need not be dispositive of the entire action . . .. Therefore, when one or more of the central issues in the action are common to the class and

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can be said to predominate, the action will be considered proper under Rule 23(b)(3) even though other important matters will have to be tried separately.

Wright, Miller and Kane, *Federal Practice and Procedure* § 1788 at 528-29.

The Alaska Supreme Court has stated that "Rule 23(b)(3) focuses on the relationship between the common and individual issues. When common questions present *a significant aspect of the case* and they can be resolved for all members of the class in a single adjudication, there is clear justification for handling the dispute on a representative rather than on an individual basis." *Bartek v. State, Dept. of Natural Resources*, 31 P.3d 100, 105 n.20 (Alaska 2001), quoting *Local Joint Executive Board v. Las Vegas Sands, Inc.*, 244 F.3d 1152, 1162 (9th Cir. 2001) (emphasis added).

As discussed above, there is a core of factual and legal questions common to all class members. The predominance of those common questions is demonstrated by a simple fact: if plaintiffs and every class member were each to bring an individual action, each would be required to prove the defendants engaged in the same wrongful acts. This proof would consist of evidence that the class members were denied reinstatement of their guiding license when their license suspension expired.

The primary individual issues concern the amount of damages suffered by each class member due to the Defendant's illegal refusal to reinstate their guide licenses. As explained previously, it is well accepted that such damage issues are an insufficient basis on which to find lack of predominance, manageability, or any other Rule 23 requirement. *See Aguirre v. Bustos*, 89 F.R.D. 645, 649 (D.N.M. 1981). Even if this were not the rule, the simplicity of providing prior tax returns to prove damages, should make individual

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Phone 907-279-9999
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losses fairly easy to calculate, especially if, as the Defendant claims, the number of class members is small. Further, if as the Defendant contends, the class members are not entitled to damages, based on sovereign immunity or other defenses, the granting of equitable injunctive relief to all members would be fairly simple, since the Court has already decided the legal issue involved.

In deciding whether common issues predominate, courts do not attempt to measure the amount of time that will be spent litigating each issue. Wright, Miller & Kane, *Federal Practice and Procedure* § 1778 p. 120 (2005). Indeed, because of the very nature of a class action, far more time may ultimately be spent litigating individual issues than is spent litigating common issues. *Id.* This is because, as a result of the class procedure, individual class members do not have to prove the common issues over and over again in separate lawsuits. *Id.* The authorities further note that the common issues need not be dispositive of the entire action. *Id.* at 122. In other words, "predominate" should not be automatically equated with "determinative" or "significant." *Id.* at 122-23. Thus, courts generally hold that if the defendant's activities present a "common course of conduct," the fact that damages or reliance vary for each class member does not prevent certification. *Id* at 124-25. Wright, Miller and Kane conclude that the proper standard is a pragmatic one:

> [w]hen common questions represent *a significant aspect of the case* and they can be resolved for all members of the class in a single adjudication, there is a clear justification for handling the dispute on a representative rather than on an individual basis. (emphasis added)

Id at 121. This is the same standard that the Alaska Supreme Court adopted in *Bartek.*

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Similarly, Conte and Newburg, *Newburg on Class Actions*, §4-25 pp. 4-82 – 4-86 (4th ed. 2002), agree that common issues do not have to be dispositive or even determinative of the liability issues. "The very definition of the requirement of the predominance of common questions contemplates that individual issues will usually remain after the common issues are adjudicated." *Id.* The authors similarly note that the predominance requirement is not a numerical test that identifies every issue in the suit as suitable for either common or individual treatment and determines whether common questions predominate by examining the resulting balance on the scale. "A single common issue may be the overriding one in the litigation, despite the fact that the suit also entails numerous remaining individual questions." *Id.* Conte and Newberg conclude that "[i]mplicit in all these articulations of satisfaction of the predominance test is the notion that adjudication of the common issues in the particular suit *has important and desirable advantages of judicial economy compared to all other issues, or when viewed by themselves.*" (emphasis added). *Id.*

2. A Class Action Is Superior To Other Methods Of Adjudication.

In addition to predominance of common questions, subpart 23(b)(3) requires a finding that "a class action is superior to other available methods for the fair and efficient adjudication of the controversy." In considering this requirement, Rule 23 directs courts to consider:

> (A) the interest of members of the class in individually controlling the prosecution . . . of separate actions; (B) the extent and nature of any litigation concerning the controversy already commenced by or against members of the class; (C) the desirability or undesirability of concentrating the litigation of the claims in the

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particular forum; (D) the difficulties likely to be encountered in the management of a class action.

This claims asserted here meet the standards for class action superiority. First, every class member has an interest in proving each defendant's common course of conduct explained in the Complaint. It would be enormously inefficient – for both the Court and the parties – to engage in multiple cases in individual actions on the same liability issues, 7A Wright, Miller and Kane, *Federal Practice and Procedure § 1779 at 556-557. See also Jordan v. County of Los Angeles*, 669 F.2d 1311, 1319-20 (9th Cir.), *vacated on other grounds*, 459 U.S. 810 (1982), ("the relatively small size of each class member's claim and the probability that the class members may be difficult to locate" are reasons for certification); *Lerwill v. Inflight Motion Pictures, Inc.* 582 F.2d 507, #512 (9th Cir 1978) (a class action is superior to numerous individual actions which would be expensive and time consuming). Plaintiffs do not anticipate any management difficulties that would preclude this action from being maintained as a class action. On the other hand, there would be a myriad of difficulties if certification was denied since this would require individual actions as providing the sole remedy, resulting in issues such as those described below:

> Without class action certification, Uniroyal's shareholders will have two options. One, the shareholders who believe they have suffered a loss may not seek redress because their individual losses may be too small to motivate them to institute individual actions. Or, two, the shareholders may clog court dockets with multiple and scattered suits. In either case, the result would be both unjust and inefficient; the goals of Rule 23, the achievement of "economies of time, effort and expense" (1966 *Advisory Committee Note*, 39 F.R.D. 98, 102-103 (1966), would clearly be defeated.

Cohen v. Uniroyal, Inc., 77 F.R.D. 685, 695 (E.D. Pa. 1977).

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Phone 907-279-9999
Fax 907-258-3804

In short, prosecution of this action as a class action will "achieve economies of time, effort and expense, and promote uniformity of decisions as to persons similarly situated." *Fed. R. Civ. P.* 23(b)(3) Advisory Committee's Note. The alternatives to a class action are either no recourse, or a "multiplicity and scattering of suits with the inefficient administration of litigation which follows in its wake." *Green v. Wolf Corp.*, 406 F.2d 291, 302 (2d Cir. 1968), *cert. denied*, 395 U.S. 977 (1969). Accordingly, the court should find that the provisions of subpart 23(b)(3) satisfied.

As explained herein, the prerequisites for certification as a class action are met with respect to each of the claims asserted by plaintiffs under ARCP 23(a) and 23(b)(3). Since numerous guides were subjected to the same improper conduct resulting in similar losses, plaintiffs submit the claims asserted here are best suited for resolution through the class action mechanism rather than through individual lawsuits. Accordingly, plaintiff respectfully requests the court grant their motion to certify their Supplemental Class Action Complaint.

IV
The Availability Of Damages

The Defendant places a great deal of emphasis on its argument that the Plaintiff and the class members cannot recover damages against the Defendant caused by the Defendant's illegal refusal to reinstate Plaintiff's guiding license. This argument ignores the procedural posture of the Plaintiff's Supplemental Complaint, the fact that no discovery has occurred regarding the allegations in the Supplemental Complaint and the relative burden of proof at this stage of the Class Action Complaint. As previously briefed, the Court

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

does not consider substantive or procedural arguments outside of ARCP 15 when ruling on a motion for leave to file a Supplemental Complaint, *Hallam v. Holland America Line*, 27 P.3d 751, 755 (Alaska 2001)(citing *Estate Of Thompson v. Mercedes-Benz, Inc.*, 514 P.2d 1269 (Alaska 1973)). Thus the Defendants "damages" arguments are putting the cart before the horse. First the Court decides the motion to file a supplemental complaint. Liberally granting such requests except in cases of prejudice, *Miller v. Safeway, Inc.*, 102 P.3d 282, 293-294 (Alaska 2004).

Defendant's position also ignores the fact that the Supplemental Complaint is requesting injunctive relief as well as damages. Whether damages can be collected or not does not defeat a complaint that also contains a legally viable request for injunctive relief.

As for the Defendant's attack on the damage claims contained in the Supplemental Complaint, Defendant's efforts to short circuit the normal procedure (complaint, answer, discovery, dispositive motions), by challenging the viability of the Supplemental Complaint[2], requires the Defendant to meet the same burdens as a motion to dismiss, that is, that there are no facts under which the Plaintiff's Supplemental Complaint will succeed, *Miller v. Safeway, Inc.*, 102 P.3d 282, 295 (Alaska 2004);

> a complaint need only allege a set of facts consistent with and appropriate to some enforceable cause of action." It "should not be dismissed for failure to state a claim unless it appears beyond a doubt that the plaintiff can prove no set of facts in support of the claims that would entitle the plaintiff to relief. *McGrew v. State, Dep't of Health & Soc. Servs., Div. of Family & Youth Servs.*, 106 P.3d 319, 322 (Alaska 2005)

[2] Normally referred to a a "futility" defense to an amendment to pleadings.

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Although, the Defendant points to the fact that the Plaintiff's Supplemental Complaint does not allege a bad faith denial of his license reinstatement, that fact is immaterial since Alaska as a "notice" pleading jurisdiction, only requires notice of the illegal conduct and the remedy requested. Specifics as to specific legal theories and the "why" behind the illegal conduct is not required at the pleading stage, *Brown v Ely*, 14 P.3d 257, 263 (Alaska 2000)(defendant on notice of claim, without necessity of reciting a malicious intent).

Going beyond these procedural arguments, the question becomes whether the Plaintiff and members of his proposed class can claim damages against the Defendant, on the basis of an illegal refusal to reinstate their suspended guide licenses after a suspension period has expired. As Plaintiff has previously argued, this issue should not come before the Court before the Plaintiff has had an opportunity to conduct discovery on the "why" behind the Big Game Commercial Services Board's refusal to reinstate suspended licenses when the period of suspension ended. Although the State would like the Court to believe that it was simply a matter of an erroneous view of the applicable law, that explanation fails to explain why the Big Game Commercial Services Board is still refusing to reinstate suspended guiding licenses after this Court has convincingly ruled why that practice is illegal. The Big Game Commercial Services Board is composed of persons in the Guiding Business, who are competitors with the suspended guides. Could that be a factor in the Board's decision to ignore this Court's ruling, as it would apply to other guides? That and may other facts regarding the Board's decision to refuse to reinstate suspended guiding

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licenses needs to be fleshed out before the Court should rules on damages issue regarding the Supplemental Complaint.

Legally, it is also unclear if a cause of action would fall under A.S. 09.50.250 or would have to be based on a constitutional violation. Under AS 09.50.250(1), the Plaintiff could not bring a claim for damages if the claim:

> is an action for tort, and is based upon an act or omission of an employee of the state, exercising due care, in the execution of a statute or regulation, whether or not the statute or regulation is valid; or is an action for tort, and based upon the exercise or performance or the failure to exercise or perform a discretionary function or duty on the part of a state agency or an employee of the state, whether or not the discretion involved is abused;

Without discovery on the actual basis for the Board's decision, it cannot be proven at this point whether the denial of reinstatement of guiding licenses was a done with "due care" or an exercise in discretion. If there is no remedy under AS 09.50.250, then the constitutional issue arises.

There is precedence for cases against government or government employees for violation of constitutional rights, *Bivens v. Six Unknown Named Agents of Fed. Bureau of Narcotics*, 403 U.S. 388, 397, 91 S.Ct. 1999, 29 L.Ed.2d 619 (1971). The Alaska Supreme Court has specifically authorized suits based on constitutional violations in the past, *Rathke v Corrections Corp.*, 153 P.3d 303 (Alaska 2007), and has not prohibited damages claims based on constitutional violations where no other alternative remedy is present, *Hertz v. Beach*, 211 P.3d 668, 677 n. 12 (Alaska 2009) (quoting *Lowell v. Hayes*, 117 P.3d 745, 753 (Alaska 2005)). Given the fact that the law is unsettled in Alaska as to the

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viability of constitutional claims, it would seen the best policy, consistent with judicial economy to develop a factual record before ruling on the viability of such a claim.

As for the Defendant's claim that the deprivation of a license can never given rise to a claim against government, Plaintiff disagrees. Unlike the cases cited by the Defendant, this case does not involve regulation of the use of licenses, but rather refusal to follow court orders, which specified a suspension, not a revocation. None of the cases cited by the Defendant deal with that issue. Since Alaska does not have any such case Plaintiff turns to federal law for guidance. Under analogous federal law:

> A public official is immune from an action under 42 U.S.C. § 1983 "[u]nless the plaintiff `s allegations state a claim of violation of clearly established law." *Mitchell v. Forsyth*; 472 U.S. 511, 526 (1985); *see also Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982) (qualified immunity applies if official's conduct "does not violate clearly established statutory or constitutional rights of which a reasonable person would have known"). In order to determine whether the defendants are immune from an action, the court must answer two questions: (1) whether Stein alleged the violation of a constitutional right, and (2) whether that right was clearly established. *Pearson v. Callahan*, 555 U.S. 223, 232, 236 (2009) (leaving the courts to decide, in their sound discretion, which question to answer first). A right is "clearly established" if its contours are "sufficiently clear that a reasonable official would understand that what he is doing violates that right." *Anderson v. Creighton*, 483 U.S. 635, 640 (1987). Also, the right must be defined "at the appropriate level of specificity." *Cousins*, 568 F.3d at 1070, *quoting Wilson v. Layne*, 526 U.S. 603, 615 (1999).

Stein v. Ryan, 10-16527 (9th Cir. 11-18-2011)(advance sheet at 20242- 20243).

> In determining whether an official is entitled to qualified immunity, courts conduct a two-prong inquiry. For the first prong, a court considers whether the facts alleged, construed in the light most favorable to the plaintiff, show that the official's conduct violated a constitutional right. For the second prong, a court considers whether the right at issue was "clearly established" at the time of the official's alleged misconduct, in light of the specific context of the case. *Saucier*, 533 U.S. at 201.

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Anchorage, Alaska 99501
Phone 907-279-9999
Fax 907-258-3804

"Qualified immunity is applicable unless the official's conduct violated a clearly established constitutional right." *Pearson*, 555 U.S. at 232. Courts may consider the two prongs in either order. *Id.* at 236. If either question is answered in the negative, the defendant is immune from liability for damages. *Id.* "[A]lthough the first *Saucier* prong calls for a factual inquiry, the second prong of the *Saucier* analysis is "solely a question of law for the judge." *Dunn v. Castro*, 621 F.3d 1196, 1198-99 (9th Cir. 2010) (quoting *Tortu v. Las Vegas Metro. Police Dep't*, 556 F.3d 1075, 1085 (9th Cir. 2009) (internal citation omitted). Thus, courts have the discretion to grant qualified immunity on the basis of the `clearly established' prong alone, without deciding whether any constitutional right has been violated. *Dunn*, 621 F.3d at 1199 (quoting *James v. Rowlands*, 606 F.3d 646, 651 (9th Cir. 2010).

To determine whether a right was "clearly established," the court must turn to Supreme Court and Ninth Circuit law existing at the time of the alleged act. *See Osolinski v. Kane*, 92 F.3d 934, 936 (9th Cir. 1996). In the absence of binding precedent, the court should look to available decisions of other circuits and district courts to ascertain whether the law was clearly established. *Id.* For the right to be clearly established, "[t]he contours of the right must be sufficiently clear that a reasonable official would understand that what he is doing violates that right." *Anderson v. Creighton*, 483 U.S. 635, 640 (1987). It is not necessary that the injured party establish that the defendant's "behavior had been previously declared unconstitutional." *Rodis v. City, County of San Francisco*, 558 F.3d 964, 969 (9th Cir. 2009) (internal quotation marks omitted). The relevant inquiry is whether it would be clear to a reasonable official that his or her conduct was unlawful in the situation he or she confronted. *Saucier*, 533 U.S. at 202; *Rodis*, 545 F.3d at 969.

Marilley v. McCamman, No. C-11-02418 DMR, (N.D.Cal. 11-8-2011)

As these cases exemplify, factual issues abound in determinations of whether qualified immunity attaches to governmental action. Thus it would seem improper to reach the issue of governmental immunity without first engaging in some discovery as to why the Board was and still is blatantly ignoring Court Orders specifying suspensions and telling the suspended guides that their licenses have been effectively revoked, requiring a re-application process.

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Fax 907-258-3804

The Washington Supreme Court recently issued a similar holding in a license case where a pharmacist challenged the revocation of his license and asked for damages under 42 USC 1983, *Jones v. State*, 170 Wn.2d 338, 242 P.3d 825 (2010). In that decision, the Court held that a professional licenses are property rights protected by the due process clause of the constitution, giving rise to damage claims if that right is removed without due process. It also held that where public officials act in a wrongful manner to deprive a license holder of his license, sufficient to constitute constitutional violations, damage suits may go forward against the officials pursuant to 42 USC 1983. Having said that the Court found since there was evidence that the officials had acted inconsistently, in scoring the Plaintiff's pharmacy, questions of fact existed as to whether liability could be established in that case, even though the Plaintiff did not have evidence of a malicious intent at that time, because all facts had to be construed in the light most favorable to teh Plaintiff, thus summary judgment was not appropriate. The *Jones* case is far closer to the circumstances in this case, than the cases cited by the Defendant concerning regulations affecting the use of a license, rather than the deprivation of one.

What we have in this case is an unexplained Board failure to follow a court order limiting a license sanction to a suspension, followed by a reinstatement of the Plaintiff's license once this Court found the Board's actions illegal, followed by the continued refusal to reinstate the licenses of other guides whose licenses were suspended. These facts give rise to an inference that the Board is refusing to reinstate suspended licenses for some

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Anchorage, Alaska 99501
Phone 907-279-9999
Fax 907-258-3804

other than a legitimate reason now, who puts into doubt any good faith basis for doing so in the past.

Under these circumstances, the Plaintiff should be allowed to file his Supplemental Complaint, move for injunctive relief for the class, granting the same rights to reinstatement of the class, as the State as conceded are owed to the Plaintiff in this case, and conduct discovery as to whether the facts support a damages claim against the State, its employees or members of the Big Game Commercial Services Board either as State Constitutional Claims or pursuant to 42 USC 1983.

CONCLUSION

The Big Game Commercial Services Board was violating a court order in refusing to reinstate Plaintiff's suspended license and is still engaging in the same conduct as to other guides with suspended licenses. As this Court has determined, that practice is illegal. Rather than contest the matter further and create a precedent, the Board decided to reinstate Plaintiff's license but none of the other suspended licenses, where the suspensions expired. This is onerous and an unconstitutional abuse of authority. The State cannot discriminate on this basis under the equal protection clause of the Alaska Constitution. Plaintiff's Supplemental Class action complaint is the ideal vehicle for correcting this wrong, by requiring the State to reinstate the suspended licenses once the suspension expires or appeal the injunction granting that relief. A multitude of suits to accomplish this

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

same end on a case by case basis is a huge waste of judicial resources and the type of situation for which class action lawsuits were designed for in the first place.

As to the damage claims in the Supplemental Complaint, it is far too early to rule on the viability of such claims. No evidence has been gathered, nor can it be until the Supplemental Complaint is permitted to be filed, answered and discovery this commence. As reflected in the last section of this brief, there is precedence for a damages suit for the unconstitutional deprivation of an occupational license, *Jones v. State*, 170 Wn.2d 338, 242 P.3d 825 (2010). Whether, the Alaska Supreme Court will approve such a suit is an open question. But in any case, since the issue may well end up in that Court on appeal, it would appear to be the far better choice to allow a factual record to be developed before the legal question is answered, so this Court and any above it, may base a decision on the actual facts of the case, as assembled following discovery, rather than a theoretical basis, which is where the case stands in the absence of a factual record.

DATED THIS 1st DAY OF DECEMBER, 2011.

FLANIGAN & BATAILLE
Attorneys for Plaintiff

By Michael W. Flanigan
ABA #7710114

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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing *Pl's Reply to Def's Opp. to Pl's Motion To Permit Filing Of Supplemental Class Action Complaint* was served by mail this 1st day of December, 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

UNOPPOSED MOTION FOR EXTENSION OF TIME

Comes Now, David Haeg, by and through counsel, Flanigan & Bataille, and moves the Court for an extension of time to file a Reply to the Defendant's Opposition to the Plaintiff's Motion for leave to file amended class action complaint in this case.

This additional extension of time is requested due to Plaintiff's counsel's daughter's involvement in an auto accident on 11/22/11, which caused Plaintiff's counsel to abandon all legal work to assist his daughter in regard to her accident, and thus be unable to file the aforementioned Reply on 11/23/11, as previously scheduled.

Having now handled all matters arising from that incident, undersigned is now back to work, and is prepared to file the aforementioned Reply brief on

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

11/30/11 and therefore requests the Court grant an additional extension for the Plaintiff to file the aforementioned Reply brief at that time.

Undersigned has spoken to Defendant's counsel and has been advised they do not oppose this motion.

An appropriate Order accompanies this request.

DATED THIS 28th DAY OF NOVEMBER, 2011.

FLANIGAN & BATAILLE
Attorneys for Plaintiff #8611112

By Michael W. Flanigan
ABA #7710114

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing
Motion for extension of Time
was served by mail this 28th day of November, 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 COURT AT KENAI

DAVID HAEG,

Plaintiff,

v.

STATE OF ALASKA,

Defendant.

3KN-10-01295 CI

OPPOSITION TO MOTION TO ALLOW FILING OF SUPPLEMENTAL CLASS ACTION COMPLAINT

The State of Alaska, through the Office of the Attorney General, opposes Mr. Haeg's motion to allow the filing of a supplemental class action complaint because it is well established in Alaska law that no damages remedy is available to compensate for the licensing decisions Mr. Haeg has put at issue, because the motion fails to meet the requirements of Alaska Rules of Civil Procedure 15 and 23, and because the request to bring a class action suit within the context of a post-conviction relief context exceeds the scope of AS 12.72.010-.040.

I. No Damages Are Available

Until this court ordered otherwise, Mr. Haeg's master license was not automatically reinstated by the Department of Commerce following his five-year suspension but, instead, he was instructed to submit an application for a new license

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pursuant to AS 08.54.670, AS 08.01.100(d) and AS 08.54.610(b).[1] On July 5, 2011, this court held that reinstatement without the need for reapplication must occur forthwith, and it did.[2] Now, Mr, Haeg is seeking compensation for the income he claims he lost during the period between completion of his sentence and the reinstatement of his license.[3] He, likewise, seeks damages on behalf of a class of others he believes are similarly situated.[4]

No damages are available under these circumstances. In *Owsichek v. State, Guide Licensing and Control Board,* 763 P.2d 488 (Alaska 1988), the Alaska Supreme Court held that no damages were available for denial of a hunting guide's application to be allowed to guide hunts within a particular area.[5] In doing so, the Court relied on the discretionary function immunity provided for under Alaska's Tort Claims Act.[6] The Court went on to say, that even if Mr. Owsichek had raised a constitutional argument, damages would not have been available in the absence of a statute authorizing damages, relying on *Vest v. Schafer*, 757 P.2d 588, 598 (Alaska1988).[7] That case had already held that, "we do not believe it proper for the judiciary to assess damages against the state on the ground that the legislature enacted a law later held unconstitutional, in the absence of a statute requiring or allowing such damages."[8]

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ANCHORAGE, ALASKA 99501
PHONE: (907) 269-6250

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1 Exhibit 1 to Haeg's Supplemental Class Action Complaint, pp. 2 and 13.
2 *Id.* and Supplemental Class Action Complaint, para. 13.
3 Supplemental Class Action Complaint, para.s 18-20 and Prayer for Relief no. 3.
4 *Id.*, para. 29. and Prayer for Relief no. 3.
5 763 P.2d at 498.
6 *Id.*
7 *Id.* n. 19.
8 757 P.2d at 598.

In *Morry v. State*, 872 P.2d 1209 (Alaska 1994), the Court expounded further on its *Owsichek* ruling, noting that, in at least two previous cases, it had held that acts of public officials who in good faith misinterpret the law and act in excess of their authority remain immune from suit.[9] Accordingly, the Court ruled that the immunity identified in *Owsichek* applied where it was alleged that public officials, here the Board of Game, had mistakenly relied on an existing, but ultimately unlawful, legal interpretation which had denied subsistence hunting opportunities.[10] Mr. Haeg's complaint does not allege bad faith, nor does it assert that any statute allows for the recovery of damages in this case. *Owsichek* and *Morry* collectively stand for the proposition that there is no damages remedy for denial of hunting or guiding opportunities, even when those opportunities are critical to important economic interests like basic subsistence or pursuit of an occupation, and they control the outcome in this case.

Perhaps in an effort to avoid the impact of the above rulings, Mr. Haeg relies, in part, on an uncompensated takings theory for his damages claim.[11] This reliance is misplaced, as the Alaska Supreme Court has also already held that there is no compensable property interest in similar circumstances. In *Vanek v. State, Board of Fisheries,* 193 P.3d 283 (Alaska 2008), the Court held that limited entry commercial fishing permits are mere "use privileges" which do not rise to the level of property for

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9 872 P.2d at 1211, citing *Earth Movers of Fairbanks, Inc. v. State*, 691 P.2d 281, 283-84 (Alaska 1984) and *Bridges v. Alaska Housing Authority*, 375 P.2d 696, 698 (Alaska 1962).

10 872 P.2d at 1212-13.

11 Supplemental Class Action Complaint, para.s 15 and 26.

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which compensation is due under either the Alaska or U.S. constitutions.[12] While the Court relied, in part, on the Limited Entry Act's more or less unique language on point, it also found, as an alternative ground for its ruling, that recognition of a compensable property interest in such use privileges would imply a level of exclusivity that would be inconsistent with Article VIII, Section 3 of the Alaska Constitution, the common use clause.[13] Then, the Court went even further, examining caselaw from other jurisdictions and especially federal opinions, and held that fishing permits are simply not property within the meaning of the constitutional takings clauses, but are use privileges or licenses.[14] Subsequently, relying on *Vanek,* the Ninth Circuit Court of Appeals has confirmed that commercial fishing permits "are not property for purposes of a takings claim."[15] Master guide licenses confer no greater rights to use the underlying resources than do commercial fishing permits. Thus, they are "use rights" or licenses to the same extent as are commercial fishing permits and they are not compensable property interests within the meaning of the Alaska or federal constitutions.

The *Herscher* case does not change this result.[16] *Herscher* does stand for the proposition that guide licenses are entitled to due process protections, as this court noted in the Decision on Motion to Reinstate Guide License dated July 5, 2011.[17] Nevertheless, the Alaska Supreme Court held in *Vanek* that even though a license

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12 193 P.3d at 288-291.

13 "Wherever occurring in their natural state, fish, wildlife, and waters are reserved to the people for common use."

14 193. P.3d at 291-94.

15 *Vandervere v. Lloyd*, 644 F.3d 957, 967 (9th Cir. 2011).

16 *Herscher v. State, Dept. of Commerce*, 568 P.2d 996 (Alaska 1977).

17 Exhibit 1 to Haeg's Supplemental Class Action Complaint, p. 4.

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revocation or denial implicates due process protections, it does not necessarily follow that license is "property" for purposes of a "takings" analysis.[18] As shown above, the Court went on to hold that commercial fishing permits, like drivers' licenses, were not property for which compensation was due under "takings" claims.[19] There is no reason why guide licenses should be treated differently from commercial fishing and drivers' licenses.

In short, it well established that Mr. Haeg and the theoretical class members may not recover damages for the Department of Commerce's application of AS 08.54.670, AS 08.01.100(d) and AS 08.54.610(b). The motion should be denied on this basis, alone.

II. The Motion Does Not Meet The Requirements Of Rules 15 And 23

Alaska Rule of Civil Procedure 15(d) provides that supplemental pleadings may be allowed for the purpose of "setting forth transactions or occurrences or events which have happened since the date of the pleading sought to be supplemented." Rule 23 sets four prerequisites plus one of three additional requirements that must be met before a class action may be maintained. Mr. Haeg's filing meets none of these requirements.

First, the Supplemental Class Action Complaint fails to identify what transactions or occurrences or events which have happened since the date of the pleading sought to be supplemented are being put at issue. Indeed, the pleading sought to be supplemented is not even identified. Since so many pleadings have been filed in the

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[18] *Vanek*, 193 P.3d at 293-94.

[19] *Id.*

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captioned post-conviction relief matter, it is impossible for the State or this court to determine which pleading Mr. Haeg is seeking to supplement unless he identifies it and then illustrates why supplementation to add subsequent events is necessary.

Second, Rule 23 requires proof that the class is so numerous that joinder of all members is impracticable. Mr. Haeg's only offer of proof is that an unnamed "official working for the Big Game Commercial Licensing Board" said that another nine guides were in the same position as Mr. Haeg.[20] His claim that there may be more than that amount is, by his own admission, a mere belief.[21] Leaving aside the fact that there is no entity in state government known as the "Big Game Commercial Licensing Board," this statement allegedly from an unnamed official does not constitute proof.[22] Before a purported admission by a party opponent is admissible, it must be shown that it is,

> the party's own statement, in either an individual or a representative capacity, or ... a statement of which the party has manifested an adoption or belief in its truth, or ... a statement by a person authorized by the party to make statements concerning the subject, or ... a statement by the party's agent or servant concerning a matter within the scope of the agency or employment, or ... a statement by a co-conspirator of a party during the course of and in furtherance of the conspiracy.[23]

This statement meets none of these tests.

Moreover, even if there are nine others in the same situation, that does not constitute a number that is too numerous to make joinder impracticable. The United

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20 Supplemental Class Action Complaint, para. 24.

21 Supplemental Class Action Complaint , para. 23.

22 The relevant agency is the "Big Game Commercial Services Board." AS 08.54.591(a).

23 Alaska R. Evid. 801(d)(2).

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States Supreme Court has held that a class of 15 members would not meet the numerosity requirement, and the Ninth Circuit has rejected classes of seven, nine and ten members.[24] Federal decisions are especially persuasive in interpreting Alaska Rule of Civil Procedure 23.[25] The smallest class the Alaska Supreme Court has approved to date appears to be in excess of 100, although it cited to authority holding that a size of 40 might be sufficient.[26] In any event, Mr. Haeg has not shown that the nine people he claims an unnamed official said may be in the same situation could not be individually joined.

Rule 23 also requires proof that there are questions of law or fact common to the class and that the claims or defenses are common among the would-be representatives and the purported class members. In the class of convicted criminals who have completed their sentences but did not receive immediate reinstatement that Mr. Haeg has identified, many important facts and legal issues could differ between the members, resulting in vastly different claims or defenses. For example, AS 08.54.610 lists seven separate grounds that disqualify an applicant from holding a guide license, including having committed various categories of crimes within a range of the previous 12 months up to the previous ten years, depending on the seriousness of the crime. It is unlikely that the asserted class is comprised of only those who fit into Mr. Haeg's particular factual setting and category of offenses, but his motion does not address this.

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[24] *Gen. Tel. Co. of the Nw., Inc. v. EEOC*, 446 U.S. 318, 330, 100 S. Ct. 1698, 64 L. Ed. 2d 319 (1980); *Harik v. Cal. Teachers Ass'n*, 326 F.3d 1042, 1051 (9th Cir. 2003).

[25] *Bartek v. State*, 31 P.3d 100, 102 (Alaska 2001).

[26] *International Seafoods of Alaska v. Bissonette*, 146 P.3d 561, 567 (Alaska 2006).

Rule 23 requires proof that the representative parties will fairly and adequately represent the class. Unless more details about the situations of the nine others in the class are produced, it is impossible to reach this conclusion.

Next, Rule 23 requires the court to find that,

> (1) The prosecution of separate actions by or against individual members of the class would create a risk of
>
> (A) Inconsistent or varying adjudications with respect to individual members of the class which would establish incompatible standards of conduct for the party opposing the class, or
>
> (B) Adjudications with respect to individual members of the class which would as a practical matter be dispositive of the interests of the other members not parties to the adjudications or substantially impair or impede their ability to protect their interests; or
>
> (2) The party opposing the class has acted or refuses to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole; or
>
> (3) The court finds that the questions of law or fact common to the members of the class predominate over any questions affecting only individual members, and that a class action is superior to other available methods for the fair and efficient adjudication of the controversy. The matters pertinent to the finding include: (A) the interest of members of the class in individually controlling the prosecution or defense of separate actions; (B) the extent and nature of any litigation concerning the controversy already commenced by or against members of the class; (C) the desirability or undesirability of concentrating the litigation of the claims in the particular forum; (D) the difficulties likely to be encountered in the management of a class action.[27]

Mr. Haeg's motion does not address these alternatives. It is silent on the risk, if any, of inconsistent adjudications or standards or the risk that individual adjudications would be

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[27] Alaska R. Civ. P. 23(b).

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dispositive of claims and impede interests. It offers no proof that the State has refused to act on the grounds applicable to the class. Finally, it does not address the interests, if any, that other class members might have in controlling their own actions, whether there is any other litigation on point, the desirability of concentrating such litigation in this court, or difficulties likely to be encountered. In short, the motion does not meet any of the requirements of Rule 23.

III. The Motion Exceeds the Scope of AS 12.72.010-.040.

Post-conviction relief is a limited remedy, under which a movant must allege facts which, if proved, constitute a denial or violation of his rights under the federal or state constitutions, causing the judgment against him to be void or voidable.[28] The purpose for post-conviction relief is to correct an illegal sentence.[29] It is not a substitute for a direct appeal, nor is it an alternative method for reviewing mere errors in the conduct of the trial or an opportunity for a belated petition for rehearing.[30] As a general rule, statutes authorizing post-conviction relief allow the remedy only where the judgment of conviction is void or otherwise subject to collateral attack and where the grounds set forth in the statute are met.[31] There is no constitutional right to post-conviction relief.[32] Nor is an application for post-conviction relief the proper forum to

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28 39 Am. Jur. 2d Habeas Corpus §181.
29 Alaska R. Crim. P. 35(a).
30 24 C.J.S. Criminal Law §2223.
31 24 C.J.S. Criminal Law §2231.
32 *Id.*

adjudicate an applicant's civil rights; rather, an independent action must be brought on point.[33] If civil rights claims are outside of the scope of AS 12.72.101, then damages claims based on alleged civil rights violations are as well.

The Alaska Legislature, in AS 12.72.010, has laid out the exclusive grounds for post-conviction relief. Relief is available only in nine specifically enumerated circumstances, including that the conviction or sentences were unconstitutional, the court lacked jurisdiction, that a prior conviction was set aside, that new evidence of material facts requires vacation of the conviction or sentence, that the person is unlawfully held in custody or restraint, that the conviction is otherwise subject to collateral attack on grounds previously available through other writs, etc., that there has been a significant change in the law that should be applied retroactively, that the applicant seeks to withdraw a plea of guilty or nolo contendere, or that the applicant was not afforded effective assistance of counsel. None of these grounds even hint at the possibility that a claim for damages may be brought, nor does any suggest that a class action would be appropriate in the post-conviction relief setting.

Mr. Haeg asserts that he is obligated under Alaska's claim splitting rule to bring his damages claims here.[34] He is in error. In *Shaw v. State, Dept. of Admin., Public Defender Agency,* the Alaska Supreme Court held that a convicted criminal must obtain post-conviction relief before pursuing an action for legal malpractice against his or her

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[33] *Rust v. State*, 584 P.2d 38, 39 (Alaska 1978); *Mitchell v. State*, 767 P.2d 203, 206 (Alaska 1988); and *Hertz v. State*, 81 P.3d 1011, 1015 (Alaska App. 2004).

[34] Motion and Memorandum to Permit Filing of Supplemental Class Action Complaint, pp. 2-3.

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attorney for damages.[35] In other words, the claim splitting rule does not require that damages actions be brought in the context of post-conviction relief settings. Especially given that damages claims are nowhere authorized under Alaska post-conviction relief statutes, there is no basis to believe that the Court would treat the damages claims Mr. Haeg asserts here any differently from the rule it has already articulated as to malpractice-related damages claims. The *Hurd* case cited by Mr. Haeg as authority for the proposition that the rule against claim splitting applies in this context had nothing to do with a post-conviction relief action under AS 12.72.010-.040. It held that subsequent appeals could not introduce new issues.[36] Appeals are completely different from post-conviction relief actions under AS 12.72.010 et seq. The latter are a limited, statutorily-granted right to seek relief from illegal sentences, not an invitation to throw the bucket of slops at the court and hope that something sticks. Mr. Haeg's damages claims and attempt to certify a class action, if they have any merit at all, should be brought in a separate civil action, not in the context of his post-conviction relief proceeding.

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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

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[35] *Shaw v. State, Dept. of Admin., Public Defender Agency*, 816 P.2d 1358, 1360-61 (Alaska 1991).

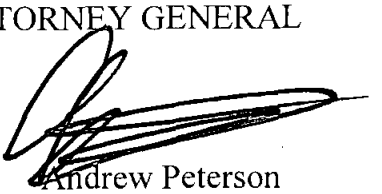
[36] *Hurd v. State*, 107 P.3d 314, 328-29 (Alaska 2005). Motion and Memorandum to Permit Filing of Supplemental Class Action Complaint, p. 3.

IV. Conclusion

For all of the reasons given above, Mr. Haeg's motion to file his supplemental complaint should be denied.

DATED at Anchorage, Alaska this 21st day of October, 2011.

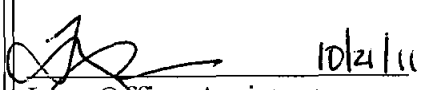
JOHN J. BURNS
ATTORNEY GENERAL

By: 
Andrew Peterson
Assistant Attorney General

Certificate of Service

I certify that I am employed by the Office of the Attorney General, Anchorage, Alaska and that on this date, I caused to be served a true and correct copy of the above document by U.S. mail, postage prepaid, on the following:

Michael W. Flanigan
Flanigan & Bataille
1029 W. 3rd Avenue, Suite
250
Anchorage, AK 99501


10/24/11
Law Office Assistant

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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

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 UNOPPOSED MOTION FOR EXTENSION OF TIME TO ANSWER DEFENDANT'S SUPPLEMENTAL CLASS ACTION COMPLAINT

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 its undersigned Assistant Attorney General, Andrew Peterson, and files this motion for an extension of time until Friday, October, 21, 2011, to reply to defendant's Supplemental Class Action Complaint. The State contacted Mr. Flanigan, counsel for the Plaintiff, and he does not oppose this request.

DATED at Anchorage, Alaska, this 17th day of October, 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 was mailed to:

Michael Flanigan
Flanigan & Bataille
1029 West 3rd Avenue, Suite 250
Anchorage, AK 99501

_____ 10/17/11
Tina Osgood Dated

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ANCHORAGE, ALASKA 99501
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CASE NO. 3KN-10-01295 CI

Trial Case No. 4MC-04-00024 CR

STATE'S OPPOSITION TO HAEG'S 3-19-12 INEFFECTIVE ASSISTANCE OF COUNSEL MEMORANDUM AND 3-29-12 JUDGE MURPHY/TROOPER GIBBENS MEMORANDUM

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.

COMES NOW the State of Alaska (hereinafter "State"), by and through its undersigned Assistant Attorney General, Andrew Peterson, and hereby files this opposition to David S. Haeg's (hereinafter "Haeg" or "Applicant") 3-19-12 and 3-29-12 memorandums filed in support of Haeg's original PCR application.

The state originally set forth the law pertaining to a motion to dismiss a PCR application in the state's original motion to dismiss. This opposition addresses the specific allegations of ineffective assistance of counsel alleged against attorneys Brent Cole and Arthur Robinson, alleged misconduct by Judge Murphy and Trooper Gibbens

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and the issues set forth in this Court's order regarding the first motion to dismiss dated April 2, 2012.

I. ALLEGATIONS OF INEFFECTIVE ASSISTANCE OF COUNSEL AGAINST ATTORNEY BRENT COLE

Haeg alleges a number of grounds for ineffective assistance of counsel with respect to Attorney Brent Cole's representation of his case from April 2004 through December 2004. The documents provided to the state in discovery by Cole outline the negotiation process between Cole and the state regarding Haeg's case.[1] The documents make it clear that a motion to suppress evidence in Haeg's case would have been unsuccessful, that Cole's decision to cooperate with the state resulted in Haeg receiving a very favorable rule 11 offer, and that Haeg ultimately decided to reject the state's offer as he was unwilling to forfeit his airplane. Haeg knowingly and intelligently decided to go to trial and face open sentencing which resulted in his conviction, suspension of his license for five years as opposed to one, and the forfeiture of his airplane.

A. Cole's Alleged Failure to Challenge Sworn Statements by Trooper Bret Gibbens Contained in the Search Warrant Affidavits

Haeg alleges that Trooper Gibbens committed perjury by falsifying the location of the wolf kill sites that he discovered. Specifically, Trooper Gibbens' search warrant affidavits state that "[o]n 3-26-04, while patrolling in my state PA-18 supercub

[1] The state will mail the supporting exhibits separately due to the voluminous nature of the documents with the exception of the map this Court ordered produced. Trial Exhibit 25 will be delivered on the day of oral arguments in this matter. The state made a copy for the court and a copy can be made for Haeg at a cost of $40.00.

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in the upper swift river drainage located with GMU-19C, I located a place where an aircraft had landed next to several sets of wolf tracks." See Exh. 24, p. 7, see also Exhs. 25 – 27. The wolf kill sites were actually located along the boundary between game management unit 19-C and 19-D. Trooper Gibbens corrected this misstatement at trial by acknowledging that the wolf kill locations discovered were actually in the corner of GMU 19-D, but still well outside of the legally permitted area for taking wolves same day airborne. See Exh. 8 (T. pp. 478-479); see also Trial Exh. 25 (Gibbens' Map – indicating that the wolf kill locations 1-4 were substantially closer to Haeg's lodge than the predator control area).

Cole and Robinson both believed that this misstatement by Gibbens was not intentional and that the evidence in the case against Haeg was sufficient to justify his conviction despite this misstatement. See Exh. 30, pp. 41-46; see also Exh. 18, pp. 1-3. In fact, there is no mention in the affidavit that Haeg is a big game guide and/or that his lodge is located in the same GMU. See Exh. 24. The undisputed fact from the affidavit is that the wolf kill locations discovered by Gibbens were well outside of the predator control area.

Haeg alleges that Cole was ineffective due to the fact that he failed to file a motion to suppress the evidence seized from the search warrants on the grounds that Trooper Gibbens committed perjury and/or falsified the evidence against him. Cole explained in his deposition that the law pertaining to a motion to dismiss would not result in the suppression of evidence unless the false statement was intentional. See Exh. 31, pp. 41-43, 98; see also Exh. 18, p. 2 (statement by Cole to Louise Driscoll,

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Assistant Bar Counsel for ABA – stating that a motion to suppress would not have resulted in a dismissal of the charges). Cole further explained that it is common for even guides to get the location of a guide use area or game management unit wrong and that he did not believe the mistake was intentional. See id. Cole further points out that the affidavit by Gibbens makes no mention of the game management unit that Haeg hunts in or where his lodge is located. See Exh. 18, p. 2. Based on this analysis, Cole believed that a motion to suppress would not result in a dismissal of the case against Haeg or a return of Haeg's airplane. See id. Cole believed that the filing of a motion to suppress would put the case in a trial posture, which was not a favorable position for Haeg. See id.

Cole advised Haeg to enter into negotiations with the state to resolve his case as opposed to challenging the state's search warrants. See id, see also Exh. 31, p. 58. Cole advised Haeg to take this course of action for several reasons. First, Cole believed that it was in Haeg's best interest to negotiate with the state due to the fact that he had spring bear hunters coming to Alaska. See Exh. 18, p. 3, see also Exh. 31, pp. 32-33. Cole anticipated that the good faith act of negotiating a resolution would result in the state not seeking to prevent Haeg from guiding. Second, given the evidence against Haeg, negotiating was in Cole's opinion the only way to ensure that Haeg would not lose his guiding privileges for a period of five years. See Exh. 18, p. 3; see also Exh. 31, p. 64. While Haeg at times wanted to fight the charges, he ultimately agreed to Cole's strategy. Cole's strategy was ultimately successful as the state agreed to not try and shut down Haeg's guiding business and ultimately offered Haeg a rule 11

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sentencing agreement that did not result in a five year revocation of his privileges, which is what he received at trial. See Exh. 31, p. 15, 35, 41, 80, see also Exh. 18, p. 3.

Haeg also alleges that Cole failed to inform him that he could seek to bond out his airplane. Contrary to Haeg's assertions, Cole did discuss this option with Haeg, but in Cole's opinion, there was very little chance that Haeg would be successful in bonding out his plane. See Exh. 31, 113. Moreover, Cole recommended against this tactic as he believed that it would result in a discontinuation of negotiations toward a favorable rule 11 agreement and he was working on negotiating a resolution for Haeg. See id, pp. 83-4, 169, 171-2. Cole stated in his deposition that Haeg ultimately agreed with his advice on this issue. See id, pp. 100, 114, 126, 171.

B. Cole's Alleged Ineffectiveness for Allowing Haeg to Give a Voluntary Statement to the State of Alaska Regarding His Conduct

Haeg alleges that Cole provided ineffective representation by allowing him to give a statement to Trooper Gibbens and Prosecutor Leaders. Haeg further alleges that this statement was given under a grant of immunity. Cole advised Haeg to give a statement to the state as a sign of good faith and to demonstrate Haeg's willingness to cooperate and accept responsibility for his actions. Cole's plan was to capitalize on Haeg's good will by negotiating a resolution that avoided Haeg running the risk of losing his guide license for a period of five years and to avoid Haeg's business being shut down prior to spring bear season. Ultimately, Cole was successful in both preventing the state from shutting Haeg's business down the spring of 2004 and in negotiating a rule 11 agreement that would result in a partially retroactive suspension

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of Haeg's big game guide license. See Exh. 3 (modifications); see also Exh. 17, p. 2 (Decision and Award before the Alaska Bar Association which outlines Cole's position and ultimate success in negotiating a favorable plea deal); Exh. 18, p. 3, Exh. 22, p. 3, Exh. 31, pp. 30, 33, 41-2, 44-5. Haeg ultimately rejected this offer and elected to go to trial. See Exh. 18, p. 3.

On June 11, 2004, at Cole's offices, Haeg provided a detailed statement to Trooper Gibbens and Scot Leaders regarding his same day airborne taking of wolves outside of the predator control area. See Exh. 1.[2] Approximately four minutes into the interview, Trooper Gibbens informs Haeg that he is taking part in a non-custodial interview, that he is free to leave at any time and that the interview is nothing more than a cooperative interview. See id. There is never a mention of the interview being an immunized statement that would prevent the state from prosecuting Haeg for his alleged violations. In fact, Trooper Gibbens, Scot Leaders, and Brent Cole all believed that the statement was being made for purposes of settlement negotiations under Evidence Rule 410. See Exh. 28, p. 4-5; see also Exh. 29, p. 1-2; Exh. 17, p. 3, 12-13; Exh. 30, pp. 24, 32 (even Haeg believed that his statement fell under Evidence Rule 410). The allegation by Haeg that his statement was made under an immunity agreement is a new claim post trial.

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[2] Haeg has in the past alleged that this audio was never provided to him. State records reveal that Cole asked for the tape December 3, 2004 (See Exh. 9), Robinson also asked for the tape on January 24, 2005 (See Exh. 10). The audio tape was subsequently given to Typing, etc. in Kenai and a copy of the tape was made for Robinson and payment receipts show that Robinson received the tape. See Exh. 12.

Cole was ultimately successful in utilizing the good will generated from Haeg's cooperation to negotiate a resolution with Scot Leaders that was very favorable to Haeg. On August 18, 2004, Scot Leaders sent a written offer letter to Brent Cole. See Exh. 3. The offer proposed resolving Haeg's case with a plea of guilty by consolidating the proposed 11 counts into five convictions. The following was the proposed sentence for the five counts based on the original 11 charges:

- Jail: five days in jail with all five suspended (55 days with 55 suspended);
- Ten hours of community work service per original count (110 hours total);
- $1,000 fine with $800 suspended per count ($11,000 with $8,800 suspended);
- Suspension of guiding and personal hunting privileges (concurrently) for a period of 1-3 years, with the actual term of suspension being decided by the sentencing judge.
  - Haeg was prohibited from guiding, transporting or booking trips during this time
  - Term of suspension was to begin July 1 (thus partially retroactive)
- Informal probation for a period of 10 years
- Forfeiture of all items seized, including Haeg's PA-12 airplane
- Restitution for the wolves killed
- Suspension of trapping privileges for a period of 10 years
- State consideration regarding Haeg's proposal to swap planes following Haeg's sentencing.

See id. The above offer allowed Haeg to argue for a minimum license revocation of one year and the state was capped at a maximum of three years.

The parties continued to negotiate the resolution of Haeg's case. On September 1, 2004, Scot Leaders sent an email to troopers indicating that Haeg was considering open sentencing on ten counts with the option of arguing for no license

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revocation and no forfeiture of his airplane. See Exh. 4. Alternatively, the state could argue for a longer period of license revocation and forfeiture of Haeg's plane. See id. Leaders ultimately rejected this counter offer, but agreed to modify his original offer as indicated by the writing on the original. See Exh. 3, 8. The modified offer called for the following sentence:

- Jail of 60 days with 55 suspended per count (25 days to serve);
- Twenty house of community work service (100 hours total);
- Fine of $1,000 with $500 suspended per count ($2,500 to pay);
- Suspension of guide and hunting privileges for 36 months with 20 months suspended to begin on March 5, 2004 and end on August 5, 2005 (resulting in 5-7 months being retroactive depending on arraignment date);
- Seven years informal probation and seven years revocation of trapping privileges.
- Haeg was still required to forfeit his PA-12 airplane.

See Exh. 3, p. 2. This deal was in effect on the date of Haeg's arraignment as demonstrated by Leader's statement on the record and Leader's email to troopers dated November 11, 2004. Haeg ultimately rejected the state's rule 11 offer based on the fact that the state was going to require Haeg to forfeit his airplane. See Exh. 18, p. 3, Exh. 23, Exh. 31, pp. 97, 102, 166. Haeg decided to seek representation by new counsel and the parties continued to negotiate a possible resolution, although under new terms. See Exh. 11.

C. Cole's Alleged Failure to Enforce the Terms of the State's Rule 11 Offer

Haeg alleges that Cole was ineffective based on his failure to seek to enforce the terms of the rule 11 agreement offered by the state. Haeg bases this

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allegation on the fact that the state filed an amended information prior to his arraignment. Haeg believes that this action violated the terms of his agreement. Haeg's allegation is without merit. The state still intended to honor the terms of the negotiated rule 11 agreement, but was not willing to allow Haeg to plead open to reduced charges.

The parties had essentially negotiated a completed rule 11 agreement prior to Haeg's arraignment. See Exh. 28, see also Exh. 17, p. 2 (ABA Award Decision outlining findings regarding the plea negotiations and the fact that Haeg was having second thoughts about the deal based upon the forfeiture provision), but see Exh. 18, p. 5 (Cole indicates that a completed agreement was not reached before November 8, 2004, but that various scenarios were being discussed, but there was not a meeting of the minds). There were a few issues that were still being discussed, but the basic terms of the agreement were complete; and there was a complete agreement on November 8, 2004. See Exh. 18, p. 5. The agreement called for Haeg to enter guilty pleas to five counts, including two counts of unlawful acts under Alaska Statute 08.54.720(a)(8)(A) which prohibits an individual licensed under Title 8 from violating any state or federal fish and game statute or regulation. The offense in this case was the 5AAC 92.085(8) violation of same day airborne taking of a big game animal.

The state similarly had the option of charging Haeg with a violation of AS 08.54.720(a)(15) based upon the exact same conduct. See Exh. 28, p. 4, see also Exh. 18, p. 4. AS 08.54.720(a)(15) prohibits individuals licensed under Title 8 from committing the offense of same day airborne taking of big game animals. The punishment for this offense requires a mandatory three year suspension of the big game

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guide's license, but also gives the court the option of permanently revoking the big game guide's license. See id. Through negotiations between Cole and Leaders, the state agreed to not file charges under AS 08.54.720(a)(15), provided that there was a rule 11 agreement in place which called for the forfeiture of Haeg's plane.

On or about November 4, 2004, Leaders filed an information charging both Haeg and Zellers with various offenses pertaining to the illegal same day airborne taking of wolves, falsifying game sealing records, and other offenses. See Exh. 28, p. 6. The charges filed reflected the plea negotiations between the parties and Leader's belief that Haeg intended to accept the state's rule 11 agreement. See id. The charges filed in the information did not reflect the charges that Leaders would have filed in the absence of a rule 11 agreement. See id. Specifically, the state agreed to pursue charges related to the aerial killing of the wolves under AS 08.54.720(a)(8)(A) as opposed to AS 08.54.720(a)(15) based on Haeg's agreement to the specific terms of the disposition, including the forfeiture of his airplane. See id.

After filing of the original information, but prior to the arraignment, Leaders learned that Haeg no longer intended to plead in accordance with the Rule 11 agreement he had negotiated with the State. See id., p. 7. Rather, he wanted to plead open. No agreement was discussed or reached regarding the specific charges that Haeg would plead open to. Haeg allegedly wanted to go open at sentencing so that he could argue for a shorter big game guide license revocation and no forfeiture of his airplane. See id., see also Exh. 17, p. 3, Exh. 23.

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Leaders received this information in a telephone call with Cole after business hours on the night before the scheduled arraignment. See id. Based on this information, and prior to the arraignment the next day, Leaders filed an amended information with the charges he would have originally filed absent the rule 11 agreement that had been reached through the pre-charging negotiations. See id. The amended information was filed prior to the arraignment so that Haeg would not be able to reap the benefit of the lesser charges he had specifically negotiated as part of the rule 11 agreement, by pleading open to those lesser charges, without having to comply with his end of the bargain -- which included agreeing to specific sentences on the lesser charges, a specific period of suspension of his big game guide license, and forfeiture of his airplane. See id. The charges filed in the amended information carried a mandatory minimum guide license revocation of three years where the charges in the original information carried a mandatory minimum guide license revocation of one year. The forfeiture of his airplane was permissive under both informations filed. See id.

The purpose for filing the original information had been to allow for the parties rule 11 agreement that called for a guide license revocation of only 16 months, part of which was retroactive. Prior to filing the amended information, Leaders advised Mr. Cole that if Mr. Haeg wanted to go open, he could go open to the charges originally contemplated by the State. See id., pp. 7-8. Alternatively, the State's Rule 11 offer was still available to Mr. Haeg. See id. This fact was made clear at Haeg's arraignment when Leaders explained on the record to Mr. Cole that there was no harm in having Mr. Haeg enter his not guilty plea to the amended information as it did not change the

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terms of the state's rule 11 offer. See id, see also Exh. 7 (Leaders informed Cole on the record that the filing of the amended information would not change the agreement).

The parties continued to negotiate a more complete rule 11 agreement. Following Haeg's arraignment, the parties reached a complete agreement that left nothing to the court's discretion. Specifically, the new agreement contained the previous terms agreed between the parties limiting the retroactive suspension to 36 months with 20 suspended. The parties were additionally going to seek the approval of occupational licensing before moving ahead with the deal. See Exh. 17, p. 2.

The original information and the amended information both contain the exact same probable cause statement. See Exh. 28, p. 8; see also Exhs. 5 and 6. Both include a brief reference to the fact that Haeg and Zellers pointed out the location of the kill on a map. See Exh. 5, p. 14 and Exh. 6 p. 14. Information provided by Haeg during his interview was not used or admitted at trial, nor was a copy of the information filed with the court read to the jury. See Exh. 28, p. 8, see also Exh. 13, p 29 of transcript.

The offer extended to Haeg was in place and available for Haeg to accept until the time Haeg terminated Cole. Leaders' statement at Haeg's arraignment further indicated that the offer was still open to Haeg as Leaders believed that the parties had a completed deal. See Exh. 7, see also Exh. 28, p. 8; Exh. 13, p. 29.

Haeg refused to accept the state's offer based on the fact that he wanted his airplane returned. As late as November 22, 2004, Haeg was still unwilling to accept the state's offer if forfeiture of his plane was involved. See Exh. 23, pp. 11-13, 16,

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and 19. Haeg instructed Cole to tell Leaders that he was willing to go to trial if the airplane was not returned. See id., p. 12.

Cole repeatedly informed Haeg that he believed the court, even under open sentencing, would forfeit his plane. Based upon this belief, Cole advised Haeg to take the state's deal due to the fact that he would legally be guiding in July of 2005. See Exh. 31, p. 103. Cole repeatedly warned Haeg that the state could convict him of illegal guiding acts under Title 8 despite the fact that he did not commit the offenses while guiding. See Exh. 31, pp. 45, 68-9; see also Exh. 18, p. 3. Haeg, however, insisted that he was operating under a trapping license and thus could not be convicted of illegal guiding acts. See Exh. 23, p. 3. Based upon Haeg's theory of the case, he believed that he could prevail at trial. The record read in its entirety clearly demonstrates a defendant that is not willing to accept the rule 11 offer extended by the state, despite the fact that he is being offered a retroactive license revocation to give him credit for time that he did not guide.

Cole informed Leaders on December 3, 2004, that Haeg no longer wanted him to represent him in the pending matter. See Exh. 9. Haeg at no time sought to accept the state's rule 11 offer that had been worked out through Mr. Cole, and negotiations began anew with Mr. Robinson as reflected by the state's rule 11 offer sent to Mr. Robinson. On February 15, 2005, Leaders extended a new offer to Haeg via Robinson. See Exh. 11, see also Exh. 28, p. 9. The new offer did not include a period of retroactive revocation. See id.

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II. ALLEGATIONS OF INEFFECTIVE ASSISTANCE OF COUNSEL AGAINST ATTORNEY CHUCK ROBINSON

Haeg raises a number of allegations of ineffective assistance of counsel against his trial counsel Chuck Robinson. Mr. Robinson was deposed on September 9, 2011. See Exh. 30. During the deposition, Mr. Robinson went through each allegation set forth in Haeg's PCR application. Mr. Robinson denied each and every allegation made by Haeg.

Haeg first alleges that Robinson said there was nothing that could be done about the alleged falsification of the evidence locations in paragraph W. Robinson denied Haeg's allegation and points out that the real issue was that Trooper Gibbens had misnumbered the location of the information as far as the hunting area was concerned, but that there was no falsification of evidence. See id., p. 12. In fact, Haeg took the stand and admitted that the wolves were killed outside of the predator control area thus corroborating the Trooper's affidavit. See id., p. 45.

Haeg's allegation that the misstatement was intentionally made to falsely suggest that Haeg acted to financially benefit his guide service is also a claim that is without merit. Rather, Haeg's own testimony support's the state's theory. Haeg admitted while on the stand that he was involved in the predator control activity to some degree to increase his business. See id. p. 36.

Haeg alleges that Robinson failed to file a motion to suppress the search and seizure warrants. Robinson states that after looking closely at the evidence, he did not believe that Haeg had a chance of winning on such a motion. See id., p. 12-13, 135.

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Robinson denies, however, telling Haeg that there was nothing that could be done about the search and seizure warrants. Id.

Robinson also denies the allegation that he failed to tell Haeg that he was entitled to a prompt post seizure hearing and/or option of bonding out property. See id., p. 14-17. Robinson stated that he advised Haeg of this right prior to Haeg actually hiring him. See id. Robinson stated that Haeg called him in the spring of 2004 and that he advised Haeg of this right. See id. Robinson states that he and Haeg discussed the option of trying to bond out the plane after his retention, but that Haeg decided not to seek to bond the plane out due to a limited amount of funds. Haeg chose rather to spend his resources fighting the charges against him and/or try and resolve his case. See id. pp. 165-66.

Haeg later tried to bond out his plane before trial as a tactic to prevent the state from forfeiting his plane. See Exh. 30, p. 16-17. Robinson noted that case law provides that if a bond is paid for a plane and then the plane is subsequently forfeited by the court, that the state would have to accept the bond in lieu of the plane. See id. The goal was to force the state to accept the bond and thus essentially be forced to give Haeg an option to buy back his plane. See id. Haeg's motion to bond out his plane was ultimately denied.

Haeg alleges that Robinson told him he had no defense to the state telling him to take wolves outside area or a claim of entrapment. Robinson admits that he never presented this theory to the jury as he had no proof of Haeg's claim. See id., p. 36-7; see also Exh. 23, p. 7; Exh. 31, p. 84-85. Robinson stated that he spoke to Ted

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Spraker about this issue, and Spraker denied ever telling Haeg to kill wolves outside of the predator control area. Robinson felt that without any corroboration that he would essentially be admitting to the jury that Haeg actually killed the wolves outside the legally permitted area by raising this defense. See id., pp. 18-20.

Haeg alleges that Robinson told him that there was nothing he could do to enforce the plea agreement Haeg believed was violated by the state. Robinson denies this allegation. See Exh. 30, p. 8. Robinson told Haeg that he had to make a decision to either seek to enforce the plea agreement or go to trial and that Haeg elected to go to trial. See id, pp. 8, 23-24, 54.

Haeg alleges that Robinson told him that he would lose at trial because Cole had given the state everything. Robinson denied this allegation and said that he did not remember saying this to Haeg. See Exh. 30, p. 29. Moreover, Robinson stated unequivocally that Leaders never used his statements against him at trial in the state's case in chief. See id., p. 23-24. Rather Haeg elected to testify and admitted to killing the wolves outside the predator control boundary. See id., p. 55.

Haeg alleges that Robinson told him that he should go to trial, and then challenge the convictions on the grounds of jurisdiction and that he would win on appeal. Robinson denies this allegation stating that "I never told him that there was no doubt that he would win on appeal." See Exh. 30, p. 30. Robinson denies ever making such a statement to any client. Robinson believed that there was a valid jurisdictional challenge, but that Haeg later decided to drop this challenge on appeal. See id., pp. 30,

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48. Robinson further stated that based upon the evidence against his client, this was the only possible defense he could identify. See id. pp. 50-51.

Haeg alleges that Robinson failed to object to the use of his "immunized" statement against him at trial. Robinson denies this allegation pointing out that the all reference to the statement was removed from the information presented to the jury and that Leaders never used his statement against him in the state's case in chief. See Exh. 30, p. 24-5, 29, 30, 33. Robinson further did not believe that Haeg had immunity from prosecution based on his statement to Leaders and Gibbens. See id., p. 30.

Haeg alleges that Robinson failed to demand a mistrial based upon alleged perjury of Gibbens. Robinson admits not asking for a mistrial on this basis as he did not believe there was proof of perjury. See id., pp. 42-43. Moreover, Robinson acknowledged that under the rules of perjury, one is allowed to correct a misstatement and that Gibbens corrected his misstatement when he clarified the actual game management unit for the kills. See id., pp. 43-44.

Haeg next claims that Robinson failed to subpoena Cole to testify about his plea agreement. Robinson admits not seeking to enforce the subpoena against Cole because Haeg was being sentenced following trial, not at a change of plea hearing pursuant to a rule 11 agreement. See id., p. 53. Robinson did not see Cole's presence as being relevant and in fact admitted that there could be some downside if Cole's testimony was seen as a waiver of attorney client privilege possibly resulting in Cole divulging admissions by Haeg as to his conduct. See id., pp. 53-55.

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Robinson denied that he was ever asked to sign an affidavit regarding his representation of Haeg. See id., p. 81-2. He further denied that he provided ineffective representation. See id. Rather, Robinson suggested through out his deposition that he provided effective assistance under the circumstances and in fact succeeded in having several counts dismissed with not guilty verdicts.

III. HAEG'S ALLEGATIONS OF INAPPROPRIATE CONTACT BETWEEN JUDGE MURPHY AND TROOPER GIBBENS

Haeg alleges that there was inappropriate contact between Judge Murphy and Trooper Gibbens that resulted in him receiving an unfair trial. Haeg essentially alleges that Trooper Gibbens picked Judge Murphy up from the airport and chauffeured her around McGrath morning, noon, and night in addition to eating meals with her. Haeg's allegations are simply untrue.

Judge Margret Murphy provided an affidavit to the state recounting the events of Haeg's trial.[3] Judge Murphy states that she ate her meals with other court personnel that were present in McGrath. Judge Murphy states that she recalls troopers being present in the restaurant, but that she never ate a meal with troopers. In July, Judge Murphy ate all of here meals at the Takusko House, where she was staying, or in the court office in the Captain Snow Center. She believes that some troopers were staying at the Takusko House, but she never ate any meals with them or socialized with them. In September, Judge Murphy ate her meals alone in the court offices. During

[3] The state is submitting a copy with this motion, but will file an original with the court on the date of oral arguments.

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Haeg's trial, Judge Murphy never ate a single meal with Trooper Gibbens. In fact, Judge Murphy indicates that she has never eaten a meal with Trooper Gibbens. See Exh. 32, p. 2.

Judge Murphy further stated that court personnel would use trooper vehicles to run court related errands such as getting meals and/or snacks for the jurors. In September, following sentencing, Judge Murphy acknowledges receiving a ride from Trooper Gibbens to her hotel. Judge Murphy notes that it was 1:30 in the morning, cold, dark, and snowing, and that her walk would take her past two bars. She asked Trooper Gibbens for a ride out of concern for her personal safety. She did not speak to Trooper Gibbens about the case despite it being after sentencing. In fact, Judge Murphy states that she never spoke to any trooper about the Haeg matter outside of open court. See id.

Judge Murphy acknowledges that the transcript of the sentencing hearing implies that Trooper Gibbens gave her a ride during the sentencing hearing on September 29, 2005. However, the ride never took place and Judge Murphy never left the court. Trooper Gibbens reminded Judge Murphy that she had left some diet coke in the trooper/VPSO offices during prior proceedings. Trooper Gibbens retrieved the diet coke for Judge Murphy and no ride took place. See id., p. 3.

Judge Murphy's affidavit is supported by Trooper Gibbens affidavit. Trooper Gibbens states that he has never had a meal with Judge Murphy. See Exh. 29, p. 2. Trooper Gibbens acknowledges being in the same restaurant as Judge Murphy, but never ate a meal with her. See id. Trooper Gibbens further states that it would not be

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uncommon for him to give someone a ride in McGrath due to the limited options for transportation. Gibbens further acknowledges that he believes he gave Judge Murphy a ride at some point, but cannot remember when. Gibbens finally states that "I would never discuss a defendant's case with the judge outside of court, and Haeg's case is no different." See id. Finally, Trooper Gibbens states that he remembers retrieving a case of diet coke for Judge Murphy, but is not sure exactly when it happened. See id.

IV. EXHIBIT 25 – MAP OF WOLF KILL SITES

Haeg alleges in his PCR application that the map he provided to troopers was used against him at trial. This allegation is refuted by Robinson, Leaders, and Trooper Gibbens.

On December 23, 2004, Cole sent a letter to Leaders outlining his understanding of the terms of the statement provided by Haeg to Leaders and Gibbens. See Exh. 17, pp. 12-13. Cole included a copy of the map that Haeg provided to Leaders. See id., pp. 14-15. This map is a copy of a sectional aeronautical chart similar to that of Exhibit 25. The map, however, is clearly not the same as Exhibit 25, which was made by Trooper Gibbens.

Exhibit 25 is a map that Trooper Gibbens used to document the location of evidence he found during the initial part of his investigation. See Exh. 29, p. 2. Gibbens' map was admitted as a trial exhibit with a legend on the bottom of the map identifying all of the locations Gibbens marked on the map. See id. p. 3; see also Exh. 13, p. 333 (of transcript). At trial, Tony Zellers provided additional information as depicted on Exhibit 25. See Exh. 13, p. 528-9. The information provided by Zellers is

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highlighted by a yellow sticky note on the bottom of Exhibit 25 and writing in red ink on the map. See id, see also Exh. 29, p. 3. The maps provided by Haeg were never used at trial. See Exh. 29, p. 3.

V. MISSOURI V. FRY AND LAFLER V. COOPER ARE NOT APPLICABLE TO HAEG'S PCR

This Court instructed the parties to address the cases of Missouri v. Fry, 2012 WL 932020 (U.S. Mo.) and Lafler v. Cooper, 2012 WL 932019 to Haeg's PCR. It is the state's contention that neither case is applicable to Haeg's PCR application.

In Fry, the defendant's counsel failed to convey an offer to Fry and the offer expired. Fry alleged that his counsel's failure to inform him of an earlier plea offer denied him of effective assistance of counsel and Fry testified that he would have taken the offer if he had known about it. See Fry, at 4. Fry is inapplicable to the present case due to the fact that Haeg was fully aware of the State's offer. See Exh. 31, pp. 11-15, 35, Exh. 23, see also Exh. 18. The bottom line is that Haeg did not want to forfeit his airplane, and as a result, he continued to refuse to accept the state's offer, despite the fact that Cole advised him of the overwhelming risk of going to trial and/or open sentencing on his pending charges. See Exh. 23.

Lafler is similarly not applicable to Haeg's case. In Lafler, the defendant filed a federal habeas corpus relief claim alleging ineffective assistance. Specifically, the defendant alleged that he would have accepted the plea offer but for the ineffective assistance of his counsel. In Haeg's case, counsel repeatedly advised Haeg to take the state's offer. See Exh. 31, pp. 11-15, 35; see also Exh. 22, p. 3-5; Exh. 23, p. 4,

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12-14, 16. Haeg made it clear throughout his dealings with Cole and Robinson that he was unwilling to take any plea deal if his plane was not going to be returned to him as part of the deal. Similarly, the state was unwilling to give him the airplane back as part of any deal. Ultimately, Haeg went to trial, and just as Cole predicted, he lost his license for a period of five years and his plane was forfeited to the state.

Haeg made the conscious decision to reject the state's offer despite knowing all of the risks. Cole's representation resulted in Haeg being offered a deal that resulted in him only being suspended for a brief period of time. In fact, Haeg would have been legally guiding two months prior to his sentencing in McGrath if he had simply accepted the deal offered. Haeg's knowing rejection of the state's offer despite the competent advice of counsel does not constitute a Lafler violation. Moreover, the record makes it very clear that Haeg would be unable to show that he would have accepted the state's offer as he was unwilling to part with his plane.

CONCLUSION

Haeg's Petition for Post-Conviction Relief should be dismissed in its entirety without leave to amend as Haeg is unable to meet his burden of establishing any of the violations alleged.

DATED at Anchorage, Alaska, this 20th day of April 2012.

MICHAEL C. GERAGHTY
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 eXpress
_____ 4/20/12
Signature Date

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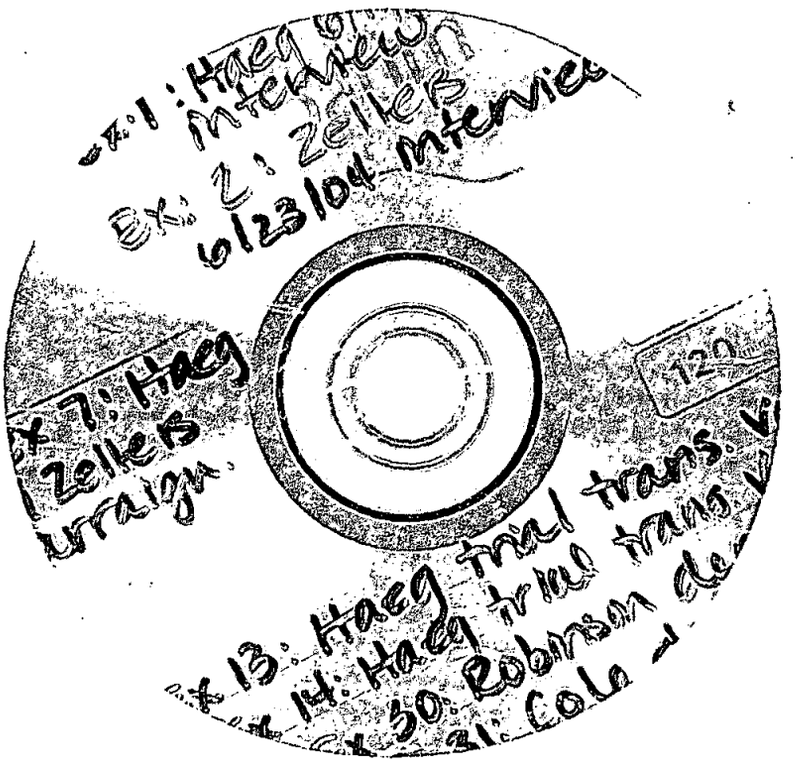
Ex. 1: Haeg interview
Ex. 2: Zellers
6/23/04 interview
Ex. 7: Haeg
Zellers
arraign
120
Ex. 13: Haeg trial trans.
Ex. 14: Haeg trial trans.
Ex. 30: Robinson
Ex. 31: Cole

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SCOT H. LEADERS, ASSISTANT ATTORNEY GENERAL

TO: Brent Cole
FROM: SCOT LEADERS
DATE: August 18, 2004
RE: Offer in David Haeg; AST Report # 04-23593

In order to resolve this case short of trial the State proposes the following resolution:

Mr. Haeg pleads to the following misdemeanor counts:

1ct

Count 1: Unlawful Acts: Same Day Airborne;
AS 8.54.720(a)(8)(A), 5 AAC 92.095(8)
Wolf taken on 3/5/04

Count 2: Unlawful Acts: Same Day Airborne;
AS 8.54.720(a)(8)(A), 5 AAC 92.095(8)
2 Wolves taken on 3/6/04

2ct

Count 3: Unlawful Acts: Same Day Airborne;
AS 8.54.720(a)(8)(A), 5 AAC 92.095(8)
Wolf taken on 3/21/04

Count 4: Unlawful Acts: Same Day Airborne;
AS 8.54.720(a)(8)(A), 5 AAC 92.095(8)
Wolf taken on 3/22/04

Count 5: Unlawful Acts: Same Day Airborne;
AS 8.54.720(a)(8)(A), 5 AAC 92.095(8)
4 Wolves taken on 3/23/04

3ct

Count 6: Unsworn Falsification;
AS 11.56.210(a)(2)
False information on sealing certificate

1ct

Count 7: Unlawful Possession;
5 AAC 92.140(a)
First 3 wolves taken 3/5-6/04

Count 8: Unlawful Possession;
5 AAC 92.140(a)
6 wolves taken 3/21-23/04

5ct

Count 9: Trap Closed Season;
5 AAC 84.275(14)
Open leg-hold trap after 3/31/04

Count 10: Trap Closed Season;
5 AAC 84.275(13)
Open snares after April 30

Count 11: Failure to Salvage;
5 AAC 92.220
Wolf left in snare as of 5/4/04

EXHIBIT 3
PAGE 1 OF 3

60/55 ← 300/2750

Mr. Haeg will receive the following agreed sentence as to each count consecutively:

~~25~~ 60 / 55 ~~20~~ = 25 6 mos $1,000

~~5~~ days in jail with all 5 days suspended;
(Composite of 55/55 days jail)
10 hours of community work service;
(Composite of 100 hours CWS)
$1000 fine with ~~$750~~ suspended;
(Composite of $11,000/$8,800 fine)
~~500~~

20/yr
$5000/2500
3/5/04 - 8/5/05

The following conditions will apply to each count concurrently:
36 month / 20 suspended

Mr. Haeg's guiding and personal hunting licenses and privileges will be suspended for a period of 1 to 3 years with the actual term of suspension under this sentence to be determined by the sentencing judge. During this period of suspension Mr. Haeg may not participate in any manner in the Big Game Guiding or Transporting industry, including acting as booking agent or maintaining a web site advertising his guiding business. Parties agree that each year's term will end effective July 1. The parties agree that when making her suspension decision the judge may consider 1.) Mr. Haeg's conduct in the above charged offenses, 2.) any uncharged conduct from March through May of this year that is relevant to the charged offenses, and 3.) Mr. Haeg's conduct in a guided moose hunt in September of 2003. The parties agree that witnesses may appear telephonically for the sentencing hearing.

7
~~10~~ years of informal probation conditioned upon ~~no jailable~~ offenses and ~~no fish~~ and wildlife, or guiding offenses,

Mr. Haeg agrees to forfeit all items seized during the investigation, including but not limited to, Piper Supercruiser N4011M, Benelli 12 gauge shotgun, Ruger .223 rifle, all traps and snares, all animal parts including hides of 9 wolves,

Mr. Haeg agrees to pay restitution, joint and severally with Tony Zellars, in the amount of $5000 for the 9 wolves taken illegally and the 1 wolf that was not salvaged from his snare set,

Mr. Haeg's trapping privileges will be suspended for ~~10~~ 7 years.

As to the airplane, I have presented your proposal to swap the airplane to be forfeited from the seized PA-12 (N4011M) to the defendant's PA-18 (N2025S) to the Alaska State Troopers. I can inform you that the State is not willing to swap the planes prior to forfeiture. However, AST is considering the propriety of reaching an agreement with Mr. Haeg prior to sentencing to swap the forfeited PA-12 for his PA-18 after the court orders forfeiture. I will advise you of the State's final decision once it has been made.

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The State is currently finalizing the complaint regarding the violations committed this spring. I anticipate filing the complaint within the next 10 days. If we are able to resolve this according to the above offer, I propose that the State file the complaint and at the telephonic arraignment the parties will request a change of plea and sentencing date convenient to the parties and the court. I anticipate that the change of plea/sentencing hearing will take most of a day.

The deadline for the offer will be the arraignment date set by the court.

If you have any questions regarding the State's proposed offer, or if you would like to discuss the matter further, please feel free to contact me at the phone number listed above.

Thank you.

Scot H. Leaders

EXHIBIT 3
PAGE 3 02824

IN THE DISTRICT COURT FOR THE STATE OF ALASKA

FOURTH JUDICIAL DISTRICT AT McGRATH

STATE OF ALASKA,

Plaintiff,

vs.

DAVID HAEG,
Dob: 01/19/66
SS#: 471-72-5023

Defendant.

Court No. 4MC-S04- Cr.

STATE OF ALASKA,

Plaintiff,

vs.

TONY ZELLARS,
Dob: 05/15/63
SS#: 327-64-8684

Defendant.

Court No. 4MC-S04- Cr.

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INFORMATION

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 a 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.

EXHIBIT 5

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Count I - AS 8.54.720(a)(8)(A)
Unlawful Acts by Guide: Same Day Airborne
David Haeg and Tony Zellars

Count II - AS 8.54.720(a)(8)(A)
Unlawful Acts by Guide: Same Day Airborne
David Haeg and Tony Zellars

Count III - AS 8.54.720(a)(8)(A)
Unlawful Acts by Guide: Same Day Airborne
David Haeg and Tony Zellars

Count IV - AS 8.54.720(a)(8)(A)
Unlawful Acts by Guide: Same Day Airborne
David Haeg and Tony Zellars

Count V – AS 8.54.720(a)(8)(A)
Unlawful Acts by Guide: Same Day Airborne
David Haeg and Tony Zellars

Count VI – 5 AAC 92.140(a)
Unlawful Possession of Game
David Haeg and Tony Zellars

Count VII – 5 AAC 92.140(a)
Unlawful Possession of Game
David Haeg and Tony Zellars

Count VIII –AS 11.56.210(a)(2)
Unsworn Falsification
David Haeg

Count IX –AS 11.56.210(a)(2)
Unsworn Falsification
Tony Zellars

Count X – 5 AAC 84.270(14)
Trap Closed Season
David Haeg

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Count XI – 5 AAC 84.270(13)
Trap Closed Season
David Haeg

Count XII – 5 AAC 92.220(a)(1)
Failure to Salvage Game
David Haeg

THE STATE OF ALASKA CHARGES:

Count I

That on or about March 5, 2004, at or near McGrath in the Fourth Judicial District, State of Alaska, David Haeg, a licensed registered guide, and Tony Zellars, a licensed assistant guide, did knowingly commit a violation of a state game regulation; to wit: did take a wolf while airborne.

All of which is a Class A Misdemeanor offense being contrary to and in violation of AS 8.54.720(a)(8)(A) and 5 AAC 92.085(8) and against the peace and dignity of the State of Alaska.

Count II

That on or about March 6, 2004, at or near McGrath in the Fourth Judicial District, State of Alaska, David Haeg, a licensed registered guide, and Tony Zellars, a licensed assistant guide, did knowingly commit a violation of a state game regulation; to wit: did take a wolf while airborne.

All of which is a Class A Misdemeanor offense being contrary to and in violation of AS 8.54.720(a)(8)(A) and 5 AAC 92.085(8) and against the peace and dignity of the State of Alaska.

Count III

That on or about March 21, 2004, at or near McGrath in the Fourth Judicial District, State of Alaska, David Haeg, a licensed registered guide, and Tony

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Zellars, a licensed assistant guide, did knowingly commit a violation of a state game regulation; to wit: did take a wolf while airborne.

All of which is a Class A Misdemeanor offense being contrary to and in violation of AS 8.54.720(a)(8)(A) and 5 AAC 92.085(8) and against the peace and dignity of the State of Alaska.

Count IV

That on or about March 22, 2004, at or near McGrath in the Fourth Judicial District, State of Alaska, David Haeg, a licensed registered guide, and Tony Zellars, a licensed assistant guide, did knowingly commit a violation of a state game regulation; to wit: did take a wolf while airborne.

All of which is a Class A Misdemeanor offense being contrary to and in violation of AS 8.54.720(a)(8)(A) and 5 AAC 92.085(8) and against the peace and dignity of the State of Alaska.

Count V

That on or about March 23, 2004, at or near McGrath in the Fourth Judicial District, State of Alaska, David Haeg, a licensed registered guide, and Tony Zellars, a licensed assistant guide, did knowingly commit a violation of a state game regulation; to wit: did take a wolf while airborne.

All of which is a Class A Misdemeanor offense being contrary to and in violation of AS 8.54.720(a)(8)(A) and 5 AAC 92.085(8) and against the peace and dignity of the State of Alaska.

Count VI

That on or about March 5, 2004 through March 6, 2004, at or near McGrath in the Fourth Judicial District, State of Alaska, David Haeg and Tony Zellars knowingly possessed wolf hides which they knew or should have known were taken in violation state game laws.

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All of which is a Class A Misdemeanor offense being contrary to and in violation of 5 AAC 92.140(a) and against the peace and dignity of the State of Alaska.

Count VII

That on or about March 21, 2004 through March 23, 2004, at or near McGrath in the Fourth Judicial District, State of Alaska, David Haeg and Tony Zellars knowingly possessed wolf hides which they knew or should have known were taken in violation state game laws.

All of which is a Class A Misdemeanor offense being contrary to and in violation of 5 AAC 92.140(a) and against the peace and dignity of the State of Alaska.

Count VIII

That on or about March 21, 2004, at or near McGrath in the Fourth Judicial District, State of Alaska, David Haeg, with the intent to mislead a public servant in the course of performance of a duty, did submit a false written statement which the person does not believe to be true on a form bearing notice, authorized by law, that false statements made in it are punishable; to wit: did make a false statement on an Alaska Department of Fish and Game Furbearer Sealing Certificate.

All of which is a Class A Misdemeanor offense being contrary to and in violation of AS 11.56.210(a)(2) and against the peace and dignity of the State of Alaska.

Count IX

That on or about March 26, 2004, at or near McGrath in the Fourth Judicial District, State of Alaska, Tony Zellars, with the intent to mislead a public servant in the course of performance of a duty, did submit a false written statement

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which the person does not believe to be true on a form bearing notice, authorized by law, that false statements made in it are punishable; to wit: did make a false statement on an Alaska Department of Fish and Game Furbearer Sealing Certificate.

All of which is a Class A Misdemeanor offense being contrary to and in violation of AS 11.56.210(a)(2) and against the peace and dignity of the State of Alaska.

Count X

That on or about April 1, 2004 through April 2, 2004, at or near McGrath in the Fourth Judicial District, State of Alaska, David Haeg, did negligently trap for wolverines with leg hold traps when trapping season for wolverines was closed.

All of which is a Class A Misdemeanor offense being contrary to and in violation of 5 AAC 84.270(14) and against the peace and dignity of the State of Alaska.

Count XI

That on or about May 1, 2004 through May 4, 2004, at or near McGrath in the Fourth Judicial District, State of Alaska, David Haeg, did negligently trap for wolves with snares when trapping season for wolves was closed.

All of which is a Class A Misdemeanor offense being contrary to and in violation of 5 AAC 84.270(13) and against the peace and dignity of the State of Alaska.

Count XII

That on or about May 1, 2004 through May 4, 2004, at or near McGrath in the Fourth Judicial District, State of Alaska, David Haeg, did negligently fail to salvage the hide of a wolf taken in a snare he had set.

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All of which is a Class A Misdemeanor offense being contrary to and in violation of 5 AAC 92.220(a)(1) and against the peace and dignity of the State of Alaska.

This information is based upon the investigation of Alaska State Trooper Brett Gibbens as compiled in report # 0423593 which indicates the following:

On 3/6/04, Gibbens observed an airplane named "Bat Cub" following a fresh wolf track just outside of the legally permitted hunt on the Windy Fork of the Big River.

On 3/9/04, Gibbens was informed by Toby Boudreau of the Alaska Department of Fish and Game that David Haeg had reported that he had killed three wolves on the Big River on 3/5/04. Gibbens was given the GPS coordinates which had been reported by Haeg.

On 3/11/04, Gibbens flew to the coordinates given, and found wolf tracks, but no kill site locations in the snow covered ground.

On 3/21/04, Gibbens met David Haeg and Tony Zellers while they were in McGrath to seal the three wolves that they had reportedly taken on the fifth of March. During this contact Gibbens noticed that the "Bat Cub" that Haeg was flying was equipped with Aero 300 ski's with a center skeg, and an over sized tail wheel with no ski.

On 3/26/04, while on patrol of the upper Swift River, Gibbens observed a set of airplane ski tracks next to some wolf tracks that seemed consistent with a wolf hunter checking the direction of travel of a pack of wolves. Gibbens was out of fuel and day light, so he returned to McGrath for the night.

On 3/27/04, Gibbens returned to the upper Swift River and followed the

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same wolf tracks, which he believed the other airplane had followed. He soon came to a spot where the wolf pack appeared to have killed an adult moose. Gibbens could see from the air that an airplane had landed at this spot, and that someone appeared to have set traps and or snares at the spot. This was apparent to Gibbens because there were human foot tracks in the snow and there was a live wolverine in a snare near the moose kill.

As Gibbens flew upstream from the location of the moose kill, he immediately located a set of running wolf tracks in the snow which ended in a bloody spot with airplane ski tracks at the same location. This evidence was consistent with a site where a wolf had been shot-gunned from the air. Gibbens followed the remaining wolf tracks upstream and soon found three more similar sites in the snow as well as an additional site where a ski plane had landed and taken off multiple times.

Gibbens landed and snowshoed in to one of the sites and found evidence confirming what he had seen from the air. Running wolf tracks ended abruptly with blood and wolf hair in the track, and there were airplane ski tracks and human foot tracks where someone had loaded the wolf into the airplane and taken off again. Blood and hair samples were collected, and Gibbens returned to McGrath for better equipment and some help.

On 3/28/04, Gibbens returned to the area, where he met up with Trooper Dobson who had flown in from Bethel, and Trooper Roe who had flown in from Fairbanks in a State Trooper helicopter. During the day, the troopers confirmed that the four kill sites, which Gibbens had observed the day before, were sites where wolves were killed from the air with guns. Shot gun pellets were recovered from three of the sites, and "WOLF" brand .223 brass was found at the remaining site. (Later this .223 brass was conclusively matched at the

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Department of Public Safety Crime Lab as being fired from the Ruger mini-14 seized from the Haeg residence.) Shot shell wadding was found at two of the sites. The shotgun pellets recovered were size 00 and #4 buckshot. All four wolves appeared to have been hauled away whole, as there were no carcasses located at the sites. The airplane tracks at all of the landing sites had large ski 's with center skegs, and an over sized tail wheel. These tracks appeared consistent with the ski's and tail wheel, which Gibbens had observed on David Haeg's airplane when he was in McGrath. There were no catch circles (where trapped or snared animals tear up the ground) or other indications that any of these wolves had been trapped.

On 3/29/04, Gibbens obtained a search warrant for Trophy Lake Lodge, which is owned and operated by David Haeg. During the execution of the search warrant, troopers located several Ruger mini-14 magazines loaded with "WOLF" brand .223 ammunition. Also located were several wolf carcasses and parts of wolf carcasses, a buck shot pellet, and blood and hair in many locations outside the lodge. Haeg was not present at the time of the search. Gibbens saw airplane tracks in the snow on the lake, which appeared consistent with tracks seen at the wolf kill sites.

On 4/1/04, David Haeg's home and garage were searched pursuant to search warrant 4MC-04-002SW. During this search, many items were discovered, some of which were a Binnell twelve guage shotgun, a large number of buck shot shells for the twelve guage, a Ruger mini-14 rifle, and cartridge magazines for the mini-14 loaded with "WOLF" brand .223 ammunition. Blood and hair samples were also taken near the garage, and a spent "WOLF" brand .223 casing was found in the snow between the "Bat Cub" and the garage. David Haeg had a receipt in his possession for eleven wolf

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skulls which he had dropped off at a local taxidermy shop.

Also on 4/1/04, the "Bat Cub", N4011M was searched and seized pursuant to search warrant 4MC-04-003SW. During the initial search of the airplane, blood and hair were found inside the airplane, and the skis and over sized tail wheel appeared consistent with the tracks from the kill sites.

On 4/2/04, Troopers Dobson and Gibbens returned to the area of the moose kill site near the location where the wolves had been shot-gunned on the Swift River. As Gibbens flew over the site in his State issued Super Cub, he saw that there were now two wolverines and one wolf caught in snares at the site near the moose. The season for wolverines had closed on March 31st, and the season for all leg hold trapping had closed that same day. Wolf snaring season remained open through April 30th. Upon landing and walking into the site, Gibbens saw that there were in excess of three dozen snares set on wolf trails near the dead moose, and also some MB-750 leg hold traps. Six of these traps were still set and operational, and were seized as evidence.

The two wolverines were caught in snares, and were seized as evidence. The wolf was left in the snare as it was still a legal animal. The remaining set snares were left alone since they were still legal at this point. The airplane tracks at this site appeared consistent with the tracks at the wolf kill sites and Trophy Lake lodge.

The troopers next went back to Trophy Lake to see if the wolverine traps near the lodge had been pulled, and to see if anyone had removed a wolverine that Gibbens saw there in a trap several days prior. At the lake troopers found that someone had removed the wolverine and snapped shut the traps near the lodge. While checking these trap sites, we found two and a half more wolf carcasses which were seized as evidence. The carcasses were being used for

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wolverine bait, and appeared to have pellet trauma in the rear ends.

On 4/2/04, Sgt. Waldron and Inv. Thompson executed search warrant 4MC-04-004SW, during which nine wolf hides were seized from Alpha Fur Dressers in Anchorage. The wolf hides had been dropped off by Tony Zellers, in the name of Dave Haeg.

On 4/3/04, Trooper Mountain seized a bag containing eleven wolf skulls from Kenny Jones taxidermy shop pursuant to search warrant 4KN-04-81SW. The skulls had been dropped off by David Haeg.

Also on 4/3/04, Troopers Dobson and Gibbens conducted necropsies in McGrath on the six wolf carcasses, which had been seized near Trophy Lake Lodge. During the necropsies, the troopers located 00 and #4 buck shot pellets in five of the six carcasses, and found an empty shot gun casing in the stomach of one of the wolves. This empty shotgun casing was later matched at the Department of Public safety Crime Lab as being extracted from the Binelli shot gun seized from the Haeg residence.

On 5/2/04, while on patrol in his State issued Super Cub on the Swift River, Gibbens went to the location of the moose kill trap site to see if the snares had been pulled. Upon arriving at the scene, Gibbens saw a wolf caught in a snare, which appeared to be freshly caught. He also observed several other torn up areas consistent with animals being caught in traps or snares. There was no longer any snow on the ground, and there was no suitable landing site.

On 5/4/04, Gibbens returned to the site with Trooper Roe in a helicopter. On the ground at the scene, Gibbens found the wolf caught in the snare, which was still salvageable, but was beginning to decompose. Gibbens skinned the wolf and collected it as evidence since the wolf snaring season had closed on April 30th. Also at the site, Gibbens located catch circles where three different

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moose had been caught, one of which broke the snare and freed itself, and two which appeared to have been caught for a prolonged period of time and eventually tore down the trees holding the snares, and had escaped the area dragging the snare and part of a tree still attached to them. There was also another wolf caught in a snare, which had been consumed by other wolves except for the head and neck. Gibbens could also see where someone had removed a wolverine and a coupe of other wolves, which had been caught at the site after he was there on April 2nd. Gibbens was able to locate nineteen snares still actively set at the site with the loops still open.

Upon checking wolf sealing records for David Haeg and Tony Zellers, Gibbens was able to locate two sealing certificates. On sealing certificate #E009883, there are three gray wolves sealed which were reportedly harvested near lone mountain on the Big River within the legally permitted aerial wolf hunting area. The wolves were sealed in McGrath on 3/21/04, with the certificate signed by David S. Haeg. The investigation shows that these wolves were not taken at the location reported by Haeg.

On sealing certificate #E039753 there are six gray wolves sealed in Anchorage on 3/26/04 which were reportedly killed in Game Management Unit 16B on the Chuitna and Chakachatna Rivers by Tony Zellers. The wolves were reportedly taken by ground shooting with a snow machine. The certificate is signed by Tony R. Zellers. The investigation shows that these wolves were not taken by Zellars at the reported location nor by ground shooting from a snowmachine.

David S. Haeg was interviewed in Anchorage on 6/11/04, and Tony R. Zellers was interviewed in Anchorage on 6/23/04. During the interviews, the timelines and events given were almost exactly identical, and a summary of the

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statements of the two men follows:

The two men applied for and were issued a permit to hunt wolves with the use of an airplane in a specific area near McGrath. Zellers bought a new Binelli twelve guage shotgun, and a large amount of several kinds of buckshot ammunition.

On 3/5/04, the two men flew in N4011M (Bat Cub) to McGrath where they were issued permits at the Fish and game office, during which they were given maps and written descriptions of the legal hunting area. After leaving McGrath, the two flew upstream along the Big River. Several wolves were located about one or two miles outside the hunt area, and they shot one gray wolf, with Zellars doing the shooting with the shotgun from the air while Haeg was flying the plane. The wolf was hauled back to trophy Lake Lodge whole and was skinned that night.

On 3/6/04, they flew to the Big River where they had shot the wolf the day before. They could not locate the remaining wolves, so they proceeded upstream on the Big River (further outside the legal area). Twenty-four miles upstream from the hunt area boundary on the Big River, they spotted two gray wolves on a ridge near a moose kill. Both wolves were shot from the air with a shotgun by Zellars with Haeg again flying the plane. One of the wolves then had to be shot from the ground with the .223 by Zellars. The two wolves were hauled back to the lodge, and were skinned that night.

On 3/6/04, Haeg called on his satellite phone and reported to McGrath Fish and Game that he and Zellars had harvested three wolves within the permitted hunt area on the Big river, at which time he gave false coordinates for the kill sites.

After calling in the report, Haeg and Zellars returned to Soldotna, taking

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the three wolf hides with them. On 3/15/04, they received a call from Fish and Game in McGrath telling them that the three hides had to be sealed in McGrath.

On 3/20/04, Haeg and Zellars flew from Soldotna to Trophy Lake Lodge, where they spent the night. They had brought the three wolf hides back with them to take to McGrath for sealing.

On the morning of 3/21/04, Haeg and Zellars decided to fly South (further from the legal area) to the upper Stony River to look for wolves and check out local moose populations. Several wolves were spotted on the Stony River, and a gray male was shot from the air with the shotgun. Zellars did the shooting from the air while Haeg flew. One of the wolves was wounded and Zellars shot the wounded wolf again from the ground with the .223. Multiple shots were taken at the other wolves, but none were killed. The dead wolf was taken back to the lodge where it was dropped off whole.

During their interviews, Haeg and Zellars pointed out the location of the kill on a map. The location described as the kill location for this wolf was more than eighty miles from the nearest border of the legal hunt area.

Haeg and Zellars then flew to McGrath with the three wolf hides from earlier in the month. Upon arrival in McGrath, the two men met with Biologist Toby Boudreau, to have the wolves sealed. Haeg provided the information for the sealing of the wolves, knowing that it was false at the time he signed the form. He had claimed that the wolves had been shot inside the permit area because he wanted to be known as a successful participant in the aerial wolf hunt.

On 3/22/04, Haeg and Zellars flew along the Swift River to check on moose numbers in the local area. They still had the shotgun and rifle in the plane. They found a dead moose, which had been recently killed by wolves.

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They spotted two different wolves near the moose kill. The second wolf they saw was a large gray male, and was shot from the air by Zellars with the shotgun while Haeg was flying the plane. The wolf was hauled back to the lodge, and the two men gathered traps and snares from the lodge, and two other sites in the field where traps and snares were being stored. They returned to the moose kill site and set in excess of forty wolf snares, and some traps. Each man set about half of the snares, and Haeg set the leg hold traps. There were no diagrams made of where the snares and traps were set, and neither man wrote down exactly how many snares had been set.

On 3/23/04, Haeg and Zellars decided to fly back to the Swift River to see if any wolves had been caught in the traps or snares. After finding no animals at the set, the two men began to fly upstream along the Swift River when they spotted, shot and killed four wolves running on the river. They also located more wolves scattered in the trees. Four gray wolves were shot from the air, with Zellars doing all of the shooting, while Haeg flew the plane. Multiple shots were taken at other wolves in the pack, without success. All wolves were hauled from the field whole and skinned at the lodge later that day.

The area where all five of the wolves were killed on the Swift River is fifty miles from the nearest boundary of the legal hunt area, and separated by major terrain features.

On 3/24/04, Haeg and Zellars flew to Soldotna with all nine wolf hides. They had a discussion about having Zellars get the six new wolves sealed in his name, and giving a false location so that they would not draw extra attention to the Swift River area. Zellars took all nine wolf hides to Anchorage, where on 3/26/04, he had the six new wolves sealed at the Fish and Game office. Zellars knew that the information he provided during sealing was false at the time he

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signed the certificate. After getting the wolf hides sealed, he took all nine to Alpha Fur Dressers to have them tanned.

During their interviews, both Haeg and Zellars admitted that they knew that the wolves they shot from the airplane were outside the permit area when they were shot.

Both Haeg and Zellars stated that they did not know that the leg hold traps had to be pulled before March 31st, and that they never went back to the trap and snare set. Haeg stated thatTony Lee had pulled some of the animals from the set during April, and he thought that Lee was going to pull all of the traps and snares. When Gibbens asked Haeg if he thought that the snares which were left out were his responsibility, he said that he did not think so, since he thought that Tony Lee was going to take care of them. Gibbens asked him if he told Tony Lee exactly how many snares were at the site, and he said that he did not know.

DATED this 4th day of November, 2004 at Anchorage, Alaska.

GREGG D. RENKES
ATTORNEY GENERAL

by: Scot H. Leaders
Scot H. Leaders
Assistant Attorney General
Alaska Bar No. 9711067

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I certify that on this date a copy of the foregoing was
X mailed
hand delivered
faxed
to the following attorney/party of record: hand delivered - Brent Cole & McGrath
mailed to Kevin FitzGerald
Sherry Gowa 11-4-04
Signature Date

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From: Scot Leaders
To: Brett S Gibbens; burke_waldron@dps.state.ak.us; Gary Folger; Randal N Hahn
Date: 9/1/2004 4:19:25 PM
Subject: David Haeg

Just wanted to update you on discussions regarding Haeg. Brent Cole says his client has inquired if we would be agreeable to the defendant just pleading to ten counts with completely open sentencing. (Brent says he is not sure that he would advise his client to do this, but he is inquiring nonetheless). I would like any thoughts that you guys might have on letting the judge have complete discretion as to the sentence.

The plan would still be to have the defendant convicted and sentenced in the wolf case and the moose case evidence would be presented at sentencing for the court to consider but no charges would be filed regarding the moose.

I find this to be an interesting proposal. On the one hand it would allow us to argue for a more severe sentence than waht we have agreed is minimally necessary to resolve the case. We would have the opportunity to get a longer guide license revocation out of the case, and maybe even greater fines and jail time. In that sense we can seek a sentence more consistent with other same day airborne cases. Even though we recognize that this is not a typical same day airborne case, we would avoid having to defend this agreement against other cases in the future where we ask for a sentence that would make the defendant ineligible to guide for 5 years. At a minimum Haeg would lose the guarantee that he doesn't lose his guide license for 5 years by having his sentence go over $1000 or 5 days in jail per count.

On the other hand, he may not lose his guide license at all and maybe the court even lets him keep his plane.

There are several issues, such as who the sentencing judge would be, that would need to be resolved before I make an ultimate decision, but I wanted to advise you all of the possibility and give you the chance to provide any thoughts you might have.

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IN THE DISTRICT COURT FOR THE STATE OF ALASKA

FOURTH JUDICIAL DISTRICT AT McGRATH

STATE OF ALASKA,

Plaintiff,

vs.

DAVID HAEG,
Dob: 01/19/66
SS#: 471-72-5023

Defendant.

Court No. 4MC-S04- 024 Cr.

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STATE OF ALASKA,

Plaintiff,

vs.

TONY ZELLARS,
Dob: 05/15/63
SS#: 327-64-8684

Defendant.

Court No. 4MC-S04- 025 Cr.

AMENDED INFORMATION

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 a 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.

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Count I - AS 8.54.720(a)(15)
Unlawful Acts by Guide: Same Day Airborne
David Haeg and Tony Zellars

Count II - AS 8.54.720(a)(15)
Unlawful Acts by Guide: Same Day Airborne
David Haeg and Tony Zellars

Count III - AS 8.54.720(a)(15)
Unlawful Acts by Guide: Same Day Airborne
David Haeg and Tony Zellars

Count IV - AS 8.54.720(a)(15)
Unlawful Acts by Guide: Same Day Airborne
David Haeg and Tony Zellars

Count V – AS 8.54.720(a)(15)
Unlawful Acts by Guide: Same Day Airborne
David Haeg and Tony Zellars

Count VI – 5 AAC 92.140(a)
Unlawful Possession of Game
David Haeg and Tony Zellars

Count VII – 5 AAC 92.140(a)
Unlawful Possession of Game
David Haeg and Tony Zellars

Count VIII –AS 11.56.210(a)(2)
Unsworn Falsification
David Haeg

Count IX –AS 11.56.210(a)(2)
Unsworn Falsification
Tony Zellars

Count X – 5 AAC 84.270(14)
Trap Closed Season
David Haeg

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Count XI – 5 AAC 84.270(13)
Trap Closed Season
David Haeg

Count XII – 5 AAC 92.220(a)(1)
Failure to Salvage Game
David Haeg

THE STATE OF ALASKA CHARGES:

Count I

That on or about March 5, 2004, at or near McGrath in the Fourth Judicial District, State of Alaska, David Haeg, a licensed registered guide, and Tony Zellars, a licensed assistant guide, did knowingly violate a state game regulation prohibiting same day airborne; to wit: did take a wolf while airborne.

All of which is a Class A Misdemeanor offense being contrary to and in violation of AS 8.54.720(a)(8)(A) and 5 AAC 92.085(8) and against the peace and dignity of the State of Alaska.

Count II

That on or about March 6, 2004, at or near McGrath in the Fourth Judicial District, State of Alaska, David Haeg, a licensed registered guide, and Tony Zellars, a licensed assistant guide, did knowingly violate a state game regulation prohibiting same day airborne; to wit: did take a wolf while airborne.

All of which is a Class A Misdemeanor offense being contrary to and in violation of AS 8.54.720(a)(8)(A) and 5 AAC 92.085(8) and against the peace and dignity of the State of Alaska.

Count III

That on or about March 21, 2004, at or near McGrath in the Fourth Judicial District, State of Alaska, David Haeg, a licensed registered guide, and Tony

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Zellars, a licensed assistant guide, did knowingly violate a state game regulation prohibiting same day airborne; to wit: did take a wolf while airborne.

All of which is a Class A Misdemeanor offense being contrary to and in violation of AS 8.54.720(a)(8)(A) and 5 AAC 92.085(8) and against the peace and dignity of the State of Alaska.

Count IV

That on or about March 22, 2004, at or near McGrath in the Fourth Judicial District, State of Alaska, David Haeg, a licensed registered guide, and Tony Zellars, a licensed assistant guide, did knowingly violate a state game regulation prohibiting same day airborne; to wit: did take a wolf while airborne.

All of which is a Class A Misdemeanor offense being contrary to and in violation of AS 8.54.720(a)(8)(A) and 5 AAC 92.085(8) and against the peace and dignity of the State of Alaska.

Count V

That on or about March 23, 2004, at or near McGrath in the Fourth Judicial District, State of Alaska, David Haeg, a licensed registered guide, and Tony Zellars, a licensed assistant guide, did knowingly violate a state game regulation prohibiting same day airborne; to wit: did take a wolf while airborne.

All of which is a Class A Misdemeanor offense being contrary to and in violation of AS 8.54.720(a)(8)(A) and 5 AAC 92.085(8) and against the peace and dignity of the State of Alaska.

Count VI

That on or about March 5, 2004 through March 6, 2004, at or near McGrath in the Fourth Judicial District, State of Alaska, David Haeg and Tony Zellars knowingly possessed wolf hides which they knew or should have known were taken in violation state game laws.

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All of which is a Class A Misdemeanor offense being contrary to and in violation of 5 AAC 92.140(a) and against the peace and dignity of the State of Alaska.

Count VII

That on or about March 21, 2004 through March 23, 2004, at or near McGrath in the Fourth Judicial District, State of Alaska, David Haeg and Tony Zellars knowingly possessed wolf hides which they knew or should have known were taken in violation state game laws.

All of which is a Class A Misdemeanor offense being contrary to and in violation of 5 AAC 92.140(a) and against the peace and dignity of the State of Alaska.

Count VIII

That on or about March 21, 2004, at or near McGrath in the Fourth Judicial District, State of Alaska, David Haeg, with the intent to mislead a public servant in the course of performance of a duty, did submit a false written statement which the person does not believe to be true on a form bearing notice, authorized by law, that false statements made in it are punishable; to wit: did make a false statement on an Alaska Department of Fish and Game Furbearer Sealing Certificate.

All of which is a Class A Misdemeanor offense being contrary to and in violation of AS 11.56.210(a)(2) and against the peace and dignity of the State of Alaska.

Count IX

That on or about March 26, 2004, at or near McGrath in the Fourth Judicial District, State of Alaska, Tony Zellars, with the intent to mislead a public servant in the course of performance of a duty, did submit a false written statement

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which the person does not believe to be true on a form bearing notice, authorized by law, that false statements made in it are punishable; to wit: did make a false statement on an Alaska Department of Fish and Game Furbearer Sealing Certificate.

All of which is a Class A Misdemeanor offense being contrary to and in violation of AS 11.56.210(a)(2) and against the peace and dignity of the State of Alaska.

Count X

That on or about April 1, 2004 through April 2, 2004, at or near McGrath in the Fourth Judicial District, State of Alaska, David Haeg, did negligently trap for wolverines with leg hold traps when trapping season for wolverines was closed.

All of which is a Class A Misdemeanor offense being contrary to and in violation of 5 AAC 84.270(14) and against the peace and dignity of the State of Alaska.

Count XI

That on or about May 1, 2004 through May 4, 2004, at or near McGrath in the Fourth Judicial District, State of Alaska, David Haeg, did negligently trap for wolves with snares when trapping season for wolves was closed.

All of which is a Class A Misdemeanor offense being contrary to and in violation of 5 AAC 84.270(13) and against the peace and dignity of the State of Alaska.

Count XII

That on or about May 1, 2004 through May 4, 2004, at or near McGrath in the Fourth Judicial District, State of Alaska, David Haeg, did negligently fail to salvage the hide of a wolf taken in a snare he had set.

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All of which is a Class A Misdemeanor offense being contrary to and in violation of 5 AAC 92.220(a)(1) and against the peace and dignity of the State of Alaska.

This information is based upon the investigation of Alaska State Trooper Brett Gibbens as compiled in report # 0423593 which indicates the following:

On 3/6/04, Gibbens observed an airplane named "Bat Cub" following a fresh wolf track just outside of the legally permitted hunt on the Windy Fork of the Big River.

On 3/9/04, Gibbens was informed by Toby Boudreau of the Alaska Department of Fish and Game that David Haeg had reported that he had killed three wolves on the Big River on 3/5/04. Gibbens was given the GPS coordinates which had been reported by Haeg.

On 3/11/04, Gibbens flew to the coordinates given, and found wolf tracks, but no kill site locations in the snow covered ground.

On 3/21/04, Gibbens met David Haeg and Tony Zellers while they were in McGrath to seal the three wolves that they had reportedly taken on the fifth of March. During this contact Gibbens noticed that the "Bat Cub" that Haeg was flying was equipped with Aero 300 ski's with a center skeg, and an over sized tail wheel with no ski.

On 3/26/04, while on patrol of the upper Swift River, Gibbens observed a set of airplane ski tracks next to some wolf tracks that seemed consistent with a wolf hunter checking the direction of travel of a pack of wolves. Gibbens was out of fuel and day light, so he returned to McGrath for the night.

On 3/27/04, Gibbens returned to the upper Swift River and followed the

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same wolf tracks, which he believed the other airplane had followed. He soon came to a spot where the wolf pack appeared to have killed an adult moose. Gibbens could see from the air that an airplane had landed at this spot, and that someone appeared to have set traps and or snares at the spot. This was apparent to Gibbens because there were human foot tracks in the snow and there was a live wolverine in a snare near the moose kill.

As Gibbens flew upstream from the location of the moose kill, he immediately located a set of running wolf tracks in the snow which ended in a bloody spot with airplane ski tracks at the same location. This evidence was consistent with a site where a wolf had been shot-gunned from the air. Gibbens followed the remaining wolf tracks upstream and soon found three more similar sites in the snow as well as an additional site where a ski plane had landed and taken off multiple times.

Gibbens landed and snowshoed in to one of the sites and found evidence confirming what he had seen from the air. Running wolf tracks ended abruptly with blood and wolf hair in the track, and there were airplane ski tracks and human foot tracks where someone had loaded the wolf into the airplane and taken off again. Blood and hair samples were collected, and Gibbens returned to McGrath for better equipment and some help.

On 3/28/04, Gibbens returned to the area, where he met up with Trooper Dobson who had flown in from Bethel, and Trooper Roe who had flown in from Fairbanks in a State Trooper helicopter. During the day, the troopers confirmed that the four kill sites, which Gibbens had observed the day before, were sites where wolves were killed from the air with guns. Shot gun pellets were recovered from three of the sites, and "WOLF" brand .223 brass was found at the remaining site. (Later this .223 brass was conclusively matched at the

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Department of Public Safety Crime Lab as being fired from the Ruger mini-14 seized from the Haeg residence.) Shot shell wadding was found at two of the sites. The shotgun pellets recovered were size 00 and #4 buckshot. All four wolves appeared to have been hauled away whole, as there were no carcasses located at the sites. The airplane tracks at all of the landing sites had large ski 's with center skegs, and an over sized tail wheel. These tracks appeared consistent with the ski's and tail wheel, which Gibbens had observed on David Haeg's airplane when he was in McGrath. There were no catch circles (where trapped or snared animals tear up the ground) or other indications that any of these wolves had been trapped.

On 3/29/04, Gibbens obtained a search warrant for Trophy Lake Lodge, which is owned and operated by David Haeg. During the execution of the search warrant, troopers located several Ruger mini-14 magazines loaded with "WOLF" brand .223 ammunition. Also located were several wolf carcasses and parts of wolf carcasses, a buck shot pellet, and blood and hair in many locations outside the lodge. Haeg was not present at the time of the search. Gibbens saw airplane tracks in the snow on the lake, which appeared consistent with tracks seen at the wolf kill sites.

On 4/1/04, David Haeg's home and garage were searched pursuant to search warrant 4MC-04-002SW. During this search, many items were discovered, some of which were a Binneli twelve guage shotgun, a large number of buck shot shells for the twelve guage, a Ruger mini-14 rifle, and cartridge magazines for the mini-14 loaded with "WOLF" brand .223 ammunition. Blood and hair samples were also taken near the garage, and a spent "WOLF" brand .223 casing was found in the snow between the "Bat Cub" and the garage. David Haeg had a receipt in his possession for eleven wolf

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skulls which he had dropped off at a local taxidermy shop.

Also on 4/1/04, the "Bat Cub", N4011M was searched and seized pursuant to search warrant 4MC-04-003SW. During the initial search of the airplane, blood and hair were found inside the airplane, and the skis and over sized tail wheel appeared consistent with the tracks from the kill sites.

On 4/2/04, Troopers Dobson and Gibbens returned to the area of the moose kill site near the location where the wolves had been shot-gunned on the Swift River. As Gibbens flew over the site in his State issued Super Cub, he saw that there were now two wolverines and one wolf caught in snares at the site near the moose. The season for wolverines had closed on March 31st, and the season for all leg hold trapping had closed that same day. Wolf snaring season remained open through April 30th. Upon landing and walking into the site, Gibbens saw that there were in excess of three dozen snares set on wolf trails near the dead moose, and also some MB-750 leg hold traps. Six of these traps were still set and operational, and were seized as evidence.

The two wolverines were caught in snares, and were seized as evidence. The wolf was left in the snare as it was still a legal animal. The remaining set snares were left alone since they were still legal at this point. The airplane tracks at this site appeared consistent with the tracks at the wolf kill sites and Trophy Lake lodge.

The troopers next went back to Trophy Lake to see if the wolverine traps near the lodge had been pulled, and to see if anyone had removed a wolverine that Gibbens saw there in a trap several days prior. At the lake troopers found that someone had removed the wolverine and snapped shut the traps near the lodge. While checking these trap sites, we found two and a half more wolf carcasses which were seized as evidence. The carcasses were being used for

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wolverine bait, and appeared to have pellet trauma in the rear ends.

On 4/2/04, Sgt. Waldron and Inv. Thompson executed search warrant 4MC-04-004SW, during which nine wolf hides were seized from Alpha Fur Dressers in Anchorage. The wolf hides had been dropped off by Tony Zellers, in the name of Dave Haeg.

On 4/3/04, Trooper Mountain seized a bag containing eleven wolf skulls from Kenny Jones taxidermy shop pursuant to search warrant 4KN-04-81SW. The skulls had been dropped off by David Haeg.

Also on 4/3/04, Troopers Dobson and Gibbens conducted necropsies in McGrath on the six wolf carcasses, which had been seized near Trophy Lake Lodge. During the necropsies, the troopers located 00 and #4 buck shot pellets in five of the six carcasses, and found an empty shot gun casing in the stomach of one of the wolves. This empty shotgun casing was later matched at the Department of Public safety Crime Lab as being extracted from the Binelli shot gun seized from the Haeg residence.

On 5/2/04, while on patrol in his State issued Super Cub on the Swift River, Gibbens went to the location of the moose kill trap site to see if the snares had been pulled. Upon arriving at the scene, Gibbens saw a wolf caught in a snare, which appeared to be freshly caught. He also observed several other torn up areas consistent with animals being caught in traps or snares. There was no longer any snow on the ground, and there was no suitable landing site.

On 5/4/04, Gibbens returned to the site with Trooper Roe in a helicopter. On the ground at the scene, Gibbens found the wolf caught in the snare, which was still salvageable, but was beginning to decompose. Gibbens skinned the wolf and collected it as evidence since the wolf snaring season had closed on April 30th. Also at the site, Gibbens located catch circles where three different

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moose had been caught, one of which broke the snare and freed itself, and two which appeared to have been caught for a prolonged period of time and eventually tore down the trees holding the snares, and had escaped the area dragging the snare and part of a tree still attached to them. There was also another wolf caught in a snare, which had been consumed by other wolves except for the head and neck. Gibbens could also see where someone had removed a wolverine and a coupe of other wolves, which had been caught at the site after he was there on April 2nd. Gibbens was able to locate nineteen snares still actively set at the site with the loops still open.

Upon checking wolf sealing records for David Haeg and Tony Zellers, Gibbens was able to locate two sealing certificates. On sealing certificate #E009883, there are three gray wolves sealed which were reportedly harvested near lone mountain on the Big River within the legally permitted aerial wolf hunting area. The wolves were sealed in McGrath on 3/21/04, with the certificate signed by David S. Haeg. The investigation shows that these wolves were not taken at the location reported by Haeg.

On sealing certificate #E039753 there are six gray wolves sealed in Anchorage on 3/26/04 which were reportedly killed in Game Management Unit 16B on the Chuitna and Chakachatna Rivers by Tony Zellers. The wolves were reportedly taken by ground shooting with a snow machine. The certificate is signed by Tony R. Zellers. The investigation shows that these wolves were not taken by Zellars at the reported location nor by ground shooting from a snowmachine.

David S. Haeg was interviewed in Anchorage on 6/11/04, and Tony R. Zellers was interviewed in Anchorage on 6/23/04. During the interviews, the timelines and events given were almost exactly identical, and a summary of the

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statements of the two men follows:

The two men applied for and were issued a permit to hunt wolves with the use of an airplane in a specific area near McGrath. Zellers bought a new Binelli twelve guage shotgun, and a large amount of several kinds of buckshot ammunition.

On 3/5/04, the two men flew in N4011M (Bat Cub) to McGrath where they were issued permits at the Fish and game office, during which they were given maps and written descriptions of the legal hunting area. After leaving McGrath, the two flew upstream along the Big River. Several wolves were located about one or two miles outside the hunt area, and they shot one gray wolf, with Zellars doing the shooting with the shotgun from the air while Haeg was flying the plane. The wolf was hauled back to trophy Lake Lodge whole and was skinned that night.

On 3/6/04, they flew to the Big River where they had shot the wolf the day before. They could not locate the remaining wolves, so they proceeded upstream on the Big River (further outside the legal area). Twenty-four miles upstream from the hunt area boundary on the Big River, they spotted two gray wolves on a ridge near a moose kill. Both wolves were shot from the air with a shotgun by Zellars with Haeg again flying the plane. One of the wolves then had to be shot from the ground with the .223 by Zellars. The two wolves were hauled back to the lodge, and were skinned that night.

On 3/6/04, Haeg called on his satellite phone and reported to McGrath Fish and Game that he and Zellars had harvested three wolves within the permitted hunt area on the Big river, at which time he gave false coordinates for the kill sites.

After calling in the report, Haeg and Zellars returned to Soldotna, taking

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the three wolf hides with them. On 3/15/04, they received a call from Fish and Game in McGrath telling them that the three hides had to be sealed in McGrath.

On 3/20/04, Haeg and Zellars flew from Soldotna to Trophy Lake Lodge, where they spent the night. They had brought the three wolf hides back with them to take to McGrath for sealing.

On the morning of 3/21/04, Haeg and Zellars decided to fly South (further from the legal area) to the upper Stony River to look for wolves and check out local moose populations. Several wolves were spotted on the Stony River, and a gray male was shot from the air with the shotgun. Zellars did the shooting from the air while Haeg flew. One of the wolves was wounded and Zellars shot the wounded wolf again from the ground with the .223. Multiple shots were taken at the other wolves, but none were killed. The dead wolf was taken back to the lodge where it was dropped off whole.

During their interviews, Haeg and Zellars pointed out the location of the kill on a map. The location described as the kill location for this wolf was more than eighty miles from the nearest border of the legal hunt area.

Haeg and Zellars then flew to McGrath with the three wolf hides from earlier in the month. Upon arrival in McGrath, the two men met with Biologist Toby Boudreau, to have the wolves sealed. Haeg provided the information for the sealing of the wolves, knowing that it was false at the time he signed the form. He had claimed that the wolves had been shot inside the permit area because he wanted to be known as a successful participant in the aerial wolf hunt.

On 3/22/04, Haeg and Zellars flew along the Swift River to check on moose numbers in the local area. They still had the shotgun and rifle in the plane. They found a dead moose, which had been recently killed by wolves.

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EXC00024

They spotted two different wolves near the moose kill. The second wolf they saw was a large gray male, and was shot from the air by Zellars with the shotgun while Haeg was flying the plane. The wolf was hauled back to the lodge, and the two men gathered traps and snares from the lodge, and two other sites in the field where traps and snares were being stored. They returned to the moose kill site and set in excess of forty wolf snares, and some traps. Each man set about half of the snares, and Haeg set the leg hold traps. There were no diagrams made of where the snares and traps were set, and neither man wrote down exactly how many snares had been set.

On 3/23/04, Haeg and Zellars decided to fly back to the Swift River to see if any wolves had been caught in the traps or snares. After finding no animals at the set, the two men began to fly upstream along the Swift River when they spotted, shot and killed four wolves running on the river. They also located more wolves scattered in the trees. Four gray wolves were shot from the air, with Zellars doing all of the shooting, while Haeg flew the plane. Multiple shots were taken at other wolves in the pack, without success. All wolves were hauled from the field whole and skinned at the lodge later that day.

The area where all five of the wolves were killed on the Swift River is fifty miles from the nearest boundary of the legal hunt area, and separated by major terrain features.

On 3/24/04, Haeg and Zellars flew to Soldotna with all nine wolf hides. They had a discussion about having Zellars get the six new wolves sealed in his name, and giving a false location so that they would not draw extra attention to the Swift River area. Zellars took all nine wolf hides to Anchorage, where on 3/26/04, he had the six new wolves sealed at the Fish and Game office. Zellars knew that the information he provided during sealing was false at the time he

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signed the certificate. After getting the wolf hides sealed, he took all nine to Alpha Fur Dressers to have them tanned.

During their interviews, both Haeg and Zellars admitted that they knew that the wolves they shot from the airplane were outside the permit area when they were shot.

Both Haeg and Zellars stated that they did not know that the leg hold traps had to be pulled before March 31st, and that they never went back to the trap and snare set. Haeg stated thatTony Lee had pulled some of the animals from the set during April, and he thought that Lee was going to pull all of the traps and snares. When Gibbens asked Haeg if he thought that the snares which were left out were his responsibility, he said that he did not think so, since he thought that Tony Lee was going to take care of them. Gibbens asked him if he told Tony Lee exactly how many snares were at the site, and he said that he did not know.

DATED this 8th day of November, 2004 at Anchorage, Alaska.

GREGG D. RENKES
ATTORNEY GENERAL

by: Scot H. Leaders
Assistant Attorney General
Alaska Bar No. 9711067

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mail
hand
faxed
to the following attorne
Signature
Date

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From: Scot Leaders
To: Randal N Hahn; steven arlow
Date: 11/9/2004 11:53:39 AM
Subject: David Haeg

This is to update you on the status of the David Haeg and Tony Zellars matter, the aerial wolf killings outside the controlled area from March of this year.

Haeg and Zellars were both arraigned this morning by the McGrath court. They have both plead no contest, but it is anticipated that the matters will resolve by Rule 11 agreement in the near future. We have finalized the deal on Haeg, but are still tweaking with the offer in Zellars case.

Haeg is currently charged with 11 counts: 5 counts of unlawful acts same day airborne under 8.54.720(a)(15), 1 count of unsworn falsification (sealing certificate), 2 counts of unlawful possession, and 3 trapping related offenses.

Under the Rule 11 agreement, Haeg will be pleading to 5 counts: 2 consolidated counts of unlawful acts same day airborne under 8.54.720(a)(8)(A), 1 count of unsworn falsification, 1 consolidated count of unlawful possession, and one trapping related offense.

On each of the 5 counts he will receive a sentence of 60 days in jail with 55 days suspended (300 days with 275 suspended total), $1000 fine with $500 suspended ($5000/2500 total), requirement to do 20 hours CWS (100 hours total).

In addition, there will be a 3 year guide and personal hunting license suspensions (retroactive to July 1, 2004) with 2 years of the suspension suspended, i.e., one year of license suspension now, and the court can suspend the guide license for an additional 2 years if there is a probation revocation.

Trapping privileges suspended for 7 years.

Court probation for 7 years, conditioned upon no wildlife or guiding violations.

Forfeiture of most of the items seized, including guns, hides and the airplane. I have agreed to return of some minor items that were seized such as the boots, etc.

Joint and several restitution in the amount of $5000 for the 9 illegally taken wolves and one wolf that was not salvaged from a snare.

The remaining 6 counts will be dismissed.

The above resolution is modified from our previous conversations in many aspects. Most of those changes are increases from the previous offer, e.g., 25 days in jail, significantly increased suspended jail, increased CWS, etc. The biggest change is in one way a decrease and in another way an increase. On the one hand we are agreeing to a one year active hunting and guide license revocation at this time. On the other hand, the defense is agreeing that the court can impose an additional two years of license suspension if there is a probation violation. In addition, the increased suspended jail time will allow us to seek a sentence that will cause the defendant to be ineligible for renewal of his guide license for up to 5 years if there is a probation revocation.

This concept of a suspended license suspension is new as far as I am aware. I have not come across this in any other case that I have reviewed. It is something I have been contemplating for a while and have discussed it with Occupational Licensing. Because I believe that loss of guide license is what impacts guides the most, Ithink this scenario gives us the greatest possible future deterrent effect on the individual, although it does lessen the immediate punitive impact.

Please fell free to contact me about this modified offer to Mr. Haeg or any other matter about this case. I

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would appreciate the opportunity to get your thoughts on the matter. I would also look forward to discussing the suspended license suspension issue in general to get your impressions on whether this will be a useful sentencing tool, or not.

Scot

CC: Brett S Gibbens; burke_waldron@dps.state.ak.us

EXHIBIT 8
PAGE 2 OF 2

LAW OFFICES OF
MARSTON & COLE, P.C.
745 WEST FOURTH AVENUE, SUITE 502
ANCHORAGE, ALASKA 99501-2136

ERIN B. MARSTON
BRENT R. COLE
COLLEEN J. MOORE

TELEPHONE (907) 277-8001
TELECOPIER (907) 277-8002

December 3, 2004

VIA FACSIMILE

Mr. Scot Leaders
Assistant Attorney General
Office of Special Prosecutions & Appeals
310 K Street. Ste. 308
Anchorage, Alaska 99501

Re: *SOA v. Haeg*
Our Client: David Haeg
Our File No.: 102.484

Dear Scot:

Mr. Haeg has informed me that he no longer wishes me to represent him in this matter. He is actively seeking out another attorney to represent him and I will advise you of who that person is when I am so informed. I told Mr. Haeg that your office has the tape containing his interview with Trooper Gibbens and you. He asked me to request that he be able to listen to the tape at your office. He also wants a copy of this tape. Can you please respond back to me on his request as soon as possible because Mr. Haeg is here in town today?

Thank you for your anticipated cooperation. If you have any further questions or concerns, please do not hesitate to contact me.

Very truly yours,

MARSTON & COLE, P.C.

Brent R. Cole

BRC/lac
cc: Client

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02360

Robinson & Associates
Lawyers
35401 Kenai Spur Highway
Soldotna, Alaska 99669

Tele: (907) 262-9164 · Fax: (907) 262-7034 · 1(800) 770-9164

January 24, 2005

Scot Leaders
Assistant Attorney General
OSPA
310 K Street, Suite 308
Anchorage, Alaska 99501

Re: State v. Haeg
Case No. 4MC-04-024 Cr.

Dear Mr. Leaders:

Please provide an audible copy of the interview David Haeg gave to the toopers and you. Also, please provide a copy of the video and stills taken of snares on the west side of the Alaska range.

Sincerely,
Robinson & Associates

Arthur S. Robinson
Attorney at Law

EXHIBIT 10
PAGE 1 OF 1

STATE OF ALASKA
DEPARTMENT OF LAW
KENAI DISTRICT ATTORNEY OFFICE
120 TRADING BAY ROAD, SUITE 200, KENAI, ALASKA 99611
PHONE (907) 283-3131 FACISIMILE (907) 283-9553
SCOT H. LEADERS, ASSISTANT DISTRICT ATTORNEY

TO: Chuck Robinson
FROM: SCOT LEADERS
DATE: February 15, 2005
RE: Offer in David Haeg; 4MC-04-024 CR.

Based on our conversation this weekend, the following is the offer the State would extend to Mr. Haeg in order to resolve his case short of trial.

Mr. Haeg will plead to the following misdemeanor counts:

Ct 1: Unlawful Acts: Same Day Airborne; 8.54.720(a)(8)(A) (Amended from 8.54.720(a)(15) and Consolidated with count 2)

Ct 3: Unlawful Acts: Same Day Airborne; 8.54.720(a)(8)(A) (Amended from 8.54.720(a)(15) and Consolidated with counts 4 & 5)

Ct 6: Unlawful Possession; 5AAC 92.140(a) (Consolidated with count 7)

Ct 8: Unsworn Falsification; 11.56.210(a)(2)

Ct 10: Trap Closed Season; 5 AAC 84.270(14)

Mr. Haeg will receive consecutive sentences as to each of the above counts of:

60 days in jail with 55 days suspended, 5 days to serve
Cumulative 300 days in jail with 275 days suspended, 25 to serve.

20 hours of community work service;
(Composite of 100 hours CWS)

$1000 fine with $750 suspended
Cumulative sentence of $5000 fine with $3750 suspended.

In addition Mr Haeg will be placed on 7 years of informal probation subject to the following conditions:

Commit no hunting, trapping or Big Game Guiding offenses.

Forfeit any interest in all items seized during the

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investigation. including but not limited to, Piper Supercruiser N4011M, Benelli 12 gauge shotgun, Ruger .223 rifle, all traps and snares, all animal parts including hides of 9 wolves,

Pay restitution in the amount of $5000 joint and several with Tony Zellers for the 9 wolves killed and the 1 wolf that was not salvaged from the snare set.

Alaskan hunting and guiding privileges suspended for 3 years with 2 years of this suspension suspended. That is, Mr. Haeg's hunting and guiding licenses and privileges are suspended for one year from the date of conviction, and two years of suspension remain for imposition by the court if Mr. Haeg violates probation. During the period of suspension Mr. Haeg may not participate in any manner in the Big Game Guiding or Transporting industry, including acting as a booking agent or maintaining a web site advertising his guiding business.

Alaskan trapping privileges suspended for 7 years.

This offer is open until February 25, 2005. The offer is revoked upon the filing of any substantive motion on behalf of Mr. Haeg in this case, or the commission of a new offense.

Thank you for your time in working to resolve this matter. If you have any questions about the above offer or the case in general, please contact me.

Sincerely,

Scot H. Leaders

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P.01

TRANSACTION REPORT

FEB-15-05 TUE 03:03 PM

DATE START	RECEIVER	TX TIME	PAGES	TYPE	NOTE	M#	DP
FEB-15 03:01 PM	2627034	59″	3	SEND	OK	062	

EXHIBIT 11

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FACSIMILE TRANSMISSION
COVER SHEET

DISTRICT ATTORNEY'S OFFICE

120 Trading Bay Road, Suite 200
Kenai, AK 99611-7716

Phone: (907) 283-3131 FAX: (907) 283-9553

Date: 2/15/05

TO: Chuck Robinson 3 pages

FROM: Scott

Order to revoke

David Haas.

SH

PLEASE INFORM US IMMEDIATELY
IF YOU DO NOT RECEIVE THIS
TRANSMISSION IN FULL
(907) 283-3131 ASK FOR: _____

EXHIBIT 11
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In order to resolve this matter prior to trial the State extends the following offer:

Mr. Haeg pleads to the following misdemeanor counts:

Count 1: Unlawful Acts: Same Day Airborne; As 8.54.720(a)(8)(A), 5 AAC 92.095(8)
Wolf taken on 3/5/04
Count 2: Unlawful Acts: Same Day Airborne; As 8.54.720(a)(8)(A), 5 AAC 92.095(8)
2 Wolves taken on 3/6/04
Count 3: Unlawful Acts: Same Day Airborne; As 8.54.720(a)(8)(A), 5 AAC 92.095(8)
Wolf taken on 3/21/04
Count 4: Unlawful Acts: Same Day Airborne; As 8.54.720(a)(8)(A), 5 AAC 92.095(8)
Wolf taken on 3/22/04
Count 5: Unlawful Acts: Same Day Airborne; As 8.54.720(a)(8)(A), 5 AAC 92.095(8)
4 Wolves taken on 3/23/04
Count 6: Unsworn Falsification; AS 11.56.210(a)(2)
False information on sealing certificate
Count 7: Unlawful Possession; 5 AAC 92.140(a)
First 3 wolves taken 3/5-6/04
Count 8: Unlawful Possession; 5 AAC 92.140(a)
6 wolves taken 3/21-23/04
Count 9: Trap Closed Season; 5 AAC 84.275(14)
Open leg-hold trap after 3/31/04
Count 10: Trap Closed Season; 5 AAC 84.275(13)
Open snares after April 30
Count 11: Failure to Salvage; 5 AAC 92.220
Wolf left in snare as of 5/4/04

Mr. Haeg will receive the following agreed sentence as to each count consecutively:

5 days in jail with all 5 days suspended	(Composite of 55/55 days jail)
10 hours of community work service	(Composite of 110 hours CWS)
$1000 fine with $800 suspended	(Composite of $11,000/$8,800 fine)

Mr. Haeg's guiding and personal hunting licenses and privileges will be suspended for a period of 1 to 3 years with the actual term of suspension under this sentence to be determined by the sentencing judge. Parties agree that each years term will end effective July 1. The parties agree that the judge may consider Mr. Haeg's conduct in the above charged offenses as well as his conduct in a guided moose hunt in October of 2003 in making its suspension decision. The parties agree that witnesses may appear telephonically for the sentencing hearing.

The following conditions will apply to each count concurrently:

10 years of informal probation conditioned upon no jailable offenses and no fish and wildlife, or guiding offenses

Mr. Haeg agrees to forfeit all items seized during the investigation, including but not limited to, Piper Supercruiser N 4011M, Benelli 12 gauge shotgun, Ruger .223 rifle, all traps and snares, all animal parts including hides of 9 wolves

Mr. Haeg agrees to pay restitution in the amount of $5000 for the 9 wolves taken illegally and the 1 wolf that was not salvaged from his snare set

Mr. Haeg's trapping privileges will be suspended for 10 years

EXHIBIT 11
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Typing, etc.
Rita E. Eddy 907-283-4001
P.O. Box 3007
Kenai, AK 99611

Invoice

Date	Invoice No.
05/16/05	05-05-42

Bill To:
AK District Attorney's Offc. 120 Trading Bay Rd., #200 Kenai, AK 99611

Ship To

P.O. Number	Terms	Rep	Ship Date	Ship Via	FOB	Project
	Due on receipt	RE	05/16/05	US Mail		

Item	Description	Quantity	Price Each	Amount
Audio Tape	Haeg, David, 4MC-S04-24 (copied from micro to standard cassette)	1	6.50	6.50

Please make payment to Rita Eddy

Total 6.50

EXHIBIT 12
PAGE 1 OF 3

Typing, etc.
Rita E. Eddy 907-283-4001
P.O. Box 3007
Kenai, AK 99611

Invoice

Date	Invoice No.
05/16/05	05-05-41

Bill To:
Robinson & Associates 35401 Kenai Spur Highway Soldotna, AK 99669

Ship To

P.O. Number	Terms	Rep	Ship Date	Ship Via	FOB	Project
	Due on receipt	RE	05/16/05	Deliver		

Item	Description	Quantity	Price Each	Amount
Audio Tape	Haeg, David, 4MC-S04-24	1	6.50	6.50
	5% Sales Tax		5.00%	0.33
Please make payment to Rita Eddy			Total	$6.83

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EXHIBIT 12
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Invoice History

Customer:Job	ROBINSON		
Invoice Date	05/16/05		
Invoice No.	05-05-41	**Invoice Total**	6.83
Memo			

Payments, deposits of payments, credits, and discounts

Type	Date	Number	Amount	Inv
Payment	05/23/05	1532	-6.83	

BEFORE THE ALASKA BAR ASSOCIATION

FEE REVIEW COMMITTEE

THIRD JUDICIAL DISTRICT

David S. Haeg,

Petitioner,

vs.

Brent R. Cole,

Respondent.

File No. 2006F007

Decision and Award

On March 29, 2004, David Haeg learned that he was the subject of a criminal investigation when a search warrant was served on a hunting lodge that he owned. It developed that the Alaska State Troopers were investigating him for taking wolves "same day airborne" outside an area where aerial wolf control activities were permitted.

Mr. Haeg hired attorney Brent Cole to represent him. He signed a written fee agreement on April 10, 2004 that included the customary stipulation that the attorney could not guarantee any particular outcome for the client. The agreement provided that Mr. Cole would bill for legal services at the rate of $200 per hour. Mr. Cole undertook the representation and sent Mr. Haeg detailed billing statements on April 21, June 1, June 29, July 26, August 30, October 7, October 29, November 8, November 30, 2004 and January 31, 2005. Mr. Cole charged a total of $13,389.00 and Mr. Haeg paid $11,329.81.

Mr. Haeg does not dispute the reasonableness of the hourly rate set by Brent Cole or the amount of time charged for legal services. Rather, 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.

Mr. Haeg has identified three specific failures: 1) Mr. Cole should have filed a motion to suppress the evidence seized pursuant to the search warrants because the affidavit submitted to the court in support of the search warrant application was perjured; 2) Mr. Cole

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gave him poor advice when he recommended that Mr. Haeg give a statement to the Alaska State Troopers without first having reached a binding plea agreement; and 3) Mr. Cole should have moved for specific performance of a plea agreement when the prosecutor unilaterally changed its terms.

Mr. Haeg did not offer evidence of the points on which the search warrant application was defective. He argued that the affidavit contained a false statement about the location of the taking of the wolves, although the taking would have been unlawful even in a correctly-identified location. We are therefore unable to reach a conclusion that the affidavit was false in whole or in part or that the misstatement was material. It follows that the panel cannot decide whether a motion to suppress should have been filed or was likely to have been granted.

Mr. Cole testified that it was his opinion, from the earliest stage of the case, that the best case strategy for Mr. Haeg was "damage control". His reasoning was that there was sufficient evidence to support a conviction on one or more counts, and a defense at trial would be unavailing. It followed that steps should be taken to get the best possible plea agreement. Mr. Cole believed that early cooperation with the authorities would lay the groundwork for a successful negotiation, and, based upon Mr. Cole's advice, Mr. Haeg did volunteer a statement about the offenses to the troopers.

The prosecutor sent Mr. Cole a proposal for a plea and sentencing agreement on August 18, 2004. In the ensuing weeks, the prosecutor and Mr. Cole negotiated adjustments in some of its terms. By October, a plea agreement had been firmed up. Central to Mr. Haeg's concerns was the suspension of his hunting guide license which, the agreement provided, would be for one to three years, the exact term to be set by the court at sentencing. All other terms of the sentence were fixed, including the forfeiture of a PA-12 aircraft. The prosecutor proposed to argue that the license suspension should be at the high end of the agreed-upon range because he had evidence that Mr. Haeg had participated in hunting or guiding violations in connection with a moose hunt the previous year; the defense had prepared evidence to refute the prosecutor's theory and anticipated as much as a day of testimony at the time of sentencing. If Mr. Haeg showed that he was not guilty of the moose violations, he would be in a better position to argue that the license suspension should be as short as one year. The entry of plea and imposition of sentence were set for November 9, 2004.

During the weeks that Mr. Cole was negotiating with the state, Mr. Haeg had second thoughts about the forfeiture of the aircraft, which he thought particularly suited to his work as a game guide. He had another plane that he could more easily give up, but the prosecutor had not agreed to allow a "swap". There had also been some discussion of Mr. Haeg's paying some amount of cash in lieu of forfeiture of the aircraft. Mr. Haeg conceived the idea that he could plead guilty to the charges and then allow the judge to decide the terms of the sentence, including jail time, fines, forfeitures, license revocation and the length and terms of probation. It was his hope to persuade the judge to return the plane to him.

Brent Cole vehemently opposed Mr. Haeg's "open sentencing" idea. He was concerned about the application of A.S. 08.54.605, which effectively requires a five-year suspension of a guide license when a guide is sentenced to more than five days or more than $1000 on a hunting violation. He thought it likely that a judge would exceed the five-day or $1000 threshold at open sentencing with the result that Mr. Haeg would lose his license for a full five years and ultimately bankrupt his lodge and guiding businesses. He also doubted that a judge would allow Mr. Haeg to keep the plane used in the commission of the offenses. However, at Mr. Haeg's insistence, Mr. Cole one day asked the prosecutor whether the prosecutor would object to Mr. Haeg's pleading guilty to the charges under discussion and "going open sentencing" (having the judge select all the terms of the sentence) and the prosecutor indicated he would have no objection.

Mr. Haeg and his witnesses appear to have believed that Mr. Haeg was proceeding with some version of an "open sentencing" option on November 9. Mr. Cole testified that he was prepared to go forward with the negotiated plea agreement on that day, which left to the judge's discretion only the length of the license suspension within a one- to three-year range.

Mr. Cole testified that, a few days before the hearing, the prosecutor advised counsel that he was filing an amended information to include a charge that carried a mandatory three-year license suspension. He notified Mr. Haeg of the change on November 8. In a recorded telephone call on January 9, 2005 [Exhibit 19, page 6], Mr. Cole recalled the prosecutor's change of heart somewhat differently. On that date he said that the prosecutor had threatened to amend the charges to include one that required a minimum three-year license suspension *unless* Mr. Haeg agreed to the forfeiture of the PA-12 aircraft. In any event, the news of a change in the terms of the plea agreement threw the defense team into disarray. Mr. Cole asked the prosecutor to reconsider and, in the evening hours of November 8, they eventually reached a new agreement that included all the terms of the plea agreement previously reached with the change that the license suspension would be retroactive to May 2005 and would end June 30, 2006. The form of the license suspension term was to be 36 months with 20 months suspended. The parties proposed to do just an arraignment on November 9 and then to seek approval of the agreement from the Division of Occupational Licensing before formally entering the plea. The new deal left nothing to the court's discretion, obviating the need for a contested evidentiary hearing on the moose case.

Mr. Cole, Mr. Haeg, and Mr. Haeg's witnesses went out to dinner together after the re-negotiated deal was made with the prosecutor to celebrate the disposition of the case. The next day, Mr. Haeg was arraigned on the charges.

Mr. Haeg, however, had apparently not given up on the idea of open sentencing. He did not consummate the plea agreement. He eventually discharged Mr. Cole and hired other counsel. With his new attorney, Mr. Haeg went to trial and was convicted. The judge suspended his guiding license for five years and forfeited the PA-12 aircraft. The judge that ultimately imposed sentence was the same judge that would have sentenced Mr. Haeg, had

he pleaded guilty pursuant to a plea agreement.

Mr. Haeg has not proved that Mr. Cole's services were valueless to him. Neither party offered expert testimony regarding the quality of Mr. Cole's efforts, but the panel can draw from the evidence two measures of the merits of Mr. Cole's services to Mr. Haeg. The first has to do with Mr.Cole's advice to Mr. Haeg that he should not leave the terms of the sentence to the discretion of Judge Murphy. The plea agreement that Mr. Cole presented to Mr. Haeg on November 8 was plainly more favorable to Mr. Haeg than "open sentencing" turned out to be, so it appears, with the benefit of hindsight, that Mr. Cole's advice that Mr. Haeg should accept a plea agreement was sound.

Mr. Haeg argues that Mr. Cole should have moved to suppress the evidence taken pursuant to the search warrants and should have moved for specific performance of an "open sentencing" agreement. But no evidence was presented that Mr. Haeg's second lawyer filed such motions. Comparison of the steps taken by another attorney, while not proving the quality of Mr. Cole's counsel, goes a way toward showing that a competent attorney would not necessarily have filed these motions. And, again, if Mr. Cole or another attorney had been successful in enforcing an agreement to "open sentencing", it is likely that Mr. Haeg would have gotten the same very severe sentence that was eventually imposed.

The panel has been presented no other evidence to support a finding that Mr. Cole's representation of Mr. Haeg was so deficient that no fee is due.

AWARD

Mr. Cole conceded at the hearing that Mr. Haeg was mistakenly charged $370 as reimbursement for a plane fare. The panel therefore finds, based on this admission, that the total fee charged Mr. Haeg should be reduced by $370.

In other respects, the panel finds in favor of the respondent, Brent Cole. Petitioner shall pay the balance of the fee, or $2689.19.

NO REFERRAL TO DISCIPLINE COUNSEL

The panel finds no basis for a referral to discipline counsel.

Nancy Shaw, Panel Chair
August 12, 2006

Robyn Johnson
August 25, 2006

Yale Metzger
August 25, 2006

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IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT KENAI

DAVID S. HAEG,

Appellant,

v.

BRENT R. COLE,

Appellee.

Case No.: 3KN-06-844 CI

MEMORANDUM DECISION AND ORDER

David S. Haeg appeals the August 25, 2006 decision of the Alaska Bar Association Fee Arbitration Panel ("panel") awarding Brent Cole $2,689.19. The Appellant alleges ten points on appeal, arguing that the award was procured by fraud, there was corruption among the arbitrators, there was partiality among the arbitrators, the arbitrators exceeded their powers, the arbitrators' decision did not address the issues the appellant presented, the arbitrators did not make a referral to discipline the appellant's counsel, the decision did not reflect the evidence, the decision did not comply with the Alaska Rules of Professional Conduct or Alaska Bar Rule 40, a large portion of the official record of the proceedings has been lost, and that the decision and award are in violation of the U.S. and Alaska Constitutions.

For the reasons set forth below, the court modifies the judgment of the panel to reflect the correct judgment of $1,689.19.

CASE HISTORY

Both parties offer their own versions of what occurred during the course of proceedings of the Appellant's criminal trial. However, the factual history of the Appellant's criminal case is a matter reserved for his criminal appeal. The only issue before this court on appeal is whether there

is a basis to vacate or modify the panel's decision. Therefore, the court only offers an abbreviated case history to the point that it is relevant to the current appeal.

The Appellant, David Haeg, retained the Appellee, Brent Cole, as his counsel on April 9, 2004 after learning that he was the subject of an investigation concerning Fish and Game violations. The Appellant signed a fee agreement with the Appellee, agreeing to pay $200.00 per hour for the Appellee's services. The Appellee sent the Appellant monthly bills and represented the Appellant through the summer and fall of 2004. Both parties offer differing versions of events of how the criminal case progressed, but it appears that the panel accepted the version presented by the Appellee. The only facts that are relevant on this appeal are that the Appellant fired the Appellee during these criminal proceedings prior to the time a plea agreement could be entered, that the Appellant proceeded to take his case to trial with a new attorney, and that the Appellant was convicted at trial. The conviction led to the judge suspending the Appellant's hunting guide license for five years and forfeiting his PA-12 aircraft.

The Appellant still had an amount left owing on his fee agreement when he fired the Appellee, which he refused to pay. The Appellee did not pursue the Appellant for this unpaid amount and appeared willing to write the losses off. The Appellant then filed grievances against the Appellee with the Bar and requested that the Appellee be referred for discipline. The Appellant subsequently filed for fee arbitration in an amount that exceeded $5,000.00. Pursuant to Bar Rules, an arbitration panel was convened. After oral argument, the panel issued a decision on August 25, 2006 that awarded the Appellee the unpaid portion of his fee agreement. This appeal followed.

STANDARD OF REVIEW

Alaska employs mandatory fee arbitration between clients and attorneys if a client commences such an action.[1] The court is to give great deference to the arbitrator's findings of fact

[1] Alaska Bar Rule 34(b).

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and law, and is "loathe to vacate an award made by an arbitrator."[2] In reviewing the award of a fee arbitration committee, the court cannot review the panel's findings of fact, even if the findings were in gross error.[3] Further, the court cannot review the decision on its merits.[4] The court can only review the decision based on the reasons set forth in AS 09.43.120 through AS 09.43.180.[5] Therefore, in reviewing this appeal, the court will only vacate the award if it finds the Appellant has proven the factors under AS 09.43.120(a) and will only modify the award if the Appellant has proven the factors under AS 09.43.130(a).

DISCUSSION

The Appellant uses his brief to argue the merits of his criminal case. However, the issue before this court is not whether the Appellant's conviction should stand. That issue is reserved solely for the Appellant's criminal appeal. The court further cannot reassess the evidence presented before the panel or the credibility of the witnesses. The court is limited to finding whether the award made by the arbitrators may be modified or vacated pursuant to AS 09.43.120 and AS 09.43.130.

The Appellant argues that the panel's decision should be vacated because the Appellee perjured himself at the panel. He also argues that the evidence he presented against the Appellee was numerous and of significant weight. He claims that the panel's acceptance of the Appellee's testimony over his evidence shows corruption and partiality on the part of the arbitrators. However, the fact that the arbitrators weighed the evidence in a manner unfavorable to the Appellant is not evidence of corruption. There is no doubt that the Appellant believes his evidence was more

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[2] Butler v. Dunlap, 931 P.2d 1036, 1038 (Alaska 1997)(*quoting* Depart. Of Pub. Safety v. Public Safety Employees, 732 P.2d 1090, 1093 (Alaska 1987)).

[3] Breeze v. Sims, 778 P.2d 215, 217-18 (Alaska 1989).

[4] A. Fred Miller v. Purvis, 921 P.2d 610, 618 (Alaska 1996).

[5] Alaska Bar Rule 40(a)(2).

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credible than that of the Appellee, but again, this court is without the authority to reassess the credibility of the witnesses or the weight of the evidence presented to the panel. Therefore, the court does not find the fact that the panel accepted the Appellee's testimony as more credible than the Appellant's evidence as an indication of corruption and will not vacate the award on this point.

The Appellant argues that the fact the panel consisted of two attorneys and one full-time court employee suggests partiality among the arbitrators for the Appellee. The court finds no merit to the Appellant's argument. Pursuant to Alaska Bar Rule 37(c), an arbitration panel consists of two attorneys and one member of the public. The fact that the panel consisted of attorneys and a court employee is not evidence of bias.

The Appellant argues that there is a clear indication of bias and corruption among the arbitrators because their decision and award does not reflect the testimony and evidence the Appellant presented before the panel. The Appellant contends that he overwhelmingly proved that the Appellee perjured himself to the panel and that the panel ignored this evidence and helped the Appellee in his case. Again, this court does not reassess the weight of the evidence or review the facts presented to the panel. The fact that the panel accepted the Appellee's version of events does not indicate bias or corruption among the arbitrators.

The Appellant further contends that the panel was corrupt and bias because it stated that the Appellant only identified three failures of the Appellee when the Appellant argued he should be excused from paying the fee. The Appellant claims that he argued numerous other issues to the panel, reiterating that the Appellee perjured himself numerous times and that the Appellee intentionally lied to the Appellant during the course of his representation. Again, the fact that the panel chose to reject the Appellant's arguments is not evidence of bias or corruption. The panel expressly stated that it could not find evidence to support the Appellant's arguments during the arbitration. While the court again acknowledges that the Appellant believes he met this burden, it is

without authority to reassess the panel's factual determination and does not find evident bias among the arbitrators in choosing to exclude some of the Appellant's arguments in its decision.

The Appellant offers other argument regarding evidence of bias and corruption among the arbitrators, but it is again repetitive of what has already been stated. Pursuant to AS 09.43.120(a), a court may only vacate the panel's award if: (1) the award was procured by fraud or other undue means; (2) there was evident partiality by an arbitrator appointed as a neutral or corruption in any of the arbitrators or misconduct prejudicing the rights of a party; (3) the arbitrators exceeded their powers; (4) the arbitrators refused to postpone the hearing upon sufficient cause being shown for postponement or refused to hear evidence material to the controversy or otherwise so conducted the hearing, contrary to the provisions of AS 09.43.050, as to prejudice substantially the rights of a party; or (5) there was no arbitration agreement and the issue was not adversely determined in proceedings under AS 09.43.020 and the party did not participate in the arbitration hearing without raising the objection. This court cannot find that the Appellant has met his burden in proving evident partiality or corruption among the arbitrators. While the court acknowledges that the Appellant believes he presented sufficient evidence to support a different award, this court cannot reassess the facts presented to the panel. The court can only look to see if there was evident partiality and corruption among the arbitrators. Upon reviewing the record, the court is unable to make this determination and finds that the panel acted within their powers when making the award. Even if the Appellant presented a magnitude of evidence to the panel that supported his claim, this would not be enough for the court to vacate the award. This court is without authority to vacate an award due to "fraud or other undue means" even if the panel made gross errors in their decision.[6] The only argument the Appellant offers repeatedly to prove his contention of fraud, evident partiality, and corruption among the arbitrators is that the panel issued a decision in favor of the

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[6] Alaska State Housing Authority v. Riley Pleas, Inc., 586 P.2d 1244, 1247 (Alaska 1978).

Appellee despite of what he claims is "overwhelming" evidence in support of his position. This is not evidence of "evident" partiality. For the court to find bias among the arbitrators on this basis would require the court to inquire into the merits of the panel's decision. As stated multiple times, this court is without authority to do so. Therefore, the court must defer to the panel and upholds the panel's decision to award the Appellee his fees.

Finally, the Appellant contends that the panel exceeded its powers by awarding the Appellee funds that he never requested. He further argues that the arbitration panel awarded the Appellee a $1,000.00 more than the Appellee was owed. The Appellant suggests that this also demonstrated corruption on the part of the arbitrators, as the Appellee had never requested these fees.

The court disagrees that the panel exceeded its power to make this award. When the Appellant pursued fee arbitration, his fee agreement with the Appellee became a proper matter for consideration. The fact that the Appellee had elected not to pursue the Appellant for the remainder of his undue balance prior to the Appellant's commencement of this action did not constitute a waiver that would prevent the panel from considering this issue. At the panel, the arbitrators were presented with the parties' fee agreement. The Appellant did not dispute that he entered into a fee agreement for $200 per hour with the Appellee. The Appellant did not dispute the time sheets presented by the Appellee that demonstrated the time spent by the Appellee working on the Appellant's case. The Appellant only challenged a charge reflecting air travel to McGrath, and the Appellee agreed that this was an improper charge. The Appellant acknowledged that he had not paid the remainder left owing on the parties' fee agreement, which reflected an amount of $2,059.19. The Appellant only challenged the quality of the Appellee's services. The panel concluded that the Appellee had effectively represented the Appellant and awarded the Appellee the amount left owing on the parties' fee agreement.

The Appellant made his fee agreement with the Appellee a proper issue for consideration when he decided to pursue fee arbitration and cannot argue waiver now. Therefore, pursuant to AS 09.43.120(a)(3), the court does not find that the panel exceeded their powers and will not vacate the award. However, pursuant to AS 09.43.130(a)(1), the court does find that the award should be modified due to an evident miscalculation on the part of the arbitrators. The panel's decision acknowledges that the Appellant had paid $11,329.81 to the Appellee for his services. The panel also acknowledges that the Appellee had charged the Appellant $13,389.00 for his services. The difference between these two amounts equal $2,059.19. The panel further credited the Appellant $370.00 for the Appellee's travel expenses. Therefore, the correct amount that should be awarded is $1,689.19. However, the court finds that this miscalculation in the panel's award was due to clerical error, and is not evidence of corruption or bias among the arbitrators.

DATED in Kenai, Alaska, this 15TH day of June, 2007.

HAROLD M. BROWN
Superior Court Judge

CERTIFICATION OF DISTRIBUTION
I certify that a copy of the foregoing was mailed/faxed to the following at their address of record: Nagy Cole
6-18-07
Date: Clerk:

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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

December 23, 2004

VIA FACSIMILE

Mr. Scot Leaders
Assistant Attorney General
Office of Special Prosecutions & Appeals
310 K Street. Ste. 308
Anchorage, Alaska 99501

Re: *SOA v. Haeg*
Our Client: David Haeg
Our File No.: 102.484

Dear Scot:

This letter is a follow-up to our recent conversations regarding Mr. Haeg's statement to law enforcement officers during the course of this investigation. As you will recall, you required that as a condition of any deal, Mr. Haeg prepare a map indicating where the various wolves were killed. My client prepared this map and I forwarded it to you when you were down in Kenai. *See Exhibit A.* My notes reflect that you and I engaged in a number of settlement discussions in April and early May 2004 where we discussed not only the parameters of my client giving a statement, but also the timing of such a meeting.

I spoke to Mr. Fitzgerald on April 28, 2004, and he inquired of me about whether or not our clients' statements could be used against them if we failed to reach a resolution on this case. I indicated to him that I did not know, but I assumed that this voluntary statement by my client was being done pursuant to our settlement discussions.

My notes and time records reflect that I spoke with you on both May 6 and May 7, 2004, in an attempt to discuss our upcoming meeting. At one of these meetings, I recall discussing this issue with. When I asked you about this issue, you indicated to me that since his statement was being given pursuant to our settlement discussions, that it could not be used against David Haeg. I have discussed this matter with Mr. Fitzgerald and he also agrees that he and I discussed this issue and he had the same understanding with regard to his client.

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Since I am no longer the attorney of record for Mr. Haeg, I am only sending this letter at the request of Mr. Robinson. Please contact him with any responses you might have to the contents of this letter. Please be advised, however, that I am prepared to sign an affidavit for the Court stating the essence of this letter, if required, on behalf of Mr. Haeg.

Thank you for your anticipated cooperation. If you have any further questions or concerns, please do not hesitate to contact me.

Very truly yours,

MARSTON & COLE, P.C.

Brent R. Cole

BRC/lac
cc: Mr. Robinson
Mr. David Haeg
Mr. Kevin Fitzgerald

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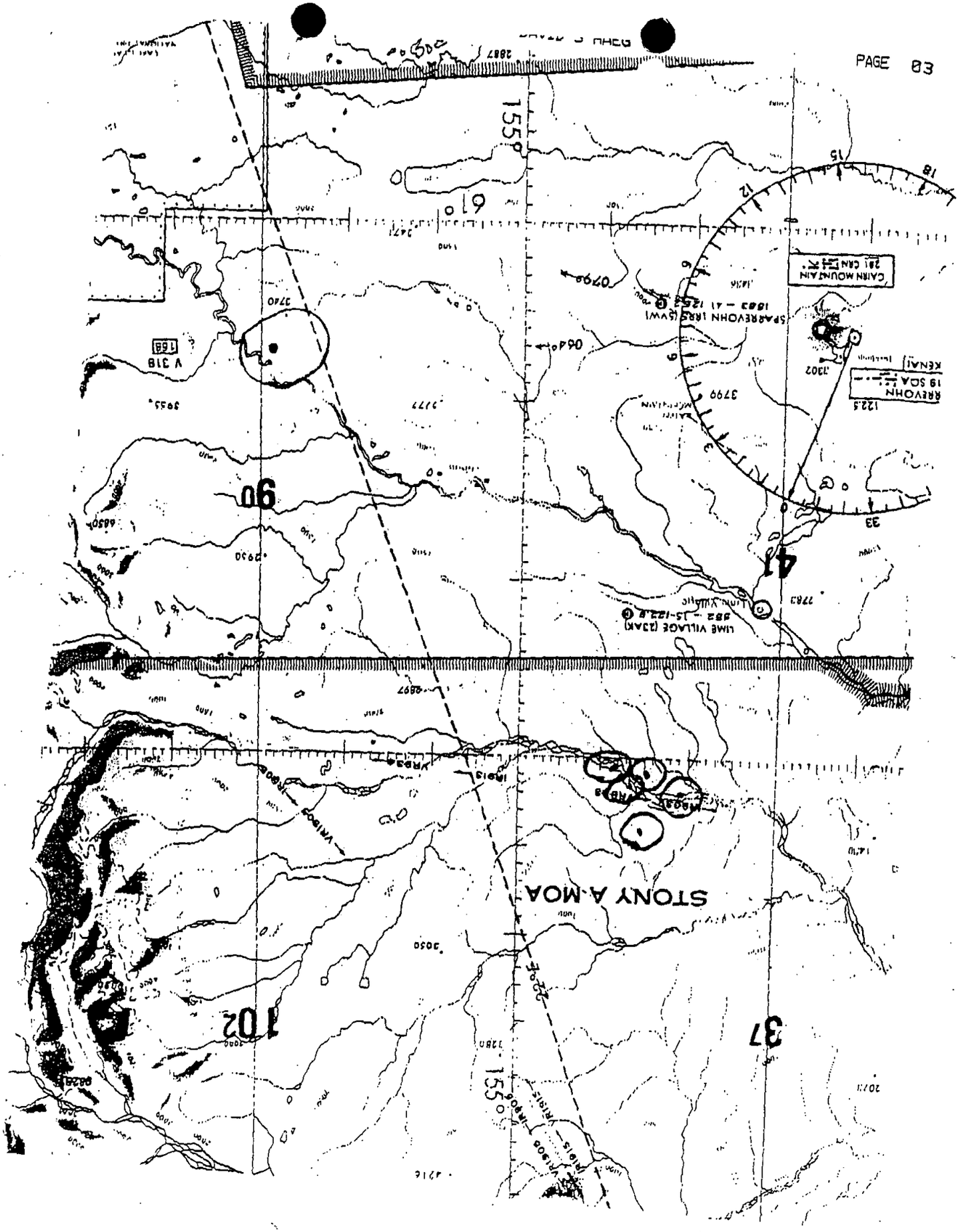

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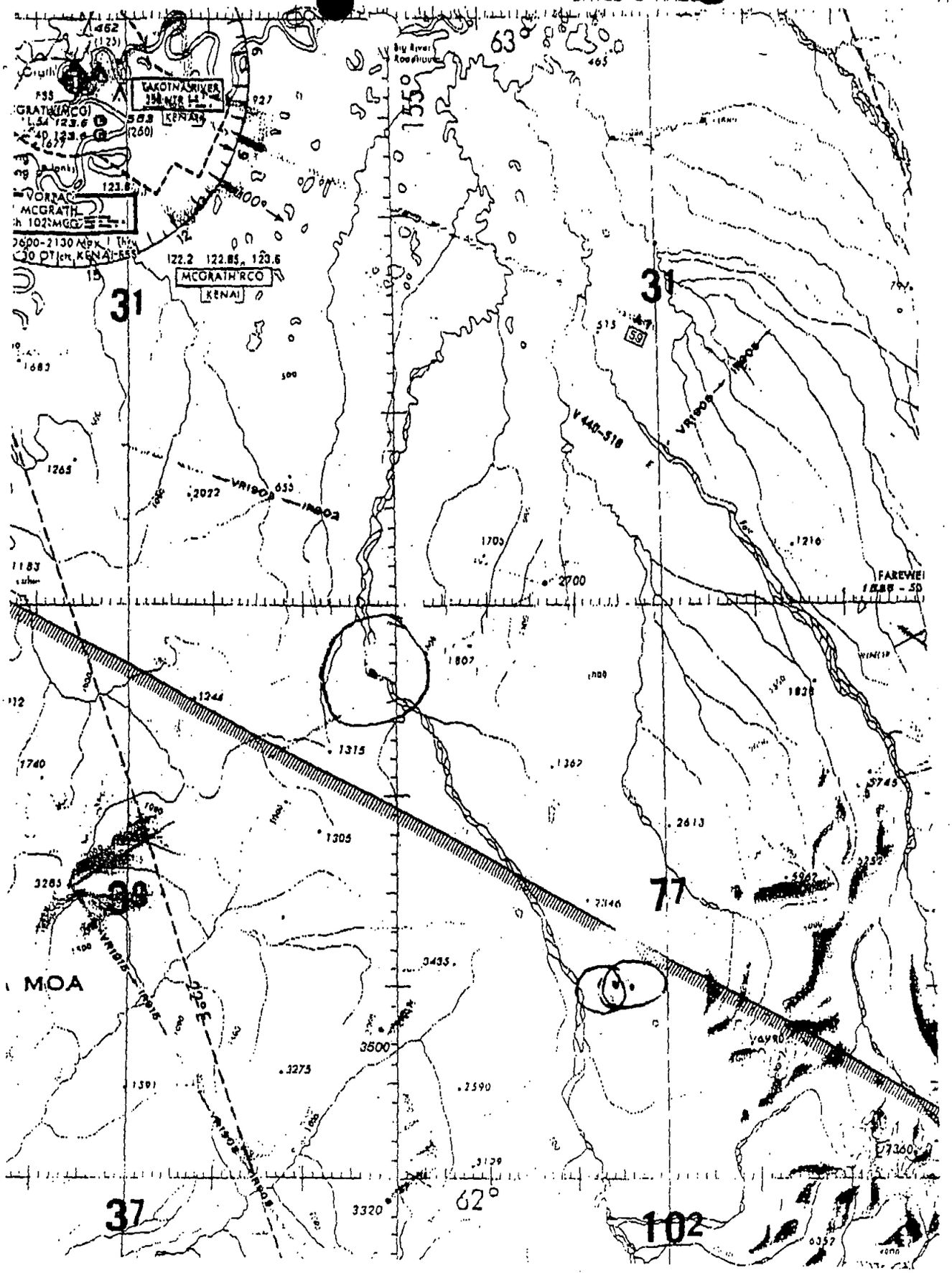

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EXHIBIT A

4/12/06

HAEG v. COLE

EXHIBIT NO.	DESCRIPTION	I.D.	OFFERED	ADMITTED/NOT
1	12/23/04 LTR w/MAP			STIPULATED
2	8/18/04 WRITTEN OFFER			STIPULATED
3	BILLING RECORDS (w/out COMMENTS)			STIPULATED (w/out HAND WRITTEN NOTE
4	TRANSCRIPT 11/9/04 ARRAIGNMENT DAVID HAEG			STIPULATED
5	INFORMATION 11/4/04			STIPULATION
6	AMENDED INFORMATION 11/8/04			STIPULATION
7	LTR 7/6/05 COLE TO HAEG			STIPULATION
8	TRANSCRIPT	D. HAEG	D. HAEG	
9	QUESTIONS FOR SENTENCING	D. HAEG	D. HAEG	ADMITTED OVER RELEVANCE OBJECTION
10	FEE AGREEMENT 4/9/04			STIPULATION
11	SEARCH WARRANT AFFIDAVIT			
				4/13/06
12.	AS 08.54.720-750	D. Haeg	D. Haeg.	STIPULATION.
13	AS 08.54.605	B. Cole	B. Cole	ADMITTED
14.	LTR 10/7/04 BY FITZGERALD	K. FITZGERALD	B. COLE	ADMITTED
	NO EXHIBITS INTRODUCED OR ADMITTED			7/11/06
				7/12/06
15.	TROOPER GIBBIN - PARTIAL RPT			STIPULATION
16.	MAPS + NOTES			STIPULATION
17.	PHONE CALL TRANSCRIPT 11/11/04			STIPULATION
18.	TRANSCRIPT 11/22/04 MEETING			STIPULATION
19.	TRANSCRIPT 1/3/05 PHONE CALL			STIPULATION
20.	PERMIT TO TAKE WOLF			STIPULATION
21.	05 AAC 92.110			STIPULATION
22.	A.S. 08.54.605-720			STIPULATION
23.	AS. 16.05.165-195			STIPULATION
24.	JORDAN v. ALASKA			STIPULATION
25.	TRANSCRIPT 4/12/06 STEPANSKY	HAEG		ADMITTED OVER OBJECTION
26.	TRANSCRIPT 1/20/06 ROBINSON	HAEG		NOT ADMITTED HEARSAY
27.	TRANSCRIPT 1/5/06 ROBINSON	HAEG		NOT ADMITTED HEARSAY
28	DAILY NEWS ARTICLE	HAEG		NOT ADMITTED
29	FITZGERALD BILLING	HAEG		ADMITTED - OVER OBJECTION
30	AFFIDAVIT OF HAEG	HAEG		NOT ADMITTED
31	BRIEF - INEFFECTIVE ASSISTANCE	HAEG		ADMITTED - OVER OBJECTION - NOT FOR FACTS

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7/12/06 CONTINUED

EXHIBIT No.	DESCRIPTION	I.D.	OFFERED	ADMITTED/NOT
32	ATTORNEY GRIEVANCE COM'N OF MD		HAEG	ADMITTED OVER OBJEC
33	ZEIGLERS DOCUMENTS		HAEG	ADMITTED OVER OBJEC
34	2/1/01 TRANSCRIPT PHONE CALL		HAEG	NOT ADMITTED
35	8/31/04 LTR FROM FITZGERALD		HAEG	ADMITTED OVER OBJECTIO
36	10/7/04 LTR FROM FITZGERALD		HAEG	ADMITTED OVER OBJEC
37	ROBINSON DOCUMENTS		HAEG	ADMITTED OVER OBJECTI
38	JACKIE HAEG'S STATEMENT		HAEG	NOT ADMITTED - HEARS
39	DAVID HAEG'S WOLF STATEMENT		HAEG	ADMITTED OVER OBJECTIO
40	ROBINSON STATEMENT		HAEG	NOT ADMITTED
41	11/1/04 LEADERS LETTER		HAEG	ADMITTED OVER OBJECTI
42	TRANSCRIPT OF TAPE YAK-05-27		HAEG	NOT ADMITTED

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1 1053

02386

LAW OFFICES OF
MARSTON & COLE, P.C.
745 WEST FOURTH AVENUE, SUITE 502
ANCHORAGE, ALASKA 99501-2136

ERIN B. MARSTON
BRENT R. COLE

TELEPHONE (907) 277-8001
TELECOPIER (907) 277-8002

March 30, 2007

VIA FACSIMILE

Louise R. Driscoll, Esq.
Assistant Bar Counsel
Alaska Bar Association
P.O. Box 100279
Anchorage, Alaska 99510-0279

Re: David Haeg/Attorney Grievance Received
ABA File No. 2006D163

Dear Ms. Driscoll:

I am writing this letter in response to your letter to me dated March 7, 2007, asking me to respond again to the grievance filed by Mr. David Haeg on or about October 6, 2005. Again, I am assuming that because Mr. Haeg has filed a bar complaint against me, that the attorney/client privilege has been waived and I am allowed to disclose previously confidential communications with my client to you in my response. I wish to incorporate in this response my prior letter to you dated March 9, 2006. Additionally, I wish to incorporate the record of the three-day fee arbitration hearing which was held this past summer. A number of these same contentions were raised by Mr. Haeg at this hearing. In the course of the testimony, many of these very issues were addressed by me and the fee arbitration panel in that hearing and the panel's written ruling rejecting Mr. Haeg's claims. With that in mind, I will attempt to address the questions contained in both your letter to me and Mr. Haeg's complaint.

1. **Whether suppression of search warrants due to either alleged errors or perjury by Trooper Brent Gibbons in affidavits would result in dismissal of criminal charges against Mr. Haeg?**

Technically, I believe what you mean to ask is whether ***suppression of the evidence*** seized during the course of the search warrants due to errors or perjury by Trooper Gibbons in affidavits would result in dismissal of criminal charges against Mr. Haeg. Additionally, there were at least three search warrants issued in this case: one of Mr. Haeg's lodge; one of Mr. Haeg's home; and one for his airplane. I'm assuming you mean to ask whether suppression of all the evidence of all three search warrants would have resulted in the dismissal of charges. Obviously, this question could have been answered in the course of Mr. Haeg's criminal case if he or his counsel, Chuck Robinson, had chosen to file a motion to suppress the evidence in that case. I am assuming you are asking me this in the context of why certain strategic decisions to cooperate rather than file substantive motions were made at the beginning of the case.

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In my opinion, even if the evidence seized in the course of the search warrant were suppressed, it would not have resulted in the dismissal of the charges against Mr. Haeg. This was not a case where the evidence against Mr. Haeg was solely derived from a search warrant. I do not have the evidence logs of what was seized in the course of these search warrants[1], so I am limited in answering this question. But it was clear to me that the State has sufficient circumstantial evidence to prove a number of violations based simply on Trooper Gibbons' observations in the field and the evidence he seized during this field investigation.

These observations were generally found in the search warrant affidavit filed by Trooper Gibbons. The search warrants affidavits describe his discussions with Mr. Haeg and Mr. Zellers, his observations of the plane they were operating, and their statements about the special firearms and ammunition they would be using during their hunt. The search warrant also describes observations consistent with the aerial killing of four wolves. Additionally, the statement of Trooper Gibbons described how the airplane that landed in the snow to pick up the wolves had skies and a tail wheel like Mr. Haeg's airplane. It also describes that the pellets seized at the scene were like those described by Mr. Zellers in McGrath. Given that Mr. Haeg's lodge was in the vicinity of the kill site (in air miles), this was a logical place to search.

All of this information was circumstantial evidence that Mr. Haeg and Mr. Zellers committed four counts of unlawful killing outside the permit area and unlawful possession of illegally taken animals. After the search warrants were executed, law enforcement officers firmly believed Mr. Haeg, a registered guide in Alaska, committed a number of fish and game violations that placed into question a highly publicized wolf hunting program. I don't believe they would have voluntarily dismissed any charges and would have proceeded regardless of a court determination suppressing this evidence.

I think it is important to review the first search warrant affidavit provided by Trooper Gibbens which sought to search Mr. Haeg's lodge. I will provide you with a copy on Monday. This affidavit makes no mention about which Game Management Unit ("GMU") Mr. Haeg hunts or in which GMU his lodge is located. I have reviewed this and do not believe that a motion to suppress could have been successful in suppressing the evidence seized at his lodge including the four carcasses that were recovered. Law enforcement officers would have tied those four carcasses to the kill sites in the field. This would have tied Mr. Haeg directly to four wolf kills outside the permit area. Additionally, because of the language in AS 08.54.605, conviction of just one charge can have very damaging consequences.

Finally, filing a motion to suppress and arguing for the suppression of evidence occurs when a case cannot settle. I am still surprised that Mr. Haeg did not file motions to suppress the evidence at his trial. Clearly, however, the signal you send the prosecutor when you file these motions is that you are going to resist any offers and take this case to trial. If you take such action, you have to be

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[1] I delivered all of this material to Mr. Robinson when he took over the representation of Mr. Haeg.

prepared to accept the consequences, which in Mr. Haeg's case, were almost all bad. Mr. Haeg and I discussed this on a number of occasions.

As I noted in my testimony before the fee arbitration committee, I discussed the alternatives with Mr. Haeg and encouraged him to cooperate with law enforcement to 1) avoid being charged federally, 2) avoid being charged with felony Tampering with Evidence, and 3) avoid "opening sentencing" on misdemeanors with the assistant District Attorney arguing more than a $1000 fine, more than five days in jail, or a hunting license suspension. Any or all of these results would have resulted in Mr. Haeg losing his right to guide under AS 08.54.605. We made the decision to cooperate with the government's investigation and not fight the charges in an effort to mitigate Mr. Haeg's damages and avoid losing his guide license. Ultimately a deal was in place where he would have been taking clients out as a guide in September 2005, one year after the event. He ultimately rejected that offer, fired me, and chose to challenge the State at trial. When he lost, he faced the situation, I always tried to avoid--being subject to "open sentencing" with an assistant district attorney arguing to impose sanctions that resulted in his loss of his guide license for five years.

2. Whether a wolf control violation would affect Mr. Haeg's guide license because he was not acting as a guide at the time of the alleged violations?

I really do not understand what you mean by a "wolf control violation." None of his charges were "violations" subjecting him to a simple $300 or $500.00. Mr. Haeg violated the terms of his permit which allowed him to shoot wolves from the air in a particular area. He did this by traveling many miles beyond the permitted area and killing the wolves while flying his plane. By engaging in this conduct, or assisting Mr. Zellers, he shot wolves from an airplane which is illegal; he killed wolves without the authority of his permit which was illegal; he transported game knowing it to be illegally taken which is against the law; he or Mr. Zellers falsified the sealing records for these skins which was against the law. And each killing of a wolf was a separate crime and subjected him to numerous misdemeanor charges. All of these actions constituted misdemeanor offenses under Alaska's laws. See AS 16.05.925. The State also mentioned that it believed Mr. Haeg had violated Alaska's law against Tampering with Evidence which is a C Felony.

At a criminal sentencing for simply violating his permit, among other things, a trial court would be free to listen to arguments about whether or not the Court should also suspend or revoke Mr. Haeg's guide license. But this was never what Mr. Haeg was charged with–he was charged with a number of other types of crimes including unlawful possession, illegal guiding, and unsworn falsification. Guides have special duties and responsibilities in Alaska. In many respects they are a self-regulating industry because there are not nearly enough law enforcement officers to cover the vast hunting areas. I was told, and had every expectation that the State would argue, that Mr. Haeg's actions in this case reflected poorly on his ability to be a guide. They demonstrated he felt he was above the law, that the terms of a permit which gave him a license to kill wolves could be ignored, that he would not turn himself or others in if a game violation occurred, and that he was willing to lie on Fish and Game forms to cover up his criminal behavior. But again, it did not matter because if the court imposed a sentence of more than $1,000 or more than five days in jail,

Mr. Haeg was going to lose his guide license by administrative action pursuant to AS 08.54.605, no matter what the court decided.

Mr. Haeg's argument that his guide license should not have been affected by his criminal conduct is also inconsistent with the language of AS 08.54.605 and AS 08.54.720(a). AS 08.54.605 precludes a person from getting his guide license for five years, if the person is convicted of "a violation of a state hunting statute or regulation..." I always believed Mr. Haeg's criminal conduct fell within the language of this statute. While I understand he believes that he was trapping and trapping is different from hunting, I never felt this was a strong argument, particularly at the administrative level where the burden of proof is so much lower than in criminal cases.[2]

Additionally, the actions of Mr. Haeg also arguably violated the following guiding laws: AS 08.54.720(a)(1), (8)(A) and (B), and (15). Sections (a)(1) and (a)(8) are broadly worded to include violations of "game" statutes or regulations. Mr. Haeg's criminal conduct killing these wolves outside the permitted area while flying his plane constitutes a violation of a "game"[3] statute or regulation. Section (15) makes it unlawful to violate a statute or regulation prohibiting hunting on the same day airborne. Without the authority of his permit, Mr. Haeg clearly violated this statute which required that he lose his guide license for at least three years, regardless of the sentence imposed.

I always believed that the fact that Mr. Haeg was a licensed guide in Alaska at the time he committed these crimes was going to negatively impact any sentence he received. That is why I constantly urged him to seek a settlement with the State of Alaska so he could avoid the five-year ban on getting his guide license. He chose to reject my guidance on this, fired me, and challenged the State at trial. By doing so, he ultimately ended up in an open sentence situation which virtually assured him losing his guide license for five years.

3. Whether suspension of Mr. Haeg's guide license would be ordered retroactive to reflect the time prior to sentencing that Mr. Haeg was not acting as a guide?

This is simply a matter that is left to the discretion of the sentencing judge. Certainly Mr. Haeg could have and should have made this argument at his sentencing. That is one reason why an attorney representing a defendant in these types of cases gets an agreement with the prosecutor to avoid what happened to Mr. Haeg. At all times during my discussions with Mr. Leaders, it was clear that the State did not intend to agree to anything less than a one-year license revocation. I urged Mr. Haeg to cancel his hunts in the fall of 2004 and the spring of 2004 because I felt this was

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[2] AS 16.05.940(21) defines "hunting" as the taking of game under parts of title 16 and its regulations. AS 16.05.940(34) defines "taking" to mean "taking, pursuing, hunting, fishing, **trapping,** or in any manner disturbing, capturing, or killing or attempting to take, pursue, hunt, fish, trap, or in any manner capture or kill fish or game." (Emphasis added.)

[3] AS 15.05.940(19) defines game to be any species of bird, reptile or mammal.

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going to happen anyway and to show the State that we were serious about resolving this case. I discussed this with Mr. Leaders and this was part of the deal that was presented to Mr. Haeg on the evening of November 8, 2004. Mr. Haeg later rejected this deal and went to trial. When he was convicted of the charges, he was left in an "open sentence" situation which allowed the court some discretion of when to start any license revocation. If the court had not taken any action on his guide license, then the ban would have been governed by AS 08.54.605 which precluded him from getting his guide license five years from the date of his sentencing.

4. The physical evidence possessed by the State of Alaska that allegedly demonstrated that Mr. Haeg was guilty of same day airborne taking of wolves outside a permit area.

Again, I do not have the police reports which were given to Mr. Robinson to refer to prior to answering this question. But generally, law enforcement had the following evidence: 1) Trooper Gibbons' observations of the plane when he saw Mr. Haeg and Mr. Zellers in McGrath on March 21, 2004; 2) Trooper Gibbons' observations on March 26-27, 2004 and the physical evidence seized on that date; 3) the physical evidence at Mr. Haeg's lodge including the wolf carcasses; 4) the physical evidence seized at Mr. Haeg's home including the firearms; 5) the wolf skins; 6) the false documents that Mr. Haeg and Mr. Zellers relating to the trapping of wolves; 7) the statements of Mr. Zellers; and (8) the statements of Mr. Haeg.

5. The difference in terms of the plea agreement originally reached between the parties and the plea agreement reached on the evening of November 8, 2004.

Your question assumes that a plea agreement was reached between the parties before November 8, 2004. I do not believe that a plea agreement occurred prior to November 8, 2004. I discussed a number of possible scenarios for resolving this case prior to that date with Mr. Leaders and Mr. Haeg and I do not believe that there was ever a "mutual meeting of the minds" between the parties. Among the scenarios that were discussed were the following:

A. **A plea to certain charges in the original information with all terms set except license revocation.** The only part of the sentence left open was the length of time of the guide license revocation. We had agreed on a minimum of one year revocation with a maximum of three years. The State intended to present evidence of other illegal activity against Mr. Haeg to increase the length of the revocation; we intended to present evidence that Mr. Haeg engaged in no other illegal activities and to give reasons why Mr. Haeg should only receive the minimum one year revocation contemplated by the agreement. Jail time, fines, restitution and forfeiture were already set. I believed Mr. Haeg wanted to proceed with this offer in mind and I thought the purpose for traveling to McGrath on November 9, 2004 was to have a sentencing under this option.

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B. **A plea to certain charges in the original information with open sentencing.** Shortly after discussing the terms noted above, I spoke with Mr. Haeg and he wanted to know if he could go forward with the modified charges and "open sentencing." "Open sentencing" obviously means there is no agreed upon terms, that the parties simply argue the merits of their case to the court and let the court decide the appropriate sentence. A defendant can receive anything from the mandatory minimum sentence or the maximum sentence in terms of jail, fine, restitution, probation, forfeiture within the confines of the law. Mr. Haeg stated he wanted to do this because he wanted to try and get back his plane which had been seized. I told him in my opinion, if the DA argued for the forfeiture of the plane, it was going to happen and that we should not waste our time, but I would ask. I later asked Mr. Leaders about this and he initially said he had no problem with this. Later he called me back and said he would not agree to this–that he would change the guiding counts to charges under AS 08.54.720(a)(15) which required a minimum three-year license revocation for a penalty if Mr. Haeg wanted to plea no contest and go forward "open sentencing." I believe I told this to Mr. Haeg over the telephone prior to November 8, 2004, although a letter I wrote on July 6, 2005, indicates this may have occurred later at the meeting. Mr. Leaders filed the second information about four days before we were scheduling an arraignment/change of plea/sentencing. Mr. Haeg wanted to know why Mr. Leaders changed his mind and I could not give him a good answer.

C. **Plead open sentencing to all the charges in the original information.** Never seriously considered but discussed. I told Mr. Haeg that pleading to open sentencing was not a good option because of AS 08.54.605, and it should be avoided at all costs.

D. **Plead open sentencing to all the charges in the second information.** Never seriously considered because I believed we reached a resolution of this case on evening of November 8, 2004. Additionally pleading open sentencing was not a good option because of AS 08.54.605.

E. **Plead to the Original Offer by the State.** The State of Alaska made a settlement offer in August 18, 2004, which if accepted would have constituted a criminal 11 plea agreement. This had set charges to be plead to, a set period of incarceration, set fines and restitution, revoked his hunting privileges for a set period, and called for a two-year loss of Mr. Haeg's guide license. I urged Mr. Haeg not to accept this because I felt I could negotiate a better deal. He never did accept this offer but it was discussed. This was set out in a memorandum to me from Mr. Leaders in August 18, 2004.

November 8, 2004 Agreement. The agreement was reached between the parties on the evening of November 8, 2004. There was a set jail sentence (slightly longer than originally contemplated), a set fine, a set restitution, a set period for a license revocation, and set terms of probation. It required a novel suspension of a suspension of Mr. Haeg's guide license which was going to allow him to guide in September of 2005. I wanted the Division of Occupational Licensing to agree to this arrangement because of my prior problems with this Agency. See Boyd v. State of Alaska, 977 P.2d 113 (Alaska 1999). This called for a license suspension of 30 months with 14 months suspended retroactive to March 2004. This would have allowed Mr. Haeg to begin guiding on September 1, 2005.

6. Any and all actions you took to comply with the witness subpoena served upon you to testify at Mr. Haeg's trial in McGrath.

As I indicated before, after I received my subpoena, I contacted Mr. Robinson's office and spoke with both his assistant and Mr. Robinson. The first scheduled sentencing was right at the beginning of September when I was planning on going hunting. I sent a letter to Mr. Robinson about this and indicated it would be a hardship. I was told they expected the sentencing to be continued.

After I was notified the sentencing was continued to September 29, 2005, I spoke with Mr. Robinson's assistant and Mr. Robinson. I told Mr. Robinson that I did not believe I would be a good witness for Mr. Haeg. I told him that if he called me as a witness, I believe the attorney client privilege would be waived. I had substantial concerns about Mr. Haeg's mental health and whether he believed he had done anything wrong. I told Mr. Robinson I would truthfully answer Mr. Leader's questions and I felt that these could be harmful to Mr. Haeg at his sentencing. Mr. Robinson seemed to agree that I would not be helpful. I asked that I not have to travel to McGrath under these circumstances, but I told him that I would stand by on the telephone and testify over the telephone if he really felt he wanted to call me as a witness. I was available the whole day to testify if I had been called.

I note that Mr. Haeg confronted Mr. Robinson about this in a meeting after the sentencing and apparently secretly recorded the conversation. In this transcript, Mr. Robinson told him that Mr. Haeg knew I was not going to be at the sentencing and I was not going to be a helpful witness. Additionally, I received a list of questions from Mr. Haeg before the sentencing which he indicated that he wanted me to testify about at the sentencing. I am forwarding you a copy of this email. It is clear from the questions that I was not being brought to testify at his sentencing about simply Mr. Haeg's good faith dealings with the State by not guiding in the fall of 2004.

7. Describe steps you took to enforce the original Rule 11 agreement that Mr. Haeg alleged was breached by assistant district attorney Scot Leaders.

There was no Rule 11 Agreement in this case. I would urge you to review Criminal Rule 11. A Criminal Rule 11 agreement is one that is agreed upon by the parties (Criminal Rule 11(e)("If

the parties reach a sentencing agreement...") The only real agreement reached between the parties occurred on the evening of November 8, 2004.

I explained to Mr. Haeg that I could try to bring a motion to enforce this deal but where would it get us. Case law is very difficult to overcome on issues relating to enforcement of charging decisions by a district attorney, but that did not even matter because even if we were to prevail, I felt ultimately Mr. Haeg would suffer. If we won, all we would get would be "open sentencing" on the original charges with a district attorney seeking to impose a sentence which would cause Mr. Haeg to lose his guide license for five years. If we lost, we were in no better position and we would have lost any opportunity to negotiate an acceptable resolution of this case. I would note that I explained this to Mr. Haeg on more than one occasion, and to Mr. Robinson's investigator who I now know secretly tape recorded me. I would also note that Mr. Haeg certainly could have filed this motion to enforce any agreement with the prosecutor after he fired me and hired Mr. Robinson, but I am not aware that he took this step at trial.

I have also reviewed Mr. Haeg's last letter to the Bar Association dated September 29, 2006 and make the following comments.

1. I have already described how Mr. Haeg asked me to proceed "open sentencing" and I attempted to accomplish this. Charging decisions are the providence of the district attorney's office and I had no control over this. Mr. Leaders ultimately turned me down on this after originally agreeing to allow it over the telephone. Even so, I was not confident I could win a motion to compel him to honor this agreement and if I did, all it would get Mr. Haeg was where we did not want to be–subject to "open sentencing" with a district attorney arguing that Mr. Haeg receive a sentence that would cause him to lose his license for five years. Ultimately I understood that it was Mr. Haeg's decision to pursue this "open sentence" arrangement. When he fired me, he had every right to bring the motion and I could have been a witness at that hearing. You need to ask Mr. Haeg and Mr. Robinson why this motion was never filed. I suspect that everyone realized what I am saying which is this alternative was not going to benefit Mr. Haeg in the long run.

2. I simply disagree with Mr. Haeg's contentions here. I did not think he would succeed, but I did tell him he could file the motion. Nothing I did precluded him from filing the motion after he fired me.

3. I believe I spoke with David over the telephone before the meeting on November 8, 2004 and told him that Mr. Leaders would not agree to open sentencing as presently charged. This is what I testified to at the hearing and I still believe that is what happened. I understand what is stated in my letter dated July 6, 2005, and how these statements tend to contradict each other. I can only say that is my best recollection of what occurred. Because we reached an agreement that evening that precluded the necessity of having a sentencing hearing, I thought this was no longer an issue with Mr. Haeg. At the time, we were still trying to arrange for Mr. Haeg

to get his airplane back. Later that month after Mr. Leaders rejected any further attempts to get his airplane back, Mr. Haeg stated he did not want to go through with the November 8 deal, fired me and hired Mr. Robinson. At that point, he was free to try to enforce this "open sentence" deal and I know he discussed it with his attorney because I talked to Mr. Robinson's investigator about the matter.

4. I do not understand Mr. Haeg's contention in this paragraph. Open sentencing means open sentencing–there were no limitations and there existed the possibility that he could lose his right to be a guide forever. Mr. Haeg never made a deal with the State–he never talked to Mr. Leaders, so I am not sure what he is talking about here. As I noted above, in every scenario I discussed with Mr. Leaders, Mr. Haeg was going to lose his guide license for at least one year. So I did encourage him to stop guiding in the fall of 2004 through the spring of 2005. That way he would have been eligible to start guiding again in the fall of 2005.

5. Mr. Haeg did not give up any rights at his arraignment. He simply pled not guilty and preserved his constitution rights to a trial and due process. I do not know whether the State of Alaska even used his statement against him at the trial–this is something that would have to be checked into. But I know that my understanding is that the State could not use his statement against him at trial in its case in chief. That is why the State was so anxious to make a deal with Mr. Tony Zellers–Mr. Zellers could testify to all the facts without regard to Mr. Haeg's statement.

Thank you for giving me this opportunity to respond to these allegations. If you have any questions regarding the contents of this letter, please do not hesitate to contact me. Thank you.

Very truly yours,

MARSTON & COLE, P.C.

Brent R. Cole

I, Brent R. Cole, state that the contents of this response are true and correct to the best of my knowledge and belief.

Dated in Anchorage, Alaska this 30th day of March, 2007.

Marston & Cole, P.C.

Brent R. Cole

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ALASKA BAR
ASSOCIATION

September 7, 2007

CONFIDENTIAL

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

RE: ABA File No. 2006D163
Grievance against Brent R. Cole

Dear Mr. Haeg:

I have completed my investigation of your grievance against attorney Brent Cole. You complained about Mr. Cole's representation of you after the State of Alaska charged that you violated the terms of a permit allowing you to take wolves same day airborne. I carefully read the grievance, Mr. Cole's response and all the other correspondence, documents, pleadings, and exhibits submitted by the parties, including the transcript of the fee arbitration proceeding. I did not watch the videotape "Alaska: Off the Beaten Path" which you provided. While it looks interesting, I did not think that it was pertinent to the specific allegations of misconduct you alleged against Mr. Cole. After further investigation, several discussions with Stephen Van Goor of this office, and upon consideration of the applicable principles of legal ethics discussed below, I concluded that your grievance should be dismissed without disciplinary action against Mr. Cole.

Under Alaska Bar Rule 25(c) you may appeal bar counsel's decision to dismiss your complaint within 15 days of notice of the dismissal. If you appeal this decision, the Bar's executive director, Deborah O'Regan, will appoint a member of the Third Judicial District Area Division to review your appeal. The appointed Area Division member may reverse bar counsel's decision, affirm the decision, or request additional investigation. If the Area Division member were to affirm bar counsel's decision, you have the right to file an Original Application with the Alaska Supreme court requesting its review of the discipline decision.

Allegations of Misconduct in First Grievance

Your initial grievance against Mr. Cole was filed on February 10, 2006. You wrote that you hired Mr. Cole to defend you in a criminal action that the State of Alaska was prosecuting against you. Your primary complaint was that "Mr. Cole refused to even **try** to enforce the Rule 11 agreement even after [your] continuous and insistent demands." You explained that you and your wife, Jackie Haeg, lost a year's income by cancelling hunts in cooperation with terms of an agreement with the prosecutor and you spent money flying in witnesses

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from as far away as Illinois only for Mr. Cole to tell you on the eve of the court hearing in McGrath that the Rule 11 agreement wouldn't be enforced.

You alleged that Mr. Cole learned that the State's prosecutor planned to renege on the agreement on November 5, 2004, (a Friday) but he did not inform you of the changes until November 8, 2004, (a Monday) when Mr. Cole showed you a fax he received on November 8 withdrawing the agreement. You alleged that Mr. Cole deliberately lied to cover up the fact that you were not able to save money by not flying people to Alaska and to deprive you of the opportunity to find someone who would be willing to enforce the Rule 11 Agreement.

You complained that Mr. Cole did not advise you that you had the option of "specific performance" or that you could have an "evidentiary hearing." Mr. Cole apparently told you that the judge would listen to you if you insisted and "that would have been the end of it."

You alleged that Mr. Cole placed his relationship with the prosecutor ahead of his duty to represent you, his client. You alleged that he committed acts of lying, deceit, and misrepresentation "with the explicit intent of protecting his interest in preserving and enhancing his long-term relationship" with the State Prosecutor's office. You questioned Mr. Cole's "close and cozy" relationship with the Prosecutor's office.

You alleged that you and witnesses heard Mr. Cole tell you, "I can't piss Leaders [the assistant district attorney] off because after our case is done I still have to be able to make deals with him." You surmised that Mr. Cole sold you out for the benefit of himself or other clients. Alternatively you suggested that Mr. Leaders had a desire to "win big" with a high profile case such as yours before Mr. Leaders relocated from Anchorage.

About a month after the November arraignment hearing, you fired Mr. Cole. You hired attorney Arthur "Chuck" Robinson who took your case to trial. You subpoenaed Mr. Cole to attend your sentencing hearing in McGrath. Mr. Cole did not attend and you questioned whether his failure to attend was the result of a conspiracy between Mr. Cole and your new attorney, Mr. Robinson.

Resolution of the First Grievance

On March 6, 2006, Mr. Cole responded to your grievance allegations, setting out his recollection of the course of events prior to your firing him. Essentially Mr. Cole alleged that he told you repeatedly that you risked losing your guide license for a five-year period and that you risked losing your airplane. Mr. Cole explained that he determined that cooperation with the State was the best avenue for keeping you from losing your guide license for a five-year period.

You and Mr. Cole disagreed about whether there was an agreement that Mr. Cole should have more forcefully argued needed to be enforced. Mr. Cole

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noted that whether one option was selected or another option was pursued, you still risked losing your guide license as well as your airplane at sentencing.

At the time that you filed your complaint against Mr. Cole, you also filed a fee arbitration petition. As is our general practice, I declined to open the February 2006, grievance for investigation because you also filed a fee arbitration petition. I explained to you in writing on May 10, 2006, that the fee arbitration panel is required to consider whether to refer a matter to Bar Counsel for disciplinary review. I told you that I would evaluate your complaint if a discipline referral was made.

The fee arbitration panel met over a period of days to take testimony from witnesses. Numerous exhibits were presented to the panel for its consideration. The panel issued its decision on August 25, 2006, awarding Mr. Cole $2,689.19 that they determined he was owed. The panel did not refer the matter to bar counsel for disciplinary review.[1] The fact that the panel did not make a discipline referral is additional support for the conclusion that clear and convincing evidence of ethical misconduct is lacking.

Allegations of Misconduct in Second Grievance

On October 10, 2006, you verified allegations of misconduct in your second complaint against Brent Cole which bar counsel accepted for investigation on February 15, 2007. You charged that Mr. Cole failed to advocate for you and then lied when you tried to advocate for yourself.

Specifically you alleged the following:

- You asked for open sentencing in August 2004, not mere days before the November 9, 2004 arraignment as Mr. Cole allegedly stated.
- Mr. Cole never told you that you could enforce the Rule 11 agreement.
- Mr. Cole gave conflicting testimony about the withdrawal of the Rule 11 agreement, stating that you knew a week before versus weeks before versus there never was an agreement.
- You and Mr. Cole dispute what constituted an 'open sentence' with you alleging now that you understood it to mean a maximum three year suspension with Mr. Cole stating that there was either no upper limit or it was five years.

[1] You appealed the Fee Arbitration decision to the Superior Court which issued a Memorandum Decision and Order which modified the judgment to reflect a correct judgment of $1,689.19. The court held that issues on the merits of your criminal case were to be reserved for your criminal appeal. In response to other contentions the court declined to find that the panel was corrupt or that the award was procured by fraud.

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- That you gave a lengthy statement to the State to demonstrate cooperation and the statements were used against you.
- Your complaint also included a paragraph from your wife who stated that the search warrant contained perjuries by Trooper Gibbens and that Mr. Cole disregarded any benefit to you that could be argued in a suppression motion.

Background Facts

In March 2004 Alaska State Troopers conducted an investigation into an illegal kill of wolves. The troopers determined that you and Anthony Zellers killed nine wolves in the areas of the Swift, Stony and Big rivers by shooting them from your airplane. The troopers also alleged that you falsely reported the location of the killing to state wildlife officials who had hired you to kill wolves as part of a predator control program near McGrath.[2]

You hired Mr. Cole who was recommended by others as an attorney with experience in matters involving fish and game violations. After consultation with you, he recommended that you pursue a course of cooperation with the State in an effort to minimize the severe penalties that attach to fish and game violations.

As part of that strategy you were interviewed for at least five hours during which time you described what happened and provided detail about the wolves you killed outside the designated permit area. Relying on information that you provided and information provided by the investigating troopers, the State and Mr. Cole started negotiations.

During the negotiations the State disclosed that it had evidence regarding an illegal moose hunt that you allegedly participated in the year before. Although you denied any wrongdoing regarding the moose hunt, the State planned to introduce evidence at trial supporting its claims.

You and Mr. Cole disagree regarding events and conversations that may have occurred between April and November which will be discussed in more detail later in this letter. The attorney-client relationship was fracturing: Mr. Cole offered to quit representing you and eventually you fired him.

After firing Mr. Cole, you retained attorney Chuck Robinson who represented you at trial. A McGrath jury found you guilty of five counts of knowingly taking nine wolves the same day you were airborne, two counts of unlawful possession of illegally taken game, once count of unsworn falsification and one count of trapping wolverines during a closed season.

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[2] *Anchorage Daily News*, Oct.1, 2005 edition

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At sentencing the court ordered you to forfeit your guiding license for five years. The magistrate failed to give you credit for the guiding trips that you cancelled in hopes that it would reduce the length of your license suspension. Accordingly, you believe that Mr. Cole wrongly advised you when he suggested that you suspend your guiding operation to reinforce your willingness to cooperate with the State. You were also sentenced to 35 days in jail, fined $6,000 and ordered to forfeit your plane to the government. According to an *Anchorage Daily News* account, all penalties with the exception of the loss of your license were put on hold by the court pending an appeal.[3]

Discussion

During this investigation I met with you and witnesses that you brought to speak on your behalf. I spoke to you many times as did Mr. Van Goor. We both spoke to attorney Scot Leaders and Mr. Van Goor talked to attorney Dale Dolifka. I left numerous messages for FBI agent Colton Seale but we never talked.

On November 6, 2006, Mr. Cole responded briefly to your second complaint. He stated that his earlier March 9, 2006, response outlined his position and he pointed out that the fee arbitration panel held a three day hearing during which time events were extensively discussed by witnesses.

On March 9, 2007, I wrote Mr. Cole asking for information that would help clarify for me some of the charges you made regarding his failure to advocate on your behalf. He responded on March 30, 2007, explaining the basis for some of his strategic decisions that guided the conduct of his representation.

On April 2, 2007, you forwarded to bar counsel a list of 51 questions that you wanted Mr. Cole to answer. Although initially I planned to ask Mr. Cole to answer the questions, I determined that many of the questions duplicated questions already asked and answered at the fee arbitration or they were questions that were asked and answered by others during the investigation.

Other questions seemed geared toward utilizing Mr. Cole's answer in an effort to demonstrate that Mr. Cole perjured himself. You alleged that Mr. Cole perjured himself repeatedly at the fee arbitration hearings and perjured himself during the investigation. While Mr. Cole's explanation of the steps he took on your behalf and his description of events that occurred during the time he represented you are occasionally less than crystal clear, that lack of clarity is not, by itself, evidence of perjury that will support a disciplinary sanction. Likewise, the fact that you and he disagree about what he said doesn't mean that he is lying or making things up.

[3] "Guide sentenced for illegal wolf killings" www.adn.com, October 1, 2005

CONFIDENTIAL

A Bar discipline proceeding is not the appropriate means to prove criminal conduct such as perjury. Perjury is a criminal offense that must be charged under Alaska Statute §11.56.200 et seq. and proven at trial in criminal proceedings. Bar counsel initiates disciplinary proceedings against lawyers who have been criminally convicted of felonies. For example, a lawyer was disbarred by the Alaska Bar *after* he was successfully prosecuted for first degree theft and perjury.[4]

Mr. Cole often spoke to you about what could go very badly wrong if the State proved its charges against you. In discussing the pros and cons of negotiation versus litigation, he pointed out that the aerial wolf control program had the potential to generate a lot of controversy which could affect the harshness of a sentence. He also acknowledged the emotional toll that the charges were having on you and your family. Choosing a course of cooperation rather than going full bore toward trial is a legitimate course of action, particularly if the defendant is reeling from the effects of the charges. You acknowledged yourself that you were a mess at the time. As part of that cooperative approach, Mr. Cole recommended that you provide an interview with the State's prosecutor.

In hindsight you believe that this was the wrong advice. You believe that by talking to the State you armed the State with facts that the State was able to use against you successfully at your trial and sentencing. You also argue that Mr. Cole should have had an immunity agreement in place.

During our conversation with Scot Leaders, I understood him to acknowledge that there was a built-in immunity to statements you gave as part of the plea negotiations. But he stated that whether an immunity agreement was in place was irrelevant since he obtained virtually the same information from Tony Zellers who was a witness for the State at your trial. The information that was used against you at trial was obtained from Mr. Zellers. And Mr. Zeller's continuing cooperative status with the State resulted in a much more lenient sentence for him.

The issue of whether a plea agreement was reached in principle or whether a Rule 11 agreement had been entered is somewhat murky. Around August 2004 Mr. Cole and Mr. Leaders were hammering out an agreement with terms that seemed to be acceptable to both parties.

Mr. Leaders said at one point he thought that the terms were in place for a Rule 11 agreement but then you indicated that you wanted to go to open sentencing. Mr. Leaders opined that there was no meeting of the minds. A consistent point seemed to be that you did not want to forfeit your plane, a bush modified, high performance PA-12 Supercruiser on Aero 3000 skis. You wanted "open sentencing" so that you could explain the situation to the judge.

---

[4] *LaParle v. State*, 957 P.2d 330(Alaska Ct. App. 1998)

CONFIDENTIAL

You acknowledged to me that there were other options, but they weren't viable options in your opinion.

Although Mr. Cole advised you against proceeding to open sentencing, you wanted "the opportunity for someone to hear my side and decide whether I need to lose the plane or not lose the plane. I just – it sticks in my craw that Leaders will not let a judge decide the whole sentence. That does stick in my craw – yes it does."[5]

Mr. Leaders expressed the belief that he thought there was a return to square one at the point you indicated that you didn't want to forfeit the plane you were flying when the wolves were killed. Even though you expressed a willingness to forfeit another plane in place of the plane you were flying when the wolves were illegally taken, the State was not willing to consider a plane swap. The disagreement over the plane also apparently led Mr. Leaders to file the Amended Information that was provided to you on November 8, 2004.

Mr. Cole's response to this was completely unsatisfactory in your opinion. You stated that Mr. Cole told you that he could do nothing other than complain to Mr. Leaders' boss which he never did. At the November hearing Mr. Cole asked the court to refer to the original information to which a not guilty plea would be entered. He advised the court that he anticipated a change of plea being requested in approximately two to three weeks. Mr. Leaders asked the court to arraign on the amended information while acknowledging that the charges could be modified at the change of plea. In other words, it appeared that the situation was still fluid and that changes could still be made.

Your frustration with Mr. Cole's apparent failure to insist on an alleged August agreement being enforced is understandable, but you fired Mr. Cole shortly after the hearing and he had little opportunity to try to get back what you had lost in the negotiations. Your new attorney, Chuck Robison, also didn't get the State to return to the offer that may have been on the table earlier. A risk that is present during negotiations is that once an offer is pulled off the table there is no guarantee that it will reappear. And if the parties are determined to proceed to trial there can be a lack of incentive to negotiate.

In any event, you believe that Mr. Cole mismanaged your criminal case. Specifically, you alleged that his decisions at the onset of cooperative negotiations with the State and his lack of action after the State filed an Amended Information are two examples of ineffective assistance that contributed to your conviction. As you know, whether Mr. Cole's conduct amounted to ineffective assistance must be determined through trial court and appeal proceedings, not the attorney discipline process. This is because of the specialized bodies of statutory and procedural law, along with local customs

[5] Transcript provided by you of taped conversation between you and Mr. Cole dated 11/22/04 at p. 11.

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and rules, that govern criminal practice and affect the analysis of whether ineffective assistance occurred. Bar Counsel ordinarily will not conduct a separate investigation that might interfere with the court's role. Thus we usually will not find a violation of the ethics code unless the court initially finds ineffective assistance.[6]

A court, not bar counsel, should determine whether Mr. Cole was ineffective when he chose not to file suppression motions during negotiations and well before the matter proceeded to trial. In considering whether Mr. Cole's performance in that regard fell below minimal standards, the court might consider whether your subsequent counsel filed suppression motions which were successful in limiting the evidence introduced at trial.

Likewise it is the court's role to consider whether Mr. Cole failed to protect your interests when he did not respond as aggressively as you demanded when Mr. Leaders filed the Amended Information prior to November hearing. The court would consider whether Mr. Cole performed at least as well as a lawyer with ordinary training and skill and criminal law and the court would examine whether he conscientiously protected your interests, "undeflected by conflicting considerations."

With respect to conflicts, you alleged that Mr. Cole sacrificed your interests to protect his interest in maintaining a good relationship with the State prosecutor's office. You alleged that Mr. Cole didn't want to anger Mr. Leaders which could be bad for Mr. Cole's other clients.

Alaska Rule of Professional Conduct 1.7 is the general rule governing conflict of interest. Rule 1.7(b) states in part that:

> (b) A lawyer shall not represent a client if the representation of that client may be materially limited by the lawyer's responsibilities to another client or to a third person, or by the lawyer's own interests, unless:
>
> (1) the lawyer reasonably believes the representation will not be adversely affected; and
>
> (2) the client consents after consultation. When representation of multiple clients in a single matter is undertaken, the consultation shall include explanation of the implications of the common representation and the advantages and risks involved.

The Alaska courts will severely sanction lawyers who exploit the lawyer-client relationship for personal gain. For instance, the Alaska Supreme Court

[6] *See Shaw v. State*, 816 P.2d 1358 (Alaska Ct. App. 1991)(criminal defendant may not pursue malpractice action against defense lawyer until court finds ineffective assistance of counsel).

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disbarred a lawyer who, among other things, put his financial needs ahead of his client's when he borrowed money and later argued that the statute of limitations prevented collection of the debt.[7]

However, a lawyer who shows an interest in preserving a good working relationship with opposing counsel, opposing parties and the tribunal is not engaging in unethical practice. A balance between honoring an individual client's demands and honoring community standards of professionalism is sometimes difficult to maintain. But not wanting to "piss off" a prosecutor isn't clear and convincing evidence of an ethical conflict. It may merely be the lawyer's attempt to salvage a bad situation for a client by trying to maintain a decent working relationship with the opposing lawyer.

The Bar Association would need to prove with clear and convincing evidence that Mr. Cole's working relationship with Mr. Leaders absolutely compromised his duty of loyalty to you. We could expect a hearing committee to conclude that Mr. Cole had a reasonable belief that his interest in protecting a working relationship with the prosecutor did not override his duty of loyalty to you.

You alleged that Mr. Cole ignored a subpoena that required his attendance at your sentencing hearing. Your attorney, Mr. Robinson, did not require Mr. Cole to appear personally to testify or to answer the questions you wanted asked of Mr. Cole. Mr. Cole alleged that he was available by telephone to testify. While you contend that Mr. Cole colluded with Mr. Robinson to avoid the subpoena, another explanation is that your trial attorney considered that Mr. Cole's testimony was not germane to the issues before the magistrate and that his testimony would not help your cause.

For example, questions asking, "Did you know Mr. Haeg was flying Mr. Zellers in from Illinois, Drew Hilterbrand from Silver Salmon Creek, taking Mr. Jedlicki from work, Kayla Haeg from school and costing Mr. Haeg nearly $6,000.00 in airfare, hotel, and driving expenses to comply with the Rule 11 agreement?" or "Wouldn't you agree the $200 per hour Mr. Haeg was paying you included defending Mr. Haeg's rights?" or "After you failed to defend Mr. Haeg are you surprised that he fired you?" might be appropriate in a different proceeding but such questions would be unlikely to help in sentencing considerations.

A lawyer has the responsibility for making the technical and tactical legal decisions. Mr. Robinson was acting within the ambit of Alaska Rule of Professional Conduct 1.2 when he exercised his professional judgment and concluded that grilling Mr. Cole on the witness stand would not benefit you before sentencing by the magistrate.

---

[7] *In re Johnson*, Supreme Court No. S-9414 (order of December 28, 1999)(disbarment for misconduct including neglect, conflict of interest and misrepresentation)

CONFIDENTIAL

Another issue that concerned you was the loss of considerable income from the cancellation of several hunts. In reliance on Mr. Cole's advice you gave up your fall 2004 brown bear and moose hunts and all of your spring brown bear hunts. The financial impact to you and your family from this decision was considerable. It was hoped that by not guiding these hunts you would be credited for the 'time served' when the court suspended your license.

On November 22, 2004, you and Mr. Cole discussed the voluntary suspension of your guide business which you had already undertaken.

> **Dave** – Um what should I do about these people that keep calling me wanting to send me money?
>
> **Brent** - You'll make them send you money on July 1st.
>
> **Dave** – What about the three booths that have non-refundable deposits? Write it off – don't send Arthur?
>
> **Brent** – I'm trying to figure out what to do with that.
>
> **Dave** – That other guy like I told you down in Fairbanks that you know he said that he went and booked – he just took it to mean he couldn't go out in the field - you know – whatever
>
> **Brent** – But it specifically stated that in the plea agreement at time – you know – you know I feel uncomfortable about telling you – you could do it ---
>
> **Dave** – OK well if you could just at some point try to figure out yes or no. ...[8]

You terminated Mr. Cole's services soon after this conversation. We understood from talking to Mr. Leaders that you continued to advertise your lodge and guide services at trade shows which enabled the State to argue that you 'guided' during the time when you claimed that you weren't guiding because you cancelled your hunts. In fact, rather than getting any credit for cancelling the hunts, the court suspended your license for five years, effectively giving you a six year suspension.

Conclusion

First, I would like to thank you for your patience while this matter was under investigation. I have always recognized that it is a matter of extreme importance to you and your family. Your grievance required more time than many of the complaints that this office reviews because of the number of

[8] Revised 1/30/06 transcript provided by you of taped Nov. 22, 2004 meeting with Mr. Cole

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CONFIDENTIAL

exhibits and materials that you provided. I reviewed the materials thoroughly and with care.

In summary, you complained about specific practices and decisions by Mr. Cole while he represented you. Your allegations concern his exercise of professional judgment, starting with having you interviewed by the State. You may feel that he made mistakes, and you may be correct. However, professional mistakes are not necessarily unethical. When there is doubt about whether a lawyer who did the work for a client did it with the necessary skill and judgment, it raises an issue of legal malpractice or ineffective assistance.

Whether Mr. Cole committed ineffective assistance in your criminal case is not a question that is resolved through disciplinary proceedings. If the court enters any findings indicating ineffective assistance by Mr. Cole, you may submit this information to us and we will reconsider our decision to dismiss this investigation.

Sincerely,

ALASKA BAR ASSOCIATION

Louise R. Driscoll
Assistant Bar Counsel

I have reviewed
and concur in this disposition.

Stephen J. Van Goor
Bar Counsel

LRD/air

cc: Brent R. Cole

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In the Supreme Court of the State of Alaska

David S. Haeg,	)	
	)	Supreme Court No. **S-12924**
Applicant,	)	
v.	)	**Order**
	)	
Alaska Bar Association,	)	
	)	
Respondent.	)	Date of Order: **2/12/08**
	)	

Trial Court Case # **3AN-00-00000BR**

Before: Fabe, Chief Justice, Eastaugh, Carpeneti, and Winfree, Justices. [Matthews, Justice, not participating.]

On consideration of the original application of David S. Haeg filed on **11/26/07**, and the response filed on **12/12/07**,

IT IS ORDERED:

The original application is **DENIED**.

Entered by direction of the court.

Clerk of the Appellate Courts

Marilyn May

Marilyn May

cc: Supreme Court Justices

Distribution:

Louise Driscoll
Alaska Bar Association
P O Box 100279
Anchorage AK 99510

David S Haeg
PO Box 123
Soldotna AK 99669

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PAGE 1 OF 1

1 0651

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

July 6, 2005

VIA FACSIMILE

Mr. David Haeg
Dave Haeg's Alaskan Hunts
P.O. Box 123
Soldotna, Alaska 99669

Re: *SOA v. David Haeg*
Court Case No.: *4MC-04-24 Cr.*
Our File No.: *102.484*

Dear David:

I am writing at your request to memorialize my recollection of some of the events which occurred leading up to the failed criminal rule 11 agreement that was extensively negotiated between myself and Mr. Scot Leaders on your behalf. I have been somewhat hindered in this effort because I do not have much of my file in your case having sent it to Mr. Robinson's office. I have reviewed certain notes of mine and notes from an interview I gave to Mr. Robinson's investigator earlier this year. My recollection of the events is as follows:

1. You were charged with a number of crimes arising out of certain events that occurred in the spring of 2004. Based upon my assessments of the strengths of the state's case, the potential penalties, and your desires to avoid losing your guide license for up to five years, we agreed to engage in a series of conversations and exchange of ideas with the State designed to mitigate the damages you might suffer as a result of your actions in this case. Mr. Fitzgerald, the co-defendant's attorney, also agreed with this strategy for dealing with this case.

2. On August 18, 2004, the State sent over a written offer to resolve your case. This began a series of negotiations between the parties in which we discussed the charges that would be brought and the sentence you would receive. We ultimately reached an agreement about virtually all the terms of the proposed resolution except for the length of your big game guide license suspension, which we agreed to argue about at an arraignment/sentencing hearing with an understanding that there would be a minimum one year to a maximum three year suspension. This occurred sometime during the middle of October of 2004. I believe the first Information was filed by the State right around that time.

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1 0618

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3. Sometime after that, you inquired about whether you could simply plead "open sentence" to the filed charges so that you could argue against the forfeiture of your aircraft. I indicated that I would make that inquiry of Mr. Leaders which I did. He initially did not have a problem with this. About a week later, however, I received telephone call from him which indicated that he was amenable to allowing you to plead "open" sentencing but he was going to change the information to require the minimum three-year license revocation. I believe this happened on or about November 5, 2004. I traveled with Mr. Leaders to Dillingham on November 6, 2004, for two fish and game sentencing hearings involving guides and I was given the amended information at that time.

4. On Monday, November 8, 2004, you, your family and several witnesses came to our office to meet in preparation for the arraignment and change of plea scheduled to occur in McGrath the next day. It was at that time I informed you of Mr. Leaders' decision and outlined your legal options. Later that night, I spoke with Mr. Leaders and we further negotiated the terms of a change of plea including limits on the nature and extent of a sixteen month license suspension that would allow you to begin guiding on July 1, 2005. Both parties agreed that in light of the new agreement, it was not necessary to fly any of the parties out to McGrath. We simply intended to get the Division of Occupational Licensing to agree to the deal and then set up a change of plea. It was during the next month that you decided that you were not agreeable to this arrangement and hired Mr. Robinson.

If you have any questions about my recollections, please feel free to contact me or have Mr. Robinson contact me. I will note with some interest that you indicated to my secretary that you were not going to pay the remaining portion of your bill and that I am somehow responsible for the predicament that you now find yourself in. Your comments led me to consider not even responding to your request. However, as I have always indicated to you, I hope that you get the help that you need.

Very truly yours,

MARSTON & COLE, P.C.

Brent R. Cole

BRC/lac

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1 0619

02410

LAW OFFICES OF
MARSTON & COLE, P.C.
745 WEST FOURTH AVENUE, SUITE 502
ANCHORAGE, ALASKA 99501-2136

ERIN B. MARSTON
BRENT R. COLE

TELEPHONE (907) 277-8001
TELECOPIER (907) 277-8002

November 6, 2006

HAND-DELIVERED
Louise R. Driscoll
Assistant Bar Counsel
Alaska Bar Association
P.O. Box 100279
Anchorage, Alaska 99510-0279

Re: David Haeg/Attorney Grievance Received
ABA File No. 2006DO22

Dear Ms. Driscoll:

I am writing this letter in response to a second Attorney Grievance Form filed by Mr. David Haeg. I am assuming that because Mr. Haeg has filed a bar complaint against me that the attorney/client privilege has been waived and I am allowed to disclose previously confidential communications with my client to you in my response. After reading Mr. Haeg's letter, I am not sure exactly how to respond. I previously outlined my position with regard to his allegations in a letter to you around March 9, 2006. We had a three day hearing before the fee arbitration board this past summer and these same contentions were raised. The fee arbitration board rejected all of these contentions and ruled in my favor.

If you have any questions regarding the contents of this letter, please do not hesitate to contact me. Thank you.

Very truly yours,

MARSTON & COLE, P.C.

Brent R. Cole

I, Brent Cole, state that the contents of this letter are true and correct to the best of my knowledge and belief.

Dated in Anchorage, Alaska this 6th day of November, 2006.

Brent Cole

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PAGE 1 OF 5

1 0652

02411

LAW OFFICES OF
MARSTON & COLE, P.C.
745 WEST FOURTH AVENUE, SUITE 502
ANCHORAGE, ALASKA 99501-2136

ERIN B. MARSTON
BRENT R. COLE

TELEPHONE (907) 277-8001
TELECOPIER (907) 277-8002

March 9, 2006

Louise R. Driscoll
Assistant Bar Counsel
Alaska Bar Association
P.O. Box 100279
Anchorage, Alaska 99510-0279

Re: David Haeg/Attorney Grievance Received
ABA File No. 2006DO22

Dear Ms Driscoll:

I am writing this letter in response to an Attorney Grievance Form filed by Mr. David Haeg. I am assuming that because Mr. Haeg has filed a bar complaint against me that the attorney/client privilege has been waived and I am allowed to disclose previously confidential communications with my client to you in my response. Suffice to say, Mr. Haeg's recollection of the events in question differs from mine and he has conveniently left out a number of important facts on this matter. I am slightly handicapped because I sent my entire file to Mr. Arthur Robinson in Soldotna, Alaska, who represented Mr. Haeg in his criminal case. My purpose in drafting this letter is to highlight a few of these facts:

- Mr. Haeg and his partner, Tony Zellers, were charged with a number of fish and wildlife crimes involving the shooting of wolves from an airplane many miles outside of an area they had a permit to take the wolves.

- The evidence against Mr. Haeg and Mr. Zellers was very strong that they had in fact been the individuals who killed the wolves in an area outside of their permit area. This evidence was outlined in a search warrant affidavit by Trooper Gibbons out of McGrath who did the crime scene investigation and found the wolf carcasses at Mr. Haeg's hunting lodge.

- Mr. Haeg was extremely emotional after the Troopers conducted searches of his lodge and his home and seized one of his aircraft.

- Mr. Haeg had been a long time guide in Alaska. The ramifications of being convicted of a fish and wildlife charge in Alaska for a guide are devastating. Under AS 08.54.605, if a guide received a sentence of more than five days in jail or a fine of $1,000 on any count, the guide loses his right to apply to be a guide for five years.

EXHIBIT

- When we initially discussed our strategy for defending this case, it was clear that Mr. Haeg's biggest concern was not losing his right to be a guide for five years. He repeatedly talked about how if he lost his guide license for five years it would ruin his business and everything he had worked his whole life for. On multiple occasions, we discussed what I believed would happen if he challenged the State's case and demanded a jury trial. I thought he would be convicted and I was convinced he would receive a sentence which would preclude him from guiding for five years.

- In the end, we both agreed that the best method for accomplishing his goal of not losing his license for five years was to cooperate with law enforcement and give them an interview. In my experience in doing this type of work for the past 15 years, this was the only way we were going to be able to convince the prosecution to enter into a reasonable criminal rule 11 agreement. My conclusions were agreed with by Mr. Kevin Fitzgerald who represented Mr. Zellers.

- Right before this interview was to occur, Mr. Leaders gave me notice of another alleged fish and wildlife violation at a different time by Mr. Haeg and Mr. Zellers. This allegedly involved Mr. Haeg using an airplane to assist in the killing of a moose. I conducted a number of interviews regarding this allegation and determined it to be without merit, but Mr. Leaders indicated that the State intended to take this event into consideration for sentencing purposes.

- Mr. Haeg then gave an interview to Trooper Gibbons and Scott Leaders which went well. Thereafter, Mr. Leaders and I negotiated for a number of months over the terms and conditions of a criminal rule 11 agreement. Mr. Leaders and I were never really able to reach an agreement on the amount of time that Mr. Haeg would lose his right to guide. We ultimately came to an agreement to disagree and had in place a minimum and maximum loss of license period, while granting the court the right to ultimately pick within this period.

- I wrote a letter to Mr. Haeg on July 6, 2005, which outlines what happened leading up to the arraignment/change of plea. Mr. Haeg is correct in noting that Mr. Leaders filed an amended information with the court after the first information. My recollection is that the change in charge required a minimum three year license revocation. Mr. Haeg is also correct that at one point I asked Mr. Leaders if he could proceed on an "open sentence" basis and he said yes and later he said no. Mr. Haeg repeatedly brings up that Mr. Leaders went back on his word and that we should have enforced the original agreement.

- I had misgivings about this for several reasons. First, it was not all that clear that a Court would enforce an oral conversation I had with Mr. Leaders. Second, I thought it would be expensive for Mr. Haeg to fight that battle with no upside. Third, and most importantly, even if we won, I didn't see where that got us. I

repeatedly advised Mr. Haeg against going before a judge on an open sentence basis. I have had several bad experiences in guide cases, one of which happened shortly before the hearing in McGrath. In both of my prior cases, the guides received sentences that precluded them from guiding for five years.

- The Monday before we were to go to McGrath, I met with Mr. Haeg and all his witnesses. We discussed all of his legal options. After discussion of all the consequences and benefits of each of his options, it was Mr. Haeg who agreed it was not necessary to go to McGrath for the arraignment/sentencing because he agreed in principle to the deal we struck with Mr. Leaders on behalf of the State of Alaska. Everyone was satisfied with this arrangement at the time and the case was only continued to get the approval of the Division of Occupational Licensing on the administrative part of the case.

- He later became dissatisfied with the deal because it did not allow him to get his airplane back. I never believed, nor do I now believe, that there were any circumstances under which he would get his plane back given the sensitive nature of this case and his actions. I discussed this numerous times with Mr. Leaders and I knew the Troopers were adamant that Mr. Haeg lose his plane.

- Mr. Haeg tried to hire Jim McComas but he indicated that he was too busy. He did try to facilitate a meeting between Mr. Haeg and I, which I attended. In the end, Mr. Haeg said he was dissatisfied with my representation and said he wanted to get another attorney. I agreed to do whatever was necessary to facilitate this request.

- He hired Mr. Robinson to represent him shortly after the arraignment. Mr. Robinson's investigator interviewed me about the agreement with the State. Certainly, Mr. Robinson could have filed the motion to enforce the agreement if he thought it was appropriate. Almost the entire discussion with the investigator addressed this issue of what arrangement existed between the State and David Haeg prior to the arraignment.

- I handle a number of fish and wildlife matters throughout the State of Alaska. I have worked with a number of attorneys who represent the State of Alaska. I am happy to give you a list of the attorneys I have worked with to determine if I have not been representing my clients properly. I believe I have probably tried more fish and wildlife cases than any other attorney in Alaska in the last 10 years, other than perhaps Bill Satterberg in Fairbanks.

- Several of my guide clients received very unfavorable sentences in cases where I had not reached an agreement with the Prosecutor ahead of time. I really felt that Mr. Haeg would be severely punished if he proceeded to open sentencing in this case for a number of reasons. The main reasons were because Mr. Haeg had abused the special benefit to hunt wolves from the air, when the State was receiving a large

amount of bad publicity for allowing aerial wolf hunting at all. I knew that the State would demand a great deal of punishment for imperiling the wolf hunting program. Second, Mr. Haeg was a guide and guides have a special responsibility to act within the law.

- I did not refuse to attend his sentencing. I received a subpoena and a plane ticket. I called Mr. Robinson and spoke with him directly. I wondered why it was necessary for me to go out for at least 24 hours to McGrath when I did not believe I had any information that would be of assistance to Mr. Haeg at his sentencing. I told him I would appear telephonically which he agreed to allow. I also told him that I did not believe I would be helpful in Mr. Haeg's case and that if questioned by Mr. Leaders, I would be truthful and not necessarily helpful to Mr. Haeg's case. I stood by the telephone and would have appeared telephonically if called. I understood Mr. Haeg agreed I was not necessary.

- I feel very sorry for Mr. Haeg and his family. I tried to help him as much as possible. The agreement I had worked out for him would have accomplished his goals and he would be back guiding today. Unfortunately, he decided he wanted to go in a different direction and hired Mr. Robinson to fight the charges. This was unfortunate because the consequences I feared came to fruition. He lost his right to be a guide for the next five years in addition to the other penal punishments. I understand he blames me for this loss, but as I told him, I am not the one who committed the crimes. He chose to turn down a deal which would have avoided all these problems and now he must live with the consequences.

If you have any questions regarding the contents of this letter, please do not hesitate to contact me. Thank you.

Very truly yours,

MARSTON & COLE, P.C.

Brent R. Cole

BRC/lac

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(4)

Meeting with Brent Cole
Dated 11/22/04

(My thoughts regarding this are noted in RED)

Brent - I had - Lisa was gone last week so she did all the stuff of sending you those documents.

Dave - Ok.

Brent - So that is the list of the people that we have received letters from.

Dave - Ok.

Brent - We had her go back through those.

Dave - Huh?

Brent - We had her go back through our files.

Dave - Ok. Um like I said we've had quite a few people that said they sent stuff in that we didn't get a copy of. Maybe they didn't send it in or they sent it to the wrong address or whatever - but I don't know.

Brent - The only one is Leon Allsworth and she is making a copy for you.

Dave - Ok.

Brent - I didn't get you a copy of that when you were here?

Dave - Nope. And have you heard anything - heard a word - who

Brent - I've talked to him again I said would you please have them make a decision. I could call him again and either ask them to make a decision. Nobody has gotten back to him. He has recommended that they do it.

Dave - Ok swap the planes or whatever - ok. Um ---

Brent - So that's where we're at on that portion.

Dave - Ok I would almost like to uh you know show you why I don't think that they could uh successfully

convict me of same day airborne big game. I know you keep - you're on one hand and I'm on another. Um and I think in the end it makes a difference doesn't it. Because if they charge you on one thing and they can't convict you on it does it mean that you'd have to go to trial to make them change their mind or they use that as a bargaining chip to extract a ---

Tom - Plea.

Dave - Plea. Is that how you see it?

Brent - Well no it's - it's - what don't you think that they will convict you of the charges that are there?

Dave - Um I don't think that they can convict me of same day airborne big game.

Brent - Ok. Well let me go get the statutes and we'll look at it.

Dave - Um I can kind of show you what I have. It's just in the - like the trapping regulation book - I don't know maybe it's different in the actual - what do you call it.

Brent - Which one?

Dave - Ok. Wolf, wolverine are classified as both big game and as fur bearers. Alaska Hunting Regulations apply if they're taken under a hunting license - Alaska Trapping Regulations apply if they're taken under a trapping license.

Brent - Ok.

Dave - Ok - uh - ok and also just wanted to in this Alaska Criminal Procedures - whatever - it says convictions of lesser offense - the defendant may blah-blah-blah - when it appears the defendant has committed a crime and there is reasonable ground of doubt in which of two or more degrees the defendant is guilty.

Brent - Right.

Dave - The defendant can only be convicted of the lowest of those degrees only.

Brent - Right.

Dave - Ok I also want to put in - whatever - show you that when Bret Gibbens typed it up he typed two things - take big game

same day airborne and he also typed in take furbearers same day airborne ---

Brent - Right.

Dave - --- which a wolf can be classified as both of those. And I would like to stand on the ground that they're classified as big game furbearer and it applies as to how I intended to take them. Ok I'm out there ---

Brent - Let me just ask you something.

Dave - Ok.

Brent - Let's say you win.

Dave - Ok.

Brent - And Leaders says, "take away his hunting license for 5 years".
Dave - Because it's a trapping violation or what?

Brent - What are we goanna do?

Dave - I don't know I hadn't thought about hat - um -and you think that is something that a judge would do or someone else or?

Brent - Well I'm just saying I - I have told you from the beginning ---

Dave - Ok.

Brent - --- that I expected that they would take away your hunting license regardless.

Dave - Ok - well.

Brent - Every year that they take away that hunting license you can't be a guide.

Dave - Ok let me just put the shoe on the other foot. If - if uh I was out hunting a moose - I shoot a moose, illegally, same day airborne do they automatically take away my trapping license for 5 years?

Brent - They don't have cause you can't trap without a hunting license.

Dave - Yeah you can. Hunting license is absolutely not necessary in regards to a trapping license. That's beyond a shadow of a doubt there. The two are not one in the same.

Brent - Dave you must know that better than I do - I'm sorry.

Dave - Yep.

Brent - That's not my understanding.

Dave - So you see what I'm saying?

Brent - I do David but I just think - you know - I just - I will do whatever you want but let me tell you in my opinion you are goanna lose your hunting license if you get convicted of your trapping. That's my - I believe that is a significant risk.

Dave - Ok - um.

Brent - And if you choose to go forward with this that's fine. But I - I'm just telling you

Dave - Yeah I understand.

Brent - I'm concerned it's a significant risk.

Dave - Yep I guess what I'm looking at is what they charge versus what they can win. You know you - uh - end up uh you know if they overcharge essentially what they can - what they could convict.

Brent - Well they don't think that they are overcharging. I agree with you maybe they are overcharging. The point is from the beginning of this I've come in looking at what I thought was the big picture which is that David Haeg came to me and said, "I want - I do not want to lose my guiding license".

Dave - Yep and I - yep ---

Brent - And that has been the focus - you know - it was the focus from the last night here so that has always been my thing and you can say what you want about the charges and the way they're done and I don't like what they did to us at all but again to me I'm trying to protect you in the long run. (He is not trying to protect me or he would never have allowed them to break the Rule 11 agreement)

Dave - Ok.

Brent - So I don't really care what they do at the beginning as long as I get to the end that I'm trying to get at.

Dave - Yep.

Brent - No if you want me to focus on all this procedure that's happened that's what I can I mean ---

Dave - Yeah but I guess what I'm saying is like on the moose thing and whatever because we went through it - it just - it helped ---

Brent - You think that Scot's charging and you're not being charged with that. (Important: because Scot Leaders says that I was going to be charged with the moose issue so that he had an excuse to bring it into sentencing after my trial and they argued that the only reason they didn't charge me was because I had agreed to talk about it at my "open sentencing" that was suppose to happen on 11/9/04 agreement that he broke. He even told the judge that I broke the deal so that he could be doubly sure that it could be brought in. On record after judgment and before sentencing Leaders lies to the judge and says that I broke the Rule 11 agreement and thus he could bring it in. Chuck never wanted me to bring up that I ever did have an agreement so he didn't want to state that it was Leaders that broke the agreement and that I actually wanted them to charge with the moose issue so it wouldn't cloud the wolf issue. I have witnesses that will testify to the fact that I told Brent Cole directly that I wanted the State to charge me with the moose issue so they couldn't use it to enhance the wolf sentence because we did absolutely nothing wrong during the moose issue all it was hearsay from someone that thought that my client shot their moose)

Dave - Ok well I'm not really saying that as what's going on now all's I'm saying is because we aggressively pursued it and got the tapes and transcribed them and I went through that's what helped the moose thing go away or lessened the consequences of the moose thing. I guess what I'm saying is if we do the same thing with the charges that they have no - forget about the moose thing - we're looking at the wolf thing. That if you can layout your case very strongly and say "hey you don't have a case for this and we'll take it to trial and - you know - we think you will lose and here is our proposal for settling this out of court". Um - another thing that I went through with a fine tooth comb, finally, on the wolf thing you know with what uh Bret Gibbens did out there like with the traps.

Brent - Mm hmm.

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Dave - He said that all six MB750 traps were set and operational and they seized them all. Yet if you go back through it they said they'd flew over and seen wolverines in the traps, they removed ravens from the traps, they said another leg hold had a wolf or wolverine in it that he pulled out. So I can account for 4 of the traps being set off before they seized them but he says that all six are up and running.

Brent - Ok.

Dave - Well to me that's a direct lie. He's lying to make a case that I had traps set. That's all black and white when you go through it just like I did with the moose thing and you start piecing together what one person and what another one says and what another one says. So do we just say "yep I'm guilty of the trapping stuff" or do we say "hey Bret Gibbens lied in his (and I don't know if you call misrepresented, made a mistake or how you put it) in his report but we can show that he intentionally or unintentionally said that there were six traps set and we can prove that four of them weren't.

Brent - Well they were sprung.

Dave - Sprung. But he said - he says six traps were "set and operational". Set to me mean open ready to catch an animal. And I don't know if that makes a difference or not, maybe not. Um - I could also - you know - I don't know - you know I've asked you about this before but I personally believe that I was set up on getting the permit issued. Does that - you said at that time "it doesn't matter and who cares" but is that - uh - something that we can use to our advantage? That they don't - that we probably could - I don't know if we could prove it yet with what I have now but we could probably go quite a ways to show that they issued that permit not because I deserved it but because they wanted to see if I 'd get in trouble with it. I know you said it doesn't make a difference how I got the permit. I went out and got myself in trouble but I don't know if that would be a - a quote bargaining chip or whatever?

Brent - Well I'll tell you what I told you before which is I don't think that - it's not been my experience anyway - that State officials give somebody a right to see if they are going to go out and violate the law. That just hasn't been my experience with the Troopers, Fish and Wildlife, or the Prosecutors or Fish and Game.

Dave - So you don't think that they actually did that?

Brent - I - I just think that - that's not been my experience.

Dave - Ok.

Brent - Now whether they did or not, I don't know. But I - my feeling is most of the judges don't think that happens either unless there is some pretty convincing evidence.

Dave - Ok.

Brent - Cause they hear about conspiracies all the time from people. And the way they react when they hear that and the risks that you have is that you are shifting blame away from yourself and to State officials and when you do that you run the risks that the judge says "you don't fully appreciate the harm - --

Dave - that I did

Brent - --- therefore - you know - I'm goanna give you a greater sentence".

Dave - Ok.

Brent - Now that is the risk on that.

Dave - Ok if - what is the risk - uh - what happens like if there's a jury trial and it's brought out somehow in there it was a - is it good or bad for people to - essentially if there's 12 people ---

Brent - What you're talking entrapment. The concept is called entrapment.

Dave - Ok.

Brent - Entrapment is where a person is lured in to committing a crime. Floyd Saltz argued entrapment when he had Pagel in his plane and Pagel suggested to him hey I'm a hunter and I want to go hunting and Floyd went out and flew him - um - looking for -- -

Dave - Probably moose.

Brent - --- fox I think -

Dave - fox?

Brent - they were shooting fox and um - I'll look for it. I mean the State or someone encourages you or gets you to violate the law ---

Dave - Ok so giving me a permit isn't encouraging me it's just allowing me to have a permit?

Brent - It allows you to do something that's legal.

Dave - Yep.

Brent - Now how you go about that is something that they didn't - I mean ---

Dave - Didn't force - yep - they didn't force one way or the other.

Brent - --- fly out of this area

Dave - yep

Brent - or you know you can't go fly over there, -which - that would be one thing but I do

Dave - I know that we could never prove it but one of the Board of Game Members - current Board of Game Members told me in Fairbanks literally about a week before went out there he said, "Dave if you end up shooting animals outside of the area just make sure you mark them on your GPS inside the area". Well I - you know - I doubt if I can ever get him to say that on the stand. And a whole bunch of the other ---

Brent - He's not - he's not ---

Dave - He's not part of the State?

Brent - I don't know if he or not.

Dave - He's appointed by the governor and but I don't know.

Brent - You know I don't know what to tell you on that one because I don't think that a State official can tell you to violate the law quite frankly. I really don't. I don't know that it's a defense.

Dave - Yeah.

Brent - I mean most of the time when this comes up is an undercover agent.

Dave - Yep like if they purchased - a moose - yep - moose hunt

Brent - And they go to you and they say, "Hey do you have a machine gun for sale"?

Tom - Right.

Brent - And you have - and - and where the courts have said you have a valid entrapment defense against - like you have a heroin addiction or you have a dying child and you need money for medical expenses for instance and they go hey if you - a Federal officer comes up or a State officer says if you - um - sell marijuana for me I will pay you $20,000 ok and by doing that - um - you prey on that persons weaknesses---

Dave - Yep.

Brent - --- then some courts have said you know that's going beyond fair play in law enforcement.

Dave - Yep I can see that - um -you know - I agree

Brent - So the concept that you're talking about is call entrapment. And I'm going to give you Floyd Saltz's entrapment case.

Dave - Uh you'd ever find out to where Al Shadel ended up being in the Troopers?

Brent - He was a Trooper - I need to talk to my buddies - he was head of the south

Dave - South Central

Brent - he was Fish and Wildlife

Dave - He was in the Troopers, yep. He was the South Central Regional Commander. Right

Brent - Actually he oversaw - DPS programs in the State. Maybe you want to talk about this issue about your be acquitted ok cause that's - lets focus on the trapping versus the hunting.

Dave - Ok.

Brent - You are charged right now with the same day airborne licensed under this chapter to knowingly violate a State statute or regulation prohibiting a wild or hunting on the same day airborne - ok?

Dave - But there's two different levels.

Brent - There's two different levels, for guides. But you're a guide ---

Dave - Yep.

Brent - --- see so you're subject to AS08

Dave - or 15

Brent - Well maybe. I mean if arguably - our specific one is the guiding statutes.

Dave - Well these are the guide statutes and this is where - this is where it comes in. If you're convicted of - court shall or a department State and guide license transfer license ---

Brent - What are you reading out of?

Dave - I don't know what it is.

Brent - What's the number AS54 720 is it 720?

Dave - Yep - unlawful acts

Brent - All right.

Dave - - um - commits - of a person who commits an offense set out in 15 or 16 of this section. 15 is a person licensed in this chapter to knowingly violate State statutes or regulations prohibiting waste of a wild food animal or hunting on the same day airborne. Well what I'm standing on we did everything on a trapping license we weren't hunting we were trapping. Trapping falls under the 8 through 14. It falls under 8 - a person committed a violation of a State game statute GAME it says GAME and trapping is part of game.

Brent - Ok.

Dave - So when you go to 8 there then you don't fall under the 3 years anymore. You go - it comes under the State shall order the department to suspend the guide license of a person who commits a misdemeanor in 8 as if - for specified period of not less than 1 year and not more than 5 years. That's what I would fall under if ---

Brent - If you are right and there is a distinction between the hunting and trapping. I know what that says but that is not what ---

Dave - Yep. I guess what I'm saying if it looks like a duck, quacks like a duck and walks like a duck it's probably a duck. The permit we received out there was for - and even in here it

says that you can take an animal trapping by any method except you can't use a shotgun larger than 10 gauges. The shotgun was a 12 gauge it certainly wasn't larger than a 10 gauge. Can't use a machine gun. The shotgun wasn't a machine gun. Set gun - no we didn't use a set gun. It also says you could take furbearers from a motorized vehicle but you know you must be off for whatever --- so essentially what they can say since you trapped illegally your now not trapping you now hunting. I mean is that - can they do that?

Brent - I think you could argue that. Ok?

Dave - Yep. Well I think---

Brent - Where is that going to get us though?

Dave - Well that gets us back to I guess where we were in the beginning when we were goanna fly out to McGrath and plead guilty to exactly what we're trying to get to here same day airborne fur bearer. Which is a violation of a game statute but not a violation of same day airborne big game. Essentially we're ---

Brent - Ok. Where does that get us?

Dave - It would get us back to ---

Brent - You goanna get your plane back?

Dave - The opportunity for someone to hear my side and decide whether I need to lose the plane or not lose the plane. I just - it sticks in my craw that Leaders will not let a judge decide the whole sentence. That does stick in my craw - yes it does. (This really sticks in my craw especially after we had given the State so much for the deal and then State gets to keep saying, "We want more". When would it ever end if you didn't put your foot down?)

Brent - Ok. I mean that's because as I've explained be for 99 times out of a 100 defendants don't want a judge to make a decision. I - quite frankly as I have said before why you would want that I don't know.

Dave - Well it's partially to do with that thing I have wrote - that as I wrote it I became to believe - maybe mistakenly - but um other people have read it, Toms read it, and I believe I have a pretty -uh - I feel I have a reasonable explanation why I shouldn't be punished as much as somebody who did essentially the same thing but did it with a client in the field that's paying them money. Because I was out there spending my own

money to help with a problem that is widely known as a problem and has now been opened up across most of the areas where I did it to what I've done is legal. So I feel that I have a better chance of getting a lenient sentence then someone that went out and landed and had their client jump out and shoot a moose for $16,000. Because I was spending my own money, burning my own fuel, risking my own airplane to help the State with a program - yep I went out of bounds so yeah I'm no longer helping the State with that program legally but where I was is now where that program is expanded to. And in the State Constitution it says that if there are things like that where you do things and later on a law is passed that allows it that that will be looked at when it comes time to sentence and time to decide the punishment that's handed down.

Brent - Ok.

Dave - And there's a whole lot of other things that I think enter into it. Um - like I've said I've read through all this stuff - you know - um - I just certainly think that a judge that would hear it would understand - you know like if you had a judge read Jim Harrower's letters - did you read those letters?

Brent - Mm hmm.

Dave - There's a gentleman that is one of the finest men in Alaska that was essentially screwed out of his lodge by the State. He had - he told me he didn't go out there in the wintertime because he would have been tempted to do exactly what I did. He told me, "Dave I couldn't go out there in the winter and see the wolves actually killing the moose because I couldn't help myself". That's the way I feel pretty strongly and I would like to hope that a judge would understand that feeling of seeing everything you worked for being taken away by mismanagement of wolves and I would hope that she would say you didn't do it with a client that was paying you big bucks you did it because your future was disappearing. Not income in your hand right now - your future was disappearing.

Brent - Ok. You want to take that risk? You have your license back in 8 months.

Dave - I understand - I would like to - I don't know - um. I guess I would like to layout the best case we have and then go to Leaders and say - you could go to Leaders and say, "Dave's ready to go to trial, he feels he has a really strong case. You don't have to even tell him he's got all kinds of stuff that he's researched he wants to go for it. If you don't want to go to trial Mr. Leaders here's the - here's what we'll accept. Give him back his plane - he'll give you - what'd you figure out

$35000 in lieu of taking his airplane, which is a plane by the way; Mr. Leaders Mr. Haeg wants back because it's a plane that he has STC's on or field approvals that could never be duplicated before. That's why he wants that plane back. It aint because he's stuck on that plane or you could swap out Supercub maybe or whatever. I still think that's a pretty big hit me giving up my fall and losing a Supercub for what we did. I could see where I should lose it where we had people out there in the field - uh- you know clients and I'm doing all this illegal stuff but I wasn't - I wasn't guiding. They have to understand that.

Brent - I understand.

Dave - We were out there when it was 30 below zero with the doors open freezing our balls off -

Brent - His point is you're a guide you are held to a higher standards then Joe hunter. You are a guide ---

Dave - Ok I understand

Brent - --- you are on the honor system

Dave - So what would they do - would they expect someone that isn't a guide to give up a whole years of work? Like if you did it would they say ---

Brent - They'd take my plane.

Dave - Ok yep would they also tell you - you cannot practice law?

Brent - I'm not a guide - I'm not a guide that's the difference.

Dave - I already gave up a whole years worth of income. (Then Brent pissed it all away for not standing up for the deal that he told me he had for weeks!!!)

Brent - I know that David.

Dave - Doesn't that account for anything?

Brent - Yeah it does - that's - that's what we negotiated. They wanted 3 - they wanted 5. The Troopers I'm telling you they just see this so much differently than you.

Dave - I understand.

Brent - And they're the ones that see that.

Dave - I understand.

Brent - And they see this as, this guy doesn't understand the difference between right and wrong he took the law into his own hands we can't have a guide who is on the honor system for the most part because we can't enforce these guides laws being a guide he should lose his guide license for 5 years.

Dave - But this wasn't guide laws as you said.

Brent - It doesn't make any difference, to them. I'm just saying that's the way they see things, that's the message they send to Leaders.

Dave - Yep.

Brent - I'm not telling you what's going on up there ---

Dave - Ok I understand that but ok say you became a judge - maybe somebody nominates you for judge. You could be a judge I think - don't they pick people- they could say Brent you have enough knowledge we're goanna make you a judge, we're goanna send you all of the Fish and Game cases. You know my side; you know the State's side. Just step back for just a minute and think about what you would want out of me.

Brent - And I'd be happy to tell you that. I - I could understand the whole thing but I will tell you I don't see not getting a year on the license.

Dave - Ok I agree with that.

Brent - So that's number 1. Number 2 but you have to understand I see it completely different than everybody cause I've been representing defendants for the past 12 years ---

Dave - Yep but you were also for X amount of years

Brent - I was a prosecutor for 5 years.

Dave - Ok.

Brent - But it makes a big difference when you've represented people and you see the human side. Ok? I have become intimately involved; still remain friends with most of the guides that I've ever worked with - a few exceptions but for the most part. She's a magistrate; most of the judges don't do that, most of the judges on Fish and Game cases are not looking at anything else other than what the prosecutors and what the

defense attorneys are recommending. I - I told you that story - --

Dave - Yep.

Brent - You know where I recommended 3 and 5 days on one of my defendants case on a guides case and the judge gives him 60 and doesn't even think twice about the offense is goanna cost him to lose his guide license for 5 years and the judge says he shouldn't be a guide. And I was like stunned. And you know it happened - it happened to me just out in Dillingham

Dave - Yeah

Brent - You know I had this guide - 27 years not one problem with an assistant guide - as a guide

Dave - I know you told me about it.

Brent - And he made one mistake.

Dave - Yep.

Brent - And he lied to the Troopers when he was initially confronted and they had to investigate and found out he was lying. He then totally confessed, said he was sorry, and the judge said I'm giving you a $3000 fine. That means you lose your license for 5 years. That means you lose your license for 5 years.

Dave - Yep.

Brent - Because that's what the State is requesting.

Dave - Yeah.

Brent - And

Dave - Yep

Brent - the other guy I negotiated his deal so he didn't lose his license and he was as happy as hell cause he sat in the back watched it and went holy shit I could lose everything.

Dave - Yep.

Brent - And you know you could talk to Kevin about it he's had clients like that. I mean I had Jim Feges - he - you think - talk about somebody that got screwed. I mean he got just screwed and tattooed.

Dave - Yep I understand you know that there's risks or whatever

Brent - I know but here. The reason that I'm being skeptical about you David is because you are the one I know what losing your license for more than 2 years is goanna do to you.

Dave - Yep.

Brent - You may not recognize it but I do. Nobody may want to tell you what it is goanna do to you but I know. Ok and I have done everything in my power to avoid that. Because I know - I know you well enough - I know you well enough by now and you can say that you're willing to accept that but I don't think you are. I don't think you are willing to accept somebody telling you you're wrong and so while I'm happy to do whatever you tell me to do. I am goanna tell you again - I'm goanna write you a letter saying you have to be very careful because I don't think you can accept somebody telling you're wrong. And worse - you've got your family to think about, your wife, and your friends. (How has he done everything in his power to avoid that? He did everything in his power to make sure it would happen!)

Dave - Yep.

Brent - And you are ruminating over this where as we have pretty much eliminated this moose case, we've pretty much eliminated the wolf case (we've got it down to 5 counts), we've pretty much eliminated you losing your guide license for more than a year and on principal you want to go back and open this whole thing up and run the risk that you may get your plane - I'll bet I can give you 15 attorneys in town to go - call defense attorneys that do Fish and Game stuff around the State you explain to them what you did with the plane and see how many say you're goanna get that plane back from any judge. Ask them and see what the say. (Ruminating over Brent having me give away a whole years income, a full confession, $6000.00 in getting everybody in to testify, then have the State and Brent give me nothing in return for what we had agreed to? Now they both want me to give up an $80,000.00 to get the same exact deal that I already had. Someone please tell me why they wouldn't go after everything else after I agree to give them an airplane to sweeten the pot to a deal that we had already agreed upon?)

Dave - Yep but you know it I also remember why didn't - why didn't Leaders let us go out to McGrath when it was eleven counts and let the judge decide that?

Brent - I don't know why he didn't do that. That pisses me off. He just -he has caused me to have to sit here and explain this

to you 25 times he did it because he wanted to be a dick and it pisses me off. It caused me so much problems in my dealing with you and I as much told him. (Why, why, why didn't Brent tell the Magistrate that we had a Rule 11 agreement and that Leaders broke it?)

Dave - Yep.

Brent - It pisses me off. He had no concept of what it has done to your and my relationship. (No shit I now feel that Brent is working hand in hand with Mr. Leaders to strip my family and I of everything that we own in the world. Just because I went out to help the State to help with a problem that they needed help from the public with.)

Tom - With the moose thing. What - how does the moose thing just to me just go away? Did he bring that up, was it part of the deal, you brought it up? I mean ---

Brent - No it just it - it ---

Tom - It just folded in on itself - what?

Brent - The necessity for having any evidentiary hearing was about whether he would lose his license for more than one year. Leaders agreed not to do that anymore and that was the only reason we were goanna do that. So it just kind of went away. (Right here Leaders agrees there's no more need for any discussion on the moose hunt but after he forces us to trial by breaking the Rule 11 agreement he brings it right back in. How is this ethical or even legal after I exercise my right to go to trial?)

Dave - Well I thought you said that when Jackie typed it out they probably read it and decided that it - they wouldn't get much grip from it.

Brent - That's what Scot always said to me. You heard him. (Yet this investigated and closed complaint from a disgruntle hunter gets brought back in after this at my sentencing a jury trial. How is this possible?)

Dave - Well I thought that talking to you on the phone you said that when ---

Brent - I think - I think it does help us.

Dave - When you uh gave what Jackie transcribe to Magistrate Murphy you thought she probably gave a copy or that copy ---

Brent - No I gave it to him.

Dave - Ok.

Brent - I have to - I can't give the judge something without giving it to him.

Dave - Ok.

Brent - I have to give it - it's not fair. (But it fair for the State to cost me thousands and thousands and thousands of dollars on reliance of a deal and to have them break it.)

Dave - But anyway what you told me is they probably read though it and went wow - you know it probably don't - whatever

Brent - Well if I did whatever I apologize - I don't - I don't know - I don't know - shit I can't remember all the stuff I've told you as it is --- (Why would this matter if he told me the truth? On our taped conversation of 12/14/05 Brent over and over says, "You hear what you want to hear". I think my problem is that I hear what was said and when he tries to lie to me later I try to straighten him out but he denies ever having said anything contradictory in the past. Then after I started taping all my conversations with him I can prove he over and over and over lied to me. So does this mean that I am hearing what I want to hear or that Brent Cole is lying to cover up all of his lies and deceitfulness?)

Dave - But anyway what - I guess what Tom was asking is just - essentially - essentially

Tom - It went on, and it went on, and it went on, they pursuing it, pursuing it, pursuing it up until that day and then just whhh. It just - I mean did they use that - did they have that in mind to use that all along as like a bargaining chip even knowing they didn't have anything but to just keep - remember when he said - remember when this first started up out there at Silver Salmon and he asked you why now - to keep stirring it. That's my feeling - they probably never had anything on that from the fucking beginning.

Dave - I think that they brought so that they could let a judge know that there've been other questions of my credibility so the judge would feel more comfortable giving me a harsher sentence. That's what I think.

Brent - Of course that's exactly right. (And Brent wouldn't even tell them I refused to talk about the moose hunt and that I wanted them to charge me with the allegations if they insisted.

Brent later told me the State had no intention whatsoever of charging me on the moose issue but insisted that I agreed to talk about it. Brent told me it would be good to talk about it cause I didn't do anything wrong and it would make the State look bad. At the time I really didn't' believe him but it was kind of hard not to believe him when I was paying the man $200.00/per hour to do his best for my family and I.)

Tom - But then like I say ---

Brent - But -but I like to think ---

Tom - I mean don't get me wrong, I'm glad its gone away ---

Brent - I'm happy it's gone away. I cannot tell you guys what is going through Scot Leaders mind. I mean quite frankly I don't know whether he just wanted to avoid the hearing, whether he accomplished what he wanted to accomplish, whether to him getting the other concessions were more important? I mean you agreed before that it wasn't any jail time. When you agreed to do some jail time that may have been more important to him then ---

Dave - Well I think it all boiled - it all boiled down to like you admitted before and I admitted that it all boils down to the airplane. Because he didn't want to go out there and have the airplane up for grab - up for the judge to decide who keeps the plane. That's why that whole thing went down the tubes. (This is exactly why Scot Leaders changed the deal. He felt justice might actually happen (I would get to keep my plane) and he couldn't allow that. Mr. Leaders insisted on being judge, jury and executioner.)

Brent - He's so stupid. I don't know why he would do that quite frankly. I - I think a judge would give it away in a second so your right he did say that and what can I say - I cannot - I have no control over what parameters he set. (He's so stupid how can Brent say this? Leaders is smarter than shit. He got me through my own attorney to give up me and wife's whole years income, a full confession including maps, and over $6000.00 in fees talk about something we never should've had to talk about in the first place and he didn't have to give us a damn thing. Now who is stupid Leaders or my attorney? Then Leaders is so "stupid" he gets my own attorney to ask me to give him and the State my $80,000.00 airplane to sweeten the pot. How "stupid" is this when after I give him my first airplane he can then just change the deal again and know there's no doubt that my own attorney who I'm paying $200.00/per hour to counsel me will no doubt tell me to give him and the State my second airplane to further sweeten the deal? -- See here where Brent says, "You're

right he did say that and what can I say" so it isn't my imagination when Brent tells me something one week and then denies telling me it the next and now that we started transcribing all of my tapes of him we can prove it beyond any shadow of a doubt.)

Dave - I guess what I'm getting at is there - is there any rational for me to go through this stuff like I did with the moose thing and pick it apart as best I can and then show at least some weaknesses in their case - does that help us at all? I mean is there - like what I've done ---- (Why doesn't Brent have any control over what parameters he set? Shouldn't that be the first thing that Brent nails down before we give Leaders anything? Is it Brent's policy just to give Leaders everything he wants for as long as he wants and not get anything in return and then if you ask for something in return to just accept it when Leaders says, "Nah I don't think we need to give you anything".)

Brent - It depends on what you want to do. Do you want to get back into the guiding and focus your attention on what you're goanna do come July 1st? In my opinion it that's your - if that is what is most important to you then I would move on. If you want to try to renegotiate this deal in any aspect or you want to have a trial on this thing then I would say yes. (How can it be called renegotiate when Leaders and the State gets to keep everything you have given them and you have to start from scratch with no consideration for anything you have already given them? This isn't negotiation this is being held hostage by a terrorist organization. Do you negotiate with a terrorist by giving them what they want and then not receiving what supposed to be given in return and then agreeing to give them more so you can get what was promised in the first negotiation?

Dave - Like I told you to me it's important to get the plane back somehow. You don't - I guess what you're saying we're not goanna do that short of a trial probably - I mean he's not goanna let the plane be decided by a judge or magistrate?

Brent - It doesn't sound like it to me.

Dave - So he just put his foot down even though that isn't his job to administer punishment. It is his job to determine guilt or innocence as far as I'm concerned.

Brent - They can do all that - they do it all the time - I mean you can say that but ---

Dave - Well that's what I read through the Constitution. I mean that's how the governments set up.

Brent - They do it day in and day out - they set penalties.

Dave - Is there any - is it worth anything to layout by Tony Lees admission and by the Troopers report that Tony Lee kept the wolverine after wolverine season was - was ----

Brent - I'm goanna bring - I'm goanna bring all that up.

Dave - Ok. Does that - um - and also I wanted to ask you if - if you were a judge and Tony Lee and my trap line thing - Tony Lee's out there checking it, pulling wolves out/wolverine keeping them, selling them. Um does that mean it's still my trap line when he lets everything out at the end of the season? To me that's a pretty strong statement.

Brent - Why don't I get one of the other counts and not the wolf - and not the trap at the end of the year - different count substituted in so you don't have to plead to that count?

Dave - All - alls I'm saying I think that's a count that doesn't need to be there. It's to me that's Tony Lees bag of worms.

Brent - Ok.

Dave - I mean I'm not looking at it like - like

Brent - See I look at it from the big perspective - to me whether it's that count or another count I'll work on getting another count in there. If that is something ---

Dave - Oh you as a prosecutor you mean?

Brent - No I'm trying to look globally - and it - because again ---

Dave - Yep.

Brent - I'm goanna say this. To me I negotiated a deal that I never thought I would get for you. I --- (And you never got it for me. Yet they got to keep everything we gave them.)

Dave - Then how did we get here? How did we get to where we're at now? From where we were at before - where you - how did we get from there to here?

Brent - Well I just keep talking to him, we keep working it, we keep throwing out suggestions, the pressure comes down, there's a day that we're suppose to go out there, they've got to put on

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evidence, they concede a little bit, we concede a little bit, we are where we're at.

Dave - That's - that's kind of what I'm saying. Does it hurt to say, "Hey we can prove that Bret Gibbens lied about all these traps that were set"? I mean - I mean ---

Brent - they get that - they get ---

Dave - It's not that big a deal.

Brent - They get that count out and he gives you just another count of unlawful possession.

Dave - I thought that's in - that's already in there.

Brent - Another - well it just makes you plead to two counts of unlawful possession instead of one.

Dave - Yeah - yeah - I mean they could have - I mean they could have a count for each wolf or eleven counts of unlawful possession cause there was - or nine wolves?

Brent - Whatever it is - I mean you know it's just - to me I don't focus ---

Dave - On each end of it - well see alls I look ---

Brent - --- looking at is the bigger picture that is how are we goanna get accomplished what - what in the parameters you set out for me. Because what did they charge you with four or five unlawful possessions, or one having a snare to long, or one guiding, you know blah - blah - blah. To me what difference does it make? ("To me what difference does it make" Of course it doesn't - he isn't the one whose life is going down the tubes!)

Dave - Yep.

Brent - Because what - I don't - I'm trying to get to the end.

Dave - The end -yep - and alls I'm saying is if you have a heap on your desk like this of problems somebody will say that's a big heap. Ok if we can show that the trapping thing has some pretty serious flaws in it. Maybe it gets thrown away. Tony Lee I feel's responsible for those sets.

Brent - So they charge us 11 counts of same day airborne of wolves, and 11 counts of unlawful possession, and 2 counts of unsworn falsification. And all of a sudden we've got 16 counts.

Dave - So what you're saying is even if we can prove a charge is baseless they'll think that it isn't and add in another charge somewhere else?

Brent - They haven't charged everything they could have charged David. They never have.

Tom - I see that point.

Dave - Yep.

Brent - They could charge ---

Tom - Sure they could do that.

Brent - Each one of those wolves they could charge us 2 or 3 different charges. That could be 35 charges out there. They picked a representative number. Ok. You can say, "I don't like this I don't like this" and they can say, "Ok we'll just pick 35 that work". There's an unlawful possession on every one of those wolves. So that's 11 right there. There's a same day airborne with every one of those wolves, there's a violation of a permit on every one of those. That's 33 counts right there. There's I don't know how many unlawful acts by a guide.

Dave - Well yeah - well I thought I read somewhere that each occurrence - they - what they broke it down was "each day" and I thought I read somewhere that in some of this crap and that's nitpicky I understand.

Brent - They can have 4 different ways you violated the law. Each one of those acts is different - the act of shooting out of the plane, the act of violating the permit, the act of possessing the animals ---

Dave - Yeah and actually wasn't there at the beginning wasn't there something about falsify or tampering with evidence and crap like that?

Tom - Yeah.

Brent - Tampering with evidence that's a C felony, yep. I mean ---

Dave - Um - yeah I agree - but alls - I guess in my mind ---

Brent - Actually that tampering with evidence was a - was a no brainer. That was at the beginning of the tape.

Dave - Yeah.

Brent - That's what they put in when they went for the affi - for the search warrant.

Dave - Yep

Brent - And that's a C-felony.

Dave - But I remember also remember a conversation with you that you say they did - that's just automatic to get you kind of entangled in stuff ---

Brent - It's just so broad David, if we went to trial on that we would have a hard time.

Dave - Yep.

Brent - I mean when you went out and told them where you said those wolves were shot and they weren't there that's tampering with evidence.

Dave - Yeah - I don't - I don't - I understand that's why I brought it up. I don't - I guess I feel like we got where we're at by just picking away at what we can pick at. You know ---

Tom - Yep.

Brent - Right.

Tom - I can see that.

Dave - Like Tom's big thing is hey if you're in a hole and you can drag a little bit down, and get a little higher, you can't get everything, you can't get out all at once, just keep working at it.

Tom - I agree.

Dave - And that's where I've been trying to just keep picking away at it ---

Brent - Right but ---

Dave - We'll probably come to a time where we can't pick no more and we either need to jump or ---

Brent - Well other than the plane ---

Dave - Other than the plane I'm happy, I'm joyace, I could live with all that ---

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Brent - Just get the plane back?

Dave - Yep we'd be done deal.

Brent - (laughs)

Dave - Um here's Tom wrote these up - I was probably go with those

Tom - You would live with them.

Dave - Um I'd prefer to keep the Supercub cause it also has modifications with those wheel skis that I don't know I'll ever get again but whatever.

Brent - But is it on wheel skis right now?

Dave - Nope but the mod is ---

Brent - Was it on wheel skis when they took it?

Dave - They never took the Supercub.

Brent - Is the plane that they took was it on skis?

Dave - On straight Aero Skis, yes. They can have those Aero Skis I don't care. The Supercub -like if we swap this Supercub for the PA-12 even though the Supercub isn't my main plane it does have a modification that is legal on it that I don't know if I could get legal again but I could work though that you know woopedo. But like I told you there's a guide named - that got busted for - I could give you a brief rundown - he had 4 clients no 3 clients they ended up shooting 5 moose when he wasn't there. So they were 2 moose over ---

Brent - Where was this at?

Dave - It was up in Fairbanks. Name I told you his name whatever it was - anyway um he got busted for it a little while after the fact because the clients well they had actually fronted the money for an airplane and since they'd done that they thought they could do whatever they wanted. Anyway they shot 5 moose for 3 of them. Apparently 2 of them had shot smaller moose they seen bigger moose, same thing more moose dead, they convinced him to cover it up, it came out later, State seized his plane because he had used it to haul the moose in and out blah-blah-blah, fully guided deal. He said he went back and forth with them, back and forth, back and forth um wrote the DA letters without his attorney even knowing it saying

hey I'm a good guy you know this is what happened blah-blah-blah, I want my plane back, how about if we - if I give you money in lieu of the plane. He said they ended up buying off on it. Gave them $25,000 dollars it was brand new - not brand new but a recently rebuilt 180 on floats. And he said in the deal - --

Brent - Could it have been Nome?

Dave - could be - could've said Nome. Yep um -

Brent - It was a new 180?

Dave - Anyway he got his plane back- and he said it was the same deal with him. That - that plane he had - there was some modifications, it was light, he liked it, and he didn't want to just give it up and try to redo the plane - um - you know whatever. If I give them the plane what are they goanna do with it? You said that they probably couldn't do anything with it. They'd probably what take it apart and sell it a wing at a time, or take it apart and burn it, or just burn it, or roll it over or I mean?

Brent - I've no idea what they want to do with it.

Dave - You know is there any if and or what or way that we can have them say that they - we gave them the plane and then I can somehow make arrangements to get it back?

Brent - I've made that suggestion.

Dave - They don't buy off on that one? They don't like that one?

Brent - No they just don't get back to me.

Dave - Ok. Anyway there's a couple more things here blah-blah-blah I've told you all about the crap and the - have you made any headway on whether I should be booking hunts or not or whether Arthur should be booking hunts or going to the sport shows?

Brent - (lots of chair creaking) Hey Scot it's Brent I have uh David Haeg and Tom in here and they're asked again about whether the Troopers are willing to talk about the plane. Can you call me back and if you talk to them if you could give me the name of the trooper whose making this decision and maybe I can talk to him personally seeing that this is such a difficult thing for them to make a decision on. Call me 277-8001. Bye.

Dave - And also maybe if they can do money in lieu of the plane. I don't - you know - I don't know if that - apparently it worked with someone else. Um ---

Tom - I would suspect it would be a better chance then on the sly letting you buy the plane back, for sure. If the word got out on that - you know.

Brent - I think that has happened. Letting people buy their planes back after it's done. Because they will know what the value of it is.

Dave - Floyd or no Ed one of those guys down there did it.

Brent - Yeah it was uh it was us his brother maybe and it was the other guy that owns the hanger up here. Um that lives down in your - in that area. Troy ---

Dave - Hodges

Brent - Hodges

Dave - Yep.

Brent - They paid $100,000 dollars in fines.

Dave - Well those guys deserved to get everything that they got.

Brent - True.

Dave - I've seen the rampage that they've been on. And I've called the Troopers on them every chance that I've had. Ok - you know - and that's neither here nor there I guess. I just think what I was doing out there shooting wolves was what is goanna be happening here this winter in the same area and I don't think that I was doing anything that wrong but the media and everybody else sure thinks so blah-blah blah. And with Al Schadle so he was South Central Regional Commander and you know like his rank was he Captain, Lieutenant, Colonel, blah-blah blah blah blah, uh underling? I mean I assume to be South Central Regional Commander you'd have to be fairly high up in it ---

Tom - Definitely - you'd have to be at least a Captain.

Dave - Um I mean not that it really matters - um and do those letters that we had wrote do they will they - I mean if we plead they don't even get entered - nobody even sees - they don't even see the light of day in other words?

Brent - No the judge is goanna read them all.

Dave - Um.

Brent - It - it looks - it's a factor in determining whether or not she accepts this plea agreement between us and the State.

Dave - Ok Tom brought up another thing. What keeps the Feds from filing a case of shooting from the air?

Brent - Well they can.

Dave - Huh?

Brent - They can.

Dave - So no matter what happens they can do that? And is that something that's likely to happen or unlikely?

Brent - It's not goanna happen - I've never had it happen.

Dave - Ok um.

Brent - Now if the Fed's charge you the State cannot come back and charge you.

Tom - Ok but if he pleads to the shooting of those wolves to a plea agreement or whatever - ok the Feds can still come back and charge him with the shooting of the same wolf?

Brent - That's what I understand.

Tom - Doesn't that play double jeopardy then?

Brent - I would think so but I know that the rules that have come down have said no.

Tom - Because they're two different entities?

Brent - Cause they're two different governmental entities. Rodney King - those guys got acquitted in State court and convicted in Federal court for the same thing. That issue has been briefed.

Tom - I mean those two pleas they aren't - aren't far off from what is on the table now, am I right?

Brent - Right. The July thing is an issue; the jail time is not a problem, the fines, um ---

Tom - So out of those 2 you would say the one in lieu of on taking the plane ---

Dave - I'd rather have - or and you know if they want to say that it's a fine they can they can as long as they convict me of same day airborne furbearer trap with the trapping it doesn't affect my guide license. It says right here ---

Tom - It don't matter cause ---

Dave - You know if you're in a hunting State statue or regulation ---

Brent - I know you David if you can believe that ---

Dave - But what I'm saying is if they make a plea agreement -

Brent - If you can believe that the Division of Occupational Licensing is goanna be reasonable and read that the way you do. I'm goanna tell you I had to go all the way to the Supreme Court to get them to back off. That cost my client 3 years of litigation.

Dave - So even if it was trapping they would say it was meant - hunting.

Brent - Yeah it's part of hunting. Hunting is trapping and they would say, "you aren't goanna get your license for the next 3 years" and you'd go, "what do you mean?" and they'd say, " well you're not goanna get it", then you'd have to go to Superior court get an injunction demand that they give it to you. They would - even if the judge said yes you appeal, they appeal, you'd go to a Superior court judge, then you'd go to Supreme Court. It took me 3 years and my client never recovered from it.

Dave - Hmm. Well I guess I just look at it you know more along the lines as this - you know - defendant committed a crime with reason beyond a doubt which of two or more degrees the defendant is guilty ---

Brent - But see the difference is that's not the case here because you're a guide. That would apply if there wasn't a section applicable to guides. But you're a guide so they aren't on even - you're not on even - there's not two equally the same statues. One applies to guides who commit game violations and the other applies to regular people that commit game violations and I don't think that the court is goanna say that you have to be convicted of a lesser one.

Dave - Well I don't know. To me it says so right there.

Brent - I know- but - I know.

Dave - It doesn't say anything about guides in there or whatnot - it just says when the defendant has committed a crime and there is reasonable ground of doubt. And to me reasonable ground of doubt is everything that we were doing out there had trapping written all over it. We were setting snares, setting traps, the permit they gave us that we violated but it was on a trapping license, all the wolves we sealed were on a trapping license even though I guess they were illegal but you know that's - that's ---

Brent - And that's fine and I'm happy to do that but you have to understand that if you ---

Dave - Well what I would say is, "yeah lets not go there with this and have a fine" if they want money in lieu of airplane a whatever fine.

Tom - Right.

Dave - Because what's his name that I called in Fairbanks and he was super nice guy and he said just keep your chin up and he said he understands you know he lost I don't know how much money he said ---

Brent - But at least he had a guy - I mean I know who he dealt with up here Jeff O'Brien been a prosecutor for 15 years.

Dave - Yeah that sounds familiar

Brent - And O'Brien is an easy guy to deal with, and he's reasonable, and he's been doing it for 20 years.

Dave - That sounds familiar because he asked me who ---

Brent - He's a good friend of mine that's exactly right. And Leaders has been doing it for 2 years, a year, actually not even a year. So you're not goanna get as good a - you know - it's just a difference between dealing with somebody that's been doing it for a year and somebody that's been doing it for 20. (Right here Brent knows that he isn't goanna get as good a deal out of Leaders as he would with O'Brien. Is it possible I'm the first lamb that Brent has lead to Leaders slaughter? He said Leaders hasn't even been doing it for 1 year. How can you trust someone like that without anything in writing? Is this giving me my right to "reasonably competent assistance of an attorney

acting as a diligent conscientious advocate?" (*People v.* Ledesma (1987) 43 Cal.3d 171, 215.)."

Tom - Yeah.

Dave - Ok well I guess we can get out of your hair.

Tom - Um what's like - where do we stand on timeline here. What is goanna happened between today November 22nd and January 7th?

Brent - A little bit depends on what you guys want to do.

Dave - I want my plane back and I want to whhhh.

Brent - Let's assume that the plane is not coming back. That should be one decision that has to be made and let's assume that the plane is coming back. What do you want to do? If the plane is coming back do you want the deal? If the plane isn't coming back do you want the deal?

Dave - Ok and when you're saying the plane going away and not coming back - the PA12 not the Supercub ---

Brent - Correct

Dave - Cause they're not making any headway on it.

Brent - Let's just - let's just - why don't you - do we want ---

Dave - Um have you run it by Leaders that I'm thinking about going to a jury trial?

Brent - Yep.

Dave - What does he say about that - great?

Brent - I don't have good client control. He can't believe that I would do that. And I just say, "well ---" (What the hell does this mean "I don't have good client control"? I thought I was paying Brent in telling him what I want done.)

Dave - Ok.

Brent - "---he wanted to go open sentencing - yeah I know I don't understand it but". (In other words Brent thinks I'm crazy for going open sentencing and thus deliberately sabotage my open sentencing agreement. Is that what this means? To me it almost seems to me that Brent is helping Leaders to prosecute me. Has Leaders told Brent if he helps hang me from the highest tree he expects to get some pretty good deals in the future?)

Dave - Ok um yeah I guess just work on those two deals that Tom handed you.

Brent - Ok.

Dave - And I'll think about giving up the plane forever - whatever - I guess. You know but I'll tell you what I think they're hammering me pretty hard for what I did keeping that airplane plus me giving me up a year of guiding. That's my honest to god feelings. I think they're putting it to me and that's my feelings. (Read this.)

Tom - You should have a sit down talk with Scot Leaders and say, "hey Scot come on now - I mean just like he said - gave up the hunting season, had him stewing over this god damn moose thing, now then spilled his guts from - at the deposition like he was asked to, all of that and you know what are you doing - ok - you've got him nailed to the cross already well lets put some more spikes in him - I mean - come on Scot" and say "hey (can't hear). You know it's been going on for 8 goddamn months already - I mean goddamn - life is to freaking short to be going through this shit. Resolve it and get the man on with his freaking life. (Read this.)

Brent - But it would be one thing if we weren't making progress. ("Progress"? Like letting the deal we paid so dearly for go by without raising a single finger?)

Tom - I understand that. That I understand.

Brent - Ok when we first came in you were talking about 5 years.

Tom - I agree there - I agree - I do agree.

Brent - Nobody wants it ---

Tom - If you can't get no more juice out of the damn thing ok.

Brent - Well nobody wants the thing ---

Tom - Everybody wants the best we can possibly get -believe me I understand that.

Brent - But at the same time come on now - how would David do if he lost his license for 3 years?

Tom - Not well.

Brent - Ok.

Tom - Not well in the business that he's in. David will do well in anything he does.

Brent - David would not do well personally.

Tom - No - no - not right away for sure.

Brent - He would not.

Tom - No it would be in there for the rest of his life.

Brent - That's right.

Tom - I understand that.

Brent - And - and you know - maybe I shouldn't be so concerned out of your welfare. It certainly isn't in my best interest. My best interest is for you to litigate the shit out of this thing and just keep paying me a whole ton of money. (Read this.)

Tom - I thought he did that already. (No kidding)

Brent - No I haven't even started that - down that trail. I don't want to start down that trial. You mean - I - you know - I - I - unlike what people say about attorneys I want to see you get taken care of. I mean I - under these circumstances you're never goanna feel good about this thing, regardless. But I know what the consequences are of a loss of 2 to 4 to 5 years and goddamn it I deal with these people, I've seen so many irrational things come out and I've seen so many goddamn judges just do whatever the Troopers say despite whatever I say. That it's almost goanna be over my dead body that we go into one of these things open sentencing. Knowing what the risk is. ("Under these circumstances you're never goanna feel good about this thing, regardless" I wonder what Brent is talking about here. I wonder if he realizes that he and Leaders together sabotaged me so I will never have a fair prosecution and no mater how much bullshit either one of them tries to feed me I will never believe that I was treated justly.)

Tom - And with nothing in writing that I can see at this point I mean freaking Leaders can go in there before January 7th and amend that thing anyway he wants. (Exactly. If I give the State my airplane like Leaders and Brent are begging me to do what is to stop them from changing the charges again and again until they take everything else that I and my family own?)

Brent - But the bottom line is - nothing in writing - we have squeezed and squeezed and squeezed and you know - you know to me

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damn it you'd be back in business July 1st. (How can Brent tell this to me when Brent gets "nothing in writing" and Brent then tells me for two weeks I had a deal and then just says, "Oops Leaders changed the deal" and then Leaders gets to keep everything I already gave him. How could Brent tell me that I will be back in business by July 1st? I may be in business but it may be at McDonalds because everything that I worked my whole life for to be a great Alaskan Big Game Guide will have been stripped from me.)

Tom - You're right we did squeeze and squeeze and squeeze well lets put two hands on it and give it one last fucking squeeze.

Brent - Ok - ok.

Dave - Um what should I do about these people that keep calling me wanting to send me money?

Brent - You'll make them send you money on July 1st.

Dave - What about the three booths that have non-refundable deposits? Write it off - don't send Arthur?

Brent - I'm trying to figure out what to do with that.

Dave - That other guy like I told you down in Fairbanks that you know he said that he went and booked - he just took it to mean he couldn't go out in the field - you know - whatever

Brent - But it specifically stated that in the plea agreement at time - you know - you know I feel uncomfortable about telling you - you could do it ---

Dave - Ok well if you could just at some point try to figure out yes or no. Also we - I have yet to get a full copy of my interview with the State that we did in your room.

Brent - I understand that to - I have asked them to send a tape into the Troopers - the tape is out in McGrath - I've asked them to send it in to here so that I can have it redone.

Dave - Ok cause its Side A is clear - Side B is useless. Um I guess could we get Leon Allworth's copy of his letter of support? Um I also - Jackie went through the discovery that big pile of stuff and she emailed you there was quite a few pages missing and I don't know if that's - that whole discovery is it suppose to come from page 1 through the end or can they pull?

Brent - I've been pulling stuff in and out so I don't know exactly what - I try to keep things in line.

Dave - Well Jackie emailed you the pages that we're missing.

Brent - Yeah I have it.

Dave - Um I know this probably doesn't matter unless it goes to trial or whatever. I also read in there something about taking out surplusage out of charges.

Brent - Yeah.

Dave - And in there they said well they seen where some moose got in snares and disappeared and blah blah blah. I think that's just in there so like if a jury or anybody who hears they just think that I'm a worse person. Does that have any bearing whatsoever on any of the charges?

Brent - Which charges - what are you talking about?

Dave - Well in the charges - charges it ---

Brent - That's the information they don't read any of that.

Dave - Ok. Um

Brent - None of that goes to the jury.

Dave - Ok well I thought there was something ---

Brent - None of that goes to the jury.

Dave - It said in the charges or in the information you can uh I don't know - there blah -blah-blah. Maybe it was in ---

Brent - It's this stuff - this is the stuff that goes to - in front of the jury -

Dave - Just the counts - not

Brent - Just the counts. The other stuff is just hearsay. If it would go to trial it would have to be proven by a jury - to a jury beyond a reasonable doubt.

Dave - I don't know somewhere in here it said that there were 3 moose - 3 different moose got in a snare and blah blah blah and - and anyway I don't know where all that went. Oh a moose had been caught 1 of which broke snare 2 of which

Brent - None of that stuff would go to a jury

Dave - had escaped the area dragging - I was just thinking that was just stuff that would keep people from ---

Brent - It would be likely that - that stuff would (words I cant hear) ---

Tom - They'd have to prove it.

Brent - They'd have to prove it which would be the Trooper testifying to it but there would be cross-examination.

Dave - Ok. Um you have uh Leon Allworth's deal?

Brent - (asks someone in office for paperwork) Do you want this back right now? I'd laugh at that stuff - there's nothing in there that concerns me.

Dave - Ok. By the way it's going - how efficient the State is I don't think they would ever realize that I had a lodge. Oh thanks.

Tom - I mean there aint very much damn time between now and January 7th

Dave - And what happens at January 7th? What does that mean?

Brent - Well my idea is that this is goanna happen before then.

Dave - Well that's what we've said 8 months ago. What happens at January 7th?

Brent - Well it's a trial call and they say well what's goanna happen? If its goanna go to trial and if it's goanna go to trial then you've gotta be there.

Dave - And then what happens? You pick jurors and all that crap?

Brent - Yep.

Dave - And how long does that take?

Tom - Laughs.

Dave - Months and months and months or weeks or

Brent - To pick a jury?

Dave - To pick a jury, go to trial, the whole nine yards.

Brent - Probably 5 to 7 full days to do a trial.

Dave - To pick a jury ---

Tom - And do the trial.

Dave - And you know you hear all this stuff about people being biased or whatever do you think that you could actually get a jury out in McGrath?

Brent - Jury in McGrath?

Dave - You know people that don't know ---

Tom - The population

Dave - Bret Gibbens, Toby Boudreau.

Brent - It not a question of whether you know the people or whether you've heard about the case. The question that the judge asks every person on the jury is given what you know or the people that you know would you still agree to be a fair and impartial juror wait till all the evidence is before you before you make a decision? And that would be the pledge that they would have to make. I mean certainly Fish and Wildlife cases are emotional, this one would be, probably take a little bit longer to decide.

Tom - Well?

Dave - Well we off?

Tom - We off.

Dave - Well I guess thanks again.

Case Number: 04-23593

IN THE DISTRICT/SUPERIOR COURT FOR THE STATE OF ALASKA
AT McGrath

SEARCH WARRANT NO. 3KW-04-81-SW

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.

TO: Any Peace Officer

[ ] Sworn testimony having been given by _____

[X] An affidavit having been sworn to ~~before me~~ by Trooper Todd Mountain

[ ] Following my finding on the record that there is probable cause to believe that 1) the presentation of the applicant's affidavit or testimony personally before a judicial officer would result in delay in obtaining a search warrant and in executing the search; and 2) the delay might result in loss or destruction of the evidence subject to seizure, recorded sworn testimony was given by telephone by _____

I find probable cause to believe that

[ ] on the person of _____

[X] on the premises known as: Skulls and Bones by Kenny Jones, Taxidermy, 48640 Jones Road, at Soldotna, Alaska, Alaska,

there is now being concealed property, namely:

A bag containing approximately 8-11 wolf skulls from David S. Haeg.

EXHIBIT 27
PAGE 1 OF 16

SEARCH WARRANT NO. 3KN-04-81 SA

and that such property (see AS 12.35.020)

[X] 1. is evidence of the particular crime(s) of Take Big Game from Aircraft 5AAC 92.085 (8)

[X] 2. tends to show that David Scott Haeg committed the particular crime(s) of Take Big Game from Aircraft 5AAC 92.085 (8)

[ ] 3. is stolen or embezzled property.

[ ] 4. was used as a means of committing a crime.

[ ] 5. is in the possession of a person who intends to use it as a means of committing a crime.

[ ] 6. is one of the above types of property and is in the possession of _____, to whom _____ delivered it to conceal it.

[ ] 7. is evidence of health and safety violations

YOU ARE HEREBY COMMANDED to search the person or premises named for the property specified, serving this warrant, and if the property be found there, to seize it, holding it secure pending further order of the court, leaving a copy of this warrant, and all supporting affidavits, and a receipt of property taken. You shall also prepare a written inventory of any property seized as a result of the search pursuant to or in conjunction with the warrant. You shall make the inventory in the presence of the applicant for the warrant and the person from whose possession or premises the property is taken, if they are present, or in the presence of at least one credible person other than the warrant applicant or person from whose possession or premises said property is taken. You shall sign the inventory and return it and the warrant within 10 days after this date to any judge as required by law.

YOU SHALL SERVE THIS WARRANT:

[X] between the hours of 7:00 a.m. and 10:00 p.m.

[ ] between the hours of hrs. and hrs.

[ ] at any time of the day or night.

EXHIBIT 27
PAGE 2 OF 16

Case Number: 04-23593

SEARCH WARRANT NO. 3KN-04-81 SW

YOU SHALL MAKE THE SEARCH:

☐ immediately.

☐ within _____ (days) (hours).

☒ within 10 days.

☐ contingent upon the happening of the events expected to occur as set forth in the supporting testimony, specifically: .

(SEAL)

4-2-2004 @ [signature]
Date Judge

1:15 (a.m.) (p.m.)
Time Issued

DAVID S. LANDRY
Type or Print Judge's Name

TELEPHONIC SEARCH WARRANTS. If this search warrant was issued by telephone, the judicial officer named above has orally authorized the applicant for this warrant to sign the judicial officer's name. AS 12.35.015(d)

Time Warrant Served: 4-3-04 10:15 am

RECEIPT AND INVENORY OF PROPERTY SEIZED

11 wolf skulls

EXHIBIT 27
PAGE 3 OF 16

Case Number: 04-23593

SEARCH WARRANT NO. 3KN-04-81 SC

RECEIPT AND INVENORY OF PROPERTY SEIZED
(Continued)

RETURN

I received the attached search warrant on 4-2-04, 19 2004, and have executed it as follows:

On 4-3-04, 1904, at 1015 (a.m.) (p.m.), I searched (the person) (the premises) described in the warrant, and I left a copy of the warrant (with) (at) Kenny Jones
(person warrant was left with or place warrant was left)

The above inventory of property taken pursuant to th warrant was made in the presence of Ms. Sgt F and of Kenny Jones.

I swear that this inventory is a true and detailed account of all property taken by me on the authority of this warrant.

Trooper Todd Mountain
Name and Title

Signed and sworn to before me on 4/5/04, 19,

Judge

(SEAL)

EXHIBIT 27
PAGE 4 OF 16

Case Number: 04-23593

IN THE DISTRICT/SUPERIOR COURT FOR THE STATE OF ALASKA
AT McGrath

SEARCH WARRANT NO. 3KW-04-81 SW

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 FOR SEARCH WARRANT

NOTE: Before completing this affidavit, read the following points which should be addressed in your statement of the facts. A search warrant may not be issued until probable cause for the search has been shown. You should explain:

1. Who was observed (give names or other identifying information).

2. When did the observations take place (date, time, and sequence of events).

3. Who made the observations.

4. Why were the observations made. If, for example, the information came from an informant, the informant's reason for making the observations should be specified, and reasons for relying on the informant's information should be set out.

5. What was observed. Include a full description of events relevant to establish probable cause.

6. Where did the observations take place. Describe the location of the observers and the persons or objects observed. The description must be as specific as the circumstances will allow.

7. How were the observations made. For example, was an informant used, was there an undercover officer, was electronic surveillance involved, etc.

8. All other relevant information.

Being duly sworn, I state that I have reason to believe that:

[ ] on the person of _____

[X] on the premises known as: Skulls and Bones by Kenny Jones, Taxidermy, 48640 Jones Road, at Soldotna, Alaska, Alaska,

EXHIBIT 27
PAGE 5 OF 16

AFFIDAVIT FOR SEARCH WARRANT

NO. 3KW-04-81 SW

there is now being concealed property, namely:

A bag containing approximately 8-11 wolf skulls from David S. Haeg.

which (see AS 12.35.020)

[X] 1. is evidence of the particular crime(s) of Take Big Game from Aircraft 5AAC 92.085 (8)

[X] 2. tends to show that David Scott Haeg committed the particular crime(s) of Take Big Game from Aircraft 5AAC 92.085 (8)

[ ] 3. is stolen or embezzled property.

[ ] 4. was used as a means of committing a crime.

[ ] 5. is in the possession of a person who intends to use it as a means of committing a crime.

[ ] 6. is one of the above types of property and is in the possession of _____, to whom _____ delivered it to conceal it.

[ ] 7. is evidence of health and safety violations

and the facts tending to establish the foregoing grounds for issuance of a search warrant are as follows:

Your affiant is an Alaska State Trooper with over six years experience. I am assigned to the Bureau of Wildlife Enforcement in Soldotna. My main duties are to enforce fish and wildlife regulations. I am an instructor, vessel pilot, and field training officer for the State Troopers. In addition to my law enforcement experience, I have been a hunter, fisherman, and part time trapper for the last 25 years.

On 4-1-04, at approximately 0800 hours, I was asked by Trooper Brett Gibbens from McGrath, to assist him in executing a search warrant at the residence of David Scott Haeg, who lives in Soldotna. Trooper Gibbens had applied for and received search warrant 4MC-04-002SW. (see attached copies of SW and affidavit)

On 4-1-04, at approximately 1030 hours, myself, SGT Godfrey, Trooper Hedlund and USFW Officer Neely, arrived at Haeg's residence, which is the last residence on Lake Front Drive off Brown's Lake Road. During the search of the residence, I found a receipt from Skulls and Bones by Kenny Jones, made out for David Haeg. The receipt shows a total of 11 wolf skulls. (see attached receipt copy) Lt. Steve Bear called Kenny Jones and confirmed that he received wolf skulls from David Haeg. Jones said he believed there was between 9 and 11 wolf skulls in a bag. Haeg said he thought there might be around 8 or 9 wolf skulls at Kenny Jones'. Haeg also said the skulls are from wolves killed this year.

EXHIBIT 27
PAGE 6 OF 16

AFFIDAVIT FOR SEARCH WARRANT NO. 3KN-04-815CR

State Trooper
Title

[signature]
Signature

Subscribed and sworn to or affirmed before me on 1st of April, 2004, at Kenai, Alaska

(SEAL)

[signature]
EXP: 4/29/07 Judge/~~Magistrate~~

☐ Additional testimony relating to this affidavit was recorded on Tape # _____, begining log # _____, ending log # _____.

EXHIBIT 27
PAGE 7 OF 16

Case Number: 04-23593

AFFIDAVIT FOR SEARCH WARRANT NO. 3KN-04-81 Sa

State Trooper
Title

J T Mountain
Signature

Subscribed and sworn to or affirmed before me on 1st of April, ~~19~~2004, at Kenai, Alaska

(SEAL)

Exp 4/29/07

Judge/~~Magistrate~~

☐ Additional testimony relating to this affidavit was recorded on Tape # _____, begining log # _____, ending log # _____.

EXHIBIT 27
PAGE 8 OF 16

Original fax

3KN-04-81 SW

IN THE DISTRICT/SUPERIOR COURT FOR THE STATE OF ALASKA

AT McGrath

SEARCH WARRANT NO. 4MC-04-0025W

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.

TO: Any Peace Officer

☐ Sworn testimony having been given by Trp. Alaska State Troopers

☒ An affidavit having been sworn to before me by Trp. Trooper Brett Gibbens Alaska State Troopers

☐ Following my finding on the record that there is probable cause to believe that 1) the presentation of the applicant's affidavit or testimony personally before a judicial officer would result in delay in obtaining a search warrant and in executing the search; and 2) the delay might result in loss or destruction of the evidence subject to seizure, recorded sworn testimony was given by telephone by Trp. Alaska State Troopers

I find probable cause to believe that

☐ on the person of

☒ on the premises known as: 32283 LAKEFRONT DRIVE TO INCLUDE RESIDENCE HANGAR OUTBUILDINGS, AND CURTILLAGE at SOLDOTNA, Alaska. Last house on Lakefront Drive next to airstrip in Soldotna. Two story building which appears to be main residence and has hangar and outbuildings on the property. Property owned by David Hagy - lots located on T05N R09W KN0960014 North Shore Ridge Subdivision in Soldotna, lots are Lot 3, Block 2; Lot 4, Block 2; Lot 11, Block 4; Lot 5, Block 4, Lot 6, Block 4; Lot 4, Block 4; & Lot 3, Block 4.

Amended 4-1-04

there is now being concealed property, namely:

ALL .22% CALIBER RIFLES AND 12 GUAGE SHOTGUNS AND AMMUNITION, AS WELL AS SPENT SHELL CASINGS OR SHOTGUN HULLS. ALSO ANY NAVIGATIONAL MAPS, EQUIPMENT, AND INFORMATION CONTAINED WITHIN. ANY WOLF CARCASSES, WOLF HIDES OR WOLF PARTS. BLOOD OR HAIR SAMPLES WHICH MAY BE FROM A WOLF. ANY VIDEO OR STILL CAMERA FILM, NEGATIVES, OR PHOTOS WHICH MAY SHOW WINTER WOLF HUNTING OR TRAPPING, AS WELL AS ANY DIGITAL STILL OR VIDEO CAMERAS AND DATA CONTAINED WITHIN. ANY "BUNNY BOOTS", AND ANY WOLF SNARES. ANY WRITTEN RECORDS CONTAINING INFORMATION PERTAINING TO FLIGHT LOCATIONS, DATES, AND PASSENGER INFORMATION FROM MARCH 1ST THROUGH PRESENT. ANY RECORD PERTAINING TO THE HUNTING OR TRAPPING OF WOLVES. ALL TAXIDERMY PAPERWORK AND TRANSFER OF POSSESSION PAPERS FOR WOLVES FROM MARCH 1ST THROUGH PRESENT. LANDING GEAR, SKI'S, TAIL WHEELS. ALSO SATELITE TELEPHONE.

X

JKN-04-81 Cr

there is now being concealed property, namely: Search Warrant No. 4MC-04-002-SW

ALL 223 CALIBER RIFLES AND 12 GUAGE SHOTGUNS AND AMMUNITION, AS WELL AS SPENT SHELL CASINGS OR SHOTGUN HULLS. ALSO ANY NAVIGATIONAL MAPS, EQUIPTMENT, AND INFORMATION CONTAINED WITHIN. ANY WOLF CARCASSES, WOLF HIDES OR WOLF PARTS. BLOOD OR HAIR SAMPLES WHICH MAY BE FROM A WOLF. ANY VIDEO OR STILL CAMERA FILM, NEGATIVES, OR PHOTOS WHICH MAY SHOW WINTER WOLF HUNTING OR TRAPPING, AS WELL AS ANY DIGITAL STILL OR VIDEO CAMERAS AND DATA CONTAINED WITHIN. ANY "BUNNY BOOTS", AND ANY WOLF SNARES. ANY WRITTEN RECORDS CONTAINING INFORMATION PERTAINING TO FLIGHT LOCATIONS, DATES, AND PASSENGER INFORMATION FROM MARCH 1ST THROUGH PRESENT. ANY RECORD PERTAINING TO THE HUNTING OR TRAPPING OF WOLVES. ALL TAXIDERMY PAPERWORK AND TRANSFER OF POSSESSION PAPERS FOR WOLVES FROM MARCH 1ST THROUGH PRESENT. LANDING GEAR, SKI'S, TAIL WHEELS. ALSO SATELITE TELEPHONE.

WHICH:

- [X] 1. is evidence of the particular crime(s) of TAKE GAME FROM AIRCRAFT 5 AAC 92.085(2) & TAMPERING WITH EVIDENCE AS 11.56.610(a)(1)(B)(v)
- [ ] 2. tends to show that _____ committed the particular crime(s) of _____;
- [ ] 3. is stolen or embezzled property,
- [ ] 4. was used as a means of committing a crime,
- [ ] 5. is in the possession of a person who intends to use it as a means of committing a crime,
- [ ] 6. is one of the above types of property and is in the possession of _____, to whom _____ delivered it to conceal it,
- [ ] 7. is evidence of health and safety violations,

and the facts tending to establish the foregoing grounds for issuance of a search warrant are as follows:

- SEE AFFIDAVIT

EXHIBIT 27

PAGE 10 OF 16

X

3KN-04-815W

SEARCH WARRANT NO. 4MC-04-0025W

and that such property (see AS 12.35.020)

[X] 1. is evidence of the particular crime(s) of TAKE GAME FROM AIRCRAFT 5AAC92.085(8) & TAMPERING WITH EVIDENCE AS 11.56.610(a)(1)(A)(4)

[X] 2. tends to show that DAVID HAEG AND TONY ZELLERS committed the particular crime(s) of TAKE GAME FROM AIRCRAFT 5AAC92.085(8) & TAMPERING WITH EVIDENCE AS 11.56.610(a)(1)(A)(4)

[ ] 3. is stolen or embezzled property.

[ ] 4. was used as a means of committing a crime.

[ ] 5. is in the possession of a person who intends to use it as a means of committing a crime.

[ ] 6. is one of the above types of property and is in the possession of _____, to whom _____ delivered it or caused it.

[ ] 7. is evidence of health and safety violations

YOU ARE HEREBY COMMANDED to search the person or premises named for the property specified, serving this warrant, and if the property be found there, to seize it, holding it secure pending further order of the court, leaving a copy of this warrant, and all supporting affidavits, and a receipt of property taken. You shall also prepare a written inventory of any property seized as a result of the search pursuant to or in conjunction with the warrant. You shall make the inventory in the presence of the applicant for the warrant and the person from whose possession or premises the property is taken, if they are present, or in the presence of at least one credible person other than the warrant applicant or person from whose possession or premises said property is taken. You shall sign the inventory and return it and the warrant within 10 days after this date to any judge as required by law.

YOU SHALL SERVE THIS WARRANT:

[ ] between the hours of 7:00 a.m. and 10:00 p.m.

[ ] between the hours of hrs. and hrs.

[X] at any time of the day or night.

EXHIBIT 27
PAGE 11 OF 14

3KN-04-8/SW

SEARCH WARRANT NO. 4MC-04-0025W

YOU SHALL MAKE THE SEARCH:

- [x] immediately.
- [ ] within _____ (days) (hours).
- [ ] within 10 days.
- [ ] contingent upon the happening of the events expected to occur as set forth in the supporting testimony, specifically: .

Amended 4-1-04
9:07am

Margaret L. Murphy

(SEAL)

3-31-04
Date

Judge

7:40 (a.m.) (p.m.)
Time Issued

Margaret L. Murphy
Type or Print Judge's Name

TELEPHONIC SEARCH WARRANTS. If this search warrant was issued by telephone, the judicial officer named above has orally authorized the applicant for this warrant to sign the judicial officer's name. AS 17.30.015(d)

Time Warrant Served: 1029

RECEIPT AND INVENORY OF PROPERTY SEIZED

#1 12 gauge Shotgun u233343, #2 Rifle 223 Ruger 195-05482 w/ scope
#3 2 magazines taped together + loaded. #4 5 pair of white Bunny boots. #5 1 pair of white bunny boots. #6 pouch from office. #7 Kodak Camera I2266311. #8 Olympos Camera 987753. #9 .223 casing #10 white rope #13 9 12 gauge Shotgun Shells. #14 5 used wolf shares #16 Bag of Ammo #18 Green Cord. #19 Hair #20 w100 Aeroshell Oil, 2 Qts. #21 White Cord w/ rope.
#100-106 Hair + blood from lake area.

EXHIBIT 27
PAGE 12 OF 16

3KN-04-81SW

SEARCH WARRANT NO. 4MC-04-0025W

RECEIPT AND INVENORY OF PROPERTY SEIZED
(Continued)

RETURN

I received the attached search warrant on 4/1, 2004, and have executed it as follows:

On 4/1, 2004, at 1029 (a.m.) (p.m.), I searched (the person) (the premises) described in the warrant, and I left a copy of the warrant (with) (at) Dave Haeg

The above inventory of property taken pursuant to th warrant was made in the presence of Travis Hellons and of Todd Mountain.

I swear that this inventory is a true and detailed account of all property taken by me on the authority of this warrant.

Name and Title

Signed and sworn to before me on _____, 19____.

(SEAL)

Judge

MAR 31 2004 01:12PM P1 PHONE NO. : 9075243775 FROM : MCGRATH/LWP

EXHIBIT 27
PAGE 13 OF 16

3KN-04-81 Civ

040023593

AFFIDAVIT FOR SEARCH WARRANT

1. Your affiant is an Alaska State Trooper with over six years of experience including five in the Yukon and Kuskokwim area. I am currently assigned to the State's Bureau of Wildlife Enforcement in McGrath. My main duties include enforcement of fish and wildlife related crimes. In addition to my law enforcement experience I am a lifelong Alaska resident and have actively trapped for over 20 years.

2. On 3-5-04, the Alaska Department of Fish and Game issued permit #12 to David S. Haeg and Tony R. Zellers allowing them to take wolves with the aide of an airplane (same day airborne) within that portion of Game Management Unit 19D East outlined by map and written description.

3. On Haeg's and Zellers application form they stated that they would be operating from a fully equipped, well insulated hunting lodge located just southeast of McGrath and capable of supporting winter flight and hunting operations. Built owned and operated by David Haeg. In addition they stated that they would be using a bush modified, high performance PA-12 Supercruiser on Aero 3000 skis. (See attached application).

4. On 3-21-04, your affiant contacted Haeg and Zellers in McGrath and inspected their aircraft. I specifically noted the style of skis and oversized tail wheel without a tail ski. During our conversation Haeg commented on the performance of his skis, and the one-inch wide skeg. Zellers specifically commented on the type of experimental shotshells they would be using to shoot wolves with. This included new copper plated pellets and Remington "hevi shot".

5. On 3-26-04, while patrolling in my state PA-18 supercub in the upper swift river drainage located with GMU-19C I located a place where an aircraft had landed next to several sets of wolf tracks. From my experience as a long time hunter trapper I recognized this as common practice when looking to see the direction of travel of the wolves. This location was approximately 50 plus miles outside of the permitted aerial wolf hunting zone.

6. On 3-27-04, I returned to this location and eventually located where four wolves had been killed in separate locations just up river from the initial point. Aerial inspection of the sites showed that in every instance running wolf tracks ended in a kill site, with no wolf tracks leaving the kill site. Ground inspection of one of the kill sites confirmed my earlier observations. From my experience I recognized this as being consistent with wolves being taken from and airplane. At all four locations airplane tracks consistent with David Haeg's airplane were observed and the wolf carcasses had been removed.

7. Trophy Lake Lodge is about 25 miles from the location of these kills sites.

EXHIBIT 27
PAGE 14 OF 16

3KN-04-81CR

8. On 3-28-04, I returned to the kill sites and did a thorough ground investigation. At kill sites #1, #3 and #4 I was able to locate shotgun pellets in the snow next to the point where the wolf tracks ended in a bloody kill site. At kill sites #3 and #4 I found copper plated buck shot pellets consistent with my conversation with Zellers on the 3-21-04 in which we talked about what ammunition he would be using. At kill site #2 I found a fresh .223 caliber brass near the kill site stamped with "223 REM WOLF". Ground inspection also showed ski tracks next to each kill site consistent with the ski on your defendant's airplane and at kill site #2 I located oil drippings from a parked airplane.

9. With the above information I request that a search warrant be issued allowing your affiant to search the airplane N4011M to look for wolf carcasses, hides and parts, as well any .223 caliber rifles or shotguns as well as the ammunition both spent and live for either. In addition any engine oil, blood or hair samples contained within N4011M. Also navigational equipment and information contained within as well as any video, still, or digital photo equipment. Vegetation or parts of vegetation in or on the airplane, and any "bunny boots" and wolf snares.

EXHIBIT 27

3KN-04-81 SW

Pre paid

SKULLS & BONES BY KENNY JONES

48640 Jones Road
SOLDOTNA, ALASKA 99669
(907) 260-6592

CUSTOMER'S ORDER NO.	PHONE	DATE
	262-9249	

NAME David Hegg

ADDRESS

SOLD BY	CASH	C.O.D.	CHARGE	ON ACCT.	MDSE. RET'D.	PAID OUT

QTY.	DESCRIPTION	PRICE	AMOUNT
2	wolf skulls	35 ea	
	beige + white		
1	wolverine	35	
1	marten	10	
	9 wolf skulls total	9 ea	
	+	10.00	
	Storage fees after 30 days notification.	TAX	
RECEIVED BY		TOTAL	

B PRODUCT 510 All claims and returned goods must be accompanied by this bill.

0818

NEBS To Reorder: 800-225-6380 or nebs.com

Thank You

EXHIBIT 27

PAGE 16 OF 16

02468

IN THE DISTRICT/SUPERIOR COURT FOR THE STATE OF ALASKA
AT McGrath

SEARCH WARRANT NO. 4MC-04-001SW

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.

TO: Any Peace Officer

[ ] Sworn testimony having been given by Trp. _____ Alaska State Troopers

[X] An affidavit having been sworn to before me by Trp. Trooper Brett Gibbens Alaska State Troopers

[X] Following my finding on the record that there is probable cause to believe that 1) the presentation of the applicant's affidavit or testimony personally before a judicial officer would result in delay in obtaining a search warrant and in executing the search; and 2) the delay might result in loss or destruction of the evidence subject to seizure, recorded sworn testimony was given by telephone by Trp. Brett Gibbens Alaska State Troopers

I find probable cause to believe that

[X] on the person of DAVID S. HAEG OR TONY R. ZELLARS

[X] on the premises known as: TROPHY LAKE LODGE OR N4011M at SE OF MCGRATH, Alaska,

there is now being concealed property, namely:

WITHIN THE REMOTE CAMP KNOWN AS "TROPHY LAKE LODGE" LOCATED NEAR UNDER HILL CREEK NEAR THE UPPER SWIFT RIVER IN GMU-19C AND ON AND WITHIN AIRCRAFT N4011M, A PIPER PA-12 SUPERCRUISER, ALL .223 CALIBER RIFLES AND SHOTGUNS AND AMMUNITION USED OR ON HAND AS WELL AS SPENT SHELL CASINGS OR SHOTGUN HULLS, ANY WOLF CARCASSES, WOLF HIDES OR WOLF PARTS, OIL, BLOOD OR HAIR SAMPLES LOCATED WITHIN OR ON N4011M, ANY VIDEO OR STILL CAMERA FILM OR PHOTOS.

EXHIBIT 24
PAGE 1 OF 6

Case Number: 3KN-04-00159CR

SEARCH WARRANT NO. 3MC-04-0015W

and that such property (see AS 12.35.020)

[X] 1. is evidence of the particular crime(s) of TAKE GAME FROM AIRCRAFT 5AAC92.085(8)

[X] 2. tends to show that HAEG AND ZELLERS committed the particular crime(s) of TAKE GAME FROM AIRCRAFT 5AAC92.085(8)

[ ] 3. is stolen or embezzled property.

[ ] 4. was used as a means of committing a crime.

[ ] 5. is in the possession of a person who intends to use it as a means of committing a crime.

[ ] 6. is one of the above types of property and is in the possession of _____, to whom _____ delivered it to conceal it.

[ ] 7. is evidence of health and safety violations

YOU ARE HEREBY COMMANDED to search the person or premises named for the property specified, serving this warrant, and if the property be found there, to seize it, holding it secure pending further order of the court, leaving a copy of this warrant, and all supporting affidavits, and a receipt of property taken. You shall also prepare a written inventory of any property seized as a result of the search pursuant to or in conjunction with the warrant. You shall make the inventory in the presence of the applicant for the warrant and the person from whose possession or premises the property is taken, if they are present, or in the presence of at least one credible person other than the warrant applicant or person from whose possession or premises said property is taken. You shall sign the inventory and return it and the warrant within 10 days after this date to any judge as required by law.

YOU SHALL SERVE THIS WARRANT:

[ ] between the hours of 7:00 a.m. and 10:00 p.m.

[ ] between the hours of hrs. and hrs.

[X] at any time of the day or night.

SEARCH WARRANT NO. 4MC-04-0015W

YOU SHALL MAKE THE SEARCH:

- [X] immediately.
- [ ] within _____ (days) (hours).
- [ ] within 10 days.
- [ ] contingent upon the happening of the events expected to occur as set forth in the supporting testimony, specifically: .

(SEAL)

3-29-04
Date

Margaret L. Murphy
Judge

1046 (a.m.) (p.m.)
Time Issued

Margaret L. Murphy
Type or Print Judge's Name

TELEPHONIC SEARCH WARRANTS. If this search warrant was issued by telephone, the judicial officer named above has orally authorized the applicant for this warrant to sign the judicial officer's name. AS 12.35.015(d)

Time Warrant Served: 1750 3/29/04

RECEIPT AND INVENORY OF PROPERTY SEIZED

- 2 30 Rd. Ruger Mini-14 Magazines
- 1 20 Rd. Ruger Mini-14 Magazines
- 1 Smaller Ruger Mini-14 Magazine
- 1 Buckshot Pellet from Dining Rm TABLE
- PARTS OF 3 WOLF CARCASSES
- Various Hair & Blood SAMPLES NEAR Buildings in CAMP.

* All Magazines Loaded W/"WOLF" BRAND .223 AMMO

02471

SEARCH WARRANT NO. 4MC-04-0015W

RECEIPT AND INVENORY OF PROPERTY SEIZED
(Continued)

RETURN

I received the attached search warrant on 3/29, 19 2004 and have executed it as follows:

On 3/29, 19 2004 at 1750 (a.m.) (p.m.), I searched (the person) (the premises) described in the warrant, and I left a copy of the warrant (with) (at) Trophy Lk. Lodge. N 61.35.08 W 154 23.80'
(Describe location: that left with or place warrant was left)

The above inventory of property taken pursuant to th warrant was made in the presence of TRP. B. GIBBENS and of TRP. D. ROE.

I swear that this inventory is a true and detailed account of all property taken by me on the authority of this warrant.

Brett Gibbens – FAXED
Name and Title

Signed and sworn to before me on _____, 19____.

Judge

(SEAL)

IN THE DISTRICT/SUPERIOR COURT FOR THE STATE OF ALASKA
AT McGrath

SEARCH WARRANT NO. 4MC-04-001SW

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 FOR SEARCH WARRANT

NOTE: Before completing this affidavit, read the following points which should be addressed in your statement of the facts. A search warrant may not be issued until probable cause for the search has been shown. You should explain:

1. Who was observed (give names or other identifying information).

2. When did the observations take place (date, time, and sequence of events).

3. Who made the observations.

4. Why were the observations made. If, for example, the information came from an informant, the informant's reason for making the observations should be specified, and reasons for relying on the informant's information should be set out.

5. What was observed. Include a full description of events relevant to establish probable cause.

6. Where did the observations take place. Describe the location of the observers and the persons or objects observed. The description must be as specific as the circumstances will allow.

7. How were the observations made. For example, was an informant used, was there an undercover officer, was electronic surveillance involved, etc.

8. All other relevant information.

Being duly sworn, I state that I have reason to believe that:

[X] on the person of DAVID S. HAEG OR TONY R. ZELLERS

[X] on the premises known as: TROPHY LAKE LODGE OR N40 1M at SE OF MCGRATH, Alaska,

Case Number: 4MC-04-00123S/3

AFFIDAVIT FOR SEARCH WARRANT NO. 4MC-04-0015W

there is now being concealed property, namely:

WITHIN THE REMOTE CAMP KNOWN AS "TROPHY LAKE LODGE" LOCATED NEAR UNDER HILL CREEK NEAR THE UPPER SWIFT RIVER IN GMU-19C AND ON AND WITHIN AIRCRAFT N4011M, A PIPER PA-12 SUPERCRUISER. ALL .223 CALIBER RIFLES AND SHOTGUNS AND AMMUNITION USED OR ON HAND AS WELL AS SPENT SHELL CASINGS OR SHOTGUN HULLS. ANY WOLF CARCASSES, WOLF HIDES OR WOLF PARTS. OIL, BLOOD OR HAIR SAMPLES LOCATED WITHIN OR ON N4011M. ANY VIDEO OR STILL CAMERA FILM OR PHOTOS.

which (see AS 12.35.020)

- [X] 1. is evidence of the particular crime(s) of TAKE GAME FROM AIRCRAFT 5AAC92.085(8)
- [ ] 2. tends to show that HAEG AND ZELLERS committed the particular crime(s) of TAKE GAME FROM AIRCRAFT 5AAC92.085(8)
- [ ] 3. is stolen or embezzled property.
- [ ] 4. was used as a means of committing a crime.
- [ ] 5. is in the possession of a person who intends to use it as a means of committing a crime.
- [ ] 6. is one of the above types of property and is in the possession of _____, to whom _____ delivered it to conceal it.
- [ ] 7. is evidence of health and safety violations

and the facts tending to establish the foregoing grounds for issuance of a search warrant are as follows:

SEE ATTACHED AFFIDAVIT.

0400235931

AFFIDAVIT FOR SEARCH WARRANT

1. Your affiant is an Alaska State Trooper with over six years of experience including five in the Yukon and Kuskokwim area. I am currently assigned to the State's Bureau of Wildlife Enforcement in McGrath. My main duties include enforcement of fish and wildlife related crimes. In addition to my law enforcement experience I am a lifelong Alaska resident and have actively trapped for over 20 years.

2. On 3-3-04, the Alaska Department of Fish and Game issued permit #12 to David S. Haeg and Tony R. Zellers allowing them to take wolves with the aide of an airplane (same day airborne) within that portion of Game Management Unit 19D East outlined by map and written description.

3. On Haeg's and Zellers application form they stated that they would be operating from a fully equipped, well insulated hunting lodge located just southeast of McGrath and capable of supporting winter flight and hunting operations. Built owned and operated by David Haeg. In addition they stated that they would be using a bush modified, high performance PA-12 Supercruiser on Aero 3000 skis. (See attached application).

4. On 3-21-04, your affiant contacted Haeg and Zellers in McGrath and inspected their aircraft. I specifically noted the style of skis and oversized tail wheel without a tail ski. During our conversation Haeg commented on the performance of his skis, and the one-inch wide skeg. Zellers specifically commented on the type of experimental shotshells they would be using to shoot wolves with. This included new copper plated pellets and Remington "hevi shot".

5. On 3-26-04, while patrolling in my state PA-18 supercub in the upper swift river drainage located with GMU-19C I located a place where an aircraft had landed next to several sets of wolf tracks. From my experience as a long time trapper I recognized this as common practice while looking to see the direction of travel of the wolves. This location was approximately 50 plus miles outside of the permitted aerial wolf hunting zone.

6. On 3-27-04, I returned to this location and eventually located where four wolves had been killed in separate locations just up river from the initial point. Aerial inspection of the sites showed that in every instance running wolf tracks ended in a kill site, with no wolf tracks leaving the kill site. Ground inspection of one of the kill sites confirmed my earlier observations. From my experience I recognized this as being consistent with wolves being taken from and airplane. At all four locations airplane tracks consistent with your defendants airplane where observed and the wolf carcasses had been removed.

7. Trophy Lake Lodge is about 25 miles from the location of these kills sites.

Page 3 of 4

EXHIBIT 24

PAGE 7 OF 8 02475

8. On 3-28-04, I returned to the kill sites and did a thorough ground investigation. At kill sites #1, #3 and #4 I was able to locate shotgun pellets in the snow next to the point where the wolf tracks ended in a bloody kill site. At kill sites #3 and #4 I found copper plated buck shot pellets consistent with my conversation with Zellers on the 3-21-04 in which we talked about what ammunition he would be using. At kill site #2 I found a fresh .223 caliber brass near the kill site stamped with "223 REM WOLF". Ground inspection also showed ski tracks next to each kill site consistent with the ski on your defendant's airplane and at kill site #2 I located oil drippings from a parked airplane.

9. With the above information I request that a search warrant be issued allowing your affiant to search the hunting camp known as Trophy Lake Lodge to include any outbuildings or storage sheds, as well as airplane N4011M to look for wolf carcasses, hides and parts, as well any .223 caliber rifles or shotguns as well as the ammunition both spent and live for either. In addition any engine oil, blood or hair samples contained within N4011M.

Sworn to on record
by Trooper Gibbens
3-29-04

Page 4 of 4

IN THE DISTRICT/SUPERIOR COURT FOR THE STATE OF ALASKA
AT McGrath

SEARCH WARRANT NO. 4MC-04-0025W

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.

TO: Any Peace Officer

[ ] Sworn testimony having been given by Trp. Alaska State Troopers

[X] An affidavit having been sworn to before me by Trp. Trooper Brett Gibbens Alaska State Troopers

[ ] Following my finding on the record that there is probable cause to believe that 1) the presentation of the applicant's affidavit or testimony personally before a judicial officer would result in delay in obtaining a search warrant and in executing the search; and 2) the delay might result in loss or destruction of the evidence subject to seizure, recorded sworn testimony was given by telephone by Trp. Alaska State Troopers

I find probable cause to believe that

[ ] on the person of

[X] on the premises known as: 32283 LAKEFRONT DRIVE TO INCLUDE RESIDENCE,HANGAR,OUTBUILDINGS, AND CURTILLEAGE at SOLDOTNA, Alaska, Last house on Lakefront Drive next to airstrip in Soldotna. Two-Story Dwelling which appears to be main residence and has hangar and outbuildings on the property.
Property owned by David Hacy - lots located on T05N R09W KN0860014 North Shore Ridge Subdivision in Soldotna, lots are Lot 3, Block 2; Lot 4, Block 2; Lot 11, Block 4; Lot 5, Block 4; Lot 6, Block 4; Lot 4, Block 4; & Lot 3, Block 4.

Amended 4-1-04

there is now being concealed property, namely:

ALL .22% CALIBER RIFLES AND 12 GUAGE SHOTGUNS AND AMMUNITION, AS WELL AS SPENT SHELL CASINGS OR SHOTGUN HULLS. ALSO ANY NAVIGATIONAL MAPS, EQUIPMENT, AND INFORMATION CONTAINED WITHIN. ANY WOLF CARCASSES, WOLF HIDES OR WOLF PARTS. BLOOD OR HAIR SAMPLES WHICH MAY BE FROM A WOLF. ANY VIDEO OR STILL CAMERA FILM,NEGATIVES,OR PHOTOS WHICH MAY SHOW WINTER WOLF HUNTING OR TRAPPING, AS WELL AS ANY DIGITAL STILL OR VIDEO CAMERAS AND DATA CONTAINED WITHIN. ANY "BUNNY BOOTS", AND ANY WOLF SNARES. ANY WRITTEN RECORDS CONTAINING INFORMATION PERTAINING TO FLIGHT LOCATIONS, DATES, AND PASSENGER INFORMATION FROM MARCH 1ST THROUGH PRESENT. ANY RECORD PERTAINING TO THE HUNTING OR TRAPPING OF WOLVES. ALL TAXIDERMY PAPERWORK AND TRANSFER OF POSSESSION PAPERS FOR WOLVES FROM MARCH 1ST THROUGH PRESENT. LANDING GEAR, SKI'S, TAIL WHEELS. ALSO SATELITE TELEPHONE.

SEARCH WARRANT NO. 4MC-04-0025W

and that such property (see AS 12.35.020)

[X] 1. is evidence of the particular crime(s) of TAKE GAME FROM AIRCRAFT 5AAC92.085(8) & TAMPERING WITH EVIDENCE AS 11.56.610(a)(1)(3)(4)

[X] 2. tends to show that DAVID HAEG AND TONY ZELLERS committed the particular crime(s) of TAKE GAME FROM AIRCRAFT 5AAC92.085(8) & TAMPERING WITH EVIDENCE AS 11.56.610(a)(1)(3)(4)

[ ] 3. is stolen or embezzled property.

[ ] 4. was used as a means of committing a crime.

[ ] 5. is in the possession of a person who intends to use it as a means of committing a crime.

[ ] 6. is one of the above types of property and is in the possession of _____ to whom _____ delivered it or borrowed it.

[ ] 7. is evidence of health and safety violations

YOU ARE HEREBY COMMANDED to search the person or premises named for the property specified, serving this warrant, and if the property be found there, to seize it, holding it secure pending further order of the court, leaving a copy of this warrant, and all supporting affidavits, and a receipt of property taken. You shall also prepare a written inventory of any property seized as a result of the search pursuant to or in conjunction with the warrant. You shall make the inventory in the presence of the applicant for the warrant and the person from whose possession or premises the property is taken, if they are present, or in the presence of at least one credible person other than the warrant applicant or person from whose possession or premises said property is taken. You shall sign the inventory and return it and the warrant within 10 days after this date to any judge as required by law.

YOU SHALL SERVE THIS WARRANT:

[ ] between the hours of 7:00 a.m. and 10:00 p.m.

[ ] between the hours of hrs. and hrs.

[X] at any time of the day or night.

SEARCH WARRANT NO. 4MC-04-0025W

YOU SHALL MAKE THE SEARCH:

- [X] immediately.
- [ ] within _____ (days) (hours).
- [ ] within 10 days.
- [ ] contingent upon the happening of the events expected to occur as set forth in the supporting testimony, specifically: .

Amended 4-1-04
9:07am

(SEAL)

Margaret L. Murphy

3-31-04
Date

Margaret L. Murphy
Judge

2142 (a.m.) (p.m.)
Time Issued

Margaret L. Murphy
Type or Print Judge's Name

TELEPHONIC SEARCH WARRANTS. If this search warrant was issued by telephone, the judicial officer named above has orally authorized the applicant for this warrant to sign the judicial officer's name. AS 17.35.015(d)

Time Warrant Served: _____

RECEIPT AND INVENORY OF PROPERTY SEIZED

EXHIBIT 25
PAGE 3 OF 5

SEARCH WARRANT NO. 4MC-04-0025SW

RECEIPT AND INVENORY OF PROPERTY SEIZED
(Continued)

RETURN

I received the attached search warrant on _____, 19_____, and have executed it as follows:

On _____, 19_____, at _____(a.m.) (p.m.), I searched (the person) (the premises) described in the warrant, and I left a copy of the warrant (with) (at) _____
(person warrant was left with or place warrant was left)

The above inventory of property taken pursuant to th warrant was made in the presence of _____ _____ and of _____.

I swear that this inventory is a true and detailed account of all property taken by me on the authority of this warrant.

_____
Name and Title

Signed and sworn to before me on _____, 19_____.

_____
Judge

(SEAL)

IN THE DISTRICT/SUPERIOR COURT FOR THE STATE OF ALASKA
AT McGrath

Search Warrant No. 4MC-04-002 SW

AFFIDAVIT FOR SEARCH WARRANT

NOTE: Before completing this affidavit, read the following points which should be addressed in your statement of the facts. A search warrant may not be issued until probable cause for the search has been shown. You should explain:

1. Who was observed (give names or other identifying information).

2. When did the observations take place (date, time, and sequence of events).

3. Who made the observations.

4. Why were the observations made. If, for example, the information came from an informant, the informant's reasons for making the observations should be specified, and reasons for relying on the informant's information should be set out.

5. What was observed. Include a full description of events relevant to establish probable cause.

6. Where did the observations take place. Describe the location of the observers and the persons or objects observed. The description must be as specific as the circumstances will allow.

7. How were the observations made. For example, was an informant used, was there an undercover officer, was electronic surveillance involved, etc.

8. All other relevant information.

Being duly sworn, I state that I have reason to believe that:

☐ on the person of _____

☒ on the premises known as 32283 LAKEFRONT DRIVE TO INCLUDE RESIDENCE, HANGAR OUTBUILDINGS, AND CURTILEAGE at SOLDOTNA, Alaska.

CR-703 (11/88) (st.4)
AFFIDAVIT FOR SEARCH WARRANT

AS 12.35.010-.120
Crim. R. 37

EXHIBIT 25

PAGE 5 OF 16

there is now being concealed property, namely: Search Warrant No. 4MC-04-002-SW

ALL .223 CALIBER RIFLES AND 12 GUAGE SHOTGUNS AND AMMUNITION, AS WELL AS SPENT SHELL CASINGS OR SHOTGUN HULLS. ALSO ANY NAVIGATIONAL MAPS, EQUIPTMENT, AND INFORMATION CONTAINED WITHIN. ANY WOLF CARCASSES, WOLF HIDES OR WOLF PARTS. BLOOD OR HAIR SAMPLES WHICH MAY BE FROM A WOLF. ANY VIDEO OR STILL CAMERA FILM,NEGATIVES,OR PHOTOS WHICH MAY SHOW WINTER WOLF HUNTING OR TRAPPING, AS WELL AS ANY DIGITAL STILL OR VIDEO CAMERAS AND DATA CONTAINED WITHIN. ANY "BUNNY BOOTS", AND ANY WOLF SNARES. ANY WRITTEN RECORDS CONTAINING INFORMATION PERTAINING TO FLIGHT LOCATIONS, DATES, AND PASSENGER INFORMATION FROM MARCH 1ST THROUGH PRESENT. ANY RECORD PERTAINING TO THE HUNTING OR TRAPPING OF WOLVES. ALL TAXIDERMY PAPERWORK AND TRANSFER OF POSSESSION PAPERS FOR WOLVES FROM MARCH 1ST THROUGH PRESENT. LANDING GEAR, SKI'S, TAIL WHEELS. ALSO SATELITE TELEPHONE.

WHICH:

- [X] 1. is evidence of the particular crime(s) of TAKE GAME FROM AIRCRAFT 5AAC 92.085(2) & TAMPERING WITH EVIDENCE AS 11.56.610(a)(1)(3)(4)
- [ ] 2. tends to show that _____ committed the particular crime(s) of _____,
- [ ] 3. is stolen or embezzled property,
- [ ] 4. was used as a means of committing a crime,
- [ ] 5. is in the possession of a person who intends to use it as a means of committing a crime,
- [ ] 6. is one of the above types of property and is in the possession of _____, to whom _____ delivered it to conceal it,
- [ ] 7. is evidence of health and safety violations,

and the facts tending to establish the foregoing grounds for issuance of a search warrant are as follows:

- SEE AFFIDAVIT

040023593

AFFIDAVIT FOR SEARCH WARRANT

1. Your affiant is an Alaska State Trooper with over six years of experience including five in the Yukon and Kuskokwim area. I am currently assigned to the State's Bureau of Wildlife Enforcement in McGrath. My main duties include enforcement of fish and wildlife related crimes. In addition to my law enforcement experience I am a lifelong Alaska resident and have actively trapped for over 20 years.

2. For many years it has been illegal to shoot wolves from an airplane. As part of an experimental predator control program in a small area around McGrath, it was made legal to aerial hunt wolves by a select number of permitted hunters as long as they remained within the permit hunt boundaries and adhered to strict reporting requirements and permit conditions. The only legal methods of take for wolves outside of the two permitted areas in the State are either ground shooting after three A.M. after the day a person has flown, or trapping and snaring.
On 3-5-04, the Alaska Department of Fish and Game issued permit #12 to David S. Haeg and Tony R. Zellers allowing them to take wolves with the aide of an airplane (same day airborne) within that portion of Game Management Unit 19D East outlined by map and written description.

3. On Haeg's and Zellers' application form they stated that they would be operating from Trophy Lake Lodge, a fully equipped, well insulated hunting lodge located just southeast of McGrath and capable of supporting winter flight and hunting operations, built, owned and operated by David Haeg. If not based at the lodge, they planned on basing out of McGrath(which did not end up being the case). In addition they stated that they would be using a bush modified, high performance PA-12 Supercruiser on Aero 3000 skis. David Haeg identified himself as a Master Guide on his application for the aerial wolf hunting permit with the Alaska Department of Fish and Game. (See attached application).

4. On 3-21-04, your affiant contacted Haeg and Zellers in McGrath and viewed their aircraft, N4011M. I specifically noted the style of skis and oversized tail wheel without a tail ski, which is a rather unusual set up in this area. Out of all of the aircraft permitted to legally hunt wolves in the McGrath area, this was the only one set up with these skis' in conjunction with this type of rather unique tail wheel. During our conversation Haeg commented on the performance of his skis, and the one-inch wide center skeg. Zellers specifically commented on the type of experimental shotshells they would be using to shoot wolves with. This included new copper plated pellets and Remington "hevi shot". As Zellers was describing the new shot shells, he pointed into the airplane and I observed a camouflage colored shotgun near the rear seat. Zellers went on to describe how with the short shot gun and the type of doors on this airplane, he was able to shoot out both side of the airplane without the airplane making a full circle turn. N4011M is registered to Bush Pilot Inc., P.O. box 123, Soldotna, Alaska 99669. This is the mailing address listed for David Haeg on his wolf permit application with the Alaska Department of Fish and Game.

EXHIBIT 25

PAGE 1 OF 5

5. On 3-26-04, while patrolling in my state PA-18 supercub in the upper Swift River drainage located with GMU-19C I located a place where an aircraft had landed next to several sets of wolf tracks. From my experience as a long time hunter trapper I recognized this as common practice when looking to see the direction of travel of the wolves. This location was approximately 50 plus miles outside of the permitted aerial wolf hunting zone.

6. On 3-27-04, I returned to this location and eventually located where four wolves had been killed in separate locations just up river from the initial point. Aerial inspection of the sites showed that in every instance running wolf tracks ended in a kill site, with blood and hair in the snow, and with no wolf tracks leaving the kill site. Ground inspection of one of the kill sites confirmed my earlier observations from the air that the tracks were that of running wolves, which dead ended at bloody spots in the snow. From my experience I recognized this as being consistent with wolves being taken from an airplane. At all four locations I saw airplane tracks consistent with the unique tail wheel and ski configuration of David Haeg's airplane. At all four kill sites, the wolf carcasses had been removed. The kill sites are all greater than 55 statute miles from the nearest boundary of the legally permitted aerial wolf hunting area.

7. Trophy Lake Lodge is located in Game Management Unit 19C, and is a large guide camp which Haeg owns and uses for both commercial and private use throughout the year. The lodge is located on the upper Swift River, 27 miles upstream of the kill sites, and 63 miles southeast of the nearest boundary of the legally permitted aerial wolf hunting area.

8. On 3-28-04, I returned to the kill sites and did a thorough ground investigation. At kill sites #1, #3 and #4 I was able to locate shotgun pellets in the snow next to the point where the wolf tracks ended in a bloody kill site. Investigation at kill site #3 showed a vertical trajectory of the pellets, consistent with the shot being fired from an airplane. At kill sites #3 and #4 I found copper plated buck shot pellets consistent with my conversation with Zellers on the 3-21-04 in which we talked about what ammunition he would be using. At kill site #2 I found a fresh .223 caliber brass near the kill site stamped with "223 REM WOLF". There were no human tracks, snowshoe, snow machine, or airplane ski tracks within twenty yards of the cartridge brass, consistent with it being fired from an airplane. Ground inspection also showed ski tracks next to each kill site consistent with the ski on your defendant's airplane and at kill site #2 I located oil drippings from a parked airplane.

9. On 3/29/04, search warrant 4MC-04-0018W was issued by the Aniak District Court for Trophy Lake Lodge, and Aircraft N4011M. During the search warrant execution later that same day, the lodge was searched during which distinctive ammunition,(".223 REM WOLF") ,wolf carcasses, and hair and blood samples were seized. The carcasses had no obvious trap or snare marks, and appeared to have been shot. It was learned that Aircraft N4011M was in Soldotna (McGrath ADF&G spoke

EXHIBIT 25

PAGE 8 OF 15

to Haeg at his home) at the time, and the search warrant return was submitted to the Aniak Court on 3/30/04.

10. During my time as a pilot in remote Alaska, it has been my experience that most pilots use a global positioning system(GPS) in conjunction with maps of the area when conducting bush flight operations. It is very common to save landing sites, lodge locations, and kill sites in the GPS, or to mark the locations on a map. Many of the hunters participating in hunts with specified boundaries, mark the boundaries on either the map or the GPS. Haeg provided GPS coordinates for the kill sites of the three wolves that he reportedly killed inside the legal permit hunt area. I flew to the coordinated which Haeg provided to ADF&G, and was unable to locate ski tracks or kill sites.

11. During the investigation it was brought to my attention by another Trooper that on the web site found on the internet at www.davehaeg.com, David Haeg offers winter wolf hunting and trapping trips for $4,000.00. He goes on to state in his advertisement that he will guarantee that every hunter takes home a wolf or wolverine hide. On the web site there are photographs of what appear to be shot wolves in front of N4011M. Also in the photo is a man holding a Ruger mini-14 rifle, which is capable of firing .223 caliber cartridges. There are numerous other photographs on the site showing shot and snared wolves.

12. Less than one quarter mile from kill site #1, there is the carcass of a dead moose which the wolves have been feeding on. The moose carcass has snares set around it, as determines by two snared animals that I observed near the carcass. The airplane tracks where the trapper landed and walked in to set the snares next to the moose carcass are the same type and vintage of those at the shot gun and rifle killed wolf sites. During the investigation there were no catch circles or drag marks typically found at sites where wolves have been trapped or snared. All four of the wolves were free roaming and left normal running wolf tracks up until the point they were shot.

13. At both the consolidation(a location between the kill sites where this same aircraft landed and took off several times) site and kill site #3, shoe tracks which appeared to be made from "bunny boots" were observed.

14. On 3/29/04, I executed a search warrant at the lodge, but the airplane was in Soldotna at the time. Soldotna Troopers have visually confirmed that the airplane is at the Haeg residence currently. The residence address listed by David Haeg on his wolf hunting permit is 32283 Lakefront Drive in Soldotna. On 3/30/04, Tony Zellers telephoned the McGrath ADF&G office and requested that a copy of the revised wolf permit conditions be faxed to David Haeg's residence. The reported kill date of the wolves by Haeg and Zellers was 3/6/04, and the wolf hides would need to be either fleshed, stretched, and dried, or stored in a refrigerator of freezer to prevent spoilage.

15. Landing gear, ski's, and tail wheels can be rapidly removed from an aircraft.

Search Warrant No. 4MC-04-00254

TROOPER B. GIBBENS
Title

Brent A. Gibbens
Signature

Subscribed and sworn to or affirmed telephonically before me on March 31, 2004, at Aniak, Alaska

(SEAL)

Judge/Magistrate

☐ Additional testimony relating to this affidavit was recorded on Tape #_____, beginning log #_____, ending log #_____.

CR-705 (11/88) (st.4)
AFFIDAVIT FOR SEARCH WARRANT

AS 12.35.010-.120
Crim. R. 37

EXHIBIT 25

STATE OF ALASKA
Department of Fish and Game

APPLICATION
Permit for Taking Wolves Using Aircraft

David	S	Haeg			
Mailing Address PO Box 123	Soldotna	AK	99669	907-262-9249	
N20255 or N4011M	Garmin 100 AVD				
Applying for Control Area: _____	Will you have a gunner in addition to the pilot? (X) Yes ( ) No				
Tony	R.	Zellers			
Mailing Address 9420 Eyan Circle	Eagle River	AK	99577	907-696-2319	

1) Have you or your gunner been convicted within the previous 5 years for a hunting violation other than a non-criminal violation established under AS 12.55.035(b)(6); or have you or your gunner been convicted for a hunting violation related to the taking of wolves that involved the use of an aircraft?

Pilot ( ) YES (X) NO Gunner ( ) YES (X) NO If yes, please explain:

2) Are you or your gunner familiar with the geography of the wolf control area(s) you are applying for?

Pilot (X) YES ( ) NO Gunner (X) YES ( ) NO

How much flying time do you or your gunner have in the wolf control area(s) you are applying for?

David Haeg - 3000 hours in Super Cub as Pilot in Command in Unit 19 (McGrath area)
Tony Zellers - 630 hours as Pilot in Command and 250 hours as Second in Command in Unit 19 (McGrath area)

(Attach an extra sheet if necessary)

Attachment Page 1 of 6

EXHIBIT 25
PAGE 11 OF 15

STATE OF ALASKA
Department of Fish and Game

Permit to Take Wolf Using Aircraft
Pilot Permit
– OVERLAY –

Control Project ID: [illegible]
Control Area: Unit 19D East
Year: 2003-2004
Permit: 12

5 PM

3/25/2004		[illegible]	Overlay 06

David	S.	Harry	
P.O. Box 3	Soldotna	AK	99669
32284 Bridget Drive	Soldotna	907-262	9249
MC Dawson Aviation	4011 M	PA-12 Purple & Silver	
Town, airport, or specific locality			
Town, airport, or specific locality			

1.) Locking Tag Number: 100541 2.) Locking Tag Number: 100542 3.) Locking Tag Number: 100543
4.) Locking Tag Number: 100544 5.) Locking Tag Number: 100545 6.) Locking Tag Number: 100546
7.) Locking Tag Number: 100547 8.) Locking Tag Number: 100548 9.) Locking Tag Number: 100549
10.) Locking Tag Number: 100550

Attachment Page 2 of 6

EXHIBIT 25

PAGE 12 OF 15

02488

3) Have you or your gunner ever taken wolves in a predator control program by aerial shooting or landing-and-shooting?

Pilot ( ) YES (X) NO Gunner ( ) YES (X) NO

Have you or your gunner ever used landing-and-shooting to take wolves when it was a legal means of hunting or trapping?

Pilot (X) YES ( ) NO Gunner (X) YES ( ) NO

If you answered yes to either of the above questions, please explain your experience in terms of [illegible] estimates of total flight time, number of wolves taken, geographic areas (e.g., game management units) where programs took place, and other pertinent information that demonstrates your ability to conduct this kind of activity:

Attached

(Attach an extra sheet if necessary)

4) If you have never participated in land-and-shoot or aerial taking of wolves, describe your pilot license, training, and experience that demonstrate your ability to conduct this type of flight. You should include, but not limit the information to type of pilot license, training and experience in special airplane operations such as corvette flight, flight time in Alaska, low-level (i.e., 500 feet or less) operations, type of airplane(s) flown and off-airport and sid-flying operations. Also, describe your ability and experience using an airplane to identify and follow wolf tracks in snow.

(Attach an extra sheet if necessary)

Completed applications may be mailed or faxed to:
ADF&G Division of Wildlife Conservation
P.O. Box 25526
Juneau, AK 99802
FAX (907) 465-6142
Application information (907) 465-4190

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EXHIBIT 25

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02489

Aerial Hunt Qualifications for Aerial Wolf Hunting in Unit 19 (McGrath) area:

Pilot Resume and Qualifications

Commercial Pilot
Current Flight Instructor
Airplane Single Engine Land & Sea
Instrument Plane

Pilot In Command Time: 7000 total hours with 6000 in a PA-18 Supercub or PA-12 Super Cruiser at MW level and short mapping leg legal at snare trapping, hunting, guiding and hunting spotting. Over 3000 of these hours were inside of Unit 19. Learned to fly in the bush at age 16 and became a commercial pilot at age 18.

An expert in all aspects of winter ski flying - in extremely remote areas including cold weather camping and survival, aircraft care and maintenance, fuel management, adverse weather recognition, and emergency procedures.

Hunting Qualifications:

Grew up in the remote wilderness where hunting and trapping was an integral part of life. Learned to trap and hunt big game alone by age 16. Became an assistant big game guide at age 21, registered big game guide in Unit 19 at age 28 and is currently a licensed master big game guide in Unit 19 at age 38. Has taken up to 14 wolves per season in Unit 19 and is expert at tracking and locating them.

Attachment 1

Attachment Page 5 of 6

Team Evidence Qualifications for Aerial Wolf Shooting in Unit 19 (McGrath) area

Pilot Evidence of Qualifications:

Multi engine Airline Transport Pilot
Single Engine Commercial Land and Sea
Retired U.S. Airforce F-15 Fighter Pilot
F-15 Flight Instructor
F-15 Check Pilot
Unit 19 Pilot in Command Time: 450 hours
Unit 19 Second in Command Time: 350 hours

Hunting Qualifications:

25 years hunting and trapping experience with the last 5 years almost entirely in Unit 19. Currently is a licensed registered big game guide in Unit 19. Graduate of all U.S. Airforce Pilot training including winter survival and instructorship.

Attachment 2

MAR. 25 2004 11:59AM P10

PHONE NO. : 9072524375

FROM : MCGRATH,MP

Attachment
Page 6 of 6

MAR. 31 2004 08:57PM P6

PHONE NO. : 9072524375

FROM : MCGRATH,MP

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PAGE 15 OF 15

IN THE DISTRICT/~~SUPERIOR~~ COURT FOR THE STATE OF ALASKA
AT McGrath

Search Warrant No. 4M-04-0035W

AFFIDAVIT FOR SEARCH WARRANT

NOTE: Before completing this affidavit, read the following points which should be addressed in your statement of the facts. A search warrant may not be issued until probable cause for the search has been shown. You should explain:

1. Who was observed (give names or other identifying information).

2. When did the observations take place (date, time, and sequence of events).

3. Who made the observations.

4. Why were the observations made. If, for example, the information came from an informant, the informant's reasons for making the observations should be specified, and reasons for relying on the informant's information should be set out.

5. What was observed. Include a full description of events relevant to establish probable cause.

6. Where did the observations take place. Describe the location of the observers and the persons or objects observed. The description must be as specific as the circumstances will allow.

7. How were the observations made. For example, was an informant used, was there an undercover officer, was electronic surveillance involved, etc.

8. All other relevant information.

Being duly sworn, I state that I have reason to believe that:

☐ on the person of _____

☒ on the premises known as N4011M, PIPER PA-12 CLIPPER CRUISER WHEREVER IT MAY BE LOCATED WITHIN THE STATE OF AK at _____, Alaska,

CR-705 (11/88) (pt.4)
AFFIDAVIT FOR SEARCH WARRANT

AS 12.35.010-.130
Crim. R. 37

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PAGE 1 OF 1

SEARCH WARRANT NO. 4MC-04-002SW

there is now being concealed property, namely:

AIRPLANE N4011M, A PIPER PA-12 SUPER CRUISER, AS WELL AS ALL .223 CALIBER RIFLES AND 12 GUAGE SHOTGUNS AND AMMUNITION AS WELL AS SPENT SHELL CASINGS OR SHOTGUN HULLS. ALSO ANY NAVIGATIONAL MAPS, EQUIPTMENT, AND INFORMATION SO CONTAINED WITHIN. CRANK CASE OIL SAMPLE, AIR SEAL GUARTS OF OIL IN USE. ANY WOLF CARCASSES, WOLF HIDES OR WOLF HAIR. ALSO ANY HAIR SAMPLES WHICH MAY BE FROM A WOLF, ANY VIDEO OR STILL CAMERA FILM, NEGATIVES, OR PHOTOS WHICH MAY SHOW WINTER WOLF HUNTING OR TRAPPING, AS WELL AS ANY DIGITAL STILL OR VIDEO CAMERAS AND DATA CONTAINED WITHIN. ANY "BUNNY BOOTS". AND ANY WOLF SNARES. ANY WRITTEN RECORDS CONTAINING INFORMATION PERTAINING TO FLIGHT LOCATIONS, DATES, AND PASSENGER INFORMATION FROM MARCH 1ST THROUGH PRESENT. ANY RECORD PERTAINING TO THE HUNTING OR TRAPPING OF WOLVES. ALL TAXIDERMY PAPERWORK AND TRANSFER OF POSSESSION PAPERS FOR WOLVES FROM MARCH 1ST THROUGH PRESENT. LANDING GEAR (SKI'S) TAILWHEELS. ALSO SATELLITE TELEPHONE

- [X] 1. is evidence of the particular crime(s) of TAKE GAME FROM AIRCRAFT 5AAC 92.085(8) & TAMPERING WITH EVIDENCE AS 11.56.610(a)(1)(A),
- [ ] 2. tends to show that _____ committed the particular crime(s) of _____,
- [ ] 3. is stolen or embezzled property,
- [X] 4. was used as a means of committing a crime,
- [ ] 5. is in the possession of a person who intends to use it as a means of committing a crime,
- [ ] 6. is one of the above types of property and is in the possession of _____, to whom _____ delivered it to conceal it,
- [ ] 7. is evidence of health and safety violations,

and the facts tending to establish the foregoing grounds for issuance of a search warrant are as follows:

- SEE AFFIDAVIT

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PAGE 2 OF 16

AFFIDAVIT FOR SEARCH WARRANT

1. Your affiant is an Alaska State Trooper with over six years of experience including five in the Yukon and Kuskokwim area. I am currently assigned to the State's Bureau of Wildlife Enforcement in McGrath. My main duties include enforcement of fish and wildlife related crimes. In addition to my law enforcement experience I am a lifelong Alaska resident and have actively trapped for over 20 years.

2. For many years it has been illegal to shoot wolves from an airplane. As part of an experimental predator control program in a small area around McGrath, it was made legal to aerial hunt wolves by a select number of permitted hunters as long as they remained within the permit hunt boundaries and adhered to strict reporting requirements and permit conditions. The only legal methods of take for wolves outside of the two permitted areas in the State are either ground shooting after three A.M. after the day a person has flown, or trapping and snaring.
On 3-5-04, the Alaska Department of Fish and Game issued permit #12 to David S. Haeg and Tony R. Zellers allowing them to take wolves with the aide of an airplane (same day airborne) within that portion of Game Management Unit 19D East outlined by map and written description.

3. On Haeg's and Zellers' application form they stated that they would be operating from Trophy Lake Lodge, a fully equipped, well insulated hunting lodge located just southeast of McGrath and capable of supporting winter flight and hunting operations, built, owned and operated by David Haeg. If not based at the lodge, they planned on basing out of McGrath(which did not end up being the case). In addition they stated that they would be using a bush modified, high performance PA-12 Supercruiser on Aero 3000 skis. David Haeg identified himself as a Master Guide on his application for the aerial wolf hunting permit with the Alaska Department of Fish and Game. (See attached application).

4. On 3-21-04, your affiant contacted Haeg and Zellers in McGrath and viewed their aircraft, N4011M. I specifically noted the style of skis and oversized tail wheel without a tail ski, which is a rather unusual set up in this area. Out of all of the aircraft permitted to legally hunt wolves in the McGrath area, this was the only one set up with these skis' in conjunction with this type of rather unique tail wheel. During our conversation Haeg commented on the performance of his skis, and the one-inch wide center skeg. Zellers specifically commented on the type of experimental shotshells they would be using to shoot wolves with. This included new copper plated pellets and Remington "bevl shot". As Zellers was describing the new shot shells, he pointed into the airplane and I observed a camouflage colored shotgun near the rear seat. Zellers went on to describe how with the short shot gun and the type of doors on this airplane, he was able to shoot out both side of the airplane without the airplane making a full circle turn. N4011M is registered to Bush Pilot Inc., P.O. box 123, Soldotna, Alaska 99669. This is the mailing address listed for David Haeg on his wolf permit application with the Alaska Department of Fish and Game.

5. On 3-26-04, while patrolling in my state PA-18 supercub in the upper Swift River drainage located with GMU-19C I located a place where an aircraft had landed next to several sets of wolf tracks. From my experience as a long time hunter trapper I recognized this as common practice when looking to see the direction of travel of the wolves. This location was approximately 50 plus miles outside of the permitted aerial wolf hunting zone.

6. On 3-27-04, I returned to this location and eventually located where four wolves had been killed in separate locations just up river from the initial point. Aerial inspection of the sites showed that in every instance running wolf tracks ended in a kill site, with blood and hair in the snow, and with no wolf tracks leaving the kill site. Ground inspection of one of the kill sites confirmed my earlier observations from the air that the tracks were that of running wolves, which dead ended at bloody spots in the snow. From my experience I recognized this as being consistent with wolves being taken from an airplane. At all four locations I saw airplane tracks consistent with the unique tail wheel and ski configuration of David Haeg's airplane. At all four kill sites, the wolf carcasses had been removed. The kill sites are all greater than 55 statute miles from the nearest boundary of the legally permitted aerial wolf hunting area.

7. Trophy Lake Lodge is located in Game Management Unit 19C, and is a large guide camp which Haeg owns and uses for both commercial and private use throughout the year. The lodge is located on the upper Swift River, 27 miles upstream of the kill sites, and 63 miles southeast of the nearest boundary of the legally permitted aerial wolf hunting area.

8. On 3-28-04, I returned to the kill sites and did a thorough ground investigation. At kill sites #1, #3 and #4 I was able to locate shotgun pellets in the snow next to the point where the wolf tracks ended in a bloody kill site. Investigation at kill site #3 showed a vertical trajectory of the pellets, consistent with the shot being fired from an airplane. At kill sites #3 and #4 I found copper plated buck shot pellets consistent with my conversation with Zellers on the 3-21-04 in which we talked about what ammunition he would be using. At kill site #2 I found a fresh .223 caliber brass near the kill site stamped with "223 REM WOLF". There were no human tracks, snowshoe , snow machine, an airplane ski tracks within twenty yards of the cartridge brass, consistent with it being fired from an airplane. Ground inspection also showed ski tracks next to each kill site consistent with the ski on your defendant's airplane and at kill site #2 I located oil drippings from a parked airplane.

9. On 3/29/04, search warrant 4MC-04-001SW was issued by the Aniak District Court for Trophy Lake Lodge, and Aircraft N4011M. During the search warrant execution later that same day, the lodge was searched during which distinctive ammunition,(".223 REM WOLF") ,wolf carcasses, and hair and blood samples were seized. The carcasses had no obvious trap or snare marks, and appeared to have been shot. It was learned that Aircraft N4011M was in Soldotna (McGrath ADF&G spoke

to Haeg at his home) at the time, and the search warrant return was submitted to the Aniak Court on 3/30/04.

10. During my time as a pilot in remote Alaska, it has been my experience that most pilots use a global positioning system(GPS) in conjunction with maps of the area when conducting bush flight operations. It is very common to save landing sites, lodge locations, and kill sites in the GPS, or to mark the locations on a map. Many of the hunters participating in hunts with specified boundaries, mark the boundaries on either the map or the GPS. Haeg provided GPS coordinates for the kill sites of the three wolves that he reportedly killed inside the legal permit hunt area. I flew to the coordinated which Haeg provided to ADF&G, and was unable to locate ski tracks or kill sites.

11. During the investigation it was brought to my attention by another Trooper that on the web site found on the internet at www.davehaeg.com, David Haeg offers winter wolf hunting and trapping trips for $4,000.00. He goes on to state in his advertisement that he will guarantee that every hunter takes home a wolf or wolverine hide. On the web site there are photographs of what appear to be shot wolves in front of N4011M. Also in the photo is a man holding a Ruger mini-14 rifle, which is capable of firing .223 caliber cartridges. There are numerous other photographs on the site showing shot and snared wolves.

12. Less than one quarter mile from kill site #1, there is the carcass of a dead moose which the wolves have been feeding on. The moose carcass has snares set around it, as determines by two snared animals that I observed near the carcass. The airplane tracks where the trapper landed and walked in to set the snares next to the moose carcass are the same type and vintage of those at the shot gun and rifle killed wolf sites. During the investigation there were no catch circles or drag marks typically found at sites where wolves have been trapped or snared. All four of the wolves were free roaming and left normal running wolf tracks up until the point they were shot.

13. At both the consolidation(a location between the kill sites where this same aircraft landed and took off several times) site and kill site #3, shoe tracks which appeared to be made from "bunny boots" were observed.

14. On 3/29/04, I executed a search warrant at the lodge, but the airplane was in Soldotna at the time. Soldotna Troopers have visually confirmed that the airplane is at the Haeg residence currently. The residence address listed by David Haeg on his wolf hunting permit is 32283 Lakefront Drive in Soldotna. On 3/30/04, Tony Zellers telephoned the McGrath ADF&G office and requested that a copy of the revised wolf permit conditions be faxed to David Haeg's residence. The reported kill date of the wolves by Haeg and Zellers was 3/6/04, and the wolf hides would need to be either fleshed, stretched, and dried, or stored in a refrigerator of freezer to prevent spoilage.

15. Landing gear, ski's, and tail wheels can be rapidly removed from an aircraft.

Search Warrant No. 4MC-04-003 SW

TROOPER B. GABBERT
Title

Brett A. Gabbert
Signature

Subscribed and sworn to or affirmed telephonically before me on March 31, 2004, at Unalakleet, Alaska

(SEAL)

Margaret R. Murphy
Judge/Magistrate

☐ Additional testimony relating to this affidavit was recorded on Tape #_____, beginning log #____, ending log #____.

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AFFIDAVIT FOR SEARCH WARRANT

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STATE OF ALASKA
Department of Fish and Game

APPLICATION
Permit for Taking Wolves Using Aircraft

David	S	Harp			
Mailing Address PO Box 123	Soldotna	AK	99669	907-262-9249	
N20255 or N40ILM	Garmin 100 AVD				

Applying for Control Area: _____ Will you have a gunner in addition to the pilot? (X) Yes ( ) No

Tony	R.	Zellers			
Mailing Address 9420 Swan Circle	Eagle River	AK	99577	907-696-7319	

1) Have you or your gunner been convicted within the previous 5 years for a hunting violation other than a non-criminal violation established under AS 12.55.035(b)(6); or have you or your gunner been convicted for a hunting violation related to the taking of wolves that involved the use of an aircraft?

Pilot ( ) YES (X) NO Gunner ( ) YES (X) NO If yes, please explain:

2) Are you or your gunner familiar with the geography of the wolf control area(s) you are applying for?

Pilot (X) YES ( ) NO Gunner (X) YES ( ) NO

How much flying time do you or your gunner have in the wolf control area(s) you are applying for?

David Harp - 3000 hours in Super Cub as Pilot in Command in Unit 19 (McGrath area)
Tony Zellers - 630 hours as Pilot in Command and 250 hours as Pilot in Command in Unit 19 (McGrath area)

Attachment
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EXHIBIT 24
PAGE 7 OF 16

STATE OF ALASKA
Department of Fish and Game

Permit to Take Wolf Using Aircraft
Pilot Permit
– OVERLAY –

Control Project ID: [redacted]
Control Area: Unit 19D East
Year: 2003-2004
Permit: 12

5 PM

3/05/2004		Expiration Date	04/30/2004
David		S.	Haey
P.O. Box 3		Soldotna	AK 99669
32853 Kalifornsky Beach		Soldotna	907-262-9249
MC Township, range, section, and/or latitude and longitude		4011 M	PA-12 Purple & Silver
Town, airport, or specific locality			
Town, airport, or specific locality			

1) Locking Tag Number: 100541 2) Locking Tag Number: 100542 3) Locking Tag Number: 100543
4) Locking Tag Number: 100544 5) Locking Tag Number: 100545 6) Locking Tag Number: 100546
7) Locking Tag Number: 100547 8) Locking Tag Number: 100548 9) Locking Tag Number: 100549
10) Locking Tag Number: 100550

Attachment
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02499